

# **Services Contract (Rotary Wing Services for Sustainment Operations in Afghanistan)**

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**Commonwealth of Australia** represented  
by the Department of Defence  
ABN 68 706 814 312

**Air Company Vertical-T LLC**  
A company registered in the Russian  
Federation  
Registration number 1026901919450

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**DATE** day of February 2011.

**PARTIES**

**Commonwealth of Australia** represented by and acting through the Department of Defence ABN 68 706 814 312 (**Commonwealth**)

**Air Company Vertical-T LCC**

a company registered in the Russian Federation Registration number 1026901919450 (**Contractor**)

**RECITALS**

- A. The Commonwealth requires the provision of transportation services for the movement of cargo by air within the Middle East Area of Operations (**MEAO**).
- B. The transportation services are required to support the Australian Defence Force (**ADF**) operations and the Commonwealth's ad hoc requirements.
- C. The Contractor agrees to provide the Services on the terms and conditions set out in this Contract.

**OPERATIVE PROVISIONS**

**1. INTERPRETATION**

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**1.1 Definitions**

In this Contract, unless the contrary intention appears, terms have the meanings given to them in the Glossary at Schedule 1.

**1.2 Interpretation**

In this Contract, unless the contrary intention appears:

- (a) headings are for the purpose of convenient reference only and do not form part of this Contract;
- (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) 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;
- (f) a reference to a clause includes a reference to a subclause of that clause;
- (g) a reference to an item is a reference to an item of a Schedule to this Contract;
- (h) a reference to 'US\$', 'USD' or '\$US' means the United States of America 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.

### **1.3 Precedence of documents**

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

- (a) these Conditions of Contract;
- (b) the Schedules;
- (c) any document incorporated by express reference as part of this Contract,

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

### **1.4 Objectives**

The objectives of this Contract are to:

- (a) to provide an effective capability to the ADF that:
  - (i) supports the ADF's mission to 'fight and win';
  - (ii) supports the Commonwealth's policy of Defence self-reliance; and
  - (iii) minimises the Commonwealth's costs of moving Relevant Cargo;
- (b) to encourage the most efficient possible use of resources for moving Relevant Cargo;
- (c) to work within a framework that ensures personnel and materiel safety, and assures compliance with all laws and other regulatory requirements; and
- (d) to achieve these joint objectives through a culture of mutual respect and co-operation, and in an environment that fosters continuous improvement, cost efficiency, transparency and open, honest and timely communication.

## **2. COMMENCEMENT AND TERM**

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### **2.1 Term**

Subject to clause 2.2, this Contract commences on the date that the last party signed the Contract and, unless terminated earlier in accordance with this Contract or otherwise, expires on 31 August 2011.

### **2.2 Options to extend**

- (a) The Commonwealth may, in its absolute discretion, extend the Term:
  - (i) for a period of 10 months beyond the end of the Term(**first extension**); and

- (ii) for a further period of 6 months beyond the first extension (**second extension**).
- (b) The Commonwealth may exercise its options to extend the Term under clause 2.2(a) by giving written notice the Contractor at any time but not later than two months prior to the expiry of the then current Term by notice.
- (c) Where the Commonwealth exercises its option to extend the Term of this Contract under clause 2.2(a), the Contract will continue for the extended Term on the same terms and conditions.

## 2.3 Transition-in activities

- (a) Subject to its obligations under clause 2.4, the Commonwealth has no obligations under this Contract until the Services Start Date. However, this clause 2.3(a) does not limit or affect any right the Commonwealth has, whether under this Contract or otherwise.
- (b) The Contractor must, on or before the Transition In Date:
  - (i) deliver, and obtain the Commonwealth's Approval of, the Services Plan in accordance with clause 3.8;
  - (ii) provide the Commonwealth with details of the Local Representative and the Contractor Representative;
  - (iii) provide each of the following to the Commonwealth:
    - (A) a certified copy of each Air Operator's Certificate;
    - (B) copies of all documentation submitted to the Aviation Authorities in relation to the Aircraft;
    - (C) evidence that the Contractor is certified as meeting all applicable ICAO and IATA standards;
    - (D) the list of Contractor Personnel present in Afghanistan as required under clause 7.1, together with the following:
      - (I) copies of any security and background checks required by the Commonwealth;
      - (II) copies of passports, identification documents, visas, and other documents required to enter and exit Afghanistan;
      - (III) copies of Geneva Conventions Identification Cards, if the Contractor Personnel has been issued such a card by a member state;
      - (IV) evidence that the Contractor Personnel has received personal security/protection training;
    - (E) evidence the Contractor has effected the insurance arrangements required under clause 21;
  - (iv) brief the Commonwealth on the accident and reporting procedures of the Contractor;
  - (v) provide the Commonwealth with details of the Telephone Service;

- (vi) obtain, and provide copies to the Commonwealth of, all Approvals required in order for the Contractor to provide the Services in accordance with this Contract; and
  - (vii) provide the Commonwealth with any other information in relation to the Contractor, the Contractor Personnel or the performance of the Services, as required by the Commonwealth by notice to the Contractor at least 5 Working Days before the Transition In Date.
- (c) The Contractor must, as soon as possible but no later than the Services Start Date:
  - (i) ensure the Aircraft is positioned at the Base Airport and ready to be used by the Contractor in providing the Transport Services;
  - (ii) ensure all personnel required to operate the Aircraft and provide the Transport Services are sufficiently close to the Base Airport to provide those services and meet the requirements of clause 7.1; and
  - (iii) be ready, willing and able to perform Transport Services under this Contract.
- (d) The Commonwealth may, by notice to the Contractor, waive compliance with a requirement of clause 2.3(b) or 2.3(c). A waiver may be subject to conditions specified in the notice.
- (e) The Contractor must notify the Commonwealth as soon as the requirements of clause 2.3(b) and 2.3(c) have been met.
- (f) If the Commonwealth is satisfied that all the requirements of clause 2.3(b) and 2.3(c) have been complied with or waived (and, if waived subject to conditions, that all the conditions have been complied with), the Commonwealth must notify the Contractor as soon as practicable.
- (g) If the Commonwealth is not satisfied that all the requirements of clause 2.3(b) and 2.3(c) have been complied with or waived on or before the Transition In Date or the Services Start Date (as applicable), then, without limiting the Commonwealth's other rights under this Contract or at law, the Commonwealth may give a notice to the Contractor terminating this Contract under clause 23.3(k) with effect from the date specified in the notice.
- (h) The Contractor releases the Commonwealth from any liability it otherwise may have had 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.

#### **2.4 Aircraft parking arrangements**

- (a) The Contractor must, within 30 days after the Effective Date, establish all necessary long term civil parking arrangements at the Base Airport for each Aircraft.
- (b) The Commonwealth must use its best endeavours to secure interim parking at the Base Airport for the Aircraft and have the parking available:
  - (i) from the Services Start Date; and
  - (ii) until the date that is 30 days after the Effective Date (or such longer date as may be agreed by the Commonwealth in writing).

- (c) The Commonwealth must notify the Contractor by the Transition In Date whether or not it has secured the interim parking referred to in clause 2.4(b).
- (d) If the Commonwealth is unable to secure the interim parking referred to in clause 2.4(b):
  - (i) the Commonwealth must, by notice to the Contractor, postpone the Services Start Date until the earlier of:
    - (A) the Commonwealth secures the interim parking;
    - (B) the Contractor establishes the long term civil parking arrangements at the Base Airport as required under clause 2.4(a) ;
    - (C) 30 days after the Effective Date (or such later date as the Commonwealth may agree in writing); and
  - (ii) the Contractor's obligations under clause 2.3(c) and to provide Transport Services commence upon the Services Start Date as notified under clause 2.4(d)(i).

### **3. PROVISION OF THE SERVICES**

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#### **3.1 Description of the Services**

The Contractor must, in accordance with this Contract:

- (a) provide the Transport Services as tasked by the Commonwealth under this Contract, up to a maximum of 88 Block Hours per month;
- (b) provide, operate and maintain all Aircraft required for the provision of the Transport Services;
- (c) obtain all Approvals necessary for the performance of the Transport Services;
- (d) plan and coordinate the performance of the Transport Services;
- (e) safely and securely move the Relevant Cargo from each Loading Location to each Unloading Location by the relevant Delivery Time and as set out in an Advance Departure Notice as confirmed or varied by a Pre-Departure Notice;
- (f) except where this Contract expressly provides otherwise, provide, operate and use all suitable equipment, materials and consumables including cranes, forklifts and ramps and bridging plates required for the loading, tie down/securing, slinging and unloading of the Relevant Cargo and for the provision of the Services; and
- (g) provide all appropriately qualified personnel for performing the Services.

#### **3.2 Requirements for the Services**

The Contractor must perform the Services:

- (a) in accordance with this Contract;
- (b) in a manner that is consistent with achieving the objectives set out in clause 1.4;
- (c) to the satisfaction of the Commonwealth Representative;
- (d) diligently, effectively and to a high professional standard;

- (e) using personnel who:
  - (i) are suitably qualified with appropriate skills and experience; and
  - (ii) hold an appropriate current certificate, authorisation, clearance or accreditation at all times during the provision of the Services, including (where applicable) in accordance with the Aircraft Operating Certificate for the Aircraft and the rules and regulations of the countries in which the Aircraft will operate;
- (f) in accordance with all relevant laws, statutes, regulations, by-laws and policies of the Commonwealth, with the requirements of any State, Territory or local authority, and with all relevant orders, directives, and instructions issued by ISAF;
- (g) in accordance with any applicable laws of any foreign countries including those in which the Aircraft will operate;
- (h) subject to the remainder of this clause 3.2, in accordance with the Contractor's Company Operations Manual governing the operation of the Aircraft; and
- (i) in accordance with the reasonable directions from time to time of the Commonwealth Representative.

### **3.3 Obligations regarding Relevant Cargo**

- (a) The Contractor must ensure that:
  - (i) the Relevant Cargo is kept safe and secure at all times while it is in the care custody or control of the Contractor or a Subcontractor;
  - (ii) any safety or security requirements specified by the Commonwealth from time to time are complied with; and
  - (iii) the Relevant Cargo is only handled by suitably qualified persons or by persons supervised by suitably qualified persons, in a safe, responsible, competent and skilful manner.
- (b) Where the departure of an Aircraft is delayed (except to the extent the delay is caused by the Commonwealth, its officers, employees and agents), the Contractor must ensure that the Relevant Cargo is securely stored in accordance with any directions given by the Commonwealth.
- (c) The Contractor must, immediately upon becoming aware that any Relevant Cargo in its care, custody or control is lost, destroyed or damaged, notify the Commonwealth Representative of the event in writing.
- (d) The Contractor must not, and must ensure that the Contractor Personnel does not, without the prior written approval of the Commonwealth Representative:
  - (i) use the Relevant Cargo;
  - (ii) modify the Relevant Cargo; or
  - (iii) transfer possession or control of the Relevant Cargo to any other person, other than to the Commonwealth at the relevant Unloading Location.
- (e) The Relevant Cargo remains the property of the Commonwealth at all times. The Commonwealth retains the right to reasonably identify the Relevant Cargo as its property and the Contractor must preserve any means of identification.

- (f) The Contractor must not, and must ensure that its officers, agents, employees and contractors do not:
  - (i) represent itself or themselves (as the case may be) as being the owner of the Relevant Cargo; or
  - (ii) create or allow to be created any lien, charge, mortgage or encumbrance over any Relevant Cargo.

### 3.4 Dangerous Goods

- (a) Subject to clause 3.4(c), the Contractor must carry all Relevant Cargo specified in an Advance Departure Notice, including any Relevant Cargo which comprise Dangerous Goods.
- (b) In respect of any Relevant Cargo which comprise Dangerous Goods, the Contractor must comply with 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 2010* (as amended from time to time) unless the Commonwealth grants an express written waiver.
- (c) Where the Relevant Cargo includes Dangerous Goods, the Commonwealth must:
  - (i) specifically identify the Dangerous Goods in the relevant Advance Departure Notice or Pre-Departure Notice and provide details of UN numbers, United Nations (**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 Cargo 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.

### 3.5 Ground Handling Services

- (a) The Contractor will be responsible for providing all Ground Handling Services for the loading and unloading of Relevant Cargo from the Aircraft at all Loading Locations and Unloading Locations for each Transport Service, except to the extent the Commonwealth agrees to provide assistance in accordance with clause 12.4.
- (b) Without limiting clause 3.5(a), the Contractor must load and unload all Relevant Cargo at each Loading Location and Unloading Location, including:
  - (i) loading the Relevant Cargo at the Loading Location and from a point agreed between the parties, in the vicinity of the landing zone, onto the Aircraft; and



- (ii) unloading the Relevant Cargo from the Aircraft at the Unloading Location and to a point agreed between the parties, in the vicinity of the landing zone.
- (c) The Contractor must load and unload all unit load devices required for the Transport Services.

### **3.6 Tie down**

- (a) The Contractor must safely and securely tie down all Relevant Cargo and/or load devices in or on the Aircraft in accordance with:
  - (i) the loading instructions in the operating manual for the Aircraft;
  - (ii) any requirements of any Aviation Authorities; and
  - (iii) any applicable laws, directions, Approvals or standards.
- (b) The Contractor must, upon completion of the loading and tie down/securing of the Relevant Cargo (including where the Commonwealth has provided assistance), examine the tie down/securing of the Relevant Cargo to ensure that it is safe and secure.

### **3.7 External transport of Relevant Cargo**

If any Relevant Cargo is proposed to be secured externally to the Aircraft using a cargo sling, the Contractor must:

- (a) ensure that the pilot and other Contractor Personnel involved are suitably qualified to prepare for, and carry out, the external loading operations;
- (b) ensure that the Relevant Cargo is safely and securely loaded into the cargo sling, and the cargo sling is safely and securely attached to the Aircraft, in accordance with:
  - (i) all applicable operating manuals;
  - (ii) the requirements of any Aviation Authorities; and
  - (iii) any applicable laws, directions, Approvals or standards; and
- (c) ensure that the transportation of the Relevant Cargo using the cargo sling will not impede the safe operation of the Aircraft or present a risk to any person or property.

### **3.8 Planning for the Transport Services**

- (a) The Contractor must undertake all necessary planning for the performance of the Transport Services, including in relation to:
  - (i) route selection;
  - (ii) take-off procedures;
  - (iii) fuel requirements;
  - (iv) crew resourcing;
  - (v) flight timing;
  - (vi) weather conditions;

- (vii) potential threats and hazards and diversion sites;
- (viii) loading and unloading requirements;
- (ix) emergency procedures;
- (x) flight and duty limits;
- (xi) security arrangements; and
- (xii) maintenance procedures, documentation and spare parts,

in each case, in accordance with all applicable laws, treaties and international agreements, regulations, directives, instructions, standards, policies and procedures and in accordance with this Contract.

- (b) The Contractor must, before the Transition In Date, submit to the Commonwealth a plan (**Services Plan**) addressing the matters referred to in clause 3.8(a).
- (c) Within 3 days of receipt of the Services Plan, the Commonwealth must notify the Contractor whether it:
  - (i) approves the Services Plan; or
  - (ii) rejects the Services Plan, in which case the Commonwealth must provide reasons for the rejection.
- (d) If the Services Plan is rejected by the Commonwealth under clause 3.8(c), the Contractor must, within 3 days of the Commonwealth's notification of rejection, submit a revised Services Plan to the Commonwealth, amended to meet the requirements of the Commonwealth and this clause 3.8.
- (e) Without limiting its rights to request Transport Services under this Contract, the Commonwealth must, 14 days before the start of a month, provide the Contractor with report (**Monthly Forecast Report**) setting out its anticipated Transport Services requirements for the next month.
- (f) The Contractor must, within 5 days of receiving the Monthly Forecast Report, submit to the Commonwealth a plan (**Monthly Forecast Plan**), addressing the matters referred to in clause 3.8(a) and taking into account the information provided in the Monthly Forecast Report.
- (g) Within 3 days of receipt of the Monthly Forecast Plan, the Commonwealth must notify the Contractor whether it:
  - (i) approves the Monthly Forecast Plan; or
  - (ii) rejects the Monthly Forecast Plan, in which case the Commonwealth must provide reasons for the rejection.
- (h) If the Monthly Forecast Plan is rejected by the Commonwealth under clause 3.8(g), the Contractor must, within 3 days of the Commonwealth's notification of rejection, submit a revised Services Plan to the Commonwealth, amended to meet the requirements of the Commonwealth and this clause 3.8.
- (i) The Contractor acknowledges that approval of a Services Plan in accordance with clause 3.8(c) or a Monthly Forecast Plan under clause 3.8(g) does not:

- (i) constitute a representation by Commonwealth that the Services Plan or Monthly Forecast Plan is feasible or appropriate, or that it meets the requirements of this Contract;
  - (ii) limit the Contractor's responsibility to provide the Services in accordance with the requirements of this Contract; or
  - (iii) constitute a waiver of any right of the Commonwealth under this Contract, or of any cause of action out of any act or omission of the Contractor or any of the Contractor Personnel.
- (j) The Contractor must provide the Transport Services in accordance with the approved Services Plan and approved Monthly Forecast Plan, noting that the Monthly Forecast Plan will override the Services Plan to the extent of any inconsistency.

### 3.9 Obtaining information for the Transport Services

Without limiting clause 3.8, the Contractor must obtain all information required to properly plan the performance of the Transport Services, including:

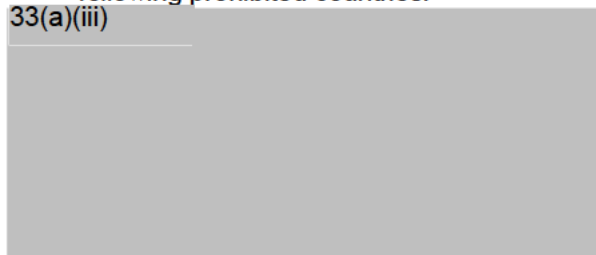
- (a) aeronautical or navigational information;
- (b) information on weather conditions or conditions at or near any landing location; or
- (c) information on the threats and hazards likely to be faced in performing the Transport Services; and
- (d) information on the conditions generally prevailing in the sector(s) in which the Transport Services are to be performed.

### 3.10 Prohibited Countries

Unless otherwise agreed by the Commonwealth in writing or where necessary in an emergency situation, the Contractor must ensure that, in providing the Transport Services:

- (a) each Aircraft only operates within Afghanistan and does not fly within 10km of an international border of Afghanistan; and
- (b) without limiting 3.10(a), none of the Aircraft land in or otherwise overfly any of the following prohibited countries:

33(a)(iii)



- (v) any other foreign state specified by the Commonwealth, at its absolute discretion, from time to time.

### 3.11 Communication in Afghanistan

- (a) The Contractor must ensure that at all times during the Term there is an on-site representative (**Local Representative**) located at the Base Airport who:
  - (i) reads, writes and speaks fluent English; and

- (ii) unless otherwise agreed by the Commonwealth in writing, is an employee of the Contractor.
- (b) The language for all communications, written or verbal, is English. All Contractor or Subcontractor pilots, aircrew, and ground crew must be able to comprehend and communicate effectively in English.

### **3.12 No passengers**

The Contractor must not, when performing a Transport Service, use the Aircraft to carry any passengers.

### **3.13 Non-beneficiary of International Agreements or Arrangements**

The Contractor does not benefit directly or indirectly from any agreement or arrangement made from time to time between the Commonwealth and the Government of the Islamic Republic of Afghanistan, unless otherwise agreed by the Commonwealth in writing.

### **3.13 On-site representative**

In relation to each Transport Service, the Contractor must nominate an on-site representative (which may be a member of the aircrew) at each Loading Location and the Unloading Location.

## **4. REQUIREMENTS OF THE AIRCRAFT**

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### **4.1 Provision of Aircraft**

The Contractor must, at its cost:

- (a) provide the Aircraft to transport the Relevant Cargo and provide all labour, equipment, ground support equipment, plant, consumables (excluding fuel) and materials required for the performance of the Transport Services in accordance with this Contract; and
- (b) perform all necessary maintenance in respect of the Aircraft to ensure an Aircraft is available at all times to perform Transport Services in accordance with this Contract.

### **4.2 Exclusive use**

- (a) Unless otherwise agreed by the Commonwealth in writing, the Contractor must not use an Aircraft for any purpose other than performing Transport Services.
- (b) Without limiting clause 4.2(a):
  - (i) the Contractor must not use any excess capacity on an Aircraft during the performance of a Transport Service for any cargo (other than the Relevant Cargo) except with the prior written agreement of the Commonwealth; and
  - (ii) the Commonwealth is exclusively entitled to use any spare capacity in any Aircraft in respect of a Transport Service.
- (c) The Contractor must ensure that an Aircraft, and a crew that is able to operate the Aircraft, is available to perform the Transport Services at all times during the Term other than:
  - (i) any periods of programmed maintenance not exceeding five days in a given month; or

- (ii) to the extent the crew is unavailable due to the crew flight and duty limits specified in an approved Services Plan being reached in a given month.

#### 4.3 Replacement Aircraft

- (a) Without limiting the Contractor's obligations or the Commonwealth's rights under this Contract, in the event that an Aircraft is not available (other than due to programmed maintenance not exceeding five days in a given month), the Contractor must (at no cost to the Commonwealth, including in relation to position in the replacement aircraft) ensure that, within 48 hours of that Aircraft being unavailable and without interfering with the provision of the Services, a replacement aircraft is available for the provision of Transport Services at the Base Airport.
- (b) The Contractor must obtain the Commonwealth's prior written approval of a replacement aircraft that it proposes to use under clause 4.3(a).
- (c) Where a replacement aircraft is used to provide Transport Services, the Contractor agrees that:
  - (i) the number of Block Hours claimed by the Contractor in relation to the provision of Transport Services using the replacement aircraft will be no greater than the number of Block Hours that could have reasonably been claimed by the Contractor, had the Transport Services been provided using the Primary Aircraft; and
  - (ii) the Commonwealth may (at its election) either:
    - (A) require the Contractor to repay to the Commonwealth; or
    - (B) reduce the amount of the Contract Price for that month by,  
  
an amount in respect of fuel to enable the replacement aircraft to provide the Transport Services to the extent that the amount of such fuel is greater than the amount of fuel that would have reasonably been used had the Transport Services been provided using the Primary Aircraft.
- (d) The Contractor must recommence using the Primary Aircraft for Transport Services as soon as possible, but no later than seven (7) days after the Primary Aircraft became unavailable, unless otherwise agreed by the parties.
- (e) Without limiting any right of the Commonwealth under this Contract, the Contractor must take all reasonable steps available to it, and use its best endeavours to ensure that any replacement aircraft that it proposes to use under clause 4.3(a) is operationally and functionally equivalent to the Primary Aircraft.

#### 4.4 Aircraft requirements

The Contractor must ensure, and represents and warrants, that at all times during the Term:

- (a) each Aircraft is designated as a Cargo Only Aircraft;
- (b) the available cargo carrying capacity of each Aircraft, unless approved by the Commonwealth in relation to a replacement aircraft under clause 4.3(a), to hold Relevant Cargo is at least 11,000 kg and 120m<sup>3</sup> over a minimum transit distance of 70 nautical miles;

- (c) each Aircraft must be fully equipped and certified to conduct external load operations, including the carriage of Relevant Cargo by suspending the Relevant Cargo below the Aircraft in a cargo sling; and
- (d) each Aircraft is:
  - (i) compliant with the airworthiness requirements and all other requirements set out in this Contract; and
  - (ii) airworthy and fit for the purpose of carrying the Relevant Cargo.

#### **4.5 Aircraft not a State Aircraft**

Each Aircraft providing a Transport Service will operate as a Civil Aircraft and not a State Aircraft and the Contractor must ensure that none of the Aircraft are represented to be State Aircraft, unless otherwise agreed by the Commonwealth in writing.

### **5. OPERATION OF AIRCRAFT**

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#### **5.1 Base airport**

- (a) The Contractor must operate from, and maintain each Aircraft at, Kandahar Airfield (OAKN) Afghanistan (**Base Airport**).
- (b) The Contractor must obtain and maintain all Approvals required for long term civil parking of each Aircraft at the Base Airport.
- (c) The Contractor must obtain all necessary materials, tools, plant, equipment, facilities, vehicles, fuel, spares, consumables and all other items which are required to enable the Contractor to operate from, and maintain each Aircraft at, the Base Airport.

#### **5.2 Operational control of the Aircraft**

The Contractor must at all times ensure that:

- (a) the Contractor maintains operational control of the Aircraft and crew;
- (b) the crew is under the control of and only authorised to take orders from the Contractor; and
- (c) the Aircraft is properly staffed and crewed, equipped and fuelled.

#### **5.3 Fuel**

- (a) The Contractor must obtain fuel for each Aircraft at the locations, dates and times and in the volumes necessary to enable the Transport Services to be provided in accordance with this Contract.
- (b) The Commonwealth must arrange for an ADF member to accompany the Contractor when obtaining fuel and will pay for the purchase of fuel.
- (c) The Contractor must only use the fuel purchased by the Commonwealth to be used:
  - (i) for the Aircraft; and
  - (ii) in providing Transport Services.

- (d) If the Commonwealth determines that the Contractor has used fuel other than in accordance with clause 5.3(c), the Commonwealth may (at its election):
  - (i) require the Contractor to repay the purchase price of that fuel to the Commonwealth; or
  - (ii) reduce any payment of the Contract Price until the purchase price of that fuel is recovered from the Contractor.
- (e) The Contractor must obtain and retain a receipt from the fuel provider for each purchase of fuel under this clause 5.3.

#### **5.4 Prohibition on carrying weapons etc**

- (a) The Contractor must ensure that the Aircraft is not fitted with (whether temporarily or otherwise) any weapons except for electronic counter-measures or other similar anti-missile counter-measures.
- (b) The Contractor must not transport any weapons, explosive ordnance or ammunition in the Aircraft, except where the weapons, explosive ordnance or ammunition is Relevant Cargo.

#### **5.5 Detailed airworthiness requirements**

- (a) The Contractor must:
  - (i) at all times during the Term, possess a valid Air Operator's Certificate in respect of each Aircraft;
  - (ii) promptly upon request by the Commonwealth, demonstrate to the reasonable satisfaction of the Commonwealth that the Contractor operates each Aircraft in accordance with the relevant Air Operator's Certificates and the requirements of the relevant Aviation Authorities;
  - (iii) promptly 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 an Aviation Authority, operations manuals, maintenance records, individual licences (aircrew and maintenance), flight records, safety incident reports and investigation reports);
  - (iv) develop and implement, an accident and incident reporting system which requires the timely notification of any accident or incident to each relevant Aviation Authority and the Commonwealth. The Contractor must, promptly upon request by the Commonwealth, provide details of the accident and incident reporting system to the Commonwealth;
  - (v) comply with the *Occupational Health and Safety Act 1991* (Cth) where applicable to the provision of the Services or aviation safety;
  - (vi) ensure that the Aircraft is registered in a country recognised by IATA and complies with Afghan airworthiness requirements, as well as the airworthiness requirements of any other country in which the Aircraft is operated in providing the Transport Services;
  - (vii) maintain records of any contracts, inspections or documents used to establish the airworthiness of the Aircraft;
  - (viii) following any accident or incident caused by or involving any Aircraft or otherwise relating to the provision of the Services, immediately notify each



relevant Aviation Authority 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 Commonwealth to do so;

- (ix) permit any relevant Aviation Authority and 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 authority 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;
  - (x) comply with all conditions placed upon them by an Aviation Authority and by the Air Operator's Certificate; and
  - (xi) promptly upon request by the Commonwealth, provide access to documentation, records and other information to enable the Commonwealth to maintain records of any investigations, incident occurrence reports or the flying safety history of the Contractor.
- (b) The Contractor must ensure that each Aircraft used in the provision of the Services is only 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 Aviation Authorities;
  - (iv) in accordance with the orders, instructions, directives or requirements issued from time to time by the relevant Aviation Authorities.

## 5.6 Access to the Aircraft

- (a) The Contractor must provide the Commonwealth, its nominee or any Aviation Authority, full and unimpeded access to:
- (i) each Aircraft; and
  - (ii) any Records of the Contractor, any Subcontractor or any Related Body Corporate of the Contractor or Subcontractor, relating to the Aircraft or its Approvals, however and wherever stored or located for the purpose of inspection or copying.

In the case of Records stored on a medium other than in writing, the Contractor must make available on request at no additional cost to the Commonwealth such reasonable facilities or tools as may be necessary to enable a legible reproduction to be created.

- (b) The Contractor must ensure that the Commonwealth is granted a right for the Commonwealth or a person authorised by the Commonwealth to enter any premises occupied by the Contractor, a Subcontractor or a Related Body Corporate for the purposes set out in clause 5.6(a).



- (c) The Contractor must provide (and must ensure that the Contractor Personnel provide) all assistance reasonably requested by the Commonwealth or a person authorised by the Commonwealth to enable the Commonwealth to exercise the rights contemplated under this clause 5.6.

#### **5.7 Noise control**

In providing the Transport Services, the Contractor must 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.

#### **5.8 Rejection of Aircraft**

- (a) The Commonwealth may reject any Aircraft proposed to be used by the Contractor to provide the Transport Services which does not meet the requirements of this clause 5. If the Commonwealth rejects an Aircraft under this Contract, 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 5.8(a), the Commonwealth may:
  - (i) require the Contractor to provide an alternative Aircraft which complies with the requirements of this Contract; or
  - (ii) give a notice terminating this Contract in accordance with clause 23.3(k) with effect from the date specified in the notice. The Contractor releases the Commonwealth from any liability it otherwise may have had 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.

#### **5.9 Australian Defence Force**

The Contractor must, and must ensure that the Contractor Personnel:

- (a) comply with the reasonable directions of the ADF; and
- (b) if requested by a Commonwealth Representative or ADF personnel authorised by a Commonwealth Representative:
  - (i) submit any items in its care, custody or control, or in the care, custody or control of any Contractor Personnel to the ADF for the purposes of inspection by the ADF;
  - (ii) provide access to the Aircraft or the Contractor's facilities for the purposes of inspection by the ADF; and
  - (iii) answer any questions or provide any information to the ADF.

#### **5.10 Notification obligations**

If at any time the Contractor discovers or considers it has encountered or found Unexploded Ordnance, Explosive Ordnance or any other hazardous substance (not forming part of the Relevant Cargo) on or near a Designated Location or an Aircraft, it must:

- (a) protect it and not damage, disturb or touch it further;
- (b) clearly mark the location of the item;

- (c) immediately give notice to the Commonwealth of the discovery, encounter or finding, who will issue instructions for dealing with it; and
- (d) ensure that all persons and Relevant Cargo are protected from exposure to it and are kept clear of the item.

## 6. PROCESS FOR ACQUIRING TRANSPORT SERVICES

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### 6.1 Advance Departure Notice

- (a) The Commonwealth may, at any time during the Term in its absolute discretion, require the Contractor to provide a Transport Service by giving at least 48 hours' notice (**Advance Departure Notice**) to the Contractor.
- (b) The Advance Departure Notice must provide details of the following in relation to the Transport Service:
  - (i) the Relevant Cargo to be moved by the Contractor, including whether the Contractor will be required to transport Dangerous Goods in accordance with clause 4.4 and, if so, the information about the Dangerous Goods required under clause 4.4;
  - (ii) the relevant Loading Location(s) and Unloading Location(s) in respect of each item of Relevant Cargo;
  - (iii) the date(s) and time(s) from which the Commonwealth will make the Relevant Cargo available to the Contractor for loading at each Loading Location; and
  - (iv) the Delivery Time(s) for the Relevant Cargo, which must be at least 48 hours after the Contractor receives Advance Departure Notice, or as otherwise agreed between the parties.
- (c) The Contractor must notify the Commonwealth within 6 hours after receiving an Advance Departure Notice for a Transport Service if:
  - (i) the Transport Service would interfere with or delay the provision of one or more other Transport Services previously required by the Commonwealth under this Contract (**Other Services**);
  - (ii) the Transport Service cannot be completed by the specified Delivery Time because of Other Services being carried out by the Contractor; or
  - (iii) the Contractor will be unable to load or unload the Relevant Cargo at a Forward Operating Base/Patrol Base using the loading/unloading capability that is integral to the Aircraft and/or using its Contractor Personnel.
- (d) If the Contractor does not give a notice under clause 6.1(c), the Contractor must provide the Transport Service and deliver and unload the Relevant Cargo by the relevant Delivery Times as specified in the Advance Departure Notice in accordance with this Contract.
- (e) If the Contractor gives a notice under clause 6.1(c), the Commonwealth may, acting reasonably, vary or cancel the Transport Service or one or more of the Other Services in accordance with clause 6.3(b).

## 6.2 Flight Plan

- (a) Within 12 hours (or such lesser period notified by the Commonwealth) after receiving an Advance Departure Notice, the Contractor must give the Commonwealth a plan (**Flight Plan**) setting out the following details:
  - (i) the Loading Date in respect of each Loading Location, which the Contractor must ensure is after the date(s) and times(s) referred to in clause 6.1(b)(iii);
  - (ii) the Scheduled Departure Time for each Loading Location;
  - (iii) the load plan that details the planned load and weight allocation and identifies any excess capacity that can be used by the Commonwealth in respect of the Transport Service;
  - (iv) any Commonwealth assistance required by the Contractor in loading or unloading the Relevant Cargo at a Forward Operating Base/Patrol Base, because of the circumstances notified under clause 6.1(c)(iii); and
  - (v) whether the available capacity in the relevant Aircraft has been exceeded and, if so, by how much.
- (b) The Contractor must ensure that the Scheduled Departure Times specified in the Flight Plan for a Transport Service will enable the Contractor to deliver and unload the Relevant Cargo to the Unloading Location(s) before the relevant Delivery Time.
- (c) Within 12 hours after receipt of a Flight Plan, the Commonwealth must notify the Contractor whether it:
  - (i) approves the Flight Plan; or
  - (ii) rejects the Flight Plan, in which case the Commonwealth must provide reasons for the rejection.
- (d) The Contractor acknowledges that approval of a Flight Plan in accordance with clause 6.2(c) does not:
  - (i) constitute a representation by Commonwealth that the Flight Plan is feasible or appropriate, or that it meets the requirements of this Contract;
  - (ii) limit the Contractor's responsibility to provide Transport Services in accordance with the requirements of this Contract; or
  - (iii) constitute a waiver of any right of the Commonwealth under this Contract, or of any cause of action out of any act or omission of the Contractor or any of the Contractor Personnel.
- (e) If the Flight Plan is rejected by the Commonwealth under clause 6.2(c), the Contractor must, within 6 hours of the Commonwealth's notification of rejection, submit a revised Flight Plan to the Commonwealth, amended to meet the requirements of the Commonwealth and this clause 6.2, whereupon the provisions of clauses 6.2(b), 6.2(c) and 6.2(d) will reapply to the revised Flight Plan.
- (f) Where the Commonwealth changes a Transport Service in accordance with clause 6.3(b)(ii), the Contractor must submit a revised Flight Plan for Commonwealth approval in accordance with this clause 6.2 within 6 hours of receipt of the notice from the Commonwealth. Clauses 6.2(c), (d) and (e) will apply to the revised Flight Plan.

### 6.3 Pre-Departure Notice

- (a) At least 24 hours prior to the Scheduled Departure Time (or as otherwise agreed between the parties) for a Transport Service, the Commonwealth must provide to the Contractor a notice (**Pre-Departure Notice**) that:
  - (i) confirms or cancels the Transport Service;
  - (ii) accepts or rejects the Contractor's claim that it requires Commonwealth assistance to load or unload the Relevant Cargo at a Forward Operating Base/Patrol Base, as notified to the Commonwealth under clause 6.1(c)(iii) and as described in the Flight Plan under clause 6.2(a)(iv); and
  - (iii) confirms the details in the Advance Departure Notice, or notifies the Contractor of any changes to the Transport Service as contemplated under clause 6.3(b).
- (b) The Commonwealth may in its absolute discretion, by notice to the Contractor:
  - (i) at any time before the Scheduled Departure Time for a Transport Service, cancel the Transport Service; or
  - (ii) no later than 24 hours before the Scheduled Departure Time for a Transport Service, change the details of the Transport Service, including by:
    - (A) changing the Loading Location(s) and/or Unloading Location(s) in respect of Relevant Cargo;
    - (B) removing and/or adding Loading Locations and/or Unloading Locations;
    - (C) changing the Relevant Cargo to be moved;
    - (D) including additional Relevant Cargo to make use of any excess capacity in the relevant Aircraft; or
    - (E) changing the Delivery Time(s) for the Relevant Cargo.
- (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 any cancellation of, or change to, a Transport Service in accordance with clause 6.3(b).
- (d) The Contractor must notify the Commonwealth within 6 hours of receiving notice under clause 6.3(b)(ii) if:
  - (i) the change to the Transport Service set out in that notice would interfere with or delay the provision of one or more other Transport Services previously required by the Commonwealth (**Other Services**); or
  - (ii) in the case of a change to the Delivery Time, the Transport Service cannot be completed by the revised Delivery Time because of Other Services being carried out by the Contractor.
- (e) Unless the Contractor gives a notice in accordance with clause 6.3(d), the Contractor must deliver the Transport Service specified in the notice under clause 6.3(b)(ii).

- (f) If the Contractor gives a notice under clause 6.3(d), the Commonwealth may, acting reasonably, change or cancel the Transport Service or one or more of the Other Services in accordance with clause 6.3(b).

#### **6.4 Pre-departure meetings**

- (a) The Commonwealth may, in an Advanced Departure Notice, require representatives of the Contractor to meet with Commonwealth representatives at a date and location:
  - (i) where possible, stated in the Advanced Departure Notice; or
  - (ii) otherwise, determined by the Commonwealth and agreed by the Contractor,to discuss the Transport Services required under this clause 6.
- (b) The Commonwealth may require the Contractor to attend additional meetings at a date and location determined by the Commonwealth and agreed by the Contractor.
- (c) At the meeting, the parties may:
  - (i) agree to amend the details of the Advance Departure Notice; and
  - (ii) agree the timing and order in which the Commonwealth is to deliver the Relevant Cargo to the Loading Location(s) or the timing and order in which the Contractor is to deliver the Relevant Cargo to the Unloading Location.

### **7. CONTRACTOR PERSONNEL**

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#### **7.1 Obligations regarding Contractor Personnel**

- (a) The Contractor must provide all flight and cabin crew, technical crew, engineering services and Ground Handling Services necessary to provide the Transport Services.
- (b) The Contractor must make arrangements for the engagement of all staff and labour, local or otherwise, and for their payment, housing, feeding and transport and provide all necessary accommodation and welfare facilities, including for their religious observances, for Contractor Personnel, including sanitary conveniences and an adequate supply of drinking water.
- (c) The Contractor must pay rates of wages, and observe conditions of labour, which are not lower than those established for the trade or industry where the work is carried out. If no established rates or conditions are applicable, the Contractor must pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally by employers whose trade or industry is similar to that of the Contractor.
- (d) 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 handle, other than for the purposes of loading or unloading the Relevant Cargo.
- (e) The Contractor must at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst the Contractor Personnel, and to preserve peace and protection of persons and property.
- (f) The Contractor must ensure that Contractor Personnel do not carry or use alcohol or Prohibited Substances.
- (g) The Contractor must ensure that the Contractor Personnel do not conduct any activities in connection with this Contract while intoxicated or affected by alcohol or Prohibited Substances.
- (h) The Contractor acknowledges and agrees that any Contractor Personnel who carry or use alcohol or Prohibited Substances will not be allowed to conduct any such activities and will be removed.
- (i) The Contractor must obtain consent from all Contractor Personnel to submit to Prohibited Substances and alcohol testing as required by the Commonwealth.
- (j) The Contractor must not and must ensure that Contractor Personnel do not carry any explosive ordnance.
- (k) The Contractor must not and must ensure that Contractor Personnel do not carry any weapons or ammunition except:
  - (i) where the weapons or ammunition are Relevant Cargo; or
  - (ii) where the weapons or ammunition are carried by aircrew for the sole purpose of self-defence of themselves or other Contractor Personnel that are aircrew, provided that:
    - (A) the weapons are only classified as handguns or rifles up to semi-automatic rifles; and
    - (B) each member of the aircrew does not carry more than one weapon;
    - (C) the ammunition is non-explosive or non-expanding ammunition;
    - (D) the aircrew have been appropriately trained and qualified on those weapons;
    - (E) the aircrew have been issued with rules on the use of force and firearms that are to the satisfaction of the Commonwealth; and
    - (F) the possession and use of such weapons is otherwise in strict compliance with applicable laws and regulations in the relevant country.
- (l) The Contractor must not and must ensure that Contractor Personnel do not, in the course of performing the Services, give, barter or otherwise dispose of to any person or persons, any weapons, explosive ordnance or ammunition of any kind.
- (m) The Contractor must ensure that at all times during the Term, each of the Contractor Personnel:
  - (i) has undertaken the security and background checks as required by the Commonwealth and the Commonwealth Representative has reviewed the

- checks and considers that such checks appear to be complete and acceptable;
- (ii) has all necessary passports, visas, and other documents required to enter and exit Afghanistan;
- (iii) has a Geneva Conventions Identification Card;
- (iv) has received personal security training, including in respect of:
  - (A) safety and security issues;
  - (B) safety and security contingency planning activities; and
- (v) where the Contractor Personnel is a member of the aircrew and carries a weapon, is trained and qualified on the use of that weapon and has been issued with rules on the use of force and firearms that are to the satisfaction of the Commonwealth.
- (n) The Contractor must establish and maintain a list that:
  - (i) identifies all Contractor Personnel present in Afghanistan in connection with the Services; and
  - (ii) provides emergency contact details for all Contractor Personnel.

The Contractor must provide a copy of this list to the Commonwealth before the Transition In Date and must keep such list updated at all times during the Term.
- (o) The Contractor acknowledges that it has a legal duty of care for the occupational health and safety of Contractor Personnel and this responsibility extends to the performance of the Services in Afghanistan.

## 7.2 Removal of Contractor Personnel

- (a) The Commonwealth may, at any time give a notice in writing to the Contractor, directing the Contractor to remove any Contractor Personnel including the Contractor's Representative or any Key Person, who the Commonwealth considers:
  - (i) persists in any misconduct or lack of care;
  - (ii) carries out duties incompetently or negligently;
  - (iii) fails to comply with a direction or request of the Commonwealth under clause 8.2;
  - (iv) fails to conform with any provisions of this Contract;
  - (v) persists in any conduct which is prejudicial to safety, health, or the protection of the environment;
  - (vi) breaches, or causes the Contractor to be in breach of, this Contract;
  - (vii) breaches any law, regulation or regulatory requirement, or the terms or conditions of any Approval;
  - (viii) breaches any local or Commonwealth security requirements;
  - (ix) in the opinion of the local government or Commonwealth, presents a security or other risk;

- (x) persists in conduct which is unlawful, riotous or disorderly, including any culturally or religiously offensive conduct, or does not preserve the peace and protection of persons and property;
  - (xi) is found to be carrying or using alcohol or a Prohibited Substance;
  - (xii) refuses to submit to alcohol or Prohibited Substance testing as required by the Commonwealth; or
  - (xiii) is otherwise unacceptable to the local government or the Commonwealth.
- (b) If the Commonwealth gives the Contractor a notice under clause 7.2(a), the Contractor must promptly appoint (or cause to be appointed) a suitable replacement person.
- (c) The Contractor will not be relieved from any of its liabilities or obligations under this Contract and must not be entitled to make, and the Commonwealth will not be liable upon, any Claim arising out of or in connection with the removal of any of the Contractor Personnel.

### **7.3 Obligations regarding Key Persons**

- (a) The Contractor must ensure that each person named in Item 3 of Schedule 2 is appointed to the Key Staff Position nominated for that person.
- (b) In the event that a Key Person will or may become unavailable for the performance of Services under this Contract for a period of four consecutive weeks or more the Contractor must:
- (i) immediately notify the Commonwealth of the impending unavailability; and
  - (ii) promptly appoint (or cause to be appointed) a suitable replacement,
- (c) If the Contractor is required to replace a Key Person under clause 7.2 or 7.3(b)(ii):
- (i) the Contractor must obtain the prior written consent of the Commonwealth to the replacement person. The Contractor must provide the Commonwealth with any information the Commonwealth requests in order to determine whether to consent to the replacement person.
  - (ii) if a replacement person is not accepted by the Commonwealth under clause 7.3(c) within three months of the Commonwealth first receiving notice under clause 7.2(b) or 7.3(b)(i) (as applicable), the Commonwealth may terminate this Contract under clause 23.2 with effect from the date specified in the notice. 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.

### **7.4 Non-representation as Auxiliary to the ADF**

The Contractor must ensure that it does not represent itself or its personnel as being auxiliary to the ADF.



## **8. COMMONWEALTH DIRECTIONS**

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### **8.1 General directions**

- (a) The Contractor must comply with the reasonable directions of the Commonwealth Representative, or an Authorised Person appointed as their delegate under clause 25.1.
- (b) 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 Contractor.
- (c) Unless authorised by this Contract or a direction given under clause 8.1(a), 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.

### **8.2 Emergency situations**

- (a) The Contractor acknowledges and agrees that, if an emergency situation arises in Afghanistan, the Contractor and the Contractor Personnel must comply with all directions and requests issued by an appropriate Commonwealth officer.
- (b) Where the Commonwealth reasonably believes that the Contractor or any Contractor Personnel has acted in breach of clause 8.2(a), the Commonwealth may:
  - (i) give a direction to the Contractor under clause 7.2 to remove such personnel from further duties in relation to the performance of the Services; or
  - (ii) remove the personnel from further duties in relation to the performance of the Services.
- (c) The Contractor acknowledges that it is responsible for notification of designated next of kin in the event any of the Contractor Personnel dies including presumed dead, or is injured, isolated, missing, detained, captured, or abducted.
- (d) If any of the Contractor Personnel is or becomes isolated, missing, detained, captured, abducted or killed, the Commonwealth may, in its absolute discretion, provide assistance in recovery actions.
- (e) The Contractor will, subject to notice to the Commonwealth Representative or ADF Commander, have the right to leave the area of operation at any time if, in its reasonable opinion, the changes to threat level adversely affect the safety or security of any of the Contractor Personnel.

## **9. SUBCONTRACTS**

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### **9.1 Prohibition on subcontracting**

The Contractor must not subcontract the whole or any part of the work under this Contract, except to the Approved Subcontractor in accordance with this clause 9 or otherwise with the prior written approval of the Commonwealth.

## 9.2 Conditions for Subcontracting

- (a) The Contractor may Subcontract the provision of the Subcontracted Services to the Approved Subcontractor provided that:
  - (i) the Subcontract includes clauses in the Subcontract that:
    - (A) are functionally equivalent to the provisions of this Contract referred to in Item 2 of Schedule 2; and
    - (B) the Commonwealth notifies are required as a condition of approving the Subcontract;
  - (ii) the Subcontract is not inconsistent with the obligations of the Contractor under this Contract;
  - (iii) the Subcontract does not permit the Approved Subcontractor to further subcontract the whole or any part of the Subcontracted Services; and
  - (iv) the Commonwealth has approved the terms of the Subcontract with the Approved Subcontractor.
- (b) The Contractor must ensure that a Subcontract is not amended or terminated except with the prior written approval of the Commonwealth.
- (c) The Contractor must immediately notify the Commonwealth Representative of:
  - (i) any disputes arising under an Approved Subcontract; and
  - (ii) the occurrence any event or circumstance that will or is likely to give the Contractor or the Approved Subcontractor a right to terminate the Approved Subcontract.

## 9.3 Qualifications of Approved Subcontractor

The Contractor must ensure that any Approved Subcontractor:

- (a) has sufficient expertise, qualifications and skills to perform the Subcontracted Services;
- (b) has in place adequate resources and personnel who are appropriately experienced, qualified and skilled to perform its obligations under the Subcontract;
- (c) has in place adequate security arrangements to satisfy the security and confidentiality provisions of the Subcontract as required by this Contract; and
- (d) is of sufficient financial standing to enable it to perform its obligations under the Subcontract.

## 9.4 Supervision and enforcement

- (a) The Contractor must ensure that the work of the Approved Subcontractor is properly managed and supervised, and must ensure performance of the Approved Subcontractor's obligations under the Subcontract.
- (b) The Contractor must take all reasonable and appropriate action, including legal action, to manage, protect or enforce its rights (including warranty rights) under or in connection with a Subcontract.

## 9.5 Contractor not relieved of obligations

- (a) The Contractor, by subcontracting any part of the Services to an Approved Subcontractor under this Contract or by obtaining the Commonwealth Representative's approval of a Subcontractor, will not be relieved of its liabilities or obligations under this Contract, and will be responsible for all Subcontractors.
- (b) Without limiting the other provisions of this clause 9, if the Contractor subcontracts the performance of any of the Services to an Approved Subcontractor:
  - (i) the Contractor is responsible for the acts and omissions of the Approved Subcontractor;
  - (ii) the Contractor indemnifies the Commonwealth, its officers, employees and agents, against any Loss sustained or incurred arising out of or in connection with:
    - (A) any fraud, negligence, unlawful act or omission or wilful misconduct of the Approved Subcontractor or any of its officers, employees or agents;
    - (B) any Claim by the Approved Subcontractor 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) any breach by the Approved Subcontractor of the terms of its Subcontract including any failure by the Approved Subcontractor to comply with the terms of this Contract which are applicable to it.

## 9.6 Other obligations regarding Subcontracts

- (a) 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 in accordance with this clause 9.
- (b) The Contractor, if requested by the Commonwealth Representative, must provide a copy of any Subcontract, which copy need not contain prices.
- (c) The Contractor must not enter into a Subcontract under this Contract with a Subcontractor named by the Australian 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).

## 10. CONTRACTOR ACKNOWLEDGEMENTS AND WARRANTIES

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### 10.1 Contractor's acknowledgements

The Contractor acknowledges and agrees that:

- (a) its provision of the Services on time, to the required safety, quality and capability, in accordance with this Contract is important to the ADF's ability to perform its functions;
- (b) the performance of the Services will require Contractor Personnel to be located within an operational environment and as such:

- (i) Contractor Personnel will be exposed to a range of risks, threats and dangerous conditions; and
- (ii) the Contractor accepts the risks associated with performing the Services in such conditions and releases the Commonwealth from all Claims and liability which it may have or claim to have, but for this release, against the Commonwealth arising out of or in connection with operating in such conditions;
- (c) its Local Representative is authorised to give and receive notices on behalf the Contractor and any notices given or received by the Local Representative are deemed to have been given or received by the Contractor and the Commonwealth is entitled to rely on such notices as being effective;
- (d) neither the Contractor nor any Contractor Personnel is part of or in any way connected with the ADF;
- (e) the Contractor and the Contractor Personnel are not, and do not enjoy the privileges of, civilian personnel employed by the Department of Defence;
- (f) the Contractor and the Subcontractors conduct activities under or in connection with this Contract at its own risk and subject to all local laws; and
- (g) the Commonwealth may, if required, disclose aspects of this Contract and the identities of the Contractor, Subcontractors or other Contractor Personnel to the International Security Assistance Force, or other countries in connection with its activities in Afghanistan.

## **10.2 Contractor warranties**

- (a) The Contractor represents and warrants that at all times that:
  - (i) 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 and will meet the requirements of this Contract;
  - (ii) the Services will be fit for the purpose or purposes required in this Contract;
  - (iii) it has the necessary expertise, experience, capacity and capability required to perform the Services in accordance with this Contract at the highest standard of industry practice.
- (b) The Contractor must meet all costs of, and incidental to, the discharge of the warranties and obligations under clause 10.2(a).
- (c) The Contractor acknowledges that the Commonwealth enters into this Contract in reliance on the Contractor's warranties in this clause 10.2(a), and the Contractor's skill and judgement in rendering the Services.

## **11. INTELLECTUAL PROPERTY**

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### **11.1 Ownership of Intellectual Property**

- (a) Nothing in this Contract 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.

## **11.2 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 that is owned by the Contractor, including the right to sub-licence, for any purpose within the power of the Commonwealth with respect to the defence of the Commonwealth, including purposes that are necessary or incidental to that purpose.
- (b) The Contractor must ensure that the Commonwealth is granted a licence from each Subcontractor on the same terms as clause 11.2(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.

## **11.3 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 11, the Contractor must deliver to the Commonwealth Representative within 20 days of request, any TD in relation to the Aircraft or equipment associated with the delivery of the Services deemed necessary by the Commonwealth to exercise its rights under this Contract at no additional cost to the Commonwealth.
- (b) The Commonwealth may provide TD to a third party for the purposes mentioned in clause 11.2(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 11.2(a) to perform those acts efficiently and effectively.

## **11.4 Release to Third Parties**

If the Commonwealth makes available to another person any 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.

## **11.5 Moral Rights**

The Contractor must:

- (a) obtain from each and any author of IP vesting in or licensed to the Commonwealth under this Contract a written consent which extends directly or indirectly to:
  - (i) the performance of acts permitted under any licence provided under clause 11;
  - (ii) any dealings with Foreground IP owned by the Commonwealth as a consequence of this Contract including the Commonwealth's licensees; and

- (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 Contract,

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.

## **12. COMMONWEALTH OBLIGATIONS**

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### **12.1 Provision of the Relevant Cargo**

The Commonwealth must make the Relevant Cargo available to the Contractor:

- (a) at the Loading Location on or before the Loading Date, in accordance with the Advance Departure Notice or Pre-Departure Notice (as applicable); and
- (b) in a condition that is suitable for air transport, including packaged or consolidated into manageable loads.

### **12.2 Commonwealth not generally required to assist Contractor**

The Contractor acknowledges that the Commonwealth is not responsible for assisting the Contractor to perform the Services or its other obligations under this Contract. Without limiting the foregoing, the Commonwealth is not obliged to:

- (a) except as contemplated under clause 12.4, perform, or provide any assistance in connection with, loading and unloading of the Relevant Cargo, or with Ground Handling Services;
- (b) perform, or provide any assistance in connection with, any maintenance of the Aircraft;
- (c) obtain, or assist the Contractor to obtain, any Approvals;
- (d) provide, or assist the Contractor to obtain, any fuel at any Loading Location, any Unloading Location or any technical stops between a Loading Location and an Unloading Location, except as contemplated under clause 5.3;
- (e) provide, or assist the Contractor to obtain:
  - (i) aeronautical or navigational information;
  - (ii) information on weather conditions or conditions at any landing location;
  - (iii) except as contemplated in clause 12.3, information on the threats and hazards likely to be faced and the conditions generally prevailing in the sector(s) in which the Transport Services are to be performed; or
  - (iv) any other information in connection with the performance of the Transport Services;
- (f) provide any transportation, accommodation, food and drinking water, medical support or training for any of the Contractor Personnel;

- (g) provide a security detachment to accompany the move of the Relevant Cargo;
- (h) provide any materials, tools, plant, equipment, facilities, vehicles, fuel, spares, consumables and all other items to operate or maintain the Aircraft or otherwise perform the Services, except as contemplated under clause 12.4; or
- (i) obtain, or assist the Contractor to obtain, any necessary diplomatic, landing and overflight clearances for any Aircraft.

### **12.3 Information on threats and hazards**

Subject to any security restrictions, the Commonwealth will use its best endeavours to provide to the Contractor information on the threats and hazards that are:

- (a) known to the Commonwealth Representative referred to in clause 25.1(a)(i); and
- (b) relevant to, or likely to affect, the provision of particular Transport Services by the Contractor.

### **12.4 Loading and unloading assistance**

Where:

- (a) a Transport Services involves delivery of Relevant Cargo to a Forward Operating Base/Patrol Base; and
- (b) the Commonwealth has indicated in the Pre-Departure Notice under clause 6.3(a)(ii), that it agrees to provide assistance to load or unload the Relevant Cargo at a Forward Operating Base/Patrol Base,

the Commonwealth will provide such assistance at that Forward Operating Base/Patrol Base in accordance with the Pre-Departure Notice.

### **12.5 Contractor obligations regarding Commonwealth property**

- (a) The Contractor must not, without the prior written approval of the Commonwealth:
  - (i) use Commonwealth property other than for the purposes of this Contract;
  - (ii) modify Commonwealth property; or
  - (iii) transfer possession or control of Commonwealth property to any other person; or
  - (iv) create or allow to be created any lien, charge, mortgage or encumbrance over any Commonwealth property.
- (b) On leaving Afghanistan, any Contractor or Subcontractor personnel in possession of Commonwealth property, including passes and protective clothing, must return this property to the Commonwealth before departing Afghanistan.
- (c) 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 Cargo or any other Commonwealth property.
- (d) Notwithstanding any other provision of this Contract, the Contractor takes full responsibility and risk for the tie down/securing of all Relevant Cargo. 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 Cargo.

#### **12.6 Contractor access to Designated Locations**

- (a) The Contractor must comply with, and ensure that the Contractor Personnel comply with, any relevant Commonwealth safety and security requirements, regulations, standing orders, or codes of behaviour for the Designated Locations.
- (b) The Commonwealth Representative may notify the Contractor of, and the Contractor must comply with, any special security or access terms that apply to a Designated Location (other than the Base Airport).

### **13. DELAY AND POSTPONEMENT**

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#### **13.1 Contractor to prevent delay**

The Contractor shall take all reasonable steps to prevent and minimise delay in the delivery of Relevant Cargo and to mitigate both parties' Loss due to any such delay.

#### **13.2 Obligations in the event of delay**

- (a) The Contractor shall, within 2 hours after becoming aware that delivery of Relevant Cargo will or may be delayed, by any cause, notify the Commonwealth Representative of the cause and nature of the delay.
- (b) The Contractor shall, within 4 hours after becoming aware that delivery of Relevant Cargo will or may be delayed by any cause, notify the Commonwealth Representative in writing:
  - (i) of the steps it shall take to minimise the delay;
  - (ii) the anticipated duration of the delay; and
  - (iii) whether it shall be claiming postponement of a Delivery Time for the Relevant Cargo.

#### **13.3 Postponement claims**

The Contractor shall be entitled to postponement of a Delivery Time for the delivery of Relevant Cargo under a Transport Service only to the extent that the delay is not caused or contributed to by the Contractor or any Contractor Personnel through its acts or omissions and the event (**Delay Event**) giving rise to the claim:

- (a) delays the Contractor in the delivery of Relevant Cargo under a Transport Service;
- (b) is beyond the reasonable control of the Contractor and the Contractor Personnel;
- (c) could not have been reasonably contemplated and allowed for by the Contractor before entering the Contract; and
- (d) is not provided for elsewhere in the Contract,

and provided that the Contractor:

- (e) as soon as possible upon, but no later than 6 hours after becoming aware of the Delay Event, submits to the Commonwealth Representative a revised Flight Plan in relation to the delayed Transport Service for the Commonwealth's consideration;



- (f) demonstrates to the Commonwealth Representative's satisfaction that the Transport Service cannot be performed in such a way so that the Relevant Cargo could be delivered by the relevant Delivery Time(s) as is reasonable with regard to circumstances;
- (g) makes all reasonable endeavours to minimise the delay and mitigate both parties' Loss; and
- (h) supports the claim with substantiating documentation to the satisfaction of the Commonwealth Representative.

#### **13.4 No postponement unless approved**

- (a) If the Contractor does not submit a revised Flight Plan within the time mentioned in clause 13.3(e) or the Commonwealth Representative rejects the postponement claim, the Contractor will:
  - (i) not be entitled to postponement of the Delivery Time for the Transport Service;
  - (ii) be fully responsible for any Loss arising from the delay; and
  - (iii) continue to comply with its obligations under the Contract.
- (b) To avoid doubt, unless and until a claim for postponement is approved by the Commonwealth Representative under clause 13.3, the Contractor is fully responsible for any delay in the performance of the Transport Services.
- (c) The parties acknowledge that:
  - (i) the Commonwealth Representative is not required to exercise its discretion under clause 13.3 for the benefit of the Contractor; and
  - (ii) the exercise or failure to exercise the discretion under clause 13.3 is not capable of being subject of a dispute for the purposes of clause 22 or otherwise subject to review.

#### **13.5 No adjustment to Contract Price**

The Contractor acknowledges and agrees that, despite any postponement of a Delivery Time in respect of a Transport Service, the Contractor will not be entitled to an adjustment of the Contract Price as a result of any Delay Event.

#### **13.6 Delay**

The Commonwealth will have no liability to the Contractor and the Contractor will not be entitled to make any Claim against the Commonwealth, for a delay in the performance of a Transport Service as a result of an act or omission of the Commonwealth or any of its officers, employees, agents or contractors.

### **14. PERFORMANCE MANAGEMENT**

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#### **14.1 Notification of matters affecting performance**

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 Contract which may materially affect the Contractor's ability to perform any of its obligations under this Contract.

## 14.2 Assessment of Contractor's performance

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

- (a) the Commonwealth may conduct internal assessments of the Contractor's performance under this Contract without any obligation to disclose the results of that assessment to the Contractor; and
- (b) if, in the Commonwealth Representative's opinion, the Contractor's performance of this Contract 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 Contract under clause 23.2. 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.

## 14.3 Performance review meeting

- (a) Where the Commonwealth gives the Contractor notice under clause 14.3(b), the parties will meet to review and discuss the Contractor's performance under this Contract.
- (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. The Commonwealth's notice may specify particular issues for discussion at the performance review meeting or specify particular issues to be addressed by the Contractor.
- (c) Within 14 days of receipt of a notice under clause 14.3(b), the Contractor must provide the Commonwealth with a report:
  - (i) detailing the Contractor's performance under this Contract;
  - (ii) addressing any particular issues identified in the Commonwealth's notice under clause 14.3(b);
  - (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 Services Start Date and the date of the last performance review meeting pursuant to this clause 14.3 and ending on the date of the Commonwealth's notice under clause 14.3(b) (**Review Period**).

- (d) The parties must meet at the time and place specified in the Commonwealth's notice issued under clause 14.3(b) and agreed by the Commonwealth to discuss the Contractor's performance under the Contract, the matters identified in clause 14.3(c), and the report prepared by the Contractor under clause 14.3(c).
- (e) 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.

## **15. RECORDS, REPORTS AND MEETINGS**

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### **15.1 Telephone service**

- (a) The Contractor must provide and maintain a 24 hour a day, 7 day a week telephone service in accordance with this clause 15.1.
- (b) The Commonwealth must be able to contact relevant personnel (including the Contractor Representative and the Local Representative) at any time via the telephone service in respect of any matter relating to this Contract.
- (c) The Contractor must provide the Commonwealth with the telephone number(s) for the Telephone Service at least 5 days prior to the Transition In Date.
- (d) The Contractor must immediately notify the Commonwealth of any changes to the telephone number(s) for the Telephone Service.

### **15.2 Records**

- (a) The Contractor must, and must ensure that each Subcontractor:
  - (i) keep records relating to this Contract 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 15.2(a) available to the Commonwealth in accordance with clause 15.3.

### **15.3 Commonwealth access**

- (a) During the performance of this Contract, the Contractor must ensure that the Commonwealth, or any person authorised by the Commonwealth, is provided with access to the premises, records and accounts of the Contractor and its Subcontractors relevant to or impacting on performance of work under this Contract. The Commonwealth or any person authorised by the Commonwealth may copy any records or accounts for the purposes of this Contract.
- (b) Without limiting the generality of clause 15.3(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 Contract;
  - (ii) performing Audit and Surveillance activities in relation to Quality;
  - (iii) determining whether and to what extent steps should be taken to register or otherwise protect any rights of the Commonwealth in respect of IP; and
  - (iv) verifying any invoices or costs claims submitted by the Contractor under this Contract. For the purpose of this verification, the Contractor must permit the Commonwealth to, or take all necessary steps to enable the

Commonwealth to exercise its rights in this clause 15.3 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 Contract.

- (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.

#### **15.4 Meetings**

The Contractor must attend such meetings as reasonably requested by the Commonwealth Representative in relation to this Contract. Unless the Commonwealth determines otherwise, such meetings will be held at Canberra, the UAE or another location agreed between the parties and on the dates and at times determined by the Commonwealth Representative and agreed by the Contractor.

#### **15.5 Daily flight logs**

The Contractor must, at the end of each Transport Service, provide to the Commonwealth Representative a copy of the flight log, which must set out the following for the Transport Service:

- (a) the Loading Locations, Unloading Locations and route taken;
- (b) the Relevant Cargo;
- (c) the departure and arrival times;
- (d) the number of Block Hours and actual flight time;
- (e) the loaded fuel, final fuel and fuel spent;
- (f) the take-off weight;
- (g) details of the pilot and crew; and
- (h) the total distance travelled.

### **16. APPROVALS, POLICY AND LAW**

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#### **16.1 Approvals**

- (a) The Contractor must obtain all necessary Approvals required in order for the Contractor to provide the Services before the Transition In Date.
- (b) The Contractor must maintain all necessary Approvals at all times during the Term.
- (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 16.1(b), the Commonwealth may terminate the Contract under clause 23.3(k). The Contractor releases the Commonwealth from any liability it otherwise may have had 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 16.1(b) and except where the Contractor satisfies the Commonwealth that it has used its best endeavours to obtain the Non-Australian Government Approval, the Commonwealth may terminate the Contract under clause 23.3(k). The Contractor releases the Commonwealth from any liability it otherwise may have had 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

## 16.2 Non-Australian Government Approvals

- (a) Non-Australian Government Approvals will include Prior Permission Request (PPR), Movement Request Form (MRF) or such other approvals as specified in Aeronautical Information Publication (AIP) – Afghanistan in order to gain the necessary access between civil and military airports.
- (b) As all civil operators in Afghanistan require an ISAF callsign, the Commonwealth will provide a valid ISAF call sign (ISF XXXX) for each Aircraft.
- (c) Where required, the Commonwealth will submit the MRF and PPR provided by the Contractor to Combined Air Operations Centre (CAOC) at Al Udiad, United Arab Emirates.

## 16.3 Terrorism and Dealing with Assets

- (a) The Contractor acknowledges the provisions of the *Charter of United Nations Act 1945* (Cth) and the *Charter of United Nations (Dealing with Assets) Regulations 2008*. This regulation requires anyone who holds assets or funds belonging to a person or organisation designated as a terrorist to freeze immediately those assets or funds. It is an offence to make any assets available to a terrorist. The list of terrorists and more information is available at [http://www.dfat.gov.au/icat/ UNSC\\_financial\\_sanctions.html](http://www.dfat.gov.au/icat/ UNSC_financial_sanctions.html).
- (b) The Contractor must comply (and must ensure that each of the Contractor Personnel complies) with the *Charter of United Nations Act 1945* (Cth).
- (c) The Contractor:
  - (i) represents and warrants that neither it, nor any of the Contractor Personnel, is; and
  - (ii) must ensure that it, and its Contractor Personnel, will not become, at any time, named on the list of persons and entities designated as terrorists under the *Charter of United Nations (Terrorism and Dealing with Assets) Regulations 2008*.
- (d) Without limiting the other provisions of this clause 16.3, the Contractor acknowledges sections 102 and 103 of the *Criminal Code* (Cth). The Contractor

must (and must ensure that the Contractor Personnel) comply with sections 102 and 103 of the *Criminal Code* (Cth).

- (e) Without limiting the Commonwealth's rights under this Contract or otherwise, if the Contractor or any Contractor Personnel is or becomes named on the list of persons and entities designated as terrorists under the *Charter of United Nations (Terrorism and Dealing with Assets) Regulations 2008*, the Commonwealth may immediately terminate this Contract under clause 23.2. 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.

#### 16.4 Montreux Document obligations

Without prejudice to the Contractor's actual status and without limiting its other obligations under this Contract or under applicable law, the Contractor must comply with the Montreux Document, including the following obligations as set out in that document, during the Term:

- (a) the Contractor must, and must ensure that the Contractor Personnel, comply with all relevant laws including those of Afghanistan, Australia, the Contractor's country of incorporation and any other relevant country;
- (b) the Contractor must ensure that the Contractor Personnel:
  - (i) behave in a mature and professional manner that reflects positively on the Commonwealth;
  - (ii) dress appropriately in plain clothes;
  - (iii) cooperate with Afghanistan Police and other relevant authorities;
  - (iv) abide by Afghanistan laws and regulations, including traffic regulations;
  - (v) treat local civilians with dignity and respect;
  - (vi) do not deal in, possess or use Prohibited Substances, including performance enhancing drugs, prohibited by Australian and/or Afghanistan law;
  - (vii) do not discuss operational information with anyone other than the ADF;
  - (viii) do not engage in any offensive combat operations, alone or in conjunction with any other company or agency or with Afghanistan security or military forces, or perform law enforcement functions for any other agency;
  - (ix) do not use force and firearms except if necessary in self-defence or defence of third persons; and
  - (x) immediately report to, and cooperate with, competent authorities in the case of the use of force and/or firearms.
- (c) promptly upon request from the Commonwealth, the Contractor must provide assurances that:
  - (i) the Contractor and the Contractor Personnel have no reliably attested record of involvement in serious crime (including organised crime, violent crime, sexual offences, violations of international humanitarian law, bribery and corruption) and, insofar as the Contractor or any Contractor Personnel had engaged in past unlawful conduct, appropriate remedial action has been taken, including by effectively cooperating with official authorities,

taking disciplinary measures against those involved, and, where appropriate and consistent with findings of wrongdoing, providing individuals injured by their conduct with appropriate reparation; and

- (ii) the Contractor has conducted comprehensive inquiries under applicable law regarding the extent to which any of the Contractor Personnel have a reliably attested record of not having been involved in serious crime or have not been dishonourably discharged from armed or security forces;
- (d) the Contractor must provide for non-criminal accountability mechanisms for improper or unlawful conduct of any Contractor Personnel, including:
  - (i) removal of individual wrongdoers from the performance of this Contract; and
  - (ii) referral of the matter to competent investigative authorities; and
- (e) the Contractor must respect applicable laws on the use of force and firearms.

#### **16.5 Compliance with Laws and Regulations**

The Contractor must comply with, and must ensure that all Contractor Personnel comply with, all applicable:

- (a) laws and regulatory requirements of Australian, Afghanistan or a third country;
- (b) treaties and international agreements;
- (c) Australian regulations, directives, instructions, policies, and procedures;
- (d) orders, directives, and instructions issued by the ADF Commander, including those relating to aircraft operations, force protection, security, health, safety, or relations and interaction with local nationals;
- (e) orders, directives, and instructions issued by ISAF, including those relating to aircraft operations, force protection, security, health, safety, or relations and interaction with local nationals; and
- (f) orders issued by a third country.

#### **16.6 Staff and Labour**

- (a) The Contractor must comply with all the relevant workplace relations, occupational health and safety and workers' compensation laws applicable to the Contractor Personnel in the jurisdiction in which they are based, including laws relating to their employment, health, safety, welfare, religious observance, immigration and emigration, and must allow them all their legal rights.
- (b) The Contractor must fully comply, and ensure its Subcontractors fully comply, with any judgment against it from any Court or Tribunal (including overseas jurisdictions but excluding judgments under appeal or instances where the period for appeal or payment or settlement has not expired) relating to a breach of workplace relations law, occupational health and safety law or workers' compensation law.

#### **16.7 Unlawful Inducements**

Without limiting any other provision of this Contract, the Contractor must comply (and must ensure that each of the Contractor Personnel complies) at all times with all laws and Commonwealth of Australia policies regarding the offering of unlawful inducements in connection with this Contract. Without limiting the preceding sentence, the Contractor



acknowledges section 70 of the *Criminal Code* (Cth). The Contractor must comply (and must ensure that each of the Contractor Personnel complies) with section 70 of the *Criminal Code* (Cth).

#### **16.8 Policy requirements**

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 Contract:

- (a) Conflict of Interest policy as detailed in the DPPM, Section 3, Chapter 3.13;
- (b) Contract Publication policy as detailed in the DPPM;
- (c) Defence and Industry policy as detailed in the Defence and Industry Policy Statement;
- (d) Defence Stocktaking policy as detailed in DI(G) LOG 4-3-014;
- (e) 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;
- (f) Environment policy as detailed in Defence Environmental Policy;
- (g) Equal Opportunity for Women in the Workplace policy as detailed in the DPPM, Section 3, Chapter 3.10;
- (h) Fraud Control policy as detailed in DI(G) FIN 12-1 The Control of Fraud in Defence and the Recovery of Public Moneys;
- (i) Hazardous Substance policy as detailed in DPPM, Section 3, Chapter 3.10;
- (j) 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;
- (k) Information Privacy Principles of the Privacy Act;
- (l) Maximising Employment Opportunities for Aboriginal and Torres Strait Islanders policy as detailed in DPPM, Section 3, Chapter 3.10; and
- (m) Ozone Depleting Substances policy as detailed in DPPM, Section 3, Chapter 3.16.

#### **16.9 Conflicts of interest**

- (a) The Contractor:
  - (i) undertakes that, to the best of its knowledge, as at the start of the Term, no conflict of interest exists which is likely to affect the performance of its obligations under this Contract by itself or by any of the Contractor Personnel; and
  - (ii) must notify the Commonwealth in writing immediately if such a conflict or risk of such a conflict of interest arises.
- (b) Within seven days after giving notice under clause 16.9(a)(ii), 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 Contract in accordance with clause 23.3(k). The Contractor releases the Commonwealth from any liability it otherwise may have had 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.

#### **16.10 Occupational Health and Safety**

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

- (a) Commonwealth employees (as defined in Section 9(1) of the *Occupational Health and Safety Act 1991*) are able to participate in any necessary inspections of the 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.

#### **16.11 Environmental obligations**

The Contractor must perform its obligations under this Contract 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).

#### **16.12 Privacy**

- (a) The Contractor must:

- (i) use or disclose Personal Information obtained during the course of providing Services under this Contract, only for the purposes of this Contract;
- (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 Contract; 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 Contract, 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 Contract (if any) that are inconsistent with an National Privacy Principle or an Approved Privacy Code binding a party to this Contract;
  - (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 Contractor Personnel who is required to deal with Personal Information for the purposes of this Contract, is made aware of the obligations of the Contractor as set out in this clause 16.12.
- (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 16.12, whether by the Contractor or any Contractor Personnel;
  - (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 Contract, contains provisions to ensure that the Subcontractor has the same awareness and obligations as the Contractor has under this clause 16.12, including the requirement in relation to Subcontracts.

#### 16.13 Disclosure of information to ISAF etc

The Commonwealth may, at its discretion and without notice to the Contractor, disclose any information about the Contract, any Subcontract or any Contractor Personnel (including where that information is Commercial-in-Confidence Information) with any agency of the Commonwealth, the Government of the Islamic Republic of Afghanistan and its agencies, and ISAF.

### 17. COMMERCIAL-IN-CONFIDENCE INFORMATION

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- (a) If in connection with this Contract, Commercial-in-Confidence Information is provided by a party (**protected party**) to the other party (**recipient party**), the recipient party must protect the confidential nature of the information and not disclose the information except:
- (i) if disclosure of the information is required by law or statutory or portfolio duties;
  - (ii) to the extent that the Commonwealth would otherwise be prevented from exercising its IP rights under this Contract; or

- (iii) to the extent disclosure of the information by the Commonwealth to any members of the International Security Assistance Force, or other countries in connection with the Commonwealth's activities in Afghanistan.
- (b) If it is necessary for a recipient party to disclose Commercial-in-Confidence Information provided by a protected party, other than to a legal adviser or for a purpose within an exception listed in clause 17(a), the recipient party must obtain the written consent of the protected party.
- (c) The Commonwealth may require the Contractor to ensure that any Contractor Personnel execute a deed of undertaking in a form acceptable to the Commonwealth prior to the disclosure of any Commercial-in-Confidence Information of the Commonwealth to such Contractor Personnel. 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) The parties agree that those parts of this Contract listed at Item 6 of Schedule 2 are Commercial-in-Confidence Information of the relevant party as at the start of the Term.
- (f) 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 Contract,except where the Contractor is required to retain such Commercial-in-Confidence Information under law or in accordance with prudent corporate governance procedures.
- (g) If the Commonwealth makes a demand under clause 17(f), 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.
- (h) 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.
- (i) Return or destruction of the documents referred to in this clause 17 does not release the Contractor from its obligations under this Contract.

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**18. DEFENCE SECURITY**

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**18.1 Security obligations**

The Contractor must, and must ensure that the Contractor Personnel will:

- (a) undertake any security checks, clearances or accreditations as required by the Commonwealth;
- (b) notify the Commonwealth of any changes to circumstances which may affect its capacity to provide Services in accordance with the Commonwealth's security requirements; and
- (c) provide a written undertaking in respect of security or access to any Commonwealth place, area or facility in the form required by the Commonwealth.

**18.2 Security of information**

- (a) The Contractor must ensure that all information in its possession relating to the performance of this Contract is safeguarded and protected according to any level of security classification.
- (b) No security classified information furnished or generated under this Contract, may be released to a third party, including a representative of another country, without prior written approval of the originator through the Commonwealth Representative.
- (c) 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 Contract has been lost or disclosed to unauthorised parties, including a representative of another country.
- (d) 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 Part 2:33 of the Defence Security Manual, as amended from time to time.
- (e) If there has been a breach by the Contractor, a Subcontractor, or any of their officers, employees or agents, of this clause 18, the Commonwealth Representative may terminate the Contract under clause 23.3.
- (f) The Contractor must ensure the requirements of clause 18 are included in all Subcontracts where the Subcontractor requires access to security classified information in order to perform the obligations of the Subcontract.
- (g) Unless otherwise agreed in writing by the Commonwealth, the Contractor shall bear the cost of complying with the Commonwealth's security requirements under the Contract.

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**19. PRICE AND PAYMENT**

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**19.1 Payment**

- (a) The Contractor directs the Commonwealth to pay all amounts that are payable to the Contractor under this Contract to an account notified to the Commonwealth, being an account in the name of Vertical Australia Pty Ltd (ACN 147 916 961) (the **Agent**).

- (b) The Contractor agrees that any payments made by the Commonwealth into the account referred to in clause 19.1(a) are taken to be payments made to the Contractor for the purposes of this Contract, and the Contractor appoints the Agent as its agent to receive payments on the Contractor's behalf under this Contract.

### **19.2 Mobilisation Cost**

The Commonwealth must pay the Contractor the Mobilisation Cost within 30 days of the Contractor providing an invoice to the Commonwealth that complies with the requirements of clause 19.6. subject to the Commonwealth being satisfied that:

- (a) the Initial Positioning Flight has occurred; and
- (b) the landing site at the Base Airport is ready for use by the Aircraft.

### **19.3 Contract Price**

Subject to clause 19.10, the Contract Price for each month during the Term commencing on the Services Start Date is, subject to clause 4.3(c) in relation to a replacement aircraft, the sum of:

- (a) the Monthly Standby Rate, which includes the provision of Transport Services up to the Minimum Capability in that month; and
- (b) if the Block Hours actually and reasonably flown by the Aircraft in providing Transport Services during that month exceeds the Minimum Capability, the number of Block Hours in excess of the Minimum Capability multiplied by the Hourly Flying Rate up to a maximum of 88 Block Hours per month.

### **19.4 Contract Price**

The Commonwealth must pay to the Contractor the Contract Price for each month within 30 days of the later of:

- (a) the end of the relevant month; or
- (b) the Contractor providing an invoice to the Commonwealth that complies with the requirements of clause 19.6,

provided the Contractor has provided the Services to the satisfaction of the Commonwealth during the month to which the invoice relates.

### **19.5 Price basis**

- (a) The Contract Price includes all costs and amounts payable by the Commonwealth in respect of the Services including:
  - (i) landing fees and enroute charges;
  - (ii) landing, airport and departure taxes;
  - (iii) meals, entertainment and refreshments where applicable;
  - (iv) the Ground Handling Services;
  - (v) obtaining weather information;
  - (vi) NOTAMs;
  - (vii) load control;

- (viii) obtaining all necessary Approvals; and
  - (ix) all charges referable to the provision of the Services, whether incidental or ancillary.
- (b) The Contractor warrants that, taken together, the Contract Price and the Positioning Price:
  - (i) make adequate provisioning for all of the Contractor's costs associated with the Aircraft, labour, on and off site overheads (including insurance), goods, materials, tools, plant, equipment, facilities, vehicles, consumables, providing the Transport Services, costs associated with the crew, maintenance and insurance and all other items which are required to enable the Contractor to comply with its obligations under this Contract or which are reasonably inferred from this Contract, notwithstanding that they are not expressly mentioned; and
  - (ii) comprises the total consideration payable by the Commonwealth to the Contractor for the provision of the Services, and the Contractor will not otherwise make any claim in respect of payment for the provision of the Services.

#### 19.6 Invoice requirements

The Contractor must ensure that it submits a single invoice, relating to the activities undertaken in the month to which the invoice relates, which:

- (a) clearly shows the details for each of the Contract Price and the Mobilisation Cost (if applicable);
- (b) specifies the Commonwealth's reference number for this Contract;
- (c) includes such supporting documents as this Contract or the Commonwealth Representative requires;
- (d) contains sufficient information to enable the Commonwealth, acting reasonably, to identify the Services and circumstances that gave rise to the claim for payment contained within the invoice, including details of:
  - (i) in relation to the Mobilisation Cost, a copy of the flight log for the Initial Positioning Flight;
  - (ii) in relation to the Contract Price:
    - (A) the dates on which Transport Services were provided; and
    - (B) a summary of the Block Hours provided on each date and, in the case of a Transport Services for which a replacement aircraft was used, a summary of the Block Hours that would have been provided had the Primary Aircraft been used to provide the Transport Services; and
- (e) contains a statement by the Contractor that the information in the invoice is complete and accurate;
- (f) is a valid tax invoice for the purposes of the GST Act; and
- (g) sets out the amount payable by the Commonwealth in respect of GST for supplies made under this Contract that are taxable supplies.

**19.7 Fuel reconciliation**

- (a) The Contractor must prepare and submit with each invoice referred to in clause 19.6 a report (**Fuel Report**) relating to the preceding month that contains:
  - (i) a summary of the fuel purchased under clause 5.3 during that month;
  - (ii) the dates on which Transport Services were provided during that month;
  - (iii) the amount of fuel used in undertaking the Transport Services on each date and, in the case of Transport Services for which a replacement aircraft was used, the amount of fuel that would have been used in undertaking the Transport Services had the Primary Aircraft been used; and
  - (iv) copies of receipts or “chits” for every fuel purchase made under clause 5.3 during that month.

**19.8 Taxes and duties**

- (a) Subject to clause 19.8(h), all taxes, duties (including stamp duty) and government charges imposed or levied in Australia or overseas in connection with this Contract will be met by the Contractor and will be included within the Contract Price and the Mobilisation Cost.
- (b) Subject to clause 19.8(d), the Commonwealth must, in addition to the Contract Price and the Mobilisation Cost, pay the amount of GST imposed on any taxable supply made by the Contractor to the Commonwealth under this Contract.
- (c) For the purposes of clause 19.8(b), the additional amount is the amount of GST payable on that part of the Contract Price and the Mobilisation Cost 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 19 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 Contract, 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 19.8(f) will be a debt recoverable by the Commonwealth in accordance with clause 25.9.
- (h) The Commonwealth will be responsible for paying any customs duty associated with the movement of the Relevant Cargo.

**19.9 Denomination of payments**

All payments under this Contract will be payable by the Commonwealth in the Relevant Currency.

**19.10 Service Credit**

- (a) If, during any month, the Contractor does not deliver and unload any Relevant Cargo at the Unloading Location by the relevant Delivery Time, for any reason, the Contract Price for that month will be reduced by the amount (if any) (**Service Credit**) determined by the following formula:

$$\text{Service Credit} = \left( \text{Contract Price} \times \frac{A}{B} \right)$$

where:

- A = the number of days between the first Delivery Time stated in the Advanced Departure Notice (as varied by the Pre-Departure Notice) for the relevant Transport Service, and the day on which all Relevant Cargo for that Transport Service is delivered and unloaded at each Unloading Location.
- B = number of calendar days in the month.
- (b) Clause 19.10(a) does not apply to the extent that a failure to deliver and unload Relevant Cargo at the Unloading Location by the Delivery Time arises is a result of:
- (i) programmed maintenance not exceeding five days in a given month; or
  - (ii) an event or circumstances for which the Contractor is entitled to postponement of the Delivery Time in relation to the Relevant Cargo.
- (c) The Contractor acknowledges that the Service Credit:
- (i) represents a reduction in the Contract Price to reflect the provision by the Contractor of a lower level of service than is required under this Contract; and
  - (ii) is a reasonable pre-estimate of the loss likely to be suffered by the Commonwealth as a result of no Aircraft being available for use in performing the Transport Services and as a result of a delay in the performance of a Transport Service.
- (d) The Contractor must:
- (i) measure the Available Days and the Number of Delayed Services;
  - (ii) provide to the Commonwealth, together with the invoice under clause 19.6, a report detailing the Available Days and the Number of Delayed Services;
  - (iii) use appropriate measurement and monitoring tools and procedures to measure the Available Days and the Number of Delayed Services accurately; and
  - (iv) provide, on request, to the Commonwealth:
    - (A) information and access to those measurement and monitoring tools and procedures to verify that they accurately measure the Contractor's performance; and
    - (B) ad hoc reports on Available Days and the Number of Delayed Services.



**20. LIABILITY**

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**20.1 Commonwealth entitled to claim damages**

Subject to clause 20.6 and the other provisions of this Contract, the Contractor acknowledges that in the event that the Contractor fails to provide the Services in accordance with the terms of this Contract the Commonwealth may suffer loss for which it will be entitled to claim damages from the Contractor.

**20.2 Contractor risk**

Subject to clause 20.6, the Contractor bears the risk of loss or destruction of, or damage to the Relevant Cargo from the time that the Relevant Cargo is delivered by the Commonwealth to the Contractor at the relevant Loading Location until the time that the Relevant Cargo is delivered to the Commonwealth and unloaded at the relevant Unloading Location, except to the extent that such loss, destruction or damage is not caused or contributed to by the Contractor or any Contractor Personnel through its acts or omissions.

**20.3 Injury etc to 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 Contract, 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).

**20.4 Property damage and public risk**

Subject to clause 20.6, the Contractor must indemnify the Commonwealth, its officers, employees and agents against any Loss 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 20.3 applies;
- (b) by any person in respect of loss of, damage to or destruction of any property (including property of the Commonwealth other than any Relevant Cargo); and
- (c) that comprises costs and expenses of defending or settling any claim referred to in clauses 20.4(a) and 20.4(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).

**20.5 Damage to Relevant Cargo**

- (a) Subject to clauses 20.5(b) and 20.6, the Contractor must indemnify the Commonwealth, its officers, employees and agents against any Loss sustained or incurred in respect of loss of, or damage to or destruction of any Relevant Cargo from the time that the Relevant Cargo is delivered to the Contractor at the relevant Loading Location until the time that the Relevant Cargo is collected by the Commonwealth at the relevant Unloading Location
- (b) Clause 20.5(a) does not apply to the extent that the loss, damage or destruction of the Relevant Cargo was:

- (i) not caused or contributed to by the Contractor or any Contractor Personnel through its acts or omissions;
- (ii) caused by fair wear and tear as a result of the transportation of the Relevant Cargo; or
- (iii) caused by the Relevant Cargo being jettisoned in an emergency situation, where that situation was not caused or contributed to by the Contractor or any Contractor Personnel.

## 20.6 Limitation of Liability

- (a) Subject to clauses 20.6(c) and 20.6(e), the liability of the Contractor to the Commonwealth arising out of the Contractor's performance of this Contract will be limited as follows:
  - (i) for loss of, or damage to or destruction of, Defence Property, in aggregate to A\$5,000,000; and
  - (ii) for a breach of contract or negligent act or omission not mentioned in clause 20.6(a)(i) in aggregate to A\$20,000,000.
- (b) Subject to clauses 20.6(c) and 20.6(e), the Contractor is not liable for loss of, or damage to or destruction of, Defence Property to the extent that the loss, damage or destruction was caused or contributed to by:
  - (i) war, hostilities, invasion, act of foreign enemies;
  - (ii) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war;
  - (iii) riot, disorder, strike or lockout by persons other than the Contractor's Personnel and other employees of the Contractor and Subcontractors;
  - (iv) ionising radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such radiation or radio-activity; and
  - (v) natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity,

except to the extent that the loss, damage or destruction:

  - (vi) could reasonably have been prevented, avoided or overcome by the Contractor; and
  - (vii) was caused or contributed to by the Contractor or any Contractor Personnel through its acts or omissions.
- (c) The limitations in clauses 20.6(a) and 20.6(b) 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 20.7; or
  - (vii) the privacy indemnity provided by the Contractor under clause 16.12.
- (d) The limitations in clause 20.6(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).
- (e) To avoid doubt, if more than one limitation mentioned in clause 20.6(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.

## 20.7 Intellectual Property

The Contractor must indemnify the Commonwealth and its officers, employees, agents, licensees and sub-licensees against any Loss sustained or incurred by the Commonwealth which arises out of any Claim 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 11 or otherwise under this Contract; 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 Contract).

## 21. INSURANCE

### 21.1 Contractor insurance

The Contractor must, by the Transition In Date, effect and maintain or cause to be effected and maintained the following insurances at the times in the manner and form and specified in this clause 21.1 (except to the extent that the relevant risk is insured against under another insurance effected in compliance with this clause 21.1), and any other insurances as may be required by applicable law.

- (a) **(Employer's liability and worker's compensation insurance):** employer's liability and worker's compensation insurance which insures any injury, damage, expense, loss or liability suffered or incurred by any person engaged by the Contractor or its contractors (or their dependants) in performing the Transport Services giving rise to a claim under statute or at common law in each jurisdiction where the Services will be carried out, the Contractor's employees normally reside or where their contract of employment was made;
- (b) **(Hull all risk insurance):** hull all risk insurance in respect of each Aircraft for US\$7,000,000;
- (c) **(Aviation liability insurance):** aviation liability insurance which covers the liability of the Contractor (including to the Commonwealth) in respect of third party legal liability for:

- (i) injury or death to persons or loss of or damage to tangible property with a limit of liability of not less than \$20 million for each occurrence and in the aggregate;
- (ii) loss of, damage to, or loss of use of, the cargo to be transported in connection with this Contract, for a sum insured of not less than US\$20 per kilogram of cargo.

## 21.2 Insurance policy requirements

The Contractor must ensure, and where relevant procure that its Subcontractors ensure, that:

- (a) each insurance referred to in clause 21.1 (with the exception of the statutory insurances):
  - (i) must apply in relation to Afghanistan and the Contractor's performance of this Contract in Afghanistan;
  - (ii) are effected with reputable insurers with a financial security rating of "A+" or better by Standard & Poors or the equivalent rating with another recognised rating agency, or any other reputable insurer;
  - (iii) are on terms (including deductible levels) approved in writing by the Commonwealth, which approval must not be unreasonably withheld;
  - (iv) are effected on terms which require twenty (20) Working Days' notice of cancellation to be given by the insurer to insured;
  - (v) where there is more than one person comprising the insured, provide that a notice of claim by one insured will be accepted by the insurer as notice by all insureds;
  - (vi) provide that the insurer waives all rights, remedies or relief to which it might become entitled by way of subrogation against named insureds;
- (b) each insurance referred to in this clause 21.1 (with the exception of the statutory insurances and the insurance referred to at clause 21.1(b)) must insure the "Commonwealth of Australia represented by the Department of Defence" for principal's liability;
- (c) each insurance referred to in clause 21.1 (with the exception of the statutory insurances and the insurance referred to at clause 21.1(a) and 21.1(b)) must:
  - (i) operate (with the exception of limits of indemnity) as if there was a separate policy of insurance covering each person comprising the insured, including to provide coverage for claims by one insured against another;
  - (ii) provide that the insurer agrees not to impute the acts, omissions, states of mind, knowledge or any non-disclosure of one insured to any other insured for the purpose of determining any insured's right to cover;
- (d) once approved by the Commonwealth, the terms of the insurances are not changed in a manner materially adverse to the insurance cover to be provided. The Contractor must indemnify the Commonwealth for its reasonable legal and other costs (if any) associated with determining whether or not to approve any such requested change.

**21.3 Subcontractor insurance**

Notwithstanding any other provision of this Contract, the Contractor must ensure each Subcontractor is insured as required by this clause 21 (including with respect to the amount of insurance, types of insurance and period of insurance) and, abide by the provisions of this clause 21, as is appropriate given the of the services or work to be performed by them, as if they were the Contractor.

**21.4 Period and evidence of insurance**

- (a) The Contractor must maintain the insurance required under this clause 21 for the duration of this Contract and in respect of any insurances written on an claims made basis. The Contractor must also maintain relevant insurances to provide reasonable cover for obligations that survive expiry or termination of this Contract, or as otherwise specified by the Commonwealth.
- (b) The Contractor must:
  - (i) by the Transition In Date;
  - (ii) in the event that the Contract is extended beyond the initial Term, on each anniversary of the Transition In Date; and
  - (iii) on request by the Commonwealth at any time, including after expiry or termination of this Contract,produce satisfactory evidence of currency and coverage of the insurance to the Commonwealth Representative.
- (c) The evidence required by clause 21.4(b) 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.

**21.5 Other insurance rights and obligations**

- (a) If the Contractor does not comply with clauses 21.4(b) and 21.4(c), the Commonwealth may, but is not obliged to, effect the relevant insurances (and the Contractor must provide all reasonable assistance and information to allow the Commonwealth to do so including by providing underwriting information and disclosures to brokers and insurers) and may:
  - (i) recover the cost of doing so as a debt due and payable on demand by the Commonwealth from the Contractor; or

- (ii) deduct the premiums payable for the insurances from amounts payable to the Contractor under this Contract or otherwise.
- (b) The Contractor must punctually pay, or cause to be paid, all premiums in respect of all insurances referred to in this clause 21.
- (c) Any deductibles payable under any of the insurances referred to in this clause 21 shall be the responsibility of the Contractor except to the extent that the Contractor has no liability, or is relieved from liability, under this Contract in respect of the loss or liability the subject of the insurance claim.
- (d) The Contractor must ensure, and where relevant procure that its Subcontractors ensure, that in relation to any insurance policy required to be maintained by this clause 21 it:
  - (i) does not do anything or fail to do anything or (insofar as it is reasonably within its power) permit anything to occur which prejudices any insurance;
  - (ii) if necessary, rectifies anything which might prejudice any insurance;
  - (iii) reinstates an insurance policy if it lapses;
  - (iv) does not cancel, adversely vary or allow an insurance policy to lapse without the prior written consent of the Commonwealth;
  - (v) immediately notifies the Commonwealth of any event which may result in an insurance policy lapsing or being cancelled;
  - (vi) gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance;
  - (vii) immediately informs the Commonwealth whenever it receives or gives a notice under or in connection with any insurance policy including any claim (with the exception of claims or potential claims by the Commonwealth against the Contractor) or notice of cancellation;
  - (viii) subject to its obligations to insurers, inform the Commonwealth immediately it becomes aware of any actual, threatened or likely claims (with the exception of claims or potential claims by the Commonwealth against the Contractor) under any of the insurances referred to in this clause 21 which could materially reduce available limits of indemnity or which may involve the Commonwealth, and must reinstate or replace any depleted aggregate limit, resulting from claims that are unrelated to the Transport Services, if requested to do so in writing by the Commonwealth; and
  - (ix) does everything reasonably required by the Commonwealth or any other person for whose benefit the policy is effected to enable the Commonwealth or that other person to claim and to collect or recover monies due under any insurance policy.
- (e) The Contractor must not do anything which has been notified to the Contractor in writing by the Commonwealth that may invalidate or otherwise prejudice any insurance held by the Commonwealth in relation to the Transport Services.
- (f) Neither failure to comply, nor full compliance, by the Contractor with this clause 21 will limit or relieve the Contractor of its liabilities and obligations under any other term of this Contract.

## **22. DISPUTE RESOLUTION**

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### **22.1 Prohibition on court proceedings**

A party must not commence court proceedings relating to any dispute arising from this Contract except where that party seeks urgent relief from a court or where dispute resolution has failed under this clause 22.

### **22.2 Dispute resolution process**

- (a) 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.
- (b) If a party fails to comply with this clause 22, the other party is not required to undertake dispute resolution for the dispute in accordance with this clause 22.

### **22.3 Obligations to perform continue**

The parties must at all times during the dispute continue to fulfil their obligations under this Contract.

## **23. TERMINATION**

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### **23.1 Default Notice**

- (a) If:
  - (i) the Contractor breaches an obligation under this Contract; and
  - (ii) the Commonwealth (in its discretion) considers that the breach is capable of being remediedthe Commonwealth may issue a notice to the Contractor requiring it remedy the default within the period specified in the notice.
- (b) If the Commonwealth issues a Default Notice under clause 23.1(a), the Contractor must:
  - (i) remedy the default specified in the notice within the period specified in the Default Notice at no additional cost to the Commonwealth;
  - (ii) comply with any directions given to the Contractor by the Commonwealth in relation to the default specified in the Default Notice; and
  - (iii) mitigate all loss, costs (including the costs of its compliance with any directions) and expenses in connection with the default specified in the Default Notice, including those arising from affected Subcontracts.

### **23.2 Commonwealth step-in right**

Where the Contractor fails to remedy a default subject to a Default Notice within the period specified in the notice, the Commonwealth, without limiting the Contractor's warranties and obligations under this Contract, 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 25.9.



### 23.3 Termination for default

In addition to its other rights, the Commonwealth may immediately terminate or reduce the scope of this Contract by notice in writing to the Contractor, if the Contractor:

- (a) becomes:
  - (i) bankrupt or insolvent;
  - (ii) subject to one of the forms of external administration provided for in Chapter 5 of the *Corporations Act 2001*; or
  - (iii) subject to any form of administration under the laws of a non-Australian jurisdiction, which is the same as, or substantially equivalent to those referred to in clause 23.3(a)(ii);
- (b) is wound up by resolution or an order of the court;
- (c) suffers execution against any of its assets which has an adverse effect on the Contractor's ability to perform its obligations under this Contract;
- (d) makes an assignment of its estate for the benefit of creditors or enters into any arrangement or composition with its creditors;
- (e) ceases to carry on business;
- (f) subject to clause 16.1(e), fails to obtain or ceases to hold any Approval;
- (g) fails to start to remedy, or fails to remedy, a breach of an obligation under this Contract, that is subject to a Default Notice, as required in a Default Notice;
- (h) without limiting the Commonwealth's other rights under this clause, has committed a Default that has been subject to a Default Notice on two or more prior occasions, whether or not the Contractor has remedied the Default on those occasions;
- (i) breaches an obligation under this Contract that the Commonwealth considers (in its discretion) is not capable of being remedied;
- (j) breaches any of its obligations under clause 11, clause 16.1 clause 18, or clause 24,
- (k) commits any breach (other than a breach the subject of a Default Notice) for which this Contract provides a notice of termination for default may be given;
- (l) assigns its rights other than in accordance with the requirements of this Contract;
- (m) has otherwise regularly or persistently failed to meet any, some or all requirements of this Contract, whether or not the Commonwealth has issued a Default Notice, including where the Contractor has failed to provide any Transport Services in accordance with an Advance Departure Notice more than once in any rolling period of 12 months;
- (n) the Aircraft required for a Transport Service is not available for use to provide the Transport Service; or
- (o) the Commonwealth rejects an Aircraft under clause 5.8;

### 23.4 Obligations in the event of termination

- (a) If this Contract is terminated under this clause 23 or otherwise:



- (i) 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;
  - (ii) subject to clause 25.10, the parties will be relieved from future performance, without prejudice to any right of action that has accrued at the date of termination;
  - (iii) subject to the process set out in clause 23.5 the right to recover damages, including full contractual damages, will not be affected; and
  - (iv) 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; and
  - (v) 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.
- (b) To avoid doubt, and despite anything else in this Contract, if the Contractor delays in delivering Services or complying with any other obligation in accordance with this Contract, each day of delay is a new breach of this Contract 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 Contract for a previous breach of this Contract.
- (c) The rights of the Commonwealth to terminate or reduce the scope of this Contract under this clause 23 are in addition to any other right or remedy the Commonwealth may have in relation to this Contract.

### **23.5 Termination or reduction in scope for convenience**

- (a) In addition to any other rights it has under this Contract, the Commonwealth may at any time terminate or reduce the scope of this Contract by notifying the Contractor in writing.
- (b) If the Commonwealth Representative issues a notice under clause 23.5(a), the Contractor must:
- (i) stop or reduce (as the case may be) work in connection with this Contract 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 reduction in scope, including those arising from affected Subcontracts.
- (c) Subject to clause 23.5(d), if the Commonwealth Representative issues a notice under clause 23.5(a), the Commonwealth will only be liable for:
- (i) payments under the payment terms of this Contract for Services provided before the effective date of termination or reduction in scope;
  - (ii) in the case of a reduction in scope, the payments unaffected by the notice; and

- (iii) any reasonable costs incurred by the Contractor solely in connection with the termination or reduction in scope that are directly attributable to the termination or reduction in scope,

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 23.5(c).

- (d) The Contractor will not be entitled to:
  - (i) profit anticipated on any part of this Contract terminated; or
  - (ii) any lost opportunity as a result of the Contractor entering into the Contract 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 23.5.

## **24. CHANGE OF CONTROL**

### **24.1 Prohibition on Change of Control**

- (a) The Contractor must ensure that there is no Change of Control of the Contractor unless and until the Contractor first obtains the written consent of the Commonwealth.
- (b) To avoid doubt, the Commonwealth may, in its absolute discretion, withhold any consent under clause 24.1(a), or give its consent subject to conditions.

### **24.2 Termination right**

If there is a Change of Control without the Contractor first obtaining the Commonwealth's consent under clause 24.1(a), the Commonwealth may terminate this Contract under clause 23.3.

### **24.3 Definitions**

For the purposes of this clause 24:

**Change of Control** means, in relation to the Contractor, where a person who did not (directly or indirectly) effectively Control the Contractor at the start of the Term, either alone or together with others, acquires Control of the Contractor; and

**Control** means:

- (a) the ability to exercise or control the exercise of the right to vote in respect of more than 50% of the voting shares or other form of voting equity in a corporation;
- (b) the ability to dispose or exercise control over the disposal of more than 50% of the shares or other form of equity in a corporation;
- (c) the ability to appoint or remove or where a majority of the directors of a corporation;
- (d) the ability to exercise or control the exercise of the casting of

a majority of the votes at the meeting of the board of directors of a corporation; and

- (e) any other means, direct or indirect, of dominating the decision making and financial and operating policies of a corporation.

## 25. GENERAL

### 25.1 Commonwealth Representative

- (a) The Commonwealth Representatives are:
- (i) in relation to matters involving the day-to-day administration of the Contract;; Officers Commanding Force Support Team KAF and TK
  - or
  - (ii) in relation to matters that relating to a dispute under the Contract, the meaning of the Contract or in relation to a proposed variation to the Contract: Commander 1 Joint Movement Group,

unless otherwise notified to the Contractor in writing, and has authority to represent the Commonwealth in respect of those matters.

- (b) The Commonwealth Representative may delegate its functions to a person, or authorise that person to carry out its functions on its behalf (**Authorised Person**). 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, from time to time, and the scope of their delegation or authorisation.

### 25.2 Contractor Representative

- (a) The Contractor Representatives are:
- (i) in relation to matters involving the day-to-day administration of the Contract;; Paul Rigby  
Aviation Director  
PME International LLC
  - or
  - (ii) in relation to matters that relating to a dispute under the Contract, the meaning of the Contract or in relation to a proposed variation to the Contract: Yuri Tchernobryvko  
Vertical Australia Pty Limited  
(Vertical-T),

unless otherwise notified to the Commonwealth in writing, and has authority to represent the Contractor in respect of those matters.

- (b) Any notice or communication given to, or received from, a person referred to in clause 25.2(a) will be deemed to have been duly given to, or received from (as applicable) the Contractor.

**25.3 Post Defence separation employment**

- (a) The Contractor must ensure that any employee who is a former Employee of Defence complies with the requirements of DWRM 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 Contract, the selection of the Contractor or the performance of the project or activity to which this Contract relates; or
  - (ii) in the 12 months immediately preceding the request for approval was a Employee of Defence,to perform or contribute to the performance of this Contract.
- (c) The Commonwealth Representative must not unreasonably withhold approval of a person under clause 25.3(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 25.3(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 Contract;
  - (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 Contract;
  - (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 Contract; and
  - (v) the policy set out in DWRM and DI(G)PERS 25-4, as applicable.
- (d) Each restriction created by clause 25.3(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).

**25.4 Applicable law**

- (a) The laws of the Australian Capital Territory apply to this Contract. The courts of that State or Territory have non-exclusive jurisdiction to decide any matter arising out of this Deed.
- (b) The Contractor appoints Vertical Australia Pty Ltd (ACN 147 916 961) (the **Agent**) as its agent to receive service of process for any proceedings in connection with this Contract. The Contractor undertakes to maintain this appointment so long as this Contract remains in force, and agrees that any process served on the Agent is taken to be served on the Contractor.

**25.5 Language and Measurement**

- (a) All information delivered as part of the Services under this Contract 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.

**25.6 Entire Contract**

- (a) This Contract 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 Contract.

**25.7 Waiver**

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

**25.8 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 Contract.

**25.9 Right of Commonwealth to Recover Money**

- (a) Without limiting the Commonwealth's rights under this Contract, if the Contractor owes any debt to the Commonwealth in relation to this Contract, 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) The Commonwealth must give the Contractor prior notice of its intention to exercise its rights under clause 25.9.
- (c) If the Commonwealth deducts the amount of a debt from any payment, it must notify the Contractor in writing that it has done so.
- (d) 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.
- (e) Nothing in this clause 25.9 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.

**25.10 Survivorship**

Any provision of this Contract which expressly or by implication from its nature is intended to survive the termination or expiration of this Contract 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.

**25.11 Severability**

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

**25.12 Notices**

(a) Unless the contrary intention appears, any notice or communication under this Contract will be effective if it is in writing (including electronic form, such as email), signed (including by electronic signature block) and delivered to the Contractor or the Commonwealth, as the case may be, at the following addresses:

(i) to the Contractor:

(A) where the matter involving the day-to-day administration of the Contract:

Address: PME International LLC. Dubai Office, UAE, PO Box 77174

Email: paul.rigby@pme-international.com

Attention: Paul Rigby, Aviation Director  
PME International LLC

Mobile +971 (0) 50 105 35 65

(B) where the matter relates to a dispute under the Contract, the meaning of the Contract or a proposed variation to the Contract:

Address: 8/317 Edgecliff rd, Woollahra, NSW, 2025, Sydney Australia

Email: yuri.tchernobryvko@gmail.com

Attention: Yuri Tchernobryvko  
Vertical Australia Pty Ltd (Vertical-T)

Mobile + 61 (0) 411 492 998

(ii) to the Commonwealth:

(A) where the matter involving the day-to-day administration of the Contract:

Address: To be advised by the Commonwealth.

Email: To be advised by the Commonwealth.

Attention: Officers Commanding Force Support Team KAF and TK

- (B) where the matter relates to a dispute under the Contract, the meaning of the Contract or a proposed variation to the Contract:

Address: Headquarters 1st Joint Movement Group

Headquarters Joint Operations Command  
Department of Defence  
CANBERRA ACT 2600

Email: [strategicliftcoordinationcell@defence.gov.au](mailto:strategicliftcoordinationcell@defence.gov.au)

Attention: SO3 SLCC HQ1JMOVGP

- (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 in electronic form (such as email) when the email message enters the addressee's information system; or
  - (iii) in the case of delivery by hand, on delivery.

#### 25.13 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:
  - (i) being employees, partners or agents of the Commonwealth; or
  - (ii) having any authority to bind or make representations on behalf of the Commonwealth
- (b) The Contractor, its officers, employees, agents and Subcontractors will not by virtue of this Contract 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.
- (c) 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 acting for or on behalf of the Commonwealth or as otherwise.

#### 25.14 Counterparts

- (a) This document may be executed in counterparts.
- (b) The counterparts, taken together, form one document.
- (c) This Contract is taken to have been executed on the date that the last party executes a counterpart.

# Schedule 1

## GLOSSARY

Term	Meaning
<b>ADF</b>	means the Australian Defence Force.
<b>Advance Departure Notice</b>	means the notice provided by the Commonwealth under clause 6.1(a) of the Conditions of Contract.
<b>Aircraft</b>	means : (a) each aircraft specified in Item 1.1 of Schedule 2; and (b) any replacement aircraft specified in Item 1.2 of Schedule 2 or approved by the Commonwealth in writing, provided that IATA has not sought to impose any limitations on the operation of the aircraft or the Contractor.
<b>Aircraft Operations Manual</b>	means the manual and associated documents accepted or approved by an Aviation Authority detailing the operational procedures to be adopted in relation to an Aircraft.
<b>Air Operator's Certificate</b>	means an Approval issued by an Aviation Authority in respect of an Aircraft, authorising the holder to operate the Aircraft.
<b>Approvals</b>	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 Cargo in accordance with this Contract including: (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 the relevant Aviation Authorities; (e) approvals from the relevant Aviation 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.
<b>Approved Flight Plan</b>	means the flight plan approved by the Commonwealth under clause 6.2(c) of the Conditions of Contract as may be amended in accordance with clause 6.2(f) of the Conditions of Contract.
<b>Approved Privacy Code</b>	has the same meaning as in the Privacy Act.



Term	Meaning
<b>Approved Subcontractor</b>	means a Subcontractor listed in Item 2of Schedule 2.
<b>Approved Subcontract</b>	means a contract between the Contractor and an Approved Subcontractor.
<b>ATO</b>	means the Australian Taxation Office.
<b>Audit</b>	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.
<b>Authorised Person</b>	has the meaning given to that term in clause 25.1(b) of the Conditions of Contract.
<b>Aviation Authority</b>	means: <ul style="list-style-type: none"> <li>(a) each Government Agency of a country that is a recognised by the IATA having the responsibility for airworthiness and operation of civil aircraft in a country that has issued an Air Operator's Certificate in relation to an Aircraft; and</li> <li>(b) the Afghanistan Ministry of Transport and Civil Aviation or body responsible for airworthiness and operation of civil aircraft in Afghanistan.</li> </ul>
<b>Background IP</b>	means IP, other than Third Party IP, that: <ul style="list-style-type: none"> <li>(a) is in existence at the Effective Date or is subsequently brought into existence other than as a result of the performance of this Contract or any Subcontract (or both); and</li> <li>(b) is embodied in, or attached to, the Services or is otherwise necessarily related to the performance of the Services.</li> </ul>
<b>Base Airport</b>	has the meaning given to that term in clause 5.1(a) of the Conditions of Contract.
<b>Block Hour</b>	means each hour or fraction of an hour of operation of the Aircraft: <ul style="list-style-type: none"> <li>(a) beginning when the Aircraft's engine(s) engage for the purpose of a flight; and</li> <li>(b) ending when the Aircraft's engine(s) stop after the Aircraft reaches its parking position at the end of a flight.</li> </ul>
<b>Civil Aircraft</b>	means all aircraft other than State Aircraft.

Term	Meaning
<b>Claim</b>	<p>means any claim, action, demand or proceeding including any claim, action, demand or proceeding:</p> <ul style="list-style-type: none"> <li>(a) under, arising out of, or in any way in connection with, this Contract; or</li> <li>(b) otherwise at law or in equity including: <ul style="list-style-type: none"> <li>(i) by statute;</li> <li>(ii) in tort for negligence or otherwise, including negligent misrepresentation; or</li> <li>(iii) for restitution, including restitution based on unjust enrichment.</li> </ul> </li> </ul>
<b>Commercial-in-Confidence Information</b>	<p>means information (whether or not owned by the Commonwealth) that:</p> <ul style="list-style-type: none"> <li>(a) is by its nature confidential;</li> <li>(b) the recipient party knows or ought to know is confidential; or</li> <li>(c) the routes, the destinations, the movements, the deployments, the personnel and/or the cargo the subject of a Transport Service;</li> </ul> <p>but does not include information which:</p> <ul style="list-style-type: none"> <li>(d) is or becomes public knowledge other than by breach of this Contract;</li> <li>(e) is in the possession of the recipient party without restriction in relation to disclosure before the date of receipt; or</li> <li>(f) has been independently developed or acquired by the recipient party.</li> </ul>
<b>Commonwealth Representative</b>	<p>means Commonwealth's representative nominated in clause 25.1 of the Conditions of Contract or any other person notified by the Commonwealth to the Contractor from time to time.</p>
<b>Conditions of Contract</b>	<p>means the provisions of this Contract that are in the document titled Services Contract (Rotary Wing Services for Sustainment Operations in Afghanistan).</p>
<b>Contract</b>	<p>means the Conditions of Contract and all Schedules and all documents incorporated by reference.</p>
<b>Contract Price</b>	<p>means the price set out in clause 19 of the Conditions of Contract.</p>
<b>Contractor Personnel</b>	<p>means:</p> <ul style="list-style-type: none"> <li>(a) any of the employees, officers, agents or Subcontractors of the Contractor; and</li> <li>(b) any of the employees, officers or agents of a Subcontractor,</li> </ul>

Term	Meaning
	that are involved in the performance of this Contract.
<b>Contractor Representative</b>	means the Contractor's representative nominated in clause 25.2 of the Conditions of Contract.
<b>Dangerous Goods</b>	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 2010 or which are classified according to the IATA Dangerous Goods Regulations 2010.
<b>day</b>	means a calendar day.
<b>Default Notice</b>	means a notice issued by the Commonwealth under clause 23.1 of the Conditions of Contract
<b>Defence</b>	means the Department of Defence or the ADF.
<b>Defence Property</b>	means property of the Commonwealth: <ul style="list-style-type: none"> <li>(a) administered by the Department of Defence; or</li> <li>(b) used by, or in the possession or under the control of the ADF or an institution of the ADF.</li> </ul> and includes the Relevant Cargo.
<b>Delivery Time</b>	means the date and time by which Relevant Cargo must be delivered to the relevant Unloading Location specified in an Advanced Departure Notice under clause 6.1(a) of the Conditions of Contract as confirmed or changed in a Pre Departure Notice under clause 6.3(a) of the Conditions of Contract.
<b>Designated Location</b>	means each of the following: <ul style="list-style-type: none"> <li>(a) Kandahar Airfield (OAKN), Afghanistan;</li> <li>(b) Tarin Kowt (OATN), Afghanistan;</li> <li>(c) each Forward Operating Base/Patrol Base.</li> </ul>
<b>DI(G) PERS 25-4</b>	means the Defence document "Notification of Post Separation Employment".
<b>document</b>	includes: <ul style="list-style-type: none"> <li>(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</li> <li>(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.</li> </ul>
<b>DPPM</b>	means the Defence Procurement Policy Manual.
<b>DRWM</b>	means the Defence Workplace Relations Manual.

Term	Meaning
<b>Effective Date</b>	means the date on which this Contract is signed by the parties, or if signed on different days, the date of the last signature.
<b>Employee</b>	means: <ul style="list-style-type: none"> <li>(a) an employee of the Department of Defence; or</li> <li>(b) a member or reserve member of the ADF.</li> </ul>
<b>Equipment</b>	means any equipment owned, used by or otherwise in the possession of the Commonwealth.
<b>Explosive Ordnance</b>	means all munitions containing explosives, nuclear fission or fusion materials and biological and chemical agents. This includes bombs and warheads; guided and ballistic missiles; artillery, mortar, rocket and small arms ammunition; all mines, torpedoes and depth charges, demolition charges; pyrotechnics; clusters and dispensers; cartridge and propellant actuated devices; electro-explosive devices; clandestine and improvised explosive devices; and all similar or related items or components explosive in nature.
<b>Flight Plan</b>	has the meaning given to that term in clause 6.2(a) of the Conditions of Contract.
<b>Foreground IP</b>	means IP which is created under or otherwise in connection with the performance of this Contract or any Subcontract (or both), other than Third Party IP.
<b>Forward Operating Base/Patrol Base</b>	means an ADF operated location with a helicopter landing location, as notified by the Commonwealth to the Contractor from time to time not greater than 70 nautical miles distance from Tarin Kowt (OATN), Afghanistan.
<b>Fuel Costs</b>	means the purchase price of fuel for the Aircraft reasonably and properly paid by the Contractor for the purposes of undertaking the Transport Services.
<b>Ground Handling Services</b>	means all activities associated with: <ul style="list-style-type: none"> <li>(a) the loading, tie-down, securing and unloading of Relevant Cargo;</li> <li>(b) receipt and despatch of the Aircraft; and</li> <li>(c) the provision of all personnel, equipment and supplies necessary for the performance of these activities including ramp service, and field operation services.</li> </ul>
<b>GST Act</b>	means the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
<b>Hourly Flying Rate</b>	means the rate specified at item 4.4 of Schedule 2.
<b>IATA</b>	means the International Air Transport Association.
<b>ICAO</b>	means the International Civil Aviation Organisation.



Term	Meaning
<b>Initial Positioning Flight</b>	means any flight necessary to reposition the Aircraft from its location on the Effective Date (being no further away from the Base Airport than Airport Zmeevo at Tver city, Russia) to the Base Airport.
<b>ISAF</b>	International Security Assistance Force
<b>Information Privacy Principle</b>	has the same meaning as in the Privacy Act.
<b>infringement</b>	in clause 20.7 includes unauthorised acts which would, but for the operation of section 163 of the <i>Patents Act 1990</i> (Cth), section 100 of the <i>Designs Act 2003</i> (Cth), section 183 of the <i>Copyright Act 1968</i> (Cth), and section 25 of the <i>Circuits Layout Act 1989</i> (Cth), constitute an infringement.
<b>Intellectual Property or IP</b>	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.
<b>Key Person</b>	means a person filling a Key Staff Position.
<b>Key Staff Position</b>	means a position that requires a person with highly specialised skills or such abilities that are crucial to the success of this Contract, as identified in accordance with Item 3 of Schedule 2.
<b>Loading Date</b>	means, in respect of a Transport Service, the date and time on which the Contractor proposes to load the Relevant Cargo on to an Aircraft at the Loading Location, as set out in the relevant Advance Departure Notice or as varied in a Pre-Departure Notice.
<b>Loading Location</b>	means, in respect of Relevant Cargo, a Designated Location specified as the Loading Location for the Relevant Cargo in the relevant Advanced Departure Notice or as varied in the Pre-Departure Notice.
<b>Local Representative</b>	has the meaning given to that term in clause 3.11(a) of the Conditions of Contract.
<b>Loss</b>	means liability, loss, damage, compensation and costs and expenses (including the costs of the investigation, defence and settlement of a relevant claim or demand) and any legal costs and expenses in relation thereto on a solicitor and own client basis, and any costs of the party claiming compensation for the Loss of investigating, prosecuting and otherwise enforcing its rights under this Contract related to the Loss.
<b>Minimum Capability</b>	means 50 Block Hours per month.
<b>Mobilisation Cost</b>	means the once-off price specified in item 4.2 of Schedule 2, being the cost arising from:

Term	Meaning
	<ul style="list-style-type: none"> <li>(a) the Initial Positioning Flight; and</li> <li>(b) the Contractor's preparation of the landing site at Kandahar Airfield.</li> </ul>
<b>month</b>	means a calendar month.
<b>Monthly Forecast Plan</b>	Has the meaning given to that term in clause 3.8(f).
<b>Monthly Forecast Report</b>	has the meaning given to that term in clause 3.8(e).
<b>Monthly Standby Rate</b>	means the rate specified in Item 4.3 of Schedule 2
<b>Montreux Document</b>	means the Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Security Companies During Armed, dated 17 September 2008 as amended from time to time.
<b>Moral Rights</b>	<p>means:</p> <ul style="list-style-type: none"> <li>(a) a right of attribution of authorship;</li> <li>(b) a right not to have authorship falsely attributed; and</li> <li>(c) a right of integrity of authorship.</li> </ul>
<b>National Privacy Principle</b>	has the same meaning as in the Privacy Act.
<b>Non-Australian Government Approvals</b>	means an Approvals issued by a foreign government, organisation, agency, body or entity, including those listed in clause 16.2 of the Conditions of Contract.
<b>Operator</b>	means, in respect of Transport Services, the Subcontractor who will be the operator of the Aircraft (where applicable).
<b>Personal Information</b>	has the same meaning as in the Privacy Act.
<b>Pre-Departure Notice</b>	means the notice provided in accordance with clause 6.3(a) of the Conditions of Contract.
<b>Primary Aircraft</b>	means the aircraft specified in item 1.1 of Schedule 2.
<b>Privacy Act</b>	means the <i>Privacy Act 1988</i> (Cth).
<b>Privacy Commissioner</b>	the Privacy Commissioner under the Privacy Act 1988.
<b>Prohibited Substances</b>	means a narcotic substance as defined in the <i>Customs Act 1901</i> (Cth) or any other substance determined to be a prohibited substance by the Commonwealth.
<b>Quality</b>	means the degree to which a set of inherent characteristics fulfils requirements.
<b>Related Bodies Corporate</b>	has the meaning given by section 9 of the <i>Corporations Act 2001</i> (Cth).
<b>Relevant Cargo</b>	means the goods, equipment and other items to be transported from a Loading Location to an Unloading Location, as specified in an Advanced Departure Notice or as confirmed or varied in a

Term	Meaning
	Pre Departure Notice.
<b>Relevant Currency</b>	means the currency specified in Item 4.1 of Schedule 2
<b>Relevant Period</b>	means each of: <ul style="list-style-type: none"> <li>(a) 24 months;</li> <li>(b) 12 months; and</li> <li>(c) 6 months,</li> </ul> before the request for the approval contemplated by clause 25.3(b) of the Conditions of Contract was made.
<b>Scheduled Departure Time</b>	means the date(s) and time(s) that a Transport Service is scheduled to depart each Loading Location as specified in the relevant Approved Flight Plan.
<b>Schedule</b>	means a schedule to this Contract, and includes any attachment or annex to that schedule.
<b>Service Provider</b>	means a consultant or other service provider engaged by the Department of Defence or the ADF.
<b>Services</b>	means the goods and services, including items of equipment, other goods, IP and TD, required to be provided by the Contractor under this Contract.
<b>Services Plan</b>	has the meaning given to that term in clause 3.8(b)
<b>Services Start Date</b>	means: <ul style="list-style-type: none"> <li>(a) the date that is 17 days after the date this Contract was executed; or</li> <li>(b) if clause 2.4(d) applies, the date notified to the Contractor under that 2.4(d)(i).</li> </ul>
<b>State Aircraft</b>	has the meaning given to that term in the <i>Air Navigation Act 1920</i> (Cth).
<b>Subcontracted Services</b>	means the part of the Services to be performed by an Approved Subcontractor, as set out in item 2 of Schedule 2
<b>Subcontractor</b>	means any person, other than the Commonwealth, that directly or indirectly furnishes goods and services, for the purposes of this Contract, to the Contractor; and Subcontract has a corresponding meaning.
<b>Surveillance</b>	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).
<b>tax invoice</b>	has the same meaning as in the GST Act.
<b>taxable supply</b>	has the same meaning as in the GST Act.

Term	Meaning
<b>Technical Data or TD</b>	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.
<b>Term</b>	has the meaning given to that term in clause 2.
<b>Third Party IP</b>	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.
<b>Transition In Date</b>	means 1 March 2011.
<b>Transport Service</b>	means the air transportation of Relevant Cargo between the Designated Locations using the Aircraft to be undertaken by the Contractor, as set out in an Advance Departure Notice as confirmed or varied by a Pre-Departure Notice.
<b>Unexploded Ordnance</b>	means explosive ordnance which has been primed, fused, armed or otherwise prepared for action, and which has been fired, dropped, launched, projected or placed in such a manner as to constitute a hazard to operations, installations, personnel or material and remains unexploded either by malfunction or design or for any other cause.
<b>Unloading Location</b>	means, in respect of Relevant Cargo, the location specified as the Unloading Location for the Relevant Cargo in the relevant Advanced Departure Notice or as varied in the Pre-Departure Notice.
<b>Working Day</b>	means: <ul style="list-style-type: none"> <li>(a) in relation to the giving of a notice or other communication, any day other than a Saturday, Sunday or public holiday in the place to which the notice or other communication is sent; and</li> <li>(b) 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;</li> <li>(c) for any other purpose, any day other than a Saturday, Sunday or public holiday in Canberra, Australia.</li> </ul>



## Schedule 2

### CONTRACT DETAILS

#### 1. AIRCRAFT DETAILS

##### 1.1 Primary aircraft

Aircraft make, type and model:	MIL-26T
Aircraft State and registration marks	Registration mark: RA-06274 Country of registration: Russian Federation
Maximum payload uplift capacity	20,000 kg
Air Operator's Certificate	Issued by the Minister of Transport of the Russian Federation to "Vertical-T" Air Company Operator Certificate No 79 dated 9 July 2010
Base Airport	Kandahar Airfield
Maintenance Base	Kandahar Airfield

##### 1.2 Replacement aircraft

Aircraft make, type and model:	KA 32S
Aircraft State and registration marks	Registration mark: YA-KAH 6225 Country of registration: Islamic Republic of Afghanistan

#### 2. APPROVED SUBCONTRACTORS

##### 2.1 Named approved subcontractors and subcontracted services

Subcontractor name	Services to be subcontracted
PME International LLC Company number 626421	Ground Handling Services (including refuelling)

##### 2.2 Clauses required in subcontracts

The following references are to clauses of the Conditions of Contract, insofar as they relate to the Subcontracted Services for the relevant Approved Subcontractor.

Clause	Description
3.2	Requirements for the Services
3.3	Obligations regarding Relevant Cargo

Clause	Description
3.4	Dangerous Goods
3.6	Tie down
3.7	External transport of Relevant Cargo
3.13	Non-beneficiary of International Agreements or Arrangements
5.9	Australian Defence Force
5.10	Notification obligations
7	Contractor personnel
8	Commonwealth directions
9.1	Prohibition on subcontracting
12.2	Commonwealth not generally required to assist Contractor
13.2	Obligations in the event of delay
14.1	Notification of matters affecting performance
15.3	Commonwealth access
16	Approvals, policy and law
17	Commercial-in-Confidence Information
18	Defence Security
20	Liability
21	Insurance
23.5	Termination or reduction in scope for convenience
24	Change of Control
25.3	Post Defence separation employment
25.4	Applicable law
25.13	Negation of Employment and Agency

**3. KEY STAFF AND KEY STAFF POSITIONS**

The key staff and key staff positions are set out in the table below:

Key staff member's name	Key staff position
<b>Management</b>	
Mr Paul Rigby Aviation Director PME International	Ground handling service provider
47F [REDACTED]	Crew and ground personnel manager
<b>Main Crew</b>	
47F [REDACTED]	Captain in Command
[REDACTED]	Main Crew
[REDACTED]	Flight Engineer
[REDACTED]	Navigator
[REDACTED]	Load Master
[REDACTED]	Load Master
<b>Reserve Crew</b>	
47F [REDACTED]	Captain in Command
[REDACTED]	Main Crew
[REDACTED]	Flight Engineer
[REDACTED]	Navigator
[REDACTED]	Load Master
[REDACTED]	Load Master
<b>Ground personnel</b>	
47F [REDACTED]	Ground Engineer A/E
[REDACTED]	Ground Engineer A/E
[REDACTED]	Ground Engineer RE and AE
[REDACTED]	Ground Technician E
[REDACTED]	Ground Technician

Key staff member's name	Key staff position
47F	Ground Engineer A/E
	Ground Engineer A/E
	Ground Engineer
	Ground Engineer RE and AE
	Ground Technician E

#### 4. PRICE

##### 4.1 Relevant Currency

The relevant currency is: US Dollars (USD)

##### 4.2 Mobilisation cost

The mobilisation cost is: USD \$428,225.00

##### 4.3 Monthly Standby Rate

The monthly standby rate is: USD \$1,056,740.10

##### 4.4 Hourly Flying Rate

The hourly flying rate is: USD \$16,080.00

#### 5. NOT USED

#### 6. COMMERCIAL-IN-CONFIDENCE INFORMATION

The following parts of the Contract are designated Contractor commercial-in-confidence information:

Information and reference
Item 1 (Aircraft Details) of this Schedule.
Item 4 (Price) of this Schedule.

**EXECUTED** as an agreement.

**EXECUTED** by the **Commonwealth of Australia** represented by the Department of Defence:

\_\_\_\_\_  
Signature of authorised representative

In the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of authorised representative

\_\_\_\_\_  
Name of witness

**THE COMMON SEAL** of Air Company Vertical-T LLC, a company registered in the Russian Federation (Registration number 1026901919450), the fixing of which was witnessed by:

\_\_\_\_\_  
Signature of sole director

In the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name of witness

~~COMMERCIAL IN CONFIDENCE~~



**COMMANDER 1<sup>ST</sup> JOINT MOVEMENT GROUP**  
**HEADQUARTERS JOINT OPERATIONS COMMAND**

B1-G-E255 Department of Defence, CANBERRA ACT, 2600 AUSTRALIA,  
Tel: (02) 6128 4400 Fax: (02) 6128 4117

AM667487

**Mr Y. Tchernobryvko**  
Managing Director  
Vertical Australia Pty Ltd  
8/317 Edgecliff Road  
Woollahra NSW 2025

Dear Mr Tchernobryvko,

**FIRST EXTENSION TO CONTRACT AO/004/10-11**

I refer to our contract AO/004/10-11 and advise that the Commonwealth wishes to execute the first option to extend the term of the contract. The continuation of the contract by an additional ten month period will provide services through to 30 June 2012.

Defence values the services provided by Vertical Australia and your support toward the Australian Defence Force's contribution in the Middle East Area of Operations.

Yours sincerely,

22

**R. BARNES, CSM**  
Group Captain  
Commander  
1<sup>st</sup> Joint Movement Group

*1* August 2011

~~COMMERCIAL IN CONFIDENCE~~




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CAVEATS: \_\_\_\_\_

**COMPLETED****Headquarters Joint Operations Command****Correspondence Cover Sheet**

<b>Originating HQJOC Branch POC Details</b>		<b>Network</b>	<b>EDMS/DRMS Object ID</b>	Document entered into Executive Correspondence Register Serial No: <b>6038</b> Date: <b>14/7</b> Branch Correspondence Details
<b>Rank/Name</b>	<b>Arthur</b>	<input checked="" type="checkbox"/> DSN	<b>F374205</b>	
<b>Branch/Posn</b>	<b>Sgt</b>	<input type="checkbox"/> DRN	(Only one reference)	
<b>Phone Contact</b>	<b>84102</b>			
<b>Document Title:</b> DB FOR CJOPS: M1 - 26 ROTARY WING SERVICES MID CONTRACT OPERATIONAL REPORT				
<b>Additional Staffing Instructions:</b>				

<b>Originator</b>	<b>Action Required/Staff Comments</b>
HQJTF 633	Sir, Recommend pass to J1/4 for Comment. DG
<b>Referred To</b>	
CJOPS	
<b>Date Referred</b>	
14 JUL 11	
<b>Due Date</b>	
20 JUL 11	s22 14/7 

<b>Originator</b>	<b>Action Required/Staff Comments</b>
145	Ma'am, 1. attached is my summary regarding the DB from 633 regarding the Vertical-T (M1-26) contract. 2. I fully support the extension + the funding is available, and have confirmed MOVGRP can proceed with the extn based on the signed DB and your approval as ATO
<b>Referred To</b>	
J1/4	
<b>Date Referred</b>	
19 JUL 11	
<b>Due Date</b>	

**REGISTRY INSTRUCTIONS**

SPACE FOR ADDITIONAL STAFF COMMENTS ON REVERSE SIDE ►

- ☐ Scan & E-Mail only - DRN / DSN  
☐ Scan & Create DOCUMENT in EDMS / DRMS EDMS/DRMS Folder ID  
☒ Scan & replace DOCUMENT in EDMS / DRMS  
☐ DO NOT SCAN Corro Coversheet

**DISTRIBUTION INSTRUCTIONS**

- ☐ Send Hard Copies to:  
☒ Send E-Copies to: EA 3114, J45, J05, HQJTF633

- ☐ Shred Hard Copy: Name \_\_\_\_\_ Rank \_\_\_\_\_ Signature \_\_\_\_\_  
☒ Return Hard Copy to: EA 3114

DTG DOCUMENT PLACED IN BRANCH OUT TRAY

Completed Steps	Initial	Date
Updated/Created		
EC Sent		
HC Sent		
CDR		
Initial Register		
Shred (7 Days)		
Original Returned		
CDR #		
Internal Register #		

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CAVEATS: \_\_\_\_\_

Additional Staff Comments/Advice	
Originator	Action Required/Staff Comments
	the operational sponsor.
Referred To	
Date Referred	
Due Date	
Originator	Action Required/Staff Comments
A/11/4	Sir,
Referred To	1. I realize this looks dodgy me signing and
e2ops	further recommending this extn for the M1-26
Date Referred	contract but the 11/4 has seen other DB and
19 JUL 11	supports the extension.
Due Date	2. Request you sign the DB
	noting paras 2 a-d, and
	endorse para 2 e.
	Para 2 f does not need to be approved as
	we can take necessary action based on your signature
Originator	Action Required/Staff Comments
	s22 [redacted] A/11/4.
Referred To	
Date Referred	
Due Date	

SHEET TO BE INCLUDED IF ADDITIONAL COMMENTS REQUIRED

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CAVEATS: \_\_\_\_\_



	<b>BRIEF FOR J1/4:</b> <b>Rotary Wing Contract Extension</b>	
	Branch: J45	Reference: F374205
	For Information:	

### Purpose

1. The purpose of this brief is to provide you an up-date and advice on the RW Contract and JTF633 request for extension of the contract

### Key Points

2. The Vertical-T contract commenced in Mar 11 as an alternative means of moving freight to the Patrol Bases in Uruzgan. The intent was to reduce the number of SHOJOs (road movements) reducing the risk being taken by soldiers and improve replenishment of the PBs.

3. Whilst there have been a number of teething problems, detailed in FSU 4 report attached to the DB, it has been a success and has gained acceptance. Over the last 4 months (stats as at 6 July) Vertical-T completed 139 flights (approx 35 per month) to 11 locations ranging from KAF and TK out to FOB Anaconda. As highlighted in para 9 of the FSU report, it has achieved a significant reduction in the road distribution requirements (though not reduced the need for SHOJOs), and provided substantial support to Coalition forces.

4. J05 Input - WRT to para 7 of the DB, DFIN has provided advice that for FY 10/11 there was an intent to provide JTF633 with sufficient funding to allow them to surge beyond the contracted hours without seeking more funds from JOC. As it turned out there was no requirement for movements beyond that contracted, thus the underspend. DFIN will be allocating FY11/12 funding to JTF633 for the remaining two months of the current contracted period, plus for the 10 month extension.

5. JMOVGRP Input - JMOVGRP supports the extension of the contract given the benefits accrued. Staff have been actively working with the FSU to assist with resolution of the problems incurred to date, and recommend that if contract changes are required, that JTF633 formally raise the changes with JMOVGRP.

6. Overall, I support the extension of the contract particularly given the potential for the <sup>33(a)(iii)</sup> 

### Recommendations

7. Recommend that CJOPS:

- notes paras 2 a-d in the JTF 633 DB,
- endorse para 2 e - the JTF 633 recommendation for extension, and
- not approve para 2 f - this is not required HQJMOVGP can take the necessary extension action vide the CJOPS signed DB. Further, J1/4 is the operational contract sponsor and can authorise the extension of the contract.

s22 

19 Jul 11

J45

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F374205



**DECISION BRIEF FOR CJOPS: MI - 26 ROTARY WING SERVICES MID CONTRACT OPERATIONAL REPORT**

Branch: HQJTF 633	Reference: HQJTF 633/OUT/2011/
Action required by: 20 Jul 11	
HQJOC Lead Branch: J1/4	
For Information: DCJOPS, J3, ACC, <i>JOC</i> <i>J4S, J05</i>	

**Purpose**

1. To provide an update on the MI-26 Rotary Wing Services Contract implemented by HQJMOVGP on behalf of HQJOC.

**Recommendations**

2. I recommend you:
  - a. **note** the contents of the attached Post Operational Report provided by CO FSU-4.  
NOTED PLEASE DISCUSS
  - b. **note** that overall the contract has been successfully implemented and is providing a very useful capability to JTF633 and CTU for intra theatre transport of stores and equipment.  
NOTED PLEASE DISCUSS
  - c. **note** that significant lessons have been learned in implementing the contract and that in some cases the size of the MI-26 poses limitations in its use at the smaller PB's.  
NOTED PLEASE DISCUSS
  - d. **note** that the contract is due to expire on 31 Aug 11 and the option for a 10 month extension to 30 Jun 12.

With the reason to be implemented MTR-3 for at 3 PB the limitations at PB Marshall will not be an issue for		Comments: 
<b>A.J. CAMPBELL, AM</b> MAJGEN CJTF 633 13/7/11	<b>B.A. POWER, AM, CSC</b> LTGEN CJOPS 19/7/11	
Point of Contact:		Phone:

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NOTED PLEASE DISCUSS

- e. **endorse** the recommendation to extend the current contract until 30 Jun 12.

ENDORSED / NOT ENDORSED / PLEASE DISCUSS

- f. **approve** the transfer of this Post Operational Report to HQJMOVGP, under covering minute, for review with a recommendation that the contract be extended until 30 Jun 12.

APPROVED / NOT APPROVED / PLEASE DISCUSS

### Background

3. The MI-26 Rotary Wing Contract (through the company Vertical - T) was established by HQJMOVGP on behalf of HQJOC and implemented in Feb-Mar 11. The contract commenced on 12 Mar 11 and provides up to 80 hours flying time per month with the first 50 hours included in the base cost of the contract and the remaining 30 hours set on an hourly rate. FSI - KAF is the primary local manager and during the period 12 Mar - 30 Jun 11 the usage of the asset has been recorded at 249.9 hours. This current usage equates to approx 67 hours per month.

4. The current contract term is 12 Mar - 31 Aug 11 with an option for a 10 month extension to 30 Jun 12 and then a second option to extend to 31 Dec 12

### Key Points

5. Overall the use of the MI-26 to move cargo has:

- a. Reduced road transport requirements with a subsequent reduction in risk to ADF and CF personnel;
- b. Increased the payload that can be delivered from TK to PB's;
- c. Enhanced the transport of difficult cargo's such as BCAS vehicles, ASLAV Belly Plate Kits, etc; and
- d. Highlighted its availability to be available for intra - theatre distribution.

6. Despite some teething problems initially with the contract the only major operational concern to date is that the MI-26 cannot land at PB Mashal due to the landing point size and that other PB's need landing point maintenance in order to allow safe operation of the MI-26.

7. The financial aspects, however, for this contract were not implemented well at the start. On advice from HQJMOVGP, DFIN allocated JTF633 the maximum funding for 80 flying hours per month being \$7.150m. As these flying hours were not achieved, ROMAN expenditure and accruals totalled \$5.342m to 30 Jun 11 which resulted in a \$1.808m underspend.

8. HQJOC (DFIN) has not currently allocated funding for FY11/12, however they have indicated it will be added to the JTF633 budget

### Conclusion

9. Overall this contract is providing a very good level of service and has the ability to

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significantly improve intra-theatre distribution particularly to remote PB's and for the movement of non-standard cargo. The financial aspects of the contract will require closer scrutiny to ensure it provides value for money over the next few months.

10. Noting the valuable addition the current contract provides, to intra theatre movement of stores and equipment, it is recommended that the option to extend the contract until 30 Jun 12 be exercised.

**Consultation**

11. HQJTF 633 J3, J7, J05, OC JMCC.

**Prepared by:** LCDR L.E. Morris, RAN J43 HQJTF 633, 07 Jul 11

**Cleared by:** CMDR G.J. Swinden, RAN J4 HQJTF 633, 07 Jul 11

**Enclosure:**

1. FSU MI-26 Contract Post Operational Report (FSU4/OUT/2011/0093 dated 01 Jul 11).

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**FORCE SUPPORT UNIT - FOUR  
MIDDLE EAST AREA OF OPERATIONS  
AIPO 16, AUSTRALIAN DEFENCE FORCE,  
SYDNEY GATEWAY, NSW 2890**

611-01-03  
FSU4/OUT/2011/0093

**FSU MI-26 MID CONTRACT POST OPERATIONAL REPORT**

**See distribution**

**Background**

1. During the period 10 Mar – 30 Jun 11, FSU was involved with the implementation of the Rotary Wing (RW) Services contract for Sustainment Operations in Afghanistan. The contract was established by HQJMOVGP on behalf of JOC. An implementation team from HQJOC and HQJMOVGP was deployed to the MEAO for approx four weeks commencing early Mar 11. The implementation team was assisted by the FSU OPSWO who travelled with the team to KAF and TK IOT provide local liaison and to act as liaison officer for FSU. On contract hand-over to FSU, FST-KAF has been the primary local manager with most day-to-day operational issues managed by Ops personnel. HQ FSU provides oversight and lower-level contract management support.
2. The contract was established through Vertical-T. The main acft to be used was a Mi-26, with an alternative acft, KAMOV 32 being available should the primary acft not be available. The Mi-26 commenced service on 10 Mar 11.
3. The contract allows for up to 80 hours of flying time per month. The first 50 hours per month are included in base costs for the contract, and 'unused' hours are not refundable. The remaining 30 hours are on a set hourly rate.

**PART 1 – Commander's Overview**

4. The Mi-26 contract has been successfully implemented by FSU over the last three months. Due to the short timeframe involved in the implementation process, and the limited time the Implementation Team (HQJOC and HQJMOVGP) had in theatre to engage with all involved parties, there were relatively significant implementation issues; some of which have not yet come to a satisfactory conclusion. In saying this, the Contractor and enabling agencies, including RC(S) at Kandahar Air Field, have been helpful in resolving the issues in an expeditious manner.
5. CTU key staff were not engaged prior to the implementation of the contract. This left a degree of suspicion within the CTU as to the effectiveness of the contract to support their operations. This perception required a considerable amount of effort by the FSU to manage the expectations of key stakeholders. These issues took a month to resolve.

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## **PART 2 - Introduction**

### **6. Scope.**

- a. **Theatre.** Middle East Area of Operations (MEAO).
- b. **Implementation date.** Early Mar 11.
- c. **Mission intent.** FSU was to support the implementation of the RW (MI-26) contract within the MEAO.
- d. **Operational record.**

#### **(1) Highlights:**

- (a) The service has provided a clear alternative to movement of cargo by road within AFG. This has resulted in a reduction of risk to AS and Coalition soldiers.
- (b) The service has been utilised to transport large items such as PMVs and BCas vehicles between KAF and TK, thus freeing up valuable space for cargo movement via established road means.
- (c) Increase in payload moved from TK to PB's indicating that there is growing acceptance of the Mi-26 capabilities by the supported forces.
- (d) FSU developing successful procedures for the management of intra-theatre RW distribution indicating that it is positioned to manage all forms of intra-theatre distribution if required.
- (e) Positive working relationships being established with the contractor staff.

#### **(2) Lowlights:**

- (a) While the contract services do provide a valuable addition to intra-theatre distribution modes available to JTF633, the size of the aircraft has posed some limitations on its employment at some of the PB's.
- (b) Several minor but important issues were not fully taken into account or mitigated against prior to RW services commencing. Failure to negotiate issues with RC(S) during initial implementation planning was especially significant in this regard. As a result, these aspects of the implementation of the service took several weeks to resolve and some are still ongoing.

## **PART 3 - Summary of Observations/Lessons/Recommendations identified**

7. Failure to negotiate contract implementation with RC(S) was an influential oversight and has resulted in relatively significant issues influencing the Mi-26's operation. These have included nomenclature used in identifying locations, communication requirements, security clearance requirements for threat updates and confirmation of supporting capabilities to the

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Mi-26, PST-KAF and HQFSU have resolved many of these issues with support from the Contractor and SIU C at HQJMOVGP.

8. The Mi-26's size, whilst extremely useful for 'operational legs' between KAF and MNB-1K as demonstrated in PMV and LO moves, has posed a limitation to servicing several of the PB's within URZ. Several PB's have required additional though superficial works to be rendered suitable for safe Mi-26 landing. These works are ongoing and have not significantly affected the use of the airframe. There are no impediments to underslung movements to any of these PB's.

9. The achievement of payloads of over 80,000 kg from MNB-1K to PB's in each month represents a significant reduction in road distribution requirements to PST-TK and MTU as part of CTU. It should be noted that a significant portion of this cargo is coalition cargo, approximately 40% of all cargo moved has been for coalition forces. However, given the significant reciprocal support already received by JTF633 forces from US distribution (road and RW) elsewhere, this is perceived to be an effective use of the Mi-26 in support of CTU's missions in Luzgan.

#### PART 4 - Summary

10. The implementation of the Mi-26 RW Contract with Vertical-T aviation has been successful, and has offered a useful capability to JTF633 and CTU. The Mi-26 has successfully reduced the requirement for road distribution tasks to selected PB's in accordance with HQJOC's intent regarding the contract. The size of the helicopter poses a limitation while JTF633 continues to support operations at smaller PB's; this situation may vary subject to the campaign plan and other operational requirements. Relations between all parties have been cordial and have resulted in successful outcomes. However, there have been significant lessons learned during contract implementation that will improve the implementation of similar RW contracts in the future.

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/ R.S. ARMSTRONG  
LTCOL 22  
CO FSU-4

01 Jul 11

#### Annexes:

- A. Observations, Insights and Lessons summary
- B. Mi-26 Summary of Services

#### Distribution:

HQJOC  
HQJMOVGP  
HQJTF633  
HQCTU

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**ANNEX A TO  
FSU MI-26 MID CONTRACT FOR  
JUL 11**

**CONSOLIDATED OBSERVATIONS AND RECOMMENDATIONS TABLE  
Mi-26 ROTARY WING CONTRACT**

Serial	Topic	Observations/Insights/Lessons (OIL)	Action	Recommendations	Action Organisation and Staff Branch
(a)	(b)	(c)	(e)	(f)	(g)
1	Permanent Parking - KAF	The implementation team were to source temporary parking inside the wire at KAF until the contractor had established their facilities Outside the Wire (OTW). Temporary parking was approved until 04 Apr 11. An extension to these arrangements was sought and approved until the end of Apr 11 as the contractor's facilities were not scheduled for completion until late Apr 11. The contractor's facilities were completed mid to late Apr 11 and the Mi-26 commenced using the facilities on 29 Apr 11.	S	Note for consideration in future contracts.	HQ1JMOVGP
2	Loading/unloading issues at KAF	<p>Loading/unloading the acft OTW proved to be very problematic due to a number of issues such as Force Protection (FP) requirements for ADF mbrs travelling OTW, length of travel and travel time to/from the acft from FST-KAF FDC etc.</p> <p>The two main options explored to resolve this issue were that the contractor would purchase a vehicle to utilise as clearance/feeder transport to/from Camp Baker (FST-KAF). The other option explored was the use of an up armoured Unimog by FST-KAF. It was decided</p>	F	The provision of feeder/clearance transport be afforded more consideration and be included in future contracts.	HQ1JMOVGP

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		that neither option was deemed suitable or practical.  The resolution came in the decision to have the Mi-26 move to a loading/unloading area inside the wire. While it is not ideal, it is workable.			
3	Prior Parking Requests (PPRs)	The requirement to submit and gain approval for PPRs at KAF caused a number of issues in the initial stages of the contract implementation. However, this matter was resolved relatively quickly when it was established that PPRs were only required when the Mi-26 was tasked to transport EO out of KAF.	S	Note for consideration in future contracts.	HQ1JMOVGP
4	Refuelling	The Contract Implementation Team had planned to use fuel cards for refuelling the acft. These were unavailable on commencement of the contract. Therefore, as a short term solution, DoDAAC codes were issued for use until fuel cards arrived. When the fuel cards did arrive, they were only to be used in the presence of an ADF member. On the first occasion of refuelling using this card, Supreme Services refused the use of the cards.  Currently the only way the acft can be refuelled is by using the FST-KAF Supreme Fuel Cards. Receipts are collected and returned to the FST-KAF Financial Officer (FO) for processing. On a whole the refuelling of the acft has not been a major concern.	F	Note for consideration in future contracts.	HQ1JMOVGP FSC
5	Access to contractor staff	As a result of the contractor staff residing and working permanently OTW, the ability to access the contractor was difficult. This had a significant impact on operations during the early stage of the contracts implementation. This has now been partially resolved as a result of the contract receiving KAF base passes and by streamlining processes and procedures.	S	Note for consideration in future contracts.	All parties

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6	RC(S) raised issues	<p>RC(S) was not consulted prior to the contract being implemented. As a result the following issues were brought to the attention of FSU and the contractor immediately after services commenced:</p> <p>The contracted RW acft must have VHF FM communications IOT communicate with ground forces at Patrol Bases (PB). This was identified during the implementation of the contract and a temporary measure of using smoke was put in place. Currently this matter remains unresolved as the acft in operation has not been fitted with the required communication devices.</p> <p>Different abbreviations were used by different organisations for the same PB. This caused some initial confusion during planning and de-confliction conferences; however, it was resolved relatively quickly once the issue was realised.</p> <p>A representative of the contractor is required to attend a daily deconfliction conference at KAF. Attendance at this conference enables the contractor to plan and complete the mission without causing interference to tactical operations (eg. ensure that the flight path is not going to interfere with artillery fire missions). Currently there is only one member with appropriate security clearances who is able to attend.</p>	F/I	<p>While alternative solutions to these issues have been identified they could have prevented with earlier consultation with all parties affected by this contract eg RC(S).</p> <p>The contractor is seeking to attain NATO security clearances for more staff to enable increased access to threat information.</p>	All parties
7	GPS Tracking	<p>There is currently no GPS tracker in either acft; when the acft are out of range of the KAF and TK radars they are not able to be observed. As the use of GPS tracking is not a requirement of HQ RC(S) and there is nothing in the contract making it a requirement, the payment and</p>	F	Note for consideration in future contracts.	HQ1JMOVGP

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8	Patrol Base access	<p>fitting of this equipment may be an issue.</p> <p>The Mi-26 cannot land at PB Mashal due to landing point size; it can access all other enduring PB's. Threat levels are at this stage not a concern to operations. It has been identified by the aircrew that several PB's require maintenance of the landing points in order to allow safe operation of the Mi-26. This is being addressed by HQCTU as advised by FST-TK and the contractor.</p>	F	<p>Work is ongoing. This includes siting of windsocks, replacement of surface material and other minor issues.</p>	<p>FST-TK HQCTU</p>
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ANNEX B TO  
FSU MI-26 MID CONTRACT POR  
JUL 11

## Mi-26T Summary of Services

Month	Week	Flying days	Cargo (kg) (Received at TK)	Cargo (kg) (Received at PBs)	Cargo (kg) (Received at KAF)	Hours	Fuel Uplift (lbs)	Cargo type
10 Mar - 09 Apr 11	10 - 16 Mar 11	2	3,200	12,995	0	8.0	14,777	Implementation Movement of General Cargo (water, communication trailers)
	17 - 23 Mar 11	4	3,634	15,657	2,392	17.0	18,769	
	24 - 30 Mar 11	3	2,715	26,371	0	13.8	30,950	MH-47 Recovery for TF 535
	31 Mar - 06 Apr 11	3	28,192	17,727	26,620	13.1	20,725	Vehicles, Forklift and EO
	07 - 09 Apr 11	1	26,315	13,285	8,040	6.3	16,700	Forklift, Generator, EO and TRI-CONS
10 Apr - 09 May 11	10 - 16 Apr 11	3	35,339	13,680	7,754	18.3	29,819	General Cargo and EO
	17 - 23 Apr 11	2	24,439	36,053	2,358	13.2	20,533	ASLAV and PMV resupply to FOB HAD
	24 - 30 Apr 11	1	7,070	7,150	0	4.1	6,300	General Cargo
	01 - 07 May 11	4	43,703	16,679	18,259	20.9	29,080	ASLAV and PMV
	08 - 09 May 11	1	0	6,867	6,286	3.9	6,020	Vehicle rotations
10 May - 09 Jun 11	10 - 16 May 11	2	18,643	20,992	11,756	12.1	18,704	General Cargo
	17 - 23 May 11	2	10,262	7,650	750	10.4	21,855	General Cargo and TRI-CON (External Lift)
	24 - 30 May 11	4	59,376	31,278	11,559	26.8	39,907	General Cargo and PMV
	31 May - 06 Jun 11	4	84,664	11,400	13,048	21.9	27,637	General Cargo and EO
	07 - 09 Jun 11	1	5,952	14,096	0	6.8	11,208	General Cargo
10 Jun - 09 Jul 11	10 - 16 Jun 11	3	35,845	14,354	6,350	14.0	22,295	EO and Forced Relocation (Current week of Operations)
	17 - 23 Jun 11	4	39,054	4,871	5,221	18.8	30,223	Vehicles, General Cargo and EO

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24 - 30 Jun 11	5	28,224	15,338	14,288	20.5	29,989	General Cargo
Overall Total	49	456,627	286,443	134,601	249.9	395,491	

NOTE

\* Hour calculations is 1 for every 60 minutes; therefore, the breakdown is as follows.

- 1 = 6 minutes
- .2 = 12 minutes
- .3 = 18 minutes
- .4 = 24 minutes
- .5 = 30 minutes
- .6 = 36 minutes
- .7 = 42 minutes
- .8 = 48 minutes
- .9 = 54 minutes
- 1 = 1 hour

\* Billing period is from the 10th of each month to the 9th of the next month.

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CAVEATS: \_\_\_\_\_

**SHEET TO BE INCLUDED IF ADDITIONAL COMMENTS REQUIRED**

Additional Staff Comments/Advice	
Originator	Action Required/Staff Comments
J45	<p>Mardena,</p> <p>I would appreciate your advice as this specifically paras 7 + 8 by EOB 18 Jul given the due date.</p> <p>22 [REDACTED] 15 Jul 11</p>
Referred To	
DFIN	
Date Referred	
15 Jul 11	
Due Date	
Originator	Action Required/Staff Comments
J05 (DFIN)	<p>J45. The budget allocation provided to HQJTF633 was based on the maximum amount that could become payable under the contract. At this phase of the implementation there was no actual usage rate that could be used as a basis. Suggest if HQJTF633 have a more accurate estimate of the mthly hrly usage that this is fed through to highlight the over-allocation of funds for this item. The BFC for JTF633 will include this item for both the current contract period &amp; 1st extension option.</p>
Referred To	
Date Referred	
Due Date	
Originator	Action Required/Staff Comments
Referred To	
Date Referred	
Due Date	

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CAVEATS: \_\_\_\_\_**Additional Staff Comments/Advice**

<b>Originator</b>	<b>Action Required/Staff Comments</b>
<b>Referred To</b>	
<b>Date Referred</b>	
<b>Due Date</b>	
<b>Originator</b>	<b>Action Required/Staff Comments</b>
<b>Referred To</b>	
<b>Date Referred</b>	
<b>Due Date</b>	
<b>Originator</b>	<b>Action Required/Staff Comments</b>
<b>Referred To</b>	
<b>Date Referred</b>	
<b>Due Date</b>	

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Branch/Post	JCO SPT WK	<input type="checkbox"/> DRN	
Phone Contact	02 6128 4500		

**Document Title:** DB for CJOPS - MI26 Rotary Wing services mid contract operational report

**Additional Staffing Instructions:**

Originator	Action Required/Staff Comments
633	<p>Ma'am,</p> <ol style="list-style-type: none"> <li>1. No issue with extension for contractual perspective</li> <li>2. Total hours avail is 88hrs not 80.</li> <li>3. Options should be explored to change contract</li> </ol>
<b>Referred To</b>	
HQJOC J1/4	
<b>Date Referred</b>	
14 Jul 11	
<b>Due Date</b>	
20 Jul 11	

Originator	Action Required/Staff Comments
	<p>to better meet operational requirements - need to be initiated by GSS</p> <p>22 [REDACTED]</p> <p><i>ImovGRP advice</i></p>
<b>Referred To</b>	
<b>Date Referred</b>	
<b>Due Date</b>	

SPACE FOR ADDITIONAL STAFF COMMENTS ON REVERSE SIDE ►

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### Additional Staff Comments/Advice

Originator	Action Required/Staff Comments
Referred To	
Date Referred	
Due Date	

Originator	Action Required/Staff Comments
Referred To	
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## Bacon, Siobhan CAPT

---

**From:** Colrain, Alex LEUT 1  
**Sent:** Wednesday, 6 July 2011 16:01  
**To:** Bacon, Siobhan CAPT  
**Cc:** Walden, Harry LTCOL  
**Subject:** RE: Vertical -T Contract [SEC=RESTRICTED]

**Attachments:** AO-004-10-11 Performance Management Workbook v1-0.xls

Ma'am,

Have had a good response back regarding the MI-26 contract. Advice is that the mid-contract POR being provided to SLCC within HQ1JMOVGP is currently with HQJTF633. Hopefully this will be sent back ASAP so I will keep an eye out for that.

Attached are the current progressive stats for the MI-26 with further detailed explanations to come in the POR. I expect the POR to arrive prior to 26 Jul, however in the mean time summarising from the stats provided:

- Over four months the MI-26 is conducting on average 35 flights per month
- Total flights over the four months are 139 broken down to:
  - 44 to TK
  - 28 to KAF
  - 23 to FOB Hadrian
  - 13 to PB Musazi
  - 12 to FOB Mirwais
  - 7 to PB Wali
  - 6 to PB Qarib
  - 3 to FOB Anaconda
  - 1 to FOB Shank
  - 1 to PB Mashal
  - 1 to PB Spin Bolak
- To note, currently due to the heat the above mentioned PBs and FOBs are the only ones able to be accessed with internal loads due to the high temperature imposing carriage limitations. Once the heat dies down they will be able to access all PBs and FOBs with an external load due to the increased capacity.
- The MI-26 loads are generally bulk cargo
- Over the duration of the contract there has been a greater acceptance that the MI-26 can complete distribution tasking, thereby seeing its use increase and can be further expected to increase.
- SHOJOs are still continuing and just as frequently. The only difference now is that they are carrying a reduced cargo therefore requiring less vehicles to conduct the move. Advice from the FSU is that SHOJOs will never be replaced due to the guarantee the road movement provides (this is perplexing for as stated, over time the increase in use has risen due to the acceptance of the MI-26 to be able to complete distribution, thereby providing an equal if not greater guarantee on delivery than a SHOJO)

Hope this is helpful Ma'am.

Regards,

Alex.



AO-004-10-11  
Performance Manag..

**A.T. COLRAIN**  
LEUT, RAN  
SO3 NON-REG LOG PLANS  
HQJOC

Ph: (UNCLAS) +61 2 6128 4164

Email: alex.colrain1@defence.gov.au

---

**From:** Bacon, Siobhan CAPT  
**Sent:** Tuesday, 5 July 2011 13:59  
**To:** Colrain, Alex LEUT 1  
**Cc:** Walden, Harry LTCOL  
**Subject:** Vertical -T Contract [SEC-RESTRICTED]

Alex,

Was wondering if you could find some stats on the AS use of the MI-26 since its commencement.

- How many trips to which PBs
- What sort of loads is it carrying
- Reduction of SHOJOs in the period

Lastly what problems have been encountered - have they been resolved ?

Could I have this by COB 26 Jul or sooner

Thanks

*Siobhan Bacon*

CAPT, RAN  
J45, HQJOC  
02 6128 5146



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**JOINT OPERATIONS COMMAND**  
Headquarters 1<sup>ST</sup> Joint Movement Group

**MINUTE**

AM865903

**COMD 1JMOVGP** (Contract Approver)  
**SO1 OPS/PLANS** 1/5/12 (Proposal and Procurement Approver)

**PROPOSAL PROCUREMENT AND CONTRACT APPROVAL FOR THE  
EXTENSION OF SERVICES CONTRACT AO/004/10-11 ROTARY WING  
SERVICES FOR SUSTAINMENT OPERATIONS IN AFGHANISTAN**

**References:**

- A. HQJTF 633/OUT/2011, DB for CJOPS: MI26 Rotary Wing Services Contract Operational Report, dated 17 Jul 11.
- B. Contract Management Plan for Services Contract AO/004/10-11, dated 14 Dec 11.
- C. FSU DB 015/12, Extension of Contract AO/004/10-11 Rotary Wing Services for Sustainment Operations in Afghanistan, dated 16 Mar 12.

**Overview**

1. **Purpose.** The purpose of this submission is to seek:
  - a. **Proposal Approval** from SO1 OPS/PLANS 1JMOVGP to spend public monies up to approximately \$19 million (inclusive of GST), for the procurement of Rotary Wing Services in support of OP SLIPPER. The delegate acknowledges by exercising their delegation that this procurement is in accordance with the policies of the Commonwealth, it makes efficient, effective, economical and ethical use of public money, and where required it has appropriate agreement under Financial Management and Accountability Regulation 10;
  - b. **Procurement Method Approval** from SO1 OPS/PLANS 1JMOVGP to exercise the final contract extension option of 6 months for contract AO/004/10-11 for the procurement of Rotary Wing Services in support of OP SLIPPER. The delegate acknowledges by exercising their delegation that the procurement method adopted represents value for money and is made in accordance with the Commonwealth Procurement Guidelines and the Defence Procurement Policy Manual; and
  - c. **Contract Approval** from COMD 1JMOVGP to authorise that the procurement is consistent with the Proposal Approval and Procurement Method Approval, represents value for money and to approve the entering into a contract, agreement or arrangement by the Commonwealth for approximately \$19 million (inclusive of GST), for the procurement of Rotary Wing Services in support of OP SLIPPER.

**Background**

2. The Services Contract for Rotary Wing Services for Sustainment Operations in Afghanistan was established 12 Mar 11 for an initial 6 month period with two options, of 10

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A-2

months to 30 Jun 12 and six months to 31 Dec 12. The first option was exercised vide reference A and is currently in effect. In accordance with reference B, the third and final option should be exercised and contractor notified by 01 May 12.

### **Consideration**

3. There is a continuing operational requirement for rotary wing services up until the contract cease date of 31 Dec 12.
4. At reference C, HQJOC J1/4 approved exercising the final extension option.
5. The contract continues to represent an efficient, effective, ethical and economic application of Commonwealth resources.
6. The proposed acquisition is deemed to be subject to the Mandatory Procurement Procedures for the purposes of Division 2 of the Commonwealth Procurement Guidelines (CPGs). The procurement has the following characteristics:
  - a. the total anticipated expenditure exceeds \$80,000 (for non construction services) or \$9 million (for construction services); and
  - b. none of the exemptions detailed in Annex A to the CPGs apply.

### **Implications of not agreeing to this Proposal**

7. If not agreed, sustainment support to AS FE at Tarin Kot and FOBs will be provided by road with increased risk to safety and security of AS personnel.

### **Resource aspects**

8. The proposed commitment and expenditure can be provided from within the current OP SLIPPER funding allocation from HQJOC.
9. Contingency is not being used to fund the proposal.
10. HQ1JMOVGP Cost Centre and Strategic Air Lift account codes will be used for this procurement.
11. FMAR 10 agreement for forward commitment is required and there are no contingent liabilities in the contract.

### **Consultation**

12. The following authorities have been consulted in the preparation of this submission:
  - a. CJTF 633;
  - b. CO FSU;
  - c. HQJOC DFIN;

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A-3

## Recommendations

13. It is recommended that:

- a. Proposal Approval from SO1 OPS/PLANS 1JMOVGP be provided to spend public monies up to approximately \$19 million (inclusive of GST), for the procurement of Rotary Wing Services in support of OP SLIPPER. The delegate acknowledges by exercising their delegation that this procurement is in accordance with the policies of the Commonwealth, it makes efficient, effective, economical and ethical use of public money, and where required it has appropriate agreement under Financial Management and Accountability Regulation 10;
- b. Procurement Method Approval from SO1 OPS/PLANS 1JMOVGP be provided to exercise the final contract extension option of 6 months for contract AO/004/10-11 for the procurement for Rotary Wing Services in support of OP SLIPPER. The delegate acknowledges by exercising their delegation that the procurement method adopted represents value for money and is made in accordance with the Commonwealth Procurement Guidelines and the Defence Procurement Policy Manual; and
- c. Contract Approval from COMD 1JMOVGP be provided authorising that the procurement is consistent with the Proposal Approval and Procurement Method Approval, represents value for money and to approve entering into a contract, agreement or arrangement by the Commonwealth for approximately \$19 million (inclusive of GST), for the procurement of Rotary Wing Services in support of OP SLIPPER.

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**M.D. QUIRKE**  
SQNLDR  
SO2 SLCC  
HQ1JMOVGP

18 Apr 12

## Annex:

A. Approvals Page

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ANNEX A TO  
AM865903  
18 APR 12

**APPROVALS PAGE**

**FUNDS AVAILABILITY**

There is sufficient uncommitted funds allocation to cover the approximate cost of this proposal. 24925 152407.22 DDFINR

Account Code: 332293 Cost Centre Code: 152146 30 APR 12.

**FMA Reg 10 Check:** Will the cost of the agreement extend beyond this financial year or will the spending proposal contain any contingent liabilities (such as indemnity clauses)?

Yes

If YES is checked then seek FMA Regulation 10 agreement (agreement to be attached).

22

	M.N. Davis	22	DFIN	27 Apr 12
(Signature)	(Printed Name)	(PMkeys)	(Appt/Position No)	(Date)

**PROPOSAL APPROVAL**

Proposal Approval to spend monies to the value of approximately \$19 million (GST Inclusive) for the procurement of Rotary Wing Services in support of OP SLIPPER.

**EITHER**

As delegate I confirm that I:

- currently hold the required procurement competency to exercise this delegation;
- fully understand my delegate obligations; and
- have conducted appropriate due diligence to ensure this procurement activity meets all required procurement obligations, notably the Commonwealth Procurement Guidelines, the appropriate Chief Executive's Instructions, the Defence Procurement Policy Manual, applicable Departmental Procurement Policy Instructions and other relevant instructions such as DMI(FIN)s and DMI(PROC)s.

22

	A. CONNER	22	SO1 OPS/PLANS	30 APR 12
(Signature)	(Printed Name)	(PMKeys No)	(Appointment)	(Date)

**OR**

As delegate I confirm that I:

- have consulted with a person who currently holds the required procurement competency and who has been involved in a material way during the development of the proposal or has provided advice during the procurement process;
- fully understand my delegate obligations; and
- have conducted appropriate due diligence to ensure this procurement activity meets all required procurement obligations, notably the Commonwealth Procurement Guidelines, the appropriate Chief Executive's Instructions, the Defence Procurement Policy Manual, applicable Departmental Procurement Policy Instructions and other relevant instructions such as DMI(FIN)s and DMI(PROC)s.

.....	.....	.....	[...Insert Delegate...]	.....
(Signature)	(Printed Name)	(PMkeys)	(Appt/Position No)	(Date)

.....	.....	.....	.....	.....
(Signature)	(Printed Name)	(PMkeys)	(Appt/Position No)	(Date)
(Person Consulted)				

~~COMMERCIAL IN CONFIDENCE~~

~~COMMERCIAL IN CONFIDENCE~~

A-2

**PROCUREMENT METHOD APPROVAL**

Procurement Method Approval to exercise the final contract extension option of 6 months for contract AO/004/10-11 for the procurement of Rotary Wing Services in support of OP SLIPPER.

**EITHER**

As delegate I confirm that I:

- currently hold the required procurement competency to exercise this delegation;
- fully understand my delegate obligations including AusTender publication responsibilities;
- have conducted appropriate due diligence to ensure this procurement activity meets all required procurement obligations, notably the Commonwealth Procurement Guidelines, the appropriate Chief Executive's Instructions, the Defence Procurement Policy Manual, applicable Departmental Procurement Policy Instructions and other relevant instructions such as DMI(FIN)s and DMI(PROC)s; and
- Where a procurement method other than open competition is being proposed, a written justification for this procurement method is available.

22 [Redacted] A. WATKINS 22 [Redacted] SO1OPS/PLANS 30 APR 12  
(Signature) (Printed Name) (PMkeys) (Appt/Position No) (Date)

**OR**

As delegate I confirm that I:

- have consulted with a person who currently holds the required procurement competency and who has been involved in a material way during the development of the proposal or has provided advice during the procurement process;
- fully understand my delegate obligations including AusTender publication responsibilities; and
- have conducted appropriate due diligence to ensure this procurement activity meets all required procurement obligations, notably the Commonwealth Procurement Guidelines, the appropriate Chief Executive's Instructions, the Defence Procurement Policy Manual, applicable Departmental Procurement Policy Instructions and other relevant instructions such as DMI(FIN)s and DMI(PROC)s.

..... [...Insert Delegate...] .....  
(Signature) (Printed Name) (PMkeys) (Appt/Position No) (Date)

.....  
(Signature) (Printed Name) (PMkeys) (Appt/Position No) (Date)  
(Person Consulted)

~~COMMERCIAL IN CONFIDENCE~~

~~COMMERCIAL-IN-CONFIDENCE~~

A-3

## CONTRACT APPROVAL



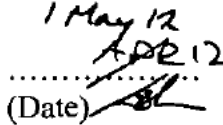
The proposal has been developed in accordance with the policies of the Commonwealth; the outcome of the procurement process will achieve value for money; and the proposal to Spend Public Monies amounting to approximately \$19 million (GST inclusive) is approved.

### EITHER

As delegate I confirm that I:

- currently hold the required procurement competency to exercise this delegation;
- fully understand my delegate obligations including AusTender publication responsibilities; and
- have conducted appropriate due diligence to ensure this procurement activity meets all required procurement obligations, notably the Commonwealth Procurement Guidelines, the appropriate Chief Executive's Instructions, the Defence Procurement Policy Manual, applicable Departmental Procurement Policy Instructions and other relevant instructions such as DMI(FIN)s and DMI(PROC)s.

22



**COMD 1JMOVGP**


(Signature) (Printed Name) (PMKeys No) (Appt/Position No) (Date)

### OR

As delegate I confirm that I:

- have consulted with a person who currently holds the required procurement competency and who has been involved in a material way during the development of the proposal or has provided advice during the procurement process.
- fully understand my delegate obligations including AusTender publication responsibilities; and
- have conducted appropriate due diligence to ensure this procurement activity meets all required procurement obligations, notably the Commonwealth Procurement Guidelines, the appropriate Chief Executive's Instructions, the Defence Procurement Policy Manual, applicable Departmental Procurement Policy Instructions and other relevant instructions such as DMI(FIN)s and DMI(PROC)s.

..... [...Insert Delegate...] .....  
 (Signature) (Printed Name) (PMKeys No) (Appt/Position No) (Date)

.....  
 (Signature) (Printed Name) (PMKeys No) (Appt/Position No) (Date)  
 (Person Consulted)

~~COMMERCIAL-IN-CONFIDENCE~~

Vertical-T

Air Charter Solutions



UNCLASSIFIED

## OPERATION SLIPPERY: RUSSIAN AVIATION MAGNATE CONCERNS

### Key Points

- Request for Tender (RFT) AO/004/10-11 was released on 25 October 2010 for procurement of heavy lift rotary wing support for Operation Slipper. The RFT was released via open tender on AusTender and closed on 24 November 2010.
- A probity advisor was appointed in respect of the procurement.
- Two tenders were received, and after screening processes were completed, the tender response from Vertical-T was deemed as the only tender suitable for detailed evaluation.
- Defence has reviewed its records to establish the process that was adopted to award the contracts.
- The contract provided a critical operational resource that was unmatched in theatre to provide intra-theatre rotary lift. Initially one helicopter was in service and that was then swapped to a MIL-26T aircraft as it was the only helicopter that could lift the Bushmaster, and proved a critical capability for deployed Australian forces, that was also of great benefit for the coalition. The contract arrangements and extensions reflected this utility.

### Talking Points

#### Subject services contracts

- The helicopters were used solely within Afghanistan to carry general cargo and some dangerous cargo permitted to be carried under international regulations.
- The procurement strategy documents reveal that the procurement was conducted in accordance with Commonwealth and Defence procurement policies and procedures, including the core principles and policies underpinning Commonwealth procurement policies relating to probity, "Ethics and Fair Dealing" and "Accounting and Transparency" policies in effect at that time.
- Each services contract also required the contractor to comply with all relevant Commonwealth and Defence policies.

PDR: QB19-000617

Date cleared: 06 December 2019

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## **OPERATION SLIPPERY: RUSSIAN AVIATION MAGNATE CONCERNS**

- A request for tender (RFT) was released via open tender on AusTender on 25 October 2010 for procurement of heavy lift rotary wing support for Operation Slipper. The RFT closed on 24 November 2010.
- A total of two tenders were received and after screening processes were completed, the tender response from Vertical-T was deemed as the only one suitable for detailed evaluation.
- A probity advisor was appointed in respect of the process.
- The services were 'procured and used overseas' which under Commonwealth policy means they are not required to be reported on AusTender.
- Services under this initial contract with Air Company Vertical-T LCC commenced in approximately March 2011 and ceased in December 2012. A replacement contract with an Australian company DynCorp (Aust) Pty Limited was entered into after that date and continued until February 2014.
- After that time the subject helicopters was no longer needed to support the intra Afghanistan operations.

### **Policies in effect now**

- Defence has implemented the Government's Black Economy procurement connected policy, which took effect on 1 July 2019.
- This policy requires that tenderers provide a satisfactory Statement of Tax Record from the Australian Taxation Office for Commonwealth Government open tender procurements with an estimated value over \$4 million (including GST).
- The Government's Black Economy procurement connected policy significantly strengthens compliance with Australian taxation laws through Commonwealth Government procurement, and Defence is committed to that policy.

PDR: QB19-000617  
Date cleared: 06 December 2019

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## OPERATION SLIPPERY: RUSSIAN AVIATION MAGNATE CONCERNS

### Overview of recent or significant events, and media interest timeline

Date	Event
04/12/19	Operation Slippery: Russian aviation magnate diverts Australian Defence profits to tax havens by Michael West.
04/12/19	#29Leaks: has the ADF been caught up in a Russian money laundering scheme? Crikey by Suzanne Smith

### Background

#### Services contracts

- Each contractor, initially Air Company Vertical-T LCC (a Russian incorporated company) and later DynCorp (Aust) Pty Limited (an Australian incorporated company) utilised aircraft registered in Russia and Belarus respectively.
- The helicopters were used solely within Afghanistan to carry general cargo and some dangerous cargo permitted to be carried under IATA regulations.
- The procurement strategy documents reveal that the procurement was conducted in accordance with Commonwealth and Defence procurement policies and procedures, including the core principles and policies underpinning Commonwealth procurement policies relating to probity, “Ethics and Fair Dealing” and “Accounting and Transparency” policies in effect at that time. Each services contract also required the contractor to comply with all relevant Commonwealth and Defence policies.
- The tender response was evaluated as compliant on the basis of financial viability and financial capacity, however the latest financial statements were not disclosed at that time, these were requested during the negotiation process. A performance guarantee was also requested during the negotiation process.
- During the tender evaluation process Vertical-T also revealed that it was operating a total of 15 helicopters in the region at that time. Aircrew and ground personnel were also available in the region to support the contract. Vertical-T also

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Date cleared: 06 December 2019

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## **OPERATION SLIPPERY: RUSSIAN AVIATION MAGNATE CONCERNS**

represented that it had supported UN Missions and other allied services (including Germany, US, Canadian, UK and Dutch services) since 2002.

- Services under this initial contract with Air Company Vertical-T LCC commenced in approximately March 2011 and ceased in December 2012.
- A replacement contract with an Australian company DynCorp (Aust) Pty Limited was entered into after that date and continued until February 2014.
- After that time the subject helicopters was no longer needed to support the intra Afghanistan operations.

### **Current policies in effect**

- The Department of Defence takes its responsibility seriously to ensure compliance with all Australian laws, including taxations laws, through its procurements and ongoing contract management.

### ***Black Market Economy – tax transparency***

- With effect from 1 July 2019 Defence has implemented the Treasury's Black Economy procurement connected policy.
- This policy requires that tenderers provide a satisfactory Statement of Tax Record from the Australian Taxation Office for Commonwealth Government open tender procurements with an estimated value over \$4 million (including GST).
- Foreign companies that do not have an Australian taxation record of at least four years must provide information and undertakings to the Australian Taxation Office in respect of compliance with future tax obligations in Australia, as well as current compliance overseas, in order to receive a Statement of Tax Record.
- If the 2011 contract with Vertical-T was still in effect, this policy would be enforceable against the contractor.

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## **OPERATION SLIPPERY: RUSSIAN AVIATION MAGNATE CONCERNS**

### ***Due Diligence and contractual obligations of contractors***

- Defence policy requires procurement officers to undertake appropriate risk assessment and due diligence, commensurate with the risk profile, scale and nature of the procurement.
- This requirement comes from the Commonwealth Procurement Rules.
- Defence procurement is conducted in accordance with the relevant legislation and the Commonwealth Procurement Rules. The material reviewed by Defence demonstrates that the rules as in effect in 2010/2011 were complied with.
- Under the rules in effect today, Defence's Australian Standard for Defence Contracting (ASDEFCON) suite of tendering and contracting templates contain clauses that require contractors to comply with the law. For example tenderers are to provide the following information in the Tenderer's Profile, a core requirement of high-level ASDEFCON templates (taken from Strategic Materiel):
  1. Details of any orders, contracts, joint ventures, collaborations with other firms or companies or any other commitments relevant to the tenderer's ability to meet the requirement,
  2. Particulars of any civil or criminal litigation or proceeding, actual or threatened, involving either the tenderer or associates and related entities which is likely to adversely affect the tenderer's performance of any resultant Contract
  3. Particulars of any foreign national or foreign bodies or organisations in a position to exercise or influence control over the tenderer.
- The ASDEFCON Conditions of Contract require the Contractor shall, in the performance of the Contract, comply with all laws in which any part of the Contract is to be carried out.

### ***DFAT sanctions and the link into our payment system***

- The Department of Foreign Affairs and Trade (DFAT), Trade Sanctions List is the only authorised Commonwealth list of sanctions. That list is incorporated into

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Date cleared: 06 December 2019

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**OPERATION SLIPPERY: RUSSIAN AVIATION MAGNATE CONCERNS**

Defence's financial system to prevent payments to companies and entities on this list.

- In September 2014 sanctions were announced against Russia but at no time have any of the Vertical-T or Vertical Australia entities been included in any of the DFAT consolidated sanctions list.
- Defence has continuing discussions with DFAT to discuss procurement guidance in relation to Commonwealth Procurement Rules and the DFAT Trade Sanctions list. DFAT advised that the list covers trade sanctions issued by either the United Nations or Australia.

**Contact and Clearance Officer**

<i>Contact Officer:</i>  Francesca Rush Assistant Secretary, Commercial General Counsel Defence Legal (02) 6265 1876 22 [REDACTED] <a href="mailto:francesca.rush@defence.gov.au">francesca.rush@defence.gov.au</a>	<i>Clearance Officer:</i>  Shane Fairweather General Business Manager Na (02) 6265 1018 22 [REDACTED] <a href="mailto:Shane.fairweather1@defence.gov.au">Shane.fairweather1@defence.gov.au</a>  Date: 09 December 2019
---	---

PDR: QB19-000617  
Date cleared: 06 December 2019

UNCLASSIFIED

22

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**From:** yuri tchernobryvko 22  
**Sent:** Thursday, 25 November 2010 12:27 PM  
**To:** Cole, Ben SQNLDR  
**Cc:** Strategic Lift Coordination Cell  
**Subject:** AO/004/10-11. Tender Response of Vertical-T

To: Ben Cole / SQNLDR  
HQ1JMOVGP

Dear Sir,

**REF: AO/004/10-11 Tender Response**

We have submitted The Tender Response at the right time.  
However to meet the dead line, some info which we consider necessary to be included, still available for your information.  
Therefore I would like to ask for the opportunity to add additional data in relation to our response.  
Please advise on appropriate way to get this info to your department.

Thanks and Regards

Yuri Tchernobryvko  
Vertical-T (Australia)  
+61 22

22

**From:** Cole, Ben SQNLDR  
**Sent:** Monday, 10 January 2011 10:24 AM  
**To:** Tanner, Jeffrey FLTLT  
**Subject:** FW: MiL8MTV [SEC=UNCLASSIFIED]

**Importance:** High

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** UNCLASSIFIED

UNCLASSIFIED

**IMPORTANT:** This email remains the property of the Department of Defence and is subject to the jurisdiction of section 70 of the Crimes Act 1914. If you have received this email in error, you are requested to contact the sender and delete the email.

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**From:** Yuri.T Vertical-A [mailto:yuri.tcher@verticalaustralia.com.au]  
**Sent:** Thursday, 16 December 2010 16:49  
**To:** Cole, Ben SQNLDR  
**Subject:** MiL8MTV  
**Importance:** High

To: Ben Cole / SQNLDR  
HQ1JMOVGP

Dear Sir,

**REF: MIL8 MTV**

I would like to advise, that we have three helicopters MiL-8MTV available now for immediate service.

Location:

- Sharona base (Afghanistan)
- Kabul Airport (Afghanistan)

Aircraft can be repositioned anywhere in AFG within short notice.

Please advise if you would require any further information.

Thanks and Regards

Yuri Tchernobryvko  
MD  
Vertical-T (Australia)  
[Yuri.Tcher@verticalaustralia.com.au](mailto:Yuri.Tcher@verticalaustralia.com.au)  
[www.verticalaustralia.com.au](http://www.verticalaustralia.com.au)

22

**From:** Cole, Ben SQNLDR  
**Sent:** Tuesday, 18 January 2011 12:26 PM  
**To:** Hales, Scott SQNLDR; Tanner, Jeffrey FLTLT; Strategic Lift Coordination Cell  
**Subject:** FW: Schedule updates. AO/004/10-11 [SEC=UNCLASSIFIED]

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** UNCLASSIFIED

UNCLASSIFIED

Request you respond to Yuri re: AO004/10-11, Regards,

Ben

**IMPORTANT:** This email remains the property of the Department of Defence and is subject to the jurisdiction of section 70 of the Crimes Act 1914. If you have received this email in error, you are requested to contact the sender and delete the email.

---

**From:** yuri tchernobryvko [mailto:22]  
**Sent:** Tuesday, 18 January 2011 11:26  
**To:** Cole, Ben SQNLDR  
**Subject:** Schedule updates. AO/004/10-11

To: Ben Cole / SQNLDR  
HQ1JMOVGP

Dear Ben,

**REF: Schedule Updates. AO/004/10-11**

Please advise if any changes or updates for the schedule of given tender?

Sincerely,  
Yuri Tchernobryvko  
MD  
Vertical-T  
**Vertical Australia PTY Limited**

**PH: +61 22**  
[Yuri.Tcher@verticalaustralia.com.au](mailto:Yuri.Tcher@verticalaustralia.com.au)

22  
[www.verticalaustralia.com.au](http://www.verticalaustralia.com.au)



22

**From:** Tanner, Jeffrey FLTLT  
**Sent:** Wednesday, 19 January 2011 5:37 PM  
**To:** 22  
**Cc:** Strategic Lift Coordination Cell  
**Subject:** RE: Schedule updates. AO/004/10-11 [SEC=UNCLASSIFIED:~~COMMERCIAL~~]

**Categories:** UNCLASSIFIED

~~UNCLASSIFIED:COMMERCIAL~~

**IMPORTANT:** This email remains the property of the Department of Defence and is subject to the jurisdiction of section 70 of the Crimes Act 1914. If you have received this email in error, you are requested to contact the sender and delete the email.

Good evening Yuri,

Thankyou for your enquiry, Squadron Leader Ben Cole has relocated within Defence and I am now the point of contact for the Request for Tender AO/004/10-11. Please continue to use the email address [StrategicLift.CoordinationCell@defence.gov.au](mailto:StrategicLift.CoordinationCell@defence.gov.au) for all correspondence.

Defence is on schedule as per the covering letter provided with the Request for Tender package. I can confirm your tender response was received and is currently being evaluated by the Tender Evaluation Steering Group.

In accordance with Conditions of Tender 3.4, some of the documents you submitted in your tender response were provided or had accompanying English language. In particular, the insurance documents were only in Russian, are you able to have these translated?

If you have any queries regarding the tender process for AO/004/10-11, please do not hesitate to contact me.

Thanks and regards,

**Jeff Tanner**  
Flight Lieutenant  
Staff Officer Grade Three  
Strategic Lift Coordination Cell  
Headquarters 1st Joint Movement Group

Tel: (02) 6128 4190  
Fax: (02) 6128 4117

---

**From:** yuri tchernobryvko [mailto:22]  
**Sent:** Tuesday, 18 January 2011 11:26  
**To:** Cole, Ben SQNLDR  
**Subject:** Schedule updates. AO/004/10-11

To: Ben Cole / SQNLDR  
HQ1JMOVGP

Dear Ben,

**REF: Schedule Updates. AO/004/10-11**

Please advise if any changes or updates for the schedule of given tender?

Sincerely,  
Yuri Tchernobryvko  
MD  
Vertical-T  
**Vertical Australia PTY Limited**  
PH: +61 22 [REDACTED]  
[Yuri.Tcher@verticalaustralia.com.au](mailto:Yuri.Tcher@verticalaustralia.com.au)  
22 [REDACTED]  
[www.verticalaustralia.com.au](http://www.verticalaustralia.com.au)

22

**From:** yuri tchernobryvko 22 >  
**Sent:** Wednesday, 19 January 2011 6:59 PM  
**To:** Tanner, Jeffrey FLTLT  
**Cc:** Strategic Lift Coordination Cell  
**Subject:** RE: Schedule updates. AO/004/10-11 [SEC=UNCLASSIFIED:~~COMMERCIAL~~]

**Attention to:**  
**Jeff Tanner**  
Flight Lieutenant  
Headquarters 1st Joint Movement Group

Dear Jeff,

**REF: AO/004/10-11**

Thank you for your email.  
Regarding insurance – will get it translated ASAP.

Regards  
Yuri

Sincerely,  
Yuri Tchernobryvko  
MD  
Vertical-T  
**Vertical Australia PTY Limited**  
PH: +61 (22  
[Yuri.Tcher@verticalaustralia.com.au](mailto:Yuri.Tcher@verticalaustralia.com.au)  
22  
[www.verticalaustralia.com.au](http://www.verticalaustralia.com.au)

---

**From:** Tanner, Jeffrey FLTLT [mailto:jeffrey.tanner@defence.gov.au]  
**Sent:** Wednesday, January 19, 2011 5:37 PM  
**To:** 22  
**Cc:** Strategic Lift Coordination Cell  
**Subject:** RE: Schedule updates. AO/004/10-11 [SEC=UNCLASSIFIED:~~COMMERCIAL~~]

UNCLASSIFIED:~~COMMERCIAL~~

**IMPORTANT:** This email remains the property of the Department of Defence and is subject to the jurisdiction of section 70 of the Crimes Act 1914. If you have received this email in error, you are requested to contact the sender and delete the email.

Good evening Yuri,

Thankyou for your enquiry, Squadron Leader Ben Cole has relocated within Defence and I am now the point of contact for the Request for Tender AO/004/10-11. Please continue to use the email address [StrategicLift.CoordinationCell@defence.gov.au](mailto:StrategicLift.CoordinationCell@defence.gov.au) for all correspondence.

Defence is on schedule as per the covering letter provided with the Request for Tender package. I can confirm your tender response was received and is currently being evaluated by the Tender Evaluation Steering Group.

22

**From:** Yuri.T Vertical-A <yuri.tcher@verticalaustralia.com.au>  
**Sent:** Thursday, 20 January 2011 1:14 PM  
**To:** Strategic Lift Coordination Cell  
**Cc:** Tanner, Jeffrey FLTLT  
**Subject:** AO/004/10-11. Aircraft Insurance(ENG)  
**Attachments:** Aircraft 3rd Party & Pax Insurance.pdf; Casco Aircraft Insurance (ENG).pdf

**Attention to:**  
**Jeff Tanner**  
Flight Lieutenant  
Headquarters 1st Joint Movement Group

Dear Jeff,

**REF: Aircraft Insurance**

Please find in attached file copies of aircraft insurance policies in English as requested.

NOTE: Given policies are standard which we use for our fleet utilized in the theater. For example our client, which we operate our MiL26 aircraft for in Kandahar – DynoCorp, included into 3<sup>rd</sup> party liability. In case you have any specific requirement for aircraft insurance we are happy to comply.

Please contact if any other info or clarifications are required.

Sincerely,  
Yuri Tchernobryvko  
MD

**Vertical Australia PTY Limited (Vertical-T)**

PH: +61 22

[Yuri.Tcher@verticalaustralia.com.au](mailto:Yuri.Tcher@verticalaustralia.com.au)

22

[www.verticalaustralia.com.au](http://www.verticalaustralia.com.au)

22

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**From:** yuri tchernobryvko 22 >  
**Sent:** Tuesday, 1 February 2011 9:51 AM  
**To:** Strategic Lift Coordination Cell  
**Cc:** Tanner, Jeffrey FLTLT  
**Subject:** AO/004/10-11. Updates

**Attention to:**  
**Jeff Tanner**  
Flight Lieutenant  
Headquarters 1st Joint Movement Group

Morning Jeff,

**REF: AO/004/10-11. Updates**

I am getting in touch to see if you require any further info from Vertical in addition to earlier forwarded copies of insurance policies.  
Also please update in case of any development in regards to this project.

Sincerely,  
Yuri Tchernobryvko  
MD  
Vertical Australia PTY Limited (Vertical-T)  
PH: +61 (22  
[Yuri.Tcher@verticalaustralia.com.au](mailto:Yuri.Tcher@verticalaustralia.com.au)  
22  
[www.verticalaustralia.com.au](http://www.verticalaustralia.com.au)

22

**From:** Yuri.T Vertical-A <yuri.tcher@verticalaustralia.com.au>  
**Sent:** Friday, 4 February 2011 12:16 PM  
**To:** Tanner, Jeffrey FLTLT  
**Subject:** FW: Sent via Google Maps: yuri tchernobryvko sent you: Kandahar Airport (KDH), Kandahar, Afghanistan

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Hi Jeff,  
It was great to meet you all yesterday.

**A Map of proposed parking Site:**

Please follow the link below and then project picture in attached file to larger scaled image in given link to identify proposed parking location in reference to the runway.

Please note: The image in the link does not have all latest development, so it is just for the reference at this time.

**Kandahar Airport (KDH)**

Kandahar, Afghanistan

I am still awaiting for the larger scaled picture (detailed) from PME guys. Will forward to you ASAP.

In reference to requested by you information and updates:

- We are working on it and all answers will be with you on Monday, the 7<sup>th</sup> of FEB.
- "Operational manual for service delivery", which I mentioned during the meeting, might take a day longer, because it should be coordinated with our ground handling company PME.

Regarding aircraft positioning day to KAF:

- Vertical-T would need at least 14 days to process all necessary permits and approvals from relevant Russian authorities for aircraft positioning. Applications and requests can be placed after contract signed.

Bet regards

Yuri

P.S. If necessary please contact me 24/7, we are all working over the weekend.

Sincerely,

Yuri Tchernobryvko

MD

Vertical Australia PTY Limited

PH: +61 (22

[Yuri.Tcher@verticalaustralia.com.au](mailto:Yuri.Tcher@verticalaustralia.com.au)

[www.verticalaustralia.com.au](http://www.verticalaustralia.com.au)



22

**From:** Yuri.T Vertical-A <yuri.tcher@verticalaustralia.com.au>  
**Sent:** Friday, 4 February 2011 2:18 PM  
**To:** Tanner, Jeffrey FLT LT  
**Cc:** Halloran, Jim LTCOL  
**Subject:** RE: Sent via Google Maps: yuri tchernobryvko sent you: Kandahar Airport (KDH), Kandahar, Afghanistan [SEC=UNCLASSIFIED:~~COMMERCIAL~~]  
**Attachments:** Potential Construction Sites.pptx  
  
**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Hi Jeff,  
Yes, satimage is outdated. This is just for the location's reference in relation to the RWY.  
Please find photo in attached (sorry for no attachment in prev. mail)

Sincerely,  
Yuri Tchernobryvko  
MD  
Vertical Australia PTY Limited  
PH: +61 22 [REDACTED]  
[Yuri.Tcher@verticalaustralia.com.au](mailto:Yuri.Tcher@verticalaustralia.com.au)  
[www.verticalaustralia.com.au](http://www.verticalaustralia.com.au)

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**From:** Tanner, Jeffrey FLT LT [mailto:jeffrey.tanner@defence.gov.au]  
**Sent:** Friday, February 04, 2011 1:49 PM  
**To:** Yuri.T Vertical-A  
**Cc:** Halloran, Jim LTCOL  
**Subject:** RE: Sent via Google Maps: yuri tchernobryvko sent you: Kandahar Airport (KDH), Kandahar, Afghanistan [SEC=UNCLASSIFIED:~~COMMERCIAL~~]

UNCLASSIFIED:~~COMMERCIAL~~

Good afternoon Yuri,

Thankyou for the link. The photo is out dated, are you able to send the photo you showed us yesterday? There was no attachment to this email.

Please include LTCOL Jim Halloran on your email correspondence, I have cc'd him to this email. LTCOL Halloran will be able to liaise with you in my absence next week.

Thanks and regards,

**Jeff Tanner**  
Flight Lieutenant  
Staff Officer Grade Three  
Strategic Lift Coordination Cell  
Headquarters 1st Joint Movement Group

Tel: (02) 6128 4190  
Fax: (02) 6128 4117

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**From:** Yuri.T Vertical-A [mailto:yuri.tcher@verticalaustralia.com.au]  
**Sent:** Friday, 4 February 2011 12:16  
**To:** Tanner, Jeffrey FLTLT  
**Subject:** FW: Sent via Google Maps: yuri tchernobryvko sent you: Kandahar Airport (KDH), Kandahar, Afghanistan

Hi Jeff,  
It was great to meet you all yesterday.

**A Map of proposed parking Site:**

Please follow the link below and then project picture in attached file to larger scaled image in given link to identify proposed parking location in reference to the runway.  
Please note: The image in the link does not have all latest development, so it is just for the reference at this time.

**Kandahar Airport (KDH)**

Kandahar, Afghanistan

I am still awaiting for the larger scaled picture (detailed) from PME guys. Will forward to you ASAP.

In reference to requested by you information and updates:

- We are working on it and all answers will be with you on Monday, the 7<sup>th</sup> of FEB.
- "Operational manual for service delivery", which I mentioned during the meeting, might take a day longer, because it should be coordinated with our ground handling company PME.

Regarding aircraft positioning day to KAF:

- Vertical-T would need at least 14 days to process all necessary permits and approvals from relevant Russian authorities for aircraft positioning. Applications and requests can be placed after contract signed.

Bet regards

Yuri

P.S. If necessary please contact me 24/7, we are all working over the weekend.

Sincerely,

Yuri Tchernobryvko

MD

Vertical Australia PTY Limited

PH: +61 22 [REDACTED]

[Yuri.Tcher@verticalaustralia.com.au](mailto:Yuri.Tcher@verticalaustralia.com.au)

[www.verticalaustralia.com.au](http://www.verticalaustralia.com.au)

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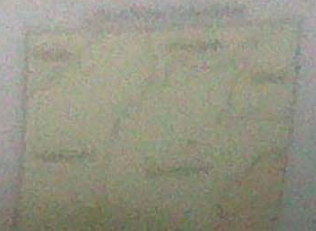




SCALE 1:7,000

REFERENCE SYSTEM: UTM  
PROJECTION: Universal Transverse Mercator  
DATUM: WGS 1984  
HEIGHT: Above Mean Sea Level

Information on this map is derived from the following sources:  
1. Aerial photography taken in 1984.  
2. Ground survey data collected in 1984.  
3. Data from the National Aeronautics and Space Administration (NASA) satellite imagery.  
4. Data from the United States Geological Survey (USGS) topographic maps.  
5. Data from the United States Census Bureau (USCB) population statistics.  
6. Data from the United States Department of the Interior (DOI) land use maps.  
7. Data from the United States Department of Defense (DOD) military maps.  
8. Data from the United States Department of Justice (DOJ) criminal justice maps.  
9. Data from the United States Department of Health and Human Services (HHS) health maps.  
10. Data from the United States Department of Education (DOE) education maps.  
11. Data from the United States Department of Agriculture (USDA) agriculture maps.  
12. Data from the United States Department of Commerce (DOC) commerce maps.  
13. Data from the United States Department of Energy (DOE) energy maps.  
14. Data from the United States Department of Transportation (DOT) transportation maps.  
15. Data from the United States Department of Housing and Urban Development (HUD) housing maps.  
16. Data from the United States Department of Labor (DOL) labor maps.  
17. Data from the United States Department of State (DOS) state maps.  
18. Data from the United States Department of the Environment (DOE) environment maps.  
19. Data from the United States Department of the Interior (DOI) interior maps.  
20. Data from the United States Department of the Treasury (DOT) treasury maps.









ATTACHMENT D  
To AM529419  
DATE



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**JOINT OPERATIONS COMMAND**  
**MINUTE**

Headquarters 1<sup>ST</sup> Joint Movements Group

AM470837- AO/004/10-11

J45 HQJOC CO 1JMOVGP

**AMENDMENT TO PROPOSAL APPROVAL FOR THE CONTRACTING OF  
ROTARY WING SERVICES IN SUPPORT OF OP SLIPPER**

**References:**

A. AM416886 Acquisition Strategy for AO/014/09-10 Contracting of Rotary Wing Services dated 24 Aug 10.

1. **Purpose.** The purpose of this submission is to seek an amendment to the Proposal Approval gained for AO/004/10-11, due to the cost of this procurement extending beyond this financial year. Ref A gained Proposal Approval for the contract of Rotary Wing services in FY 10/11 using the Air Transport Deed of Standing Offer Panel, DNL09009, with the required date of implementation of 20 Oct 10.

2. **Resource Aspects.** A revised date of implementation is now scheduled for 01 Mar 11, for an initial six month period until 31 Aug 11. Ref A provided a Statement of Funds Availability for this procurement estimated at US\$8M in FY10/11. Current air charter funding of AU\$13.27M has been allocated for this charter service in FY 10-11. An FMA Reg 10 has been approved for this procurement by the Procurement Method approval delegate for the additional two months funding in FY 11/12.

**APPROVED / ~~NOT APPROVED~~**

**H. MARSHALL**  
GPCAPT  
J45 HQJOC

21 Oct 10

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~~COMMERCIAL IN CONFIDENCE~~

FOI 098/20/21  
Document 28

JOINT OPERATIONS COMMAND  
Headquarters 1<sup>ST</sup> Joint Movements Group

## MINUTE

AM529419

### COMD 1JMOVGP (For Contract Approval)

### CONTRACT APPROVAL FOR THE PROVISION OF HEAVY LIFT ROTARY WING SUPPORT FOR OPERATION SLIPPER AO/004/10-11

#### References:

- A. F225820 FRAGO 025 to CJOPS OPORD 1/09 dated 20 Jul 10
- B. Noting Brief for DGSPT Rotary Wing Procurement Schedule AO/004/10-11 AM468324 dated 12 Oct 10

#### Purpose

1. The purpose of this submission is to obtain COMD 1JMOVGP approval to commit Commonwealth Funds for the provision of Heavy Lift Rotary Wing Support to Operation Slipper at a cost of AUD\$15,566,848.90 in accordance with Reference A and Attachments B, C, E and F.

#### Background

2. Op Slipper is the codename for the ADF Operation in the Middle East Area of Operations (MEAO). 1JMOVGP at Reference A was tasked to contract a Middle East intra-theatre heavy lift helicopter service in support of Op Slipper. The requirement was to be enduring in nature providing cargo sustainment services between Kandahar Airfield (KAF), Multi National Base – Tarin Kowt (MNB-TK) and various forward operating bases primarily located in Uruzgan Province, Afghanistan.
3. In liaison with JTF633, J45 HQJOC determined the following essential requirements related to this RW procurement:
  - a. A minimum of payload of 11 000kg, with a minimum total volume of 110m<sup>3</sup>;
  - b. A minimum transit distance of 70 nautical miles from Tarin Kowt; and
  - c. Multiple aircraft solutions permitted provided the solution meets the above requirements
4. The Noting Brief at Reference B cleared the proposed timeline for the Procurement, the delegate appointments as well as the acceptance of external legal and probity advice. This advice resulted in a change to the procurement method at Attachment D due to the complexity of amending DNL09009 Air Transport Deed of Standing Offer draft contract to meet the particular needs of this contract. The Tender Evaluation Plan at Attachment E established the guidelines for the progression of this tender process.

#### Consideration

5. RFT AO/004/10-11 is for Heavy Lift Rotary Wing Support for Operation Slipper in the Middle East for the intra-theatre conveyance of ADF equipment and stores within Afghanistan. The RFT was released as an Open Tender on the Australian Government Tender Website on 25 Oct 10 with tenderers being given four weeks to respond. Prior to the RFT closing, a number of clarification questions were received from prospective tenderers. A Contact Register was maintained for all correspondence received and all responses to these clarification questions were provided to all companies who requested the RFT.

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6. Only two responses to the RFT were received. These were from:
  - a. Vertical-T, and
  - b. Air Charter Solutions.
7. Both responses to the RFT were lodged at the DMO Tender Mail Room, with the response from Vertical-T being received by the due date and time and with Air Charter Solutions response received late. The late tender from Air Charter Solutions was returned the company un-opened in accordance with DPPM guidelines for actioning Late Tenders.
8. An initial screening process was carried out by the Technical and Operational Tender Evaluation Working Group (T & O TEWG) on the single tender received (Vertical-T) in accordance with the tender Evaluation Process (TEP). The Vertical-T tender passed this screening process with three minor deficiencies able to be addressed during the negotiation phase. Due to there only being a single tender no short listing was carried out.
9. The single tender was assessed against the following criterion by two TEWGS, a Technical and Operational TEWG (T & O TEWG) and a Financial TEWG (FIN TEWG) as indicated:
  - a. Technical (T & O TEWG),
  - b. Operational and Management (T & O TEWG),
  - c. Previous Performance (T & O TEWG),
  - d. Corporate Information and Financial Viability (FIN TEWG),
  - e. Contractual Compliance (FIN TEWG), and
  - f. Price and Payment (FIN TEWG).
10. Qualitative analysis against the assigned evaluation criteria were conducted by both the TEWGs with Evaluation Workbooks being used to record the TEWG's assessment of compliance, risk assessment and responses supporting the TEWG determinations. Compliance ratings were categorised as 'Exceeding Compliance', 'Compliant', 'Not Applicable' or 'Deficient'. Deficiencies were further categorised as 'Critical', 'Significant' or 'Minor'. The risk assessment methodology detailed in the Tender Evaluation Plan was used, and the priority of the sub-criteria was correlated against the compliance rating to determine the evaluation outcome. A collegiate approach to considerations was adopted and consensus between TEWG members was achieved without the application of scoring.
11. Vertical-T has proposed their MIL-26T rotary wing aircraft registered RA-06274. The identified aircraft has a valid Air Operator's Certificate and Certificate of Registration by the Russian Federation Ministry of Transport. The evaluation of the Vertical-T tender determined the response demonstrated overall compliance against the RFT assessment criteria.
12. The T & O TEWG ascertained that the Tender did not contain any significant or critical deficiencies and therefore has merit as an acceptable solution. Areas of minor deficiencies were assessed as LOW risk and were addressed during negotiations.
13. The FIN TEWG ascertained that the Tender did contain some significant and minor deficiencies, however the risk associated in these areas were determined as LOW. The tenderer



responded adequately to the RFT except for some commercial aspects relating to insurance. The RFT response provided copies of the insurance policies written in Russian and consequently FIS could not assess the policies. Only the personal accident policy (worker's compensation) was written in English with the policy being current. Subsequent contact with Vertical-T provided English copies of the insurance policies which were current. The tenderer has not proposed a performance security, deed of substitution or indemnity and as the Commonwealth does not require these they have been removed from the draft contract.

14. The latest financial statements provided for both the proposed prime contractor and sub-contractor were for 2009. During negotiations the Commonwealth requested a copy of their 2010 financial statements. Vertical-T have responded that their financial year finished on 31 Dec 10 with lodgement of their financial documents with their authorities by the last business day of March 2011.

15. The Tender Evaluation Steering Group did not carry out a Comparative Assessment for the evaluation of the one tender response. The strengths and weaknesses of the Vertical-T tender were assessed during the TEWG evaluations against each criterion and are fully detailed in the SER attached.

16. During the negotiation phase the Commonwealth secured a reduction in the flying hour rate for monthly hours flown between 50 and 80 based on the fact that Vertical-T had amortised their fixed monthly costs in their standing 50 block hour rate. The Commonwealth also noted the requirement for a one off mobilisation payment for positioning of the aircraft, ground handling and parking site construction at KAF on receipt of a substantiated invoice.

17. The draft contract does not contain any liabilities, warranties or indemnities for the proposed Contractor on behalf of the Commonwealth. The total acquisition cost is within the funds available, as estimated in the Proposal Approval. Contingency funds are not being used to fund the procurement. This procurement is assessed as carrying a low risk due to the proven capabilities of Vertical-T in providing the same service to the Dutch in Afghanistan for the last five years. The draft contract is for an initial six month period followed by two possible extensions, the first for ten months to bring the contract into line with the financial year and the second for a further six months.

18. The proposed acquisition is deemed to be subject to the Mandatory Procurement Procedures for the purposes of Division 2 of the Commonwealth Procurement Guidelines (CPGs). The procurement has the following characteristics:

- a. the total anticipated expenditure exceeds \$80,000 (for non construction services) or \$9 million (for construction services); and
- b. none of the exemptions detailed in Annex A to the CPGs apply.

**Implications of Not Agreeing to This Proposal**

19. If the delegate does not agree to this Contract Approval then the only alternative is to continue to use the current ad-hoc air movement arrangements for Patrol Base support in Uruzgan Province with the Dutch and ISAF as well as maintain the current road convoy tasking which places ADF personnel at high risk from insurgent activity. This contracted solution provides the ADF with the ability to control its own forward supply chain with the added advantage of removing a number of ADF personnel from hazardous situations.

**Value for Money Assessment**

20. The Tender Evaluation Steering Group (TESG) assessed Vertical-T, and its proposed subcontractors as having minor deficiencies with a low level of risk and one significant deficiency with a medium level of risk. Vertical-T is assessed as having an overall rating of LOW and is ranked as the preferred tenderer.

21. The T & O TEWG has made its assessment on the basis of the allocated evaluation criteria and has found that Vertical-T's tender meets the requirements to provide Heavy Lift Rotary Wing Support for Operation Slipper from a technical and operational perspective.

22. The Finance TEWG made its assessment on the basis of the assigned evaluation criteria and found that Vertical-T meets the requirements to provide Heavy Lift Rotary Wing Support for Operation Slipper from a financial perspective.

23. The Tender Evaluation Steering Group has assessed the tender as demonstrating value for money and satisfying the requirements of Proposal and Procurement Approvals.

**Resource Aspects**

24. The cost is based on a guaranteed 50 block hours per month contract price as obtained through negotiation with the proposed contractor with a provision to extend to up to 80 hours per month depending on the requirement. The absolute maximum that the aircraft may be flown is 88 hours per month, of which the costing has been based upon.

25. The procurement was forecast and budgeted for at the beginning of the financial year. Approximately AU\$13.27 million was initially allocated against this requirement with AU\$8 million being approved under FMA Reg10. The proposed commitment and expenditure can be provided from within the current funding allocation. The following financial codes will be used for this procurement, without need of contingency funds:

Account Code:	Cost Centre:	WBS:	Fund No:
24925	152134	JOC-OPS- NEWMEASURES	70245



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26. The planned spread of funds for the first six (6) months for this proposal, at the maximum block hours of 88 per month (including mobilisation payments), and inclusive of estimated fuel costs is contained below (all in AUD\$):

FY	10/11	11/12
	10,941,965	4,624,863

27. **Recommendation.** It is recommended that COMD IJMOVGP provides Contract Approval of Attachment F on the basis that the procurement is consistent with the Proposal Approval and Procurement Method Approval, and represents value for money. Further, it is recommended that COMD IJMOVGP approve the entering into a contract between the Commonwealth and Vertical-T to an estimated AUD\$ 15,566,848.90 (exclusive of GST), for the provision of Heavy Lift Rotary Wing Support for Operation Slipper.

22

**J. HALLORAN**  
LTCOL  
TESG CHAIRMAN

23 Feb 11

**Attachments:**

- A. Procurement Strategy for the Contracting of Rotary Wing Support for Op Slipper AM418269 dated 23 Aug 10
- B. Proposal/Procurement Approval for the Provision of Heavy Lift Rotary Wing Support for Op Slipper AM418280 dated 24 Aug 10
- C. PMAR Regulation10 Authorisation AM470446 dated 20 Oct 10
- D. Amendment to Proposal Approval for the Contracting of Rotary Wing Services in Support of Op Slipper AM470837 dated 21 Oct 10
- E. Tender Evaluation Plan for Heavy Lift Rotary Wing Support for Op Slipper AO/004/10-11 AM475116 dated 25 Oct 10
- F. RPT AO/04/10-11 Negotiation Action Items Matrix (AM533005)
- G. Services Contract (Rotary Wing Services for Sustainment Operations in Afghanistan) AO/004/10-11
- H. Indemnity advice received from Blakes Legal through email McKinney / Hales of 22 Feb 11
- I. List of ongoing actions in support of AO/004/10-11

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## APPROVALS PAGE: AO/004/10-11

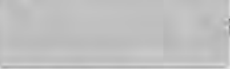
**CONTRACT APPROVAL**

The proposal has been developed in accordance with the policies of the Commonwealth; the outcome of the procurement process will achieve value for money; and the proposal to Spend Public Monies amounting to AUD\$ 15,566,848.90 (GST exclusive) is approved.

As delegate I confirm that I:

- currently hold the required procurement competency to exercise this delegation;
- fully understand my delegate obligations; and
- have conducted appropriate due diligence to ensure this procurement activity meets all required procurement obligations, notably the Commonwealth Procurement Guidelines, the appropriate Chief Executive's Instructions, the Defence Procurement Policy Manual, applicable Departmental Procurement Policy Instructions.

22

	R.S. BARNES	22	COMD 1JMOVGP/528663	23 Feb 2011
(Signature)	(Printed Name)	(PMKeys No)	(Appointment/Position No.)	(Date)

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ATTACHMENT F  
OF AM529419  
FEB 11

AM533005

RFT AO/04/10-11 NEGOTIATION ACTION ITEMS MATRIX

ACTION ITEM	NEGOTIATED RESULT
Vertical-T to advise the proposed date of service commencement	<ul style="list-style-type: none"> <li>Aircraft can be in country 17 days from Contract Signature</li> </ul>
The Commonwealth to advise Vertical-T of Loading/Unloading capabilities (personnel and manual handling equipment) where Commonwealth Assistance is required at Tarin Kot and Forward Operating Bases.	<ul style="list-style-type: none"> <li>MTF S4 advises that there will be no worries in moving loads at PB/FOBs, provided that the cargo is off the aircraft. The concept will be that the PB/FOB will move any outbound cargo to the aircraft loading ramp and hand over to crew for signing and loading. Inbound cargo will be off loaded by the crew from the ramp to the ground where PB/FOB will sign and takeover responsibility.</li> <li>Advise provided to Vertical T</li> <li><b>Actioned</b></li> </ul>
Vertical-T to provide Commonwealth with proposed location of aircraft parking at Kandahar Airfield	<ul style="list-style-type: none"> <li>Contractor provided concrete pad available 30 days after Contract signature.</li> <li>Commonwealth need to assist with a temporary parking position on one of the ISAF Ramps to take advantage of being able to the aircraft in country 17 days after contract signature</li> <li><b>Actioned</b></li> </ul>
Vertical-T to draft Contract clause for the rate applicable in contract price for flying in excess of 50 Block Hours per month.	<ul style="list-style-type: none"> <li>Draft clause received by Blake Dawson for inclusion in draft contract</li> <li><b>Actioned</b></li> </ul>
Vertical-T to advise the Commonwealth of the proposed aircraft positioning fee	<ul style="list-style-type: none"> <li>Vertical-T advised a one off mobilisation cost of US\$428,225.00 made up of:               <ul style="list-style-type: none"> <li>US\$254,000.00 for the aircraft and associated spares delivery to Afghanistan</li> <li>US\$174,225.00 for ground handling and parking site construction</li> <li><b>Actioned</b></li> </ul> </li> </ul>
Vertical-T to consider Commonwealth Assistance in respect to the provision of air navigational or security information for the purpose of flight	<ul style="list-style-type: none"> <li>To be followed up in country by LCDR Willeit &amp; FLTLT Tanner</li> <li>Still under investigation</li> </ul>

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planning	
The Commonwealth to consider extent of Assistance to be provided in respect to intelligence and security planning in support of flight planning	<ul style="list-style-type: none"> <li>• To be followed up in country by LCDR Willett &amp; FLTLT Tanner</li> <li>• Still under investigation</li> </ul>
The Commonwealth to advise Vertical-T of details to allow the Defence Department to be listed on relevant Insurance policies	<ul style="list-style-type: none"> <li>• Blake Dawson to advise – to be completed</li> <li>• Still under investigation</li> </ul>
Vertical-T to consider relevant Insurance policies and extent of coverage	<ul style="list-style-type: none"> <li>• Still to be completed</li> </ul>
Vertical-T to provide the Commonwealth with financial accounts until Dec 10 where applicable	<ul style="list-style-type: none"> <li>• Vertical-T financial year finished on 31 Dec 10</li> <li>• Accounts presented by end of March 11</li> <li>•</li> </ul>
Vertical-T to provide the Commonwealth with up to three referees	<ul style="list-style-type: none"> <li>• Not advised to date - 16 Feb 11</li> </ul>
Vertical-T to draft Contract clause for Replacement Aircraft	<ul style="list-style-type: none"> <li>• Draft clause received by Blake Dawson for inclusion in draft contract</li> <li>• Included</li> <li>• <b>Actioned</b></li> </ul>
Vertical-T to draft Contract clause for Block Hours	<ul style="list-style-type: none"> <li>• Draft clause received by Blake Dawson for inclusion in draft contract</li> <li>• Included</li> <li>• <b>Actioned</b></li> <li>•</li> </ul>
The Commonwealth to advise Blake Dawson of HQJT633 Business Management arrangements	<ul style="list-style-type: none"> <li>• To be followed up in country by LCDR Willett &amp; FLTLT Tanner</li> <li>• Once Contract signed details will be worked out with Vertical T in-country rep Paul Rigby</li> <li>• Still to be completed</li> <li>•</li> </ul>
Commonwealth to advise administration process for the submission of invoices including billing of fuel and provide detail for contract	<ul style="list-style-type: none"> <li>• Awaiting call back from JFLA so we can finalise what has to go in contract regarding fuel.</li> <li>• JFLA recommend the use of a US DoD fuel card and are advising requirements and</li> </ul>

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16/02/2011 @ 15:00:40




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	<p>procedures to IJMOVGP PM 16 Feb 11</p> <ul style="list-style-type: none"><li>• Discussing with JOC Finance requirement for a Line of funding from JOC to JFLA to pay account (no effect on contract)</li><li>• Still being actioned</li><li>• Still to be completed</li></ul>
Commonwealth to confirm credit rating of Vertical-T Insurer Rosstrakh Ltd	<ul style="list-style-type: none"><li>• Passed to FIS for checking 9 Feb 11</li><li>• FIS have advised that a rating of A++ has been issued by a Russian ratings agency by the name of Expert RA</li><li>• <b>Actioned</b></li></ul>

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16/02/2011 @ 15:00:40

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 <b>Headquarters Joint Operations Command</b> Correspondence Cover Sheet			
Originating HQJOC Branch POC Details		Network	Handling Priority
Rank/Name	Arthur	<input checked="" type="checkbox"/> DSN	<input type="checkbox"/> IMMEDIATE (<12 HRS)
Branch/Posn	SPT	<input type="checkbox"/> DRN	<input type="checkbox"/> PRIORITY (12-24 HRS)
Phone Contact	84102		<input type="checkbox"/> ROUTINE (24-36 HRS)
Document Title: Procurement strategy for the contracting of Rotary wing Services in Support of OP SHIPPER		EDMS/DRMS Object ID Number(s): AM 413260	
<b>CJOPS/DCJOPS Correspondence Preparation Checklist:</b>			
<input type="checkbox"/> EDMS/DRMS number correct on primary document & annotated on Covering Sheet <input checked="" type="checkbox"/> All supporting documents attached and in correct order			
<input type="checkbox"/> "Sign Here" Tab Attached (If Required) <input checked="" type="checkbox"/> Corro covering sheet attached to document			
<input type="checkbox"/> Document flagged/tapped as required <input type="checkbox"/> EDMS note updated on despatch			
Originator	Referred To	Action Required	Due Date
COMD 1JMOVGP	J1/4		
	Date Referred		
J1/4	COMD 1JMOVGP	Requires further amendment J1/4	
	Date Referred		
	23/8/10		
J1/4	COMD 1JMOVGP	Signed. J1/4	
	Date Referred		
	23/8/10		
SPACE FOR ADDITIONAL STAFF COMMENTS ON REVERSE SIDE ►			
Additional Staffing Instructions/Branch Receipt Stamp		Executive Branch Correspondence Register Stamp	
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**COMMANDER 1ST JOINT MOVEMENTS GROUP  
HEADQUARTERS JOINT OPERATIONS COMMAND**

**B1-G-E255 Department of Defence, CANBERRA ACT, 2600 AUSTRALIA,  
Tel: (02) 6128 4400 Fax: (02) 6128 4117**

AM413260

J1/4 HQ JOC

**PROCUREMENT STRATEGY FOR THE CONTRACTING OF ROTARY WING  
SERVICES IN SUPPORT OF OP SLIPPER**

**Reference:**

A. F225820 FRAGO 025 to CJOPS OPORD 01/09 dated 20 Jul 10.

**Introduction**

1. Ref A directs the requirement for the contract of a heavy lift rotary wing (RW) service in support of Operation Slipper intra-theatre sustainment. The requirement is enduring in nature, to provide cargo sustainment services to Multi National Base – Tarin Kowt (MNB-TK) and various Forward Operating Bases (FOBs), primarily located in Uruzgan Province in Afghanistan.

**Background**

2. Tactical movement involves the deployment of forces into a hostile area where the prime determinant is battle readiness. The scope of the tactical movement referred to in this strategy is for positioning of cargo only, which can be defined as administrative movement (combat support equipment and supplies) in a tactical environment. ADF Force Elements (FE) are currently supported through a mixture of coalition and organic ground distribution, and ad-hoc Coalition (COA) and commercial RW support.

**Objective**

3. Augmentation of organic ADF and COA ground based distribution resources by a contracted heavy lift RW capability is required to minimise exposure to ground based threats associated with ground distribution. The objective of this procurement strategy is to contract tactical heavy lift RW services for the transport of combat support equipment and supplies in Southern Afghanistan in support of ADF FE. No organic in-theatre RW lift capability exists or will be deployed to support this requirement. The procurement deliverables will be contained within the formal request documentation however, it is anticipated to comprise of a minimum guaranteed 50 block hours per month, under Aircraft, Crew, Maintenance and Insurance (ACMI) lease arrangements, including fuel, with an uplift capacity of 11,000 kg and 120m<sup>3</sup> of cargo (no passengers onboard). The effect of not achieving this procurement in accordance with the schedule outlined below is that current arrangements will remain extant, in that distribution will be conducted utilising road transport assets.

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**Rotary Wing Procurement Options**

4. In liaison with JTF633, LOG PLANS HQJOC have determined the following essential requirements related to this RW procurement:

- a. a minimum guarantee of 50 block hours per month;
- b. a minimum uplift capacity of 11 000kg, with a maximum uplift capacity of 20000kg;
- c. a minimum total cargo volume of 120m<sup>3</sup>;
- d. a minimum transit distance of 70 nautical miles at minimum uplift capacity; and
- e. multiple aircraft solutions are permitted provided it meets the above requirements.

5. The estimated cost of a chartered option based on a minimum usage of 50 hrs per month for a 6 month period is US\$16,000 per hour, exclusive of fuel, at approximately US\$800,000 per month.

**Concept of Operations**

6. The concept of operation is for the aircraft to be based at Kandahar Air Field, Afghanistan. The aircraft will primarily load from KAF and TK, and provide distribution support for up to 10 Patrol Bases/FOBs. The intent is for schedules to be coordinated by the tasking authority directly with the charter operator. For the sake of operational security the schedules will vary to support operational requirements and to mitigate the threat that would increase if a regular schedule to FOB locations was adopted.

**Tasking Authority**

7. It is anticipated that the tasking authority, responsible for the operational tasking, load co-ordination and promulgation of flight schedules, will be exercised through Force Support Unit Afghanistan, based on priorities allocated by the AS operations and logistics staff within HQ CT-U. This will be further refined as the procurement process develops.

**Cargo**

8. The carriage of cargo will be restricted to the following stores:
- a. General Cargo;
  - b. Dangerous Goods approved for air transport (including underslung loads) in accordance with IATA DG Regulations.

**Ground Handling**

9. The RW service provider will be responsible for all ground handling support, including loading and unloading, at KAF, MNB-TK, and at all Patrol Bases/FOBs.

**Insurances**

10. The following insurances are required by the Service provider:
- a. All Risks Hull Insurance (all flight and ground risks);

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- b. All Risks (including war and allied risks on ground and air) property insurance on engines/parts not installed, at full replacement and engine test and running cost;
- c. Additional War Risk Insurance subject to Terms and Conditions of London Insurance Market; and
- d. Aircraft Third Party and Airline General Third Party Liability Insurance.

**Liability**

11. The contractor will be required to release Defence from liability for any injury or loss which the contractor suffers or causes as a result of providing the services.

**Contractor Requirements**

12. The contractor will be required to arrange the following support with no recourse to the ADF for assistance:

- a. Base access;
- b. Working and domestic accommodation at MOB;
- c. Access to medical facilities /messing;
- d. Ramp access at KAF for operations and maintenance;
- e. Flight clearance to undertake Defence tasking;
- f. Storage facilities/operating location;
- g. Fuel – where fuel cannot be supplied by any other party other than the ADF, the contractor is to advise of fuel uplift requirements, with fuel charged to the contractor at the World Fuel Services benchmark rate;
- h. Import and export of personnel/equipment/repair/spare aircraft parts;
- i. Positioning/Repositioning costs;
- j. Additional Crew Cost (if exceeding guaranteed block hours per month);
- k. Additional War Risk per additional flights above block hour rate; and
- l. Visas.

**Complex Procurement Process**

13. In order to conform to Commonwealth and Defence procurement policy and procedures, project deliverables required of this procurement are:

- a. Develop Procurement Strategy and Risk Management Plan;
- b. Develop Probity Plan;
- c. Obtain Statement of Funds Availability;
- d. Obtain Proposal Approval;
- e. Obtain Procurement Approval;
- f. Obtain Delegate Approval for Tender Evaluation Plan;
- g. Conduct Financial Analysis Planning;
- h. Release Request for Tender documentation (RFT);
- i. Evaluate Tender responses;
- j. Obtain Contract Approval; and
- k. Obtain Contract Signatory Approval.



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**Implementation of Contract**

14. Contract implementation will occur upon successful completion of the tendering process. A detailed Contract Negotiation Directive and implementation plan will be released prior to Contract Approval. The initial contract duration will be until 30 Jun 11, with two options to extend by a further 12 months.

**Delegations**

15. The following delegations and the limitation of these delegations are identified for this procurement:

- |    |                      |                          |
|----|----------------------|--------------------------|
| a. | Procurement Strategy | J1/4 HQJOC (LOFA);       |
| b. | Proposal Approval    | J45 HQJOC (LOFA);        |
| c. | Procurement Approval | J05 FIN;                 |
| d. | Contract Approval    | COMD 1JMOVGP (LOFA); and |
| e. | Contract Signatory   | J1/4 HQJOC (LOFA).       |

16. HQ1JMOVGP will be responsible for the conduct of the Complex Procurement process. Once implemented, all contract management tasks, including operational contract management, performance monitoring, and payment of invoices, will be assigned to CJTF 633. COMD 1JMOVGP will be the Contract Authority for approving any Contract Change Proposals.

**Method of Procurement**

17. The role of policy in supporting Commonwealth procurement is to ensure a consistent approach and to provide a basis for personnel to make decisions in the best interest of the Commonwealth. The core principles and policies underpinning Commonwealth Procurement are:

- a. Value for money;
- b. Efficiency and effectiveness;
- c. Ethics and fair dealing;
- d. Accountability and transparency; and
- e. Support for other government policies.

18. Defence will utilise the DNL 09009 Air Lift Standing Offer Panel for procuring RW Services. Due to the ability of panel members to source RW services globally for an enduring requirement, it is considered that there are adequate sources of supply available through the Standing Offer panel for this procurement. The restriction of the RFT to the extant standing offer panel is also considered appropriate due to the need to have this support provided to M~~RTF~~-1 as soon as possible. The procurement is treated as complex due to the risk involved and the high monetary value. A probity plan will be developed for this procurement.

19. The procurement is based on providing an enduring service to Defence over a fixed period of time. As Defence does not wish to retain permanent control of the assets used to provide this service, and the service sought is readily available through commercial sources, a cost plus contract would not be suitable for this procurement. As this procurement will be based on the provision of a sustainment service, it is proposed this contract is based on a fixed

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price, per hour, which is expected to be derived from the operator's Aircraft, Crew, Maintenance and Insurance (ACMI) costs, including fuel, and additional support costs such as ground handling.

**Request Format**

20. The standard Request template, contained within the Air Standing Offer Agreement will be used for this procurement. The drafting of the request document will utilise external legal services accessed through the Defence External Legal Services panel. The Tender Evaluation Plan (TEP), to be approved prior to the release of the Request, will detail the tender evaluation process. Evaluation will be based on Commonwealth and Defence procurement principles referenced earlier. The evaluation process will comprise the following steps:

- a. A Technical Evaluation Working Group (TEWG) will be established to endorse the technical compliance of responses; and
- b. A Tender Evaluation Steering Group (TESG) will be established to evaluate all compliant responses according to the essential and desirable criteria within the Request.

**Risk Management**

21. Risk is part of the environment in which we operate within Defence. Risk management involves the systematic identification, analysis, treatment, and, where appropriate, acceptance of risks. Risk management will be built into the procurement process, through the creation of a risk matrix for all identified risks, and ongoing development of a risk management plan. A detailed risk management plan will be developed separately for this procurement.

**Procurement Milestones**

22. Key procurement milestones are identified within Table 1. Any further change to milestone dates will affect estimated project costs and implementation date.

- |    |                               |                  |
|----|-------------------------------|------------------|
| a. | Procurement Strategy Approval | 20 Aug 10        |
| b. | Release of RFT                | 03 Sep 10        |
| c. | Close of RFT                  | 17 Sep 10        |
| d. | Tender evaluation             | 24 Sep-08 Oct 10 |
| e. | Negotiation                   | 08 - 15 Oct 10   |
| f. | Contract Signatory            | 18 Oct 10        |
| g. | Contract Commencement         | 20 Oct 10        |

**Financial Management**

23. Based on RFI responses for RW support to OP SLIPPER, the cost of the RW service from 20 Oct 10 – 30 Jun 10 is estimated to be US\$8M. Current air charter funding of AU\$13.27M has been allocated for this charter service in FY 10-11. A detailed financial analysis of all tender responses will be completed by Financial and Investigative Services (FIS), who will provide a corporate and financial viability report of all tenderers, and financial analysis of all responses, comprising of a comparative assessment, ranking and value for money assessment. In accordance with the Defence complex procurement process, a

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statement of funds availability for the estimated procurement is required prior to tendering.

**Recommendation**

24. It is recommended that J1/4 HQJOC approve the Procurement Strategy for OP SLIPPER RW support.

APPROVED/NOT APPROVED

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R.S. BARNES  
GPCAPT  
COMD 1JMOVGP

23 Aug 10

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D. GALLASCH  
BRIG  
J1/4 HQ JOC

23 Aug 10

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ATTACHMENT B To  
AM529419  
DATED



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**JOINT OPERATIONS COMMAND**  
**MINUTE**  
Headquarters 1<sup>ST</sup> Joint Movements Group

AM416886- AO/004/10-11

J45 HQJOC  
J05 HQJOC

**PROPOSAL/PROCUREMENT APPROVAL FOR THE CONTRACTING OF  
ROTARY WING SERVICES IN SUPPORT OF OP SLIPPER**

**Reference:**

A. F225820 FRAGO 025 to CJOPS OPORD 01/09 dated 20 Jul 10.

1. **Purpose.** The purpose of this submission is to seek:
  - a. Proposal Approval from J45 HQJOC to spend public monies up to AU\$13.27M (exclusive of GST), for the procurement of Rotary Wing Services. The delegate acknowledges by exercising their delegation that this procurement is in accordance with the policies of the Commonwealth, it makes efficient, effective and ethical use of public money, and where required it has appropriate authorisation under Financial Management and Accountability Regulation 10; and
  - b. Procurement Method Approval from J05 to utilise DNL09009 Deed of Air Standing Offer for the procurement of Rotary Wing Services. The delegate acknowledges that by exercising their delegation that the procurement method adopted represents value for money and is made in accordance with the Commonwealth Procurement Guidelines and the Defence Procurement Policy Manual.
2. **Background.** Ref A directs the requirement for the contract of a heavy lift rotary wing (RW) service in support of Operation Slipper intra-theatre sustainment. The requirement is enduring in nature, to provide cargo sustainment services to Multi National Base – Tarin Kowt (MNB-TK) and various Forward Operating Bases (FOBs) and Patrol Bases, primarily located in Uruzgan Province in Afghanistan.
3. **Consideration.** The proposed procurement is deemed to be subject to the Mandatory Procurement Procedures for the purposes of Division 2 of the Commonwealth Procurement Guidelines (CPGs). The procurement has the following characteristics:
  - a. the total anticipated expenditure exceeds \$80,000 (for non construction services) or \$9 million (for construction services); and
  - b. none of the exemption categories detailed in Annex A to the CPGs apply.
4. **Implications of not agreeing to this Proposal.** If this Proposal/Procurement approval is not approved in accordance with the proposed schedule current arrangements will remain extant, in that distribution will be conducted utilising road transport assets, increasing operational risk to Defence personnel.

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5. **Resource Aspects.** The cost of RW service from 20 Oct 10 – 30 Jun 10 is estimated to be approximately US\$8M. Current air charter funding of AUS13.27M has been allocated for this charter service in FY 10-11. The required date of implementation is 20 Oct 10, therefore release of a Request for Tender (RFT) is required by 03 Sep 10. There is low risk in the likelihood of seeking an increase in project funding approval. The proposed commitment and expenditure can be provided from within the current funding allocation. Contingency funding is not being used to fund the proposal. The following financial codes will be used for this procurement:

Account Code:	Cost Centre:	WBS:	Fund No:
24925	152134	JOC-OPS- NEWMEASURES	70245

6. **Procurement Method.** As the value of this procurement is estimated to be greater than \$80,000 this procurement is classified as a covered procurement. It is proposed to utilise the Global Airlift Standing Offer Panel, DNL09009, to conduct this complex procurement, as a single stage open RFT. Competitiveness and value for money will be achieved utilising this panel as the panel was established under an open RFT process, and the panel has access to air charter services (including rotary wing) worldwide. Standard request documentation within the Global Air lift Standing Offer Agreement, DNL09009, will be used.

7. **Proposed strategy.** It is proposed to utilise the Air Standing Offer for the task, with an open Request for Tender (RFT) being forwarded to the following panel members:

- a. Adagold Aviation,
- b. Air Charter Network,
- c. Alltrans International,
- d. Cobham Aviation,
- e. Corporate Air,
- f. Execujet,
- g. Independent Aviation,
- h. PDL Toll,
- i. Pel-Air Aviation,
- j. Skytraders,
- k. Strategic Aviation,
- l. Vincent Aviation, and
- m. WEXCO.

8. **Funds Availability.** A Statement of Funds Availability is provided by DDFINSPT (MEAO) HQJOC.

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9. **Recommendation.** It is recommended that:

- a. Proposal Approval from J45 be provided to spend public monies up to \$13.27M (exclusive of GST), for the procurement of Rotary Wing Services. The delegate acknowledges by exercising their delegation that this procurement is in accordance with the policies of the Commonwealth, it makes efficient, effective and ethical use of public money, and where required it has appropriate authorisation under Financial Management and Accountability Regulation 10; and
- b. Procurement Method Approval from J05 DFIN be approved to utilise DNL09009 Deed of Air Standing Offer for the procurement of Rotary Wing Services. The delegate acknowledges by exercising their delegation that the procurement method adopted represents value for money and is made in accordance with the Commonwealth Procurement Guidelines and the Defence Procurement Policy Manual.

APPROVED / ~~NOT APPROVED~~

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H. MARSHALL  
GPCAPT  
J45 HQJOC

24 Aug 10

APPROVED / NOT APPROVED

N. RUFUS  
MR  
J05 HQJOC

Aug 10

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## APPROVALS PAGE

### FUNDS AVAILABILITY

There is sufficient uncommitted funds allocation to cover the approximate cost of this proposal.

Account Code: 24925

Cost Centre Code: 152134

### FMA Reg 10 Check

Will the cost of the agreement extend beyond this financial year or will the spending proposal contain any contingent liabilities (such as indemnity clauses)? ☐ Yes ☒ No

If YES is checked then seek FMA Regulation 10 authorisation (authorisation to be attached).

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C. COLE

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DDFINSPT (MEAO)

24/8/10

(Signature)

(Date)

### PROPOSAL APPROVAL

Proposal Approval to spend monies to the value of \$13.27M (GST exclusive) for the procurement of Rotary Wing Services.

As delegate I confirm that I:

- currently hold the required procurement competency to exercise this delegation;
- fully understand my delegate obligations; and
- have conducted appropriate due diligence to ensure this procurement activity meets all required procurement obligations, notably the Commonwealth Procurement Guidelines, the appropriate Chief Executive's Instructions, the Defence Procurement Policy Manual, applicable Departmental Procurement Policy Instructions and other relevant instructions such as DMI(FINS) and DMI(PROCs).

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F. MARSHALL, GPCAPT

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[J45]

24 Aug 10

(Signature)

(PMKeys)

(Date)

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## PROCUREMENT METHOD APPROVAL

Procurement Method Approval for the procurement of Rotary Wing Services

As delegate I confirm that I:

- currently hold the required procurement competency to exercise this delegation;
- fully understand my delegate obligations;
- have conducted appropriate due diligence to ensure this procurement activity meets all required procurement obligations, notably the Commonwealth Procurement Guidelines, the appropriate Chief Executive's Instructions, the Defence Procurement Policy Manual, applicable Departmental Procurement Policy Instructions and other relevant instructions such as DMI(FINS) and DMI(PROCs); and
- Where a procurement method other than open competition is being proposed, a written justification for this procurement method is available.

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TRUFUS

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[J05]

24/08/10

(Signature)

(Date)

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DFIN (HQJOC)

AM548731

**REQUEST FOR AUTHORISATION TO APPROVE A FUTURE SPENDING PROPOSAL**  
**HQ 1JMOVGP REG 10/FY2010/11 – AO/004/10-11 OP SLIPPER ROTARY WING SERVICES 01**  
**MAR – 30 AUG 11**

**References:**

- A. Financial Management and Accountability Regulations 1997, 3 Mar 2008, Regulation 10.
- B. CEI 2.1 (Procurement), Edition 4, AL3 December 2005
- C. FINMAN2 (Financial Delegations Manual) Part 2, Jan 2008, schedule F2-1 – To Approve A Future Spending Proposal

1. In accordance with the Secretary's delegation, DFIN HQJOC authorisation is sought for a delegated approver to approve expenditure for which an appropriation of money is not authorised under an existing law or a proposed law that is before Parliament.

2. Checks for each proposal (required in accordance with reference C) have been completed at enclosure 1. A spreadsheet showing estimated expenditure is at enclosure 2.

3. On this basis, it is requested that you exercise FMAR 10 authorisation for the attached proposals having been assigned authority by the Defence Chief Executive.

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S.J. HALES  
SQNLDR  
SO2 SLCC  
HQ 1JMOVGP

23 Feb 11

**Enclosure:**

- 1. Checklist for exercise of delegation to authorise future spending proposals.
- 2. Spreadsheet of estimated expenditure.

Authorisation is ~~GRANTED/NOT GRANTED~~ (delete whichever is not applicable), for a delegated approver to approve expenditure for the subject proposal.

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NOTE: Discussed with JOC GFO on 29th Oct,  
verbal approval received to commit  
JOC GMI in FY11-12<sup>s22</sup>

M.N. DAVIS  
DFIN  
HQJOC

23 Feb 11

HQJOC FMAR 10 Register Number: \_\_\_\_\_

Copied to DBM Reporting Cell (date, sign, print name) \_\_\_\_\_

**CHECKLIST FOR EXERCISING DELEGATIONS SCHEDULE 2-1  
TO AUTHORISE FUTURE SPENDING PROPOSALS**

	REQUIREMENT	REQUESTOR INITIALS CONFIRMING REQUIREMENT HAS BEEN MET	DFIN INITIALS CONFIRMING REQUIREMENT HAS BEEN MET
1.	The proposal is for an expenditure for which an appropriation of money is not authorised under an existing law or a proposed law that is before Parliament	s22	s22
2.	The proposal meets the following criteria		
	- it relates to a departmental item (see description below)		
	- it does not extend beyond sixteen years from the date of exercising this delegation		
	- for the period of the forward estimates (ie, next budget year as year 2, plus 3 years) the departmental item has uncommitted appropriation and uncommitted forward estimates which are sufficient to cover the expenditure under the spending proposal as it would or could become payable	Uncommitted appropriation and uncommitted forward estimates unknown to requestor	N/A
	- for each year beyond the period of the forward estimates, the expenditure that would or could become payable under the spending proposal in each year is of an amount that does not cause the total commitments and liabilities under the departmental item for each year to exceed the following percentage of the forward estimate recorded for the third forward year: Year 6, 40%; Years 7 – 10, 30%; Years 11-16, 20%;	Uncommitted appropriation and uncommitted forward estimates unknown to requestor	N/A
	- For spending proposals with duration beyond the forward estimates, the responsible Minister has agreed in writing to the exercise of this delegation, noting the restrictions in the "Additional Directions" section of FINMAN 2 Schedule 2-1	s22	s22
3.	The spending proposal(s) include(s) contingent liabilities (see below) which have been assessed in writing ( <b>attached</b> ) as having less than \$50,000 AUD value per contingent liability and having a less than 5% chance of occurring. The contingent liabilities relate to departmental items and have a duration not exceeding 16 years. (If contingent liabilities do not apply, indicate "Not Applicable")	N/A	N/A
4.	The spending proposal(s) include(s) contingent liabilities (see below) which have been assessed in writing ( <b>attached</b> ) as having less than \$50,000 AUD value per contingent liability and having a less than 5% chance of occurring. The spending proposal includes a contingent liability that is an integral part of the spending proposal and the spending proposal would, apart from the presence of the contingent liability satisfy the requirements of point 2 of this table. (If contingent liabilities do not apply, indicate "Not Applicable")	N/A	N/A



5.	The spending proposal has been explicitly agreed in a decision of Cabinet or The National Security Committee of Cabinet, or the Prime Minister <b>and</b> : (If PM, Cabinet or NSCC decision not applicable, indicate "Not Applicable")	N/A	s22 NSC agreed. 6 Dec 2010. ET-L transfer
	- It has been assessed in writing ( <b>attached</b> ) that the most probable expenditure that could arise would be less than \$50,000AUD per contingent liability and the contingency has a less than 5% chance of occurring; <b>or</b>	N/A	N/A
	- The contingent liability has been explicitly approved in the relevant decision; <b>or</b>	N/A	N/A
	- The contingent liability is capped to an amount that does not cause the total potential cost of the spending proposal to exceed the amount agreed in the relevant decision; <b>and</b>	N/A	N/A
	- The approval is consistent with restrictions placed by the Finance Minister on the power to authorise it.	N/A	N/A
6.	The spending proposal relates to a departmental item for which a delegation for all items listed above is not available and the exercise of the power is in accordance with a determination of the Finance Minister (if not applicable, indicate "Not Applicable")	N/A	N/A
7.	The spending proposal does not include a private financing initiative subject to the Public Private Partnerships policy principles or any other transaction that by a determination of the Finance Minister is prohibited for this delegation.	s22	s22
8.	The proposal does not include any transactions that have been prohibited by a determination of the Finance Minister for this delegation	s22	s22
9.	The spending proposal identifies:		
	- the total amount of public money that would or could become payable under the spending proposal and the times when the public money could or would become payable;	s22	s22
	- the applicable departmental item;	s22	s22
	- whether there is sufficient uncommitted appropriation and uncommitted forward estimates; and	Requestor does not hold this information	N/A
	- any direct or indirect risks arising from the spending proposal and any proposed transaction under it.	s22	s22
	- the amount of GST payable		
10.	The proposal meets the obligation on a Chief Executive under section 44 of the <i>Financial Management and Accountability Act 1997</i> to promote the efficient, effective and ethical use of Commonwealth resources.	s22	s22
11.	The Delegate for the purposes of FINMAN2 Schedule F2-1 is not also exercising the Proposal Approver delegation for this spending proposal.	s22	s22

**Contingent Liabilities** include indemnities, guarantees, warranties and letters of comfort. The supplier's quote may not be sufficient to determine whether there is a contingent liability, particularly if it is underpinned by a standing offer, contract or other agreement. For example, if we lease vehicles from a supplier, their quote will usually supply the price, but may not show contingent liabilities in the contract, which has been signed separately. If we have agreed under contract arrangements to repair or replace a vehicle that is damaged while we are using it, that is a contingent liability. If the contract limits this contingent liability to a certain dollar value, it is "capped" at that value. If no dollar value is placed on this contingency, then it is "uncapped" and a written risk assessment must be presented with this documentation.

Source [http://www.finance.gov.au/comcover/docs/Financial\\_Management\\_Guidelines\\_No.\\_6.pdf](http://www.finance.gov.au/comcover/docs/Financial_Management_Guidelines_No._6.pdf)

## **Introduction**

### **Purpose**

These guidelines are designed to advise officials of their responsibilities when considering entering into arrangements involving issuing indemnities, guarantees, warranties, or letters of comfort on behalf of the Commonwealth. These guidelines also reinforce the importance of sound risk management strategies and awareness regarding the use of such instruments. These guidelines represent Australian Government policy and replace the guidance previously contained in Finance Circular 1997/06, *Potential Liabilities and Losses*.

**What are indemnities, guarantees, warranties and letters of comfort?** Indemnities, guarantees, warranties and letters of comfort are forms of contingent liabilities that exist at any given point in time that may give rise to a liability on the occurrence of a particular future event that is outside the control of the Agency.

An **indemnity** is a legally binding promise whereby a party undertakes to accept the risk of loss or damage another party may suffer. Indemnities issued by the Australian Government can be classified into two groups, which are useful in assessing the level of risk the Commonwealth is assuming:

Class A: Potential losses or damages for which the Commonwealth, without having issued an indemnity, may otherwise be liable although the initial loss would accrue to the other party.

### **Example:**

The Australian Government, in providing goods or services to a client, may indemnify that client against possible losses arising from legal action by a third party, injured or otherwise disaffected, as a result of the Australian Government's actions (such as negligently providing defective equipment to the client).

### **Class B:**

Potential losses or damages for which the Commonwealth, without having issued an indemnity, would not otherwise be liable.

A Commonwealth **guarantee** is a promise whereby the Commonwealth assumes responsibility for the debt of, or performance obligations of, another party should that party default in some way. Guarantees issued by the Australian Government cover potential losses that would not otherwise be met by the Commonwealth.

A **warranty** is a promise whereby one party provides certain assurances to another party, for example, that an item sold is the vendor's to sell, is fit for use, and that for a specified period defective parts will be replaced or otherwise rectified.

Warranties generally relate to the type, sufficiency, and condition of assets and typically form part of a sale agreement. Issues commonly addressed include ownership of the assets, ownership of copyright, completeness of financial statements, payment of taxes, disclosure of material matters, legal proceedings and employee entitlements. Warranties usually become the responsibility of the former 'owning' Agency at the completion of the sale



**Example:** The Australian Government, in using goods or property owned by another party, may indemnify the owner against losses that may be suffered if a third party damages those goods (such as losses that may result from destruction of an exhibit by a member of the public).

**Example:** Where the Commonwealth guarantees payment of bank borrowings, performance or liabilities by a third party.

A **letter of comfort** is essentially an instrument that is used to facilitate an action or transaction but is constructed with the intention of not giving rise to a legal obligation.

In general, letters of comfort should be avoided. Officials should be aware that a letter of comfort may lead to an actual liability, either through a court finding that the party receiving the letter was entitled to rely upon its contents, or through a moral obligation for the Commonwealth to make good on its assurances.

It is therefore important to carefully consider who may sign letters of comfort. In a worst case scenario, a letter of comfort that was held to indicate probable Commonwealth financial support for an activity may cause the Commonwealth significant expenditure. Letters of comfort need to be appropriately authorised; they need to be offset by adequate benefits; and they should be limited in some way to minimise the Commonwealth's exposure.

It is prudent to seek legal advice on the form of words to be used to ensure that the Commonwealth's risk exposure is minimised.

Indemnities, guarantees, warranties and letters of comfort do not impact on fiscal or underlying cash balances unless the contingent event occurs, crystallising the liability. That is, there is no impact on the Commonwealth budget simply from their creation. However indemnities, guarantees, warranties and, in some cases, letters of comfort are legally binding obligations that can result in significant budget costs if the contingent event occurs. As such, these instruments need to be managed carefully, with the exposures they represent being adequately monitored over the life of the instruments.

**Example:** The Commonwealth enters into an agreement to sell shares and provides a warranty to the buyer in respect of the Commonwealth's title and power to sell the shares.

Source: [http://www.finance.gov.au/budgetgroup/appropriation\\_bills.html](http://www.finance.gov.au/budgetgroup/appropriation_bills.html)

### **Administered versus Departmental**

Departmental and administered items are specific accounting terms. Administered and departmental monies are treated differently and appropriated separately in the Appropriation Bills. The distinction arises from the differing accountabilities involved. 'Administered items' are those resources controlled by Government but administered by the agency on behalf of the Government (e.g., most grants and benefits; transfer payments).

'Departmental items' (or outputs) are those resources controlled by the agency, comprising the assets, liabilities, revenues and expenses applied to the production of an agency's outputs (e.g. salaries; operational expenses including depreciation (or asset replacement); and accruing employee entitlements).

Departmental expenses are notionally split between outcomes, thereby providing an indication of the departmental resources to be allocated towards the achievement of key outcomes for agencies. This split is for information only, as departmental items will be appropriated as a single amount for each agency. The single appropriation for departmental items represents the price paid by Government for all the outputs the agency plans to deliver.

- Departmental outputs appropriations represent funding for the provision of outputs by agencies to the Government (this funding is controlled by agencies subject to delivery of their outputs).
- Departmental non-operating appropriations represent funding in the form of equity injections or borrowings over which the agency exercises control.

Administered expenses are expenses that agencies do not have control over and are normally made pursuant to eligibility rules and conditions established by the Government such as grants, subsidies and benefit payments. Annual appropriations for administered expenses are appropriated on the basis of agency outcomes, making it clear what the funding is intended to achieve rather than the programme it is being spent on. Administered assets and liabilities appropriations represents equity injections, which are for functions oversighted (not controlled) by an agency on behalf of the Government.

AM548743

FMAR 10 Authorisation Submission No: AO/004/10-11

(a)	Unit Ref #	UNIT/GST (b)	Nature of Expenditure (choose from drop down menu within each cell) (c)	Description of Proposal (d)	Contingent Liabilities Amount of Capped (\$) (e)	Contingent Liabilities Amount of Uncapped (\$) (f)	Appropriation Source (h)	Date of Submission (i)	Expenditure Total (k)	Planned Expenditure Current Year YR 1 (l)	Planned Expenditure FY 11/12 YR 2 (m)	Planned Expenditure FY 12/13 YR 3 (n)	Planned Expenditure FY 13/14 YR 4 (o)
1	AO/004/10-11	JMOVGP	6. freight and storage	AO/004/10-11 OP SLIPPER ROTARY WING SERVICES 01 MAR – 30 AUG 11	N/A	N/A	Suppliers Expenses	23-Feb-11	AUD 12,554,979.46	AUD 8,934,072.21	AUD 3,620,907.25		
2	AO/004/10-11	JMOVGP	6. freight and storage	Fuel for AO/004/10-11 OP SLIPPER ROTARY WING SERVICES 01 MAR – 30 AUG 11	N/A	N/A	Suppliers Expenses	23-Feb-11	AUD 3,011,869.44	AUD 2,007,912.96	AUD 1,003,956.48		
3									0.00				
4									0.00				
5									0.00				
6									0.00				
7									0.00				
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14									0.00				
15									0.00				
16									0.00				
17									0.00				
18									0.00				
19									0.00				
20									0.00				
21	Total								15,566,848.90	10,941,985.17	4,624,863.73	0.00	0.00

Notes:

Please note: All values are to be represented in AUD only.

- (a) Item Number - Locked Field
- (b) UNIT/GST - eg. ADFWC, GST to be entered as a separate line. See guidelines
- (c) Nature of Expenditure - Choose from drop down menu
- (d) Description of Proposal - eg. Course Manager Contract/ Doctrine Publication Support
- (e) Contingent Liabilities - Capped. Enter the amount of the cap
- (f) Contingent Liabilities - Uncapped. Conduct Risk Assessment. Enter the assessed amount (ie. The most probable expenditure that could arise if the contingency were to occur)
- (g) Finance Database Bid #/Business Plan Task Reference
- (h) Appropriation Source - Capital or Suppliers
- (i) Date signed by Unit Business Manager
- (j) Submitting Entity's File reference for audit capture
- (k) PO total; may or may not be FMAR 10 applicable
- (l) Current Year spend relating to FMAR 10 proposal. Figure required for FMAR 10 Reporting purposes.



Serial	Time/Date	Person, Organisation initiating Contact	Person, Organisation Contacted	Issue
1	0909 hours 25/10/2010	47F [redacted] [redacted] PDLToll	Strategic Lift inbox (voicemail left with SO2 Strategic Lift, but not responded to)	request for documents
2	1100 hours 25 Oct 10	SQNLDR Cole, SO2 Strategic Lift	DNL09009 panel members	advertisement of AO/004/10-11
3	1112 hours 25/10/2010	47F [redacted] [redacted], Adagold 47F@adagold.com	contacted SO2 Strategic lift and emailed Strategic Lift inbox	request for documents
4	1112 hours 25/10/2010	47F [redacted] [redacted], Independent Aviation 47F [redacted] [redacted] independent aviation.com	Emailed Strategic Lift inbox	request for documents
5	1138 hours 25/10/2010	47F [redacted] [redacted] Pel Air, 47F [redacted]@pelai [redacted].com	Emailed Strategic Lift inbox	request for documents
6	1141 hours 25/10/2010	47F [redacted] [redacted] Strategic Aviation 47F [redacted] 47F@flystrategic.com	Emailed Strategic Lift inbox	request for documents
7	1222 hours 25/10/2010	47F [redacted] [redacted] CAN 47F@aircharternetwo rk.com.au	Emailed Strategic Lift inbox	request for documents
8	1240 hours 25/10/2010	47F [redacted] AusHeli 47F [redacted]@austheli.com	Emailed Strategic Lift inbox	request for documents
9	1446 hours 25/10/2010	47F [redacted] [redacted] AAR 47F [redacted]@aarcor p.com	Emailed Strategic Lift inbox	request for documents
10	1446 hours 25/10/2010	47F [redacted] Wexco 47F [redacted]@wexco.com	Emailed Strategic Lift inbox	request for documents

11	1446 hours 25/10/2010	47F [redacted] Unity Resources Group 47F [redacted]@unityresource sgroup.com	Emailed Strategic Lift inbox	request for documents
12	1724 hours 25/10/2010	47F [redacted] Kestrel Aviation Aerodrome Road Mangalore 3663 Victoria, Australia.Ph: +61 (0)3 5796 2373 47F [redacted]@kestrelaviati on.com.au	Emailed Strategic Lift inbox	request for documents
13	1936hrs 25/10/10	47F [redacted] ALLTRANS International Tel: 61.418 413 755 alltrans@bigpond.com	Emailed SO2 SLCC inbox	request for documents
14	1026hrs 26/10/10	47F [redacted] nited Aero 47F [redacted]@unitedaero.co	Emailed Strategic Lift inbox	request for documents
15	1136hrs 26/10/10	47F [redacted] - Asia Pacific, 47F [redacted]@innovativ emarketing.com.au	Emailed Strategic Lift inbox	request for documents
16	0834hrs 27/10/10	47F [redacted] 47F [redacted]@ausae ro.com.au]	Emailed Strategic Lift inbox	request for documents
17	1700h 26/10/10	47F [redacted] Aviation PME International 47F [redacted]@pme- international.com	Emailed Strategic Lift inbox	request for documents
18	1357h 27/10/10	47F [redacted] SBR Engineering 47F [redacted]	Emailed Strategic Lift inbox	request for documents
19	1400h 28/10/10	yuri tchernobryvko 47F [redacted]@g mail.com]	Emailed Strategic Lift inbox	request for documents
20	1100h 4/11/10	47F [redacted] Wexco 47F [redacted]@wexco.com	Meeting regarding tender debrief for AO/014/09-10	mention of tender

21	1500h 5/11/10	47F ALLTRANS International Tel: 61.418 413 755	Meeting regarding tender debrief for AO/014/09-10	mention of tender
22	1444h 08/11/10	47F Kestrel Aviation Mangalore Airport Mangalore	SQNLDR Ben Cole email	mention of tender
23	0840h 09/11/10	47F Columbia Helicopters Inc Mobile 503 989	Emailed Strategic Lift inbox	request for documents
24	1158h 10/11/10	47F 47F@ air-dynamic.com] 47F, Air Dynamic	Emailed Strategic Lift inbox	request for documents
25	1315h 15/11/10	47F Adagold	Emailed SQNLDR Ben Cole	RFI on procurement method
26	1745h 15/11/10	47F Heli Niugini Limited	Emailed Strategic Lift inbox	request for documents
27	1055h 16/11/10	47F Heli Niugini Limited	phoned SQNLDR Ben Cole 0261284436	request possibility of an extension
28	1027h 17/11/10	47F Precision Helicopters Tel: (02) 6652 9988 Fax: (02) 6652 5688 Mob: 47F	emailed SQNLDR Ben Cole	request for documents
29	1229h 16/11/10	47F@precisionheli 47F Aviation PME International 47F@pme- international.com	emailed SQNLDR Cole	RFI on AOC holder

32	0203h 20/11/10	47F [REDACTED] 47F [REDACTED]@ [REDACTED]air-dynamic.com] 47F [REDACTED], Air [REDACTED]Dynamic	Emailed Strategic Lift inbox	please forard to other members in my company
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34 1419h 23 Nov 10 47F [REDACTED] Emailed Strategic Lift request possibility of an  
[REDACTED]@ [REDACTED] inbox [REDACTED] extension  
[REDACTED]air-dynamic.com]  
47F [REDACTED], Air  
[REDACTED]Dynamic

36	1600h 23 Nov 10	47F [REDACTED]@ [REDACTED] air-dynamic.com]	Emailed Strategic Lift request possibility of an extension
		47F [REDACTED], Air Dynamic	

Page 4

38	0919h 24 Nov 10	47F [REDACTED]@ [REDACTED] air-dynamic.com] general Director, Air Dynamic	emailed WO2 Vale	clarification on DPPM policy
39	1122h 24 Nov 10	47F [REDACTED] CEOSkyLink Aviation, Inc.1027 Yonge St, Toronto Ontario, M4W 2K9, Canada Tel: +1 (416) 924-9000 Fax: +1 (416) 924-9006 Cell: 47F [REDACTED] [REDACTED] www.skylinkaviation.c om	emailed SQNLDR Ben Cole	request extension
40	1205h 24 Nov 10	47F [REDACTED]@ [REDACTED] air-dynamic.com] 47F [REDACTED], Air Dynamic	emailed SLCC, SL Cole	emailed TRS
41	1740h 26 Nov 10	yuri tchernobryvko ph 47F [REDACTED]	phoned SL Cole mobile after hours	phoned regarding an extension
42	1748h 26 Nov 10	yuri tchernobryvko 47F [REDACTED]@g mail.com]	emailed SL Cole	emailed regarding an extension
43	1107h and 1109h 27 Nov 10	47F [REDACTED] SkyLink Aviation, Inc. 1027 Yonge Street Toronto, Ontario M4W 3Y8 Canada	emailed SL Cole	emailed tender documents
44	1659h 27 Nov 10	47F [REDACTED] 47F [REDACTED] SkyLink Aviation Inc.	emailed SL Cole	emailed regarding tender documents
45	1125h 29 Nov 10	serial 42-44	emailed SL Cole	emailed regarding extension to tender close date
46	0830h 02 Dec 10	Fred Cailless, Procurement registering branch, DMO	emailed SL Cole	a late tender was received
47	1649h 16 Dec 10	yuri tchernobryvko 47F [REDACTED]@g mail.com]	Emailed Strategic Lift inbox	MiL-8MTV available now for immediate service
48	1737h 19 Jan 11	FLTLT Tanner	Vertical-T	Insurance Certificates
49	1315h 20 Jan 11	yuri tchernobryvko 47F [REDACTED]@g mail.com]	Emailed Strategic Lift inbox	Insurance Certificates



50	0951h 01 Feb 11	yuri tchernobryvko 47F [REDACTED]@g mail.com]	Emailed Strategic Lift inbox	AO/004/10-11 Updates
51	1730h 01 Feb 11	GPCAPT Barnes, COMD 1JMOVGP	Mr Yuri Tchernobryvko, Vertical-T	Notification of preferred tenderer

## Summary of Contact

PDL Toll would like to register its interest in AO/004/10-11 for the provision of heavy-lift rotary wing aircraft for Afghanistan. Unfortunately I was not able to find the RFT documents on the Austender website and would be grateful if you could point me in the right direction?

After clearance from Probity advisor an email to all DNL09009 panel members (in DRMS) was conducted to highlight the release on AUSTENDER

Adagold registered its interest in AO/004/10-11 for the provision of heavy-lift rotary wing aircraft for Afghanistan.

Independent requested documents, and requested advice on the uplift requirement for this aircraft.

Could you please send me a copy of the RFT documentation? Has there been any news on a date regarding a debrief on the MEAO ADF tender?

Will there be a further document released or added to the website listing the details of the requirements of this tender?

Could you please send me a copy of the RFT documentation?

Could you please send me a copy of the RFT documentation?

Could you please send me a copy of the RFT documentation?

Could you please send me a copy of the RFT documentation?

Could you please send me a copy of the RFT documentation?

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Could you please send me a copy of the RFT documentation?

Could you please send me a copy of the RFT documentation?

Could you please send me a copy of the RFT documentation?

Could you please send me a copy of the RFT documentation?  
member stated in an unrelated debrief that he has received the AO/004/10-11 tender

member stated in an unrelated debrief that he has received the AO/004/10-11 tender

Request Eleanor is notified of future RW requests

Could you please send me a copy of the RFT documentation?

Could you please send me a copy of the RFT documentation?  
Is the RFT open to anyone, or just panel members?

Could you please send me a copy of the RFT documentation?

Are we able to have an extension to the closing date?

Could you please send me a copy of the RFT documentation?

Can you please confirm we can utilise the AOC of our subcontractor for this requirement or if the respondent is required to hold their own AOC?

Email requested an extension of four weeks after closing date?  
a number of requests for clarification were raised regarding AO/004/10-11

Could you please cc responses to other members (listed in email) in Company  
Email requested an extension of response until COB Monday 29 Nov 10

emailed strategic lift to confirm possibility of an extension

emailed strategic lift to confirm possibility of an extension

emailed strategic lift to confirm possibility of an extension

emailed strategic lift to gain documents and request extension



emailed WO2 Vale regarding clarification on a number of references to DPPM in the RFT

emailed Strategic lift to request an extension

wanted us to see their response even though beyond cutoff date

Mr Yuri enquired as to whether an extension to the tender close date was approved

Following my phone call today 26 NOV 2010, I would like to reconfirm if any extension of lodgment time regarding given tender has been granted?

Skylink emailed tender documents and link containing them

We expect that delivery of the hard copy of our offer will be at the Tender Box by noon, Monday November 29. A number of queries have been received regarding an extension of the closing date for AO/004/10-11.

**Response:** The tender close date and lodgement requirements of AO/004/10-11 remain in accordance with Clauses 1.11 and 1.12 of the Conditions of Tender. Tenders were to be lodged in the required form on or before 12:00 noon (Australian Eastern Daylight Savings Time) on 24 November 2010.

A later tender (skylink) was received by Procurement registering cell.

I would like to advise, that we have three helicopters MiL-8MTV available now for immediate service.

Location: Sharona base (Afghanistan) /Kabul Airport (Afghanistan)

Aircraft can be repositioned anywhere in AFG within short notice.

Please advise if you would require any further information

Requested copy of documents translated in English

Copy of Insurance Certificates provided as requested in English

I am getting in touch to see if you require any further info from Vertical in addition to earlier forwarded copies of insurance policies.

Also please update in case of any development in regards to this project.

COMD called to advise Cmwth had accepted their tender response as the preferred tenderer, would like to invite to negotiations asap, and a letter advising details would be followed up Wed, 02 Feb 11.

Action Required	Contact officer noted
Request package frwarded to PDLToll at 1200h	SQNLDR Cole Noted
Nil	SQNLDR Cole Noted
Request package frwarded to Adagold at 1200h	SQNLDR Cole Noted
Request package frwarded to Independent at 1200h	SQNLDR Cole Noted
Request package frwarded to Pel Air at 1200h	SQNLDR Cole Noted
Request package frwarded to Pel Air at 1200h	SQNLDR Cole Noted
Request package frwarded to ACN at 1240h	SQNLDR Cole Noted
Request package frwarded to Australian helicopters at 1245h	SQNLDR Cole Noted
Request package frwarded to AAR at 1450h	SQNLDR Cole Noted
Request package frwarded to Wexco at 1700h	SQNLDR Cole Noted

Request package forwarded to Unity at 1700h      SQNLDR Cole Noted

Request package forwarded to Krestel at 1040h 26 Oct 10      SQNLDR Cole Noted

Request package forwarded to Alltrans at 1040h 26 Oct 10      SQNLDR Cole Noted

Request package forwarded to United Aero at 1040h 26 Oct 10      SQNLDR Cole Noted

Request package forwarded to Asia Pacific at 1200h 26 Oct 10      SQNLDR Cole Noted

Request package forwarded to US Aero at 1000h 27 Oct 10      SQNLDR Cole Noted

Request package forwarded to PME at 1100h 27 Oct 10      SQNLDR Cole Noted

Request package forwarded to SBR at 1430h 27 Oct 10      SQNLDR Cole Noted

Request package forwarded to Yuri at 1524h 28 Oct 10      SQNLDR Cole Noted

nil      SQNLDR Cole noted

nil SQNLDR Cole noted

Responded that future RW will be advertised on Austender SQNLDR Cole noted

Request package frwarded to Columbia Helicopters at 0930h 09 Nov 10 SQNLDR Cole Noted

Request package frwarded to Air Dynamic at 1130h 11 Nov 10 SQNLDR Cole Noted

Responded 0800h 16 Nov 10 to all personnel who requested documentation (bcc) and will be contained in tender documentation for all future tender personnel SQNLDR Cole noted

Request package frwarded to Heliniugini at 0900h 16 Nov 10 SQNLDR Cole Noted

SQNLDR Cole advised any requests for clarification to be in email form to the email address nominated in the conditions of tender. Upon receipt of email, it will be forwarded to delegate for consideration  
Request package frwarded to Andrew home at 1737h 17 Nov 10 SQNLDR Cole Noted

SQNLDR Cole forwarded draft response to legal and probity for review, after agreement, released to all prospective tenderers on 1827h 17 Nov 10 SQNLDR Noted



SQNLDR Cole forwarded email request to contract approval delegate, who responded that extension was not possible. This was forwarded along with RFI and Addendum 1 on AOC at 1827h on 17 Nov 10	SQNLDR Cole Noted
SQNLDR Cole drafted responses and forwarded to probity, legal, procurement approval for review. Once approved response to be released to all tenderers.	SQNLDR Cole noted
Noted, nil action	SQNLDR Cole Noted

WO2 Vale spoke to SQNLDR Cole regarding email request for extension to COB Mon 29 Nov 10. Serial 30 RFI response was forwarded along with serial 30 RFI at 1638h 23 Nov 10.	SQNLDR Cole Noted
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no response given to company	SQNLDR Cole noted
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no response given to company	SQNLDR Cole noted
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no response given to company	SQNLDR Cole noted
------------------------------	-------------------

documents and clarifications forwarded to company 1040h 24 Nov 10	SQNLDR Cole Noted
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no response to company      SQNLDR Cole noted

no response to company      SQNLDR Cole noted

no response to company      SQNLDR Cole noted

advised Yuri to put any      SQNLDR Cole noted  
requests in writing to the  
contact officer via email  
forwarded to probity adviser      SQNLDR Cole noted  
for a blanket response

forwarded to probity adviser      SQNLDR Cole noted  
for a blanket response

forwarded to probity adviser      SQNLDR Cole noted  
for a blanket response

forwarded to Skylink and      SQNLDR Cole noted  
Vertical T

In discussion with Gil,      SQNLDR Cole noted  
agreed we should receipt  
tender and return unopened

no response to company      SQNLDR Cole noted

Emailed Yuri; reply of ack      FLTLT Tanner noted  
received 19 Jan 11  
email ack to sender 21 Jan      FLTLT Tanner noted  
11

no response to company      FLTLT Tanner noted

FLTLT Tanner to prepare      FLTLT Tanner  
notification letter for COMD      actioned.  
signature.



~~2~~COMMERCIAL-IN-CONFIDENCE

**COMMANDER 1<sup>ST</sup> JOINT MOVEMENT GROUP**  
**HEADQUARTERS JOINT OPERATIONS COMMAND**

BI-G-E255 Department of Defence, CANBERRA ACT, 2600 AUSTRALIA,  
Tel: (02) 6128 4400 Fax: (02) 6128 4117

AM525979

**Mr Y. Tchernobryvko**  
Tender Representative  
Air Company Vertical-T LLC  
Suite 8, 317 Edgecliff Rd  
Woollahra NSW 2025

Dear Mr Tchernobryvko,

**REQUEST FOR TENDER NO AO/004/10-11**  
**FOR THE PROVISION OF ROTARY WING SERVICES FOR SUSTAINMENT**  
**OPERATIONS IN AFGHANISTAN**  
**CLOSING DATE 24 NOVEMBER 2010**

1. The Commonwealth is pleased to inform you that the evaluation of tenders received in response to the above procurement has been completed and your company has been selected as the preferred tenderer.
2. The Commonwealth wish to invite you to enter formal contract negotiations to finalise the contract details. Negotiations are proposed to be held tomorrow 1000h Thursday, 03 February 2011 at Blake Dawson, Level 11, 12 Moore St Canberra ACT 2600.
3. Please be reminded that until the completion of the procurement process, your selection as preferred tenderer is Commercial-in-Confidence Information to the Commonwealth in accordance with the conditions of tender which:
  - a. does not affect or limit the Commonwealth's rights or your company's obligations under the RFT;
  - b. is not a representation that a contract will be entered into between the Commonwealth and your company;
  - c. the Commonwealth may recommence or commence negotiations under the RFT with any other tenderer whether or not a tenderer has been selected as preferred tenderer.

~~2~~COMMERCIAL-IN-CONFIDENCE

~~22~~ COMMERCIAL-IN-CONFIDENCE

2

4. Please contact Flight Lieutenant Jeff Tanner on tel 02 6128 4190 should you wish to discuss this matter further.

Yours sincerely,

22

**R. BARNES, CSM**

Group Captain

Commander

1<sup>st</sup> Joint Movement Group

Tel: (02) 6128 4400

Email: [robert.barnes2@defence.gov.au](mailto:robert.barnes2@defence.gov.au)

02 February 2011

~~22~~ COMMERCIAL IN CONFIDENCE



22

**From:** Hales, Scott SQNLDR  
**Sent:** Tuesday, 16 August 2011 2:19 PM  
**To:** Walden, Harry LTCOL; Barnes, Robert GPCAPT 2; 'Yuri.T Vertical-A'  
**Cc:** Nathan, David LTCOL; Walker, Adrian LTCOL; Strategic Lift Coordination Cell; Vetuna, John MAJ  
**Subject:** Meeting with Vertical Australia [SEC=UNCLASSIFIED]  
**Attachments:** RE: Meeting with Vertical Australia [SEC=UNCLASSIFIED]; 110816 Vertical-T Agenda.doc  
  
**Categories:** UNCLASSIFIED

UNCLASSIFIED

Hi Sirs & Yuri;

please find attached an agenda for our meet tomorrow.

Yuri - as we haven't met before please wait outside of the building for us to arrive; Group Captain Barnes and I are easily spotted by the bright red (with embossed yellow circle) rectangular patch that we wear on our right arm.

Kind regards,

**S.J. HALES**  
SQNLDR  
SO2 SLCC, HQ1JMOVGP  
HQJOC-B, B1-G-E204  
CANBERRA BC ACT 2610

Tel: +61 (0) 2 6128 4436  
Fax: +61 (0) 2 6128 4106  
Mob: 22

**IMPORTANT:** This email remains the property of the Department of Defence and is subject to the jurisdiction of section 70 of the Crimes Act 1914. If you have received this email in error, you are requested to contact the sender and delete the email.



# CONTRACT MANAGEMENT PLAN

**CONTRACT: AO/002/12-13**

**ROTARY WING SERVICES FOR SUSTAINMENT OPERATIONS  
IN AFGHANISTAN**

**VERSION 1.3**

**29 January 2013**

AO/002/12-13 Contract Management Plan is issued and approved by  
COMD 1JMOVGP as Contract Authority and in accordance with the  
Defence Procurement Policy Manual, 01 Jul 2012.

Approved by:

22

**S.J. Tuckerman, CSC**  
COL  
COMD 1JMOVGP

29 Jan 13

## DOCUMENT CONTROL SHEET

### Amendment Record

Revision Date	Description	Changes Marked
01 Dec 12	First Issue Version 1 (original issue)	
01 Jan 13	Revision – FSU-7, JMCC, JTF633	
29 Jan 13	Revision – SO2 SLCC	

### Distribution

Organisation	Position
FSU	CO
FSU	OPSO
FSU	OC FSU KAF
FSU	OC FSU TK
HQ1JMOVGP	SO1 OPS/PLANS
HQJOC	J1/4
HQJOC	J45
HQJOC	DFIN
HQJTF633	J4
HQJTF633	J05
HQ JMCC	OC
JFLA	DD(OPS)

### Queries

Any questions or suggestions regarding this document should be forwarded to HQ  
1JMOVGP Strategic Lift Coordination Cell

[Strategiclift.coordinationcell@defence.gov.au](mailto:Strategiclift.coordinationcell@defence.gov.au)

## INTRODUCTION

1. In December 2010 Defence established a contract for the provision of an intra theatre heavy lift helicopter cargo service in support of Operation Slipper. All extension options were exercised and the contract term expired on 31 Dec 12. The continued requirement for a heavy lift rotary wing service into 2013 was identified and 1JMOVGP established a new contract. The Commonwealth has engaged Dyncorp (Aust) as the contractor (Vertical-T as air operator sub-contractor) to provide rotary wing support to sustainment and redeployment operations in Afghanistan.

## PURPOSE

2. The purpose of this document is to outline the key contractual obligations, management responsibilities and service delivery requirements for the efficient and effective management of the contract through its lifecycle.

## KEY DELIVERABLES

3. The services provided under this contract are:
- a. priority use of a MIL-26T aircraft (registered EW 342TF) operated by Vertical-T with the capacity for a maximum cargo uplift of 20,000 kg;
  - b. guaranteed minimum of 50 block hours per month with the option for additional flying up to a total 88 hours per month;
  - c. transport services to the designated locations of Kandahar Airfield, Tarin Kot Airfield and other locations as directed by the Commonwealth and within the operational capability of the aircraft;
  - d. transport services for consigned cargo consisting of general cargo, dangerous goods, weapons<sup>1</sup>, vehicles, ammunition and explosive ordnance;
  - e. aircraft and crew able to perform transport services at all times other than periods of programmed maintenance (not exceeding 5 days per month) and within crew flight duty limits;
  - f. access to a replacement aircraft (MIL-26T registered RA-06274) within 48 hours of the primary aircraft becoming unavailable;
  - g. contractor local representatives with a 24/7 telephone support service; and
  - h. ground handling services, manual handling equipment and suitable equipment to load, tie-down/secure, unload cargo and external lift.

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<sup>1</sup> Movement of weapons in accordance with eDSM

## **CONTRACT PERIOD**

4. The contract is for an initial term of six months from 01 Jan to 30 Jun 13 with the following options:

- a. Extension Option 1 – 01 Jul to 31 Oct 13;
- b. Extension Option 2 – 01 Nov 13 – 28 Feb 14; and
- c. Extension Option 3 – 01 Mar – 30 Jun 14.

5. Contract milestones and decision points are in annex A.

## **MANAGEMENT AND ADMINISTRATIVE CONTROL**

### **Key appointments**

6. Key appointments for contract AO/002/12-13 are:

- a. COMD 1JMOVGP – Contract Signatory and Contract Authority;
- b. HQJOC J45 – Project Sponsor;
- c. HQJOC DFIN – Funds Controller;
- d. J4 JTF633 – Theatre Sponsor;
- e. J05 JTF633 – Theatre Finance Manager;
- f. CO FSU – Operational Authority;
- g. OPSO FSU – Operational Contract Manager;
- h. CM BMC – Technical Contract Manager; and
- i. OC FSU-KAF and OC FSU-TK – Service Delivery Managers.

### **Direct liaison authority**

7. DIRLAUTH with Dyncorp and its sub-contractor, Vertical-T, is approved for FSU in order to coordinate the efficient provision of services.

### **Points of contact**

8. The key points of contact to facilitate the execution of contract AO//002/12-13 are contained in annex B.



## **Roles and responsibilities**

9. Roles and responsibilities in the management and operation of this contract are described below. An Organisational Responsibility Chart is in annex C.

10. **HQJOC J45.** HQJOC J45 is requested to:

- a. sponsor the requirement for heavy lift rotary wing support for OP SLIPPER; and
- b. refer disputes, breaches or non-compliances of contract and requests for contract variations to COMD 1JMOVGP for resolution or approval.

11. **HQJOC DFIN.** HQJOC DFIN is requested to manage funding control for contract AO/002/12-13.

12. **HQ1JMOVGP.** HQ1JMOVGP is to:

- a. manage the Contract Management Plan for AO/002/12-13;
- b. process and approve variations to contract AO/002/12-13;
- c. manage disputes, breaches or non-compliance to contract AO/002/12-13; and
- d. manage extensions to AO/002/12-13.

13. **JFLA.** JFLA is requested to:

- a. manage in-theatre fuel supply arrangements for contracted aircraft under contract AO/002/12-13;
- b. liaise with HQ FSU to verify all fuel uplifted at either KAF through the Mutual Logistics Support Request between AS and the UK or at TK through the US; and
- c. produce a monthly invoice to the contractor (Dyncorp Aust) for any fuel used to undertake third party tasking.

14. **J4 JTF633** is requested to:

- a. provide theatre oversight of the operation and use of the contract as a method of logistics supply;
- b. deconflict priorities between 633 TGs where applicable; and
- c. provide planning input into decision to exercise contract extension options.

15. **J05 JTF633** is requested to:

- a. Pay all invoices once cleared by OC KAF;
- b. Maintain all financial records;
- c. Provide input into monthly and quarterly operational reports as requested by OC KAF;
- d. Conduct all liaison on finance issue with DFIN HQJOC.

16. **FSU.** FSU is requested to:

- a. manage contract (Operational Contract Manager) and service delivery (Service Delivery Managers) in accordance with the contract and the approved contract management plan;
- b. manage Commonwealth assistance in support of transport services (Service Delivery Managers);
- c. liaise with customer units to achieve scheduling, load planning and prioritisation of cargo (Service Delivery Managers);
- d. validate monthly flying rate of effort for payment of invoices (Service Delivery Manager- OC KAF);
- e. authorise third party tasking to be undertaken by the contractor (Service Delivery manager – OC KAF);
- f. monitor and validate fuel usage for both ADF (Service Delivery Managers- OC KAF) and third party tasking;
- g. refer disputes, breaches or non-compliance of contract and requests for contract variation through HQJOC J45 to HQ1JMOVGP for resolution or approval;
- h. develop key performance indicators and monitor performance of the contractor in delivery of transport services; and
- i. ensure effective communications between subordinate units and the contractor (Service Delivery Managers have DIRLAUTH).

## **SERVICE DELIVERY MANAGEMENT**

### **Availability**

17. The MIL-26T aircraft is contracted for 88 block hours per month. The first 50 hours will be charged at a set rate with any additional hours (up to 38) being charged at an hourly flying rate. Defence has agreed to five days per month allocated for scheduled maintenance and crew duty rest periods. All other periods are available for aircraft tasking.

## **Priority usage**

18. A key difference between this new contract and the previous arrangement is that the Commonwealth has agreed to relinquish exclusive use of the aircraft but will retain priority access. The contractor is authorised to pursue and undertake other (third party) tasking at the contractor's sole risk for both the primary and secondary aircraft. In return, the Commonwealth has negotiated a reduction in the overall cost of the contract. All third party tasks require ADF approval, with OC KAF authorised as the Approving Authority. The Approving Authority may reject a third party task if it adversely impacts ADF operational requirements or if in the opinion of the Approving Authority, the third party task presents an unacceptable risk to ADF reputation or future ADF operations.

19. It should be noted that the Approving Authority retains the right to refuse any third party tasking, the intent is for the contractor to be able to undertake third party work where it can secure it.

## **Routes**

20. The MIL-26T aircraft is based at KAF and provides transport services between KAF, Tarin Kot (TK) Airfield, forward operating bases out to 70nm from TK and other locations as determined by FSU within the capabilities of the aircraft.

## **Planning transport services**

21. **Monthly forecast.** FSU (through Service Delivery Manager - OC KAF) provides the contractor a monthly forecast of anticipated transport service requirements 14 days in advance of the first day of the applicable month.

22. **Monthly flight schedule.** The contractor is to produce a monthly flight schedule in accordance with the monthly forecast within 5 days of receipt of the monthly forecast. OC KAF is to approve or reject the monthly flight schedule. If rejected, the contractor is to amend and resubmit the monthly flight schedule within four days.

23. **ISAF approvals.** OC KAF and OC TK are to submit Movement Request Forms (MRFs) and/or Prior Permission Required (PPRs) for TK and KAF (if parking on the military ramp is required).

## **Requesting transport services**

24. **Advance Departure Notice.** The Advance Departure Notice details the requirement of the transport service and includes a manifest of the cargo. ADNs are consolidated at KAF OPS and provided to the contractor no earlier than 21 hours prior to flight.

25. **Flight plan.** The Contractor flight plan follows the ADN, and is submitted no earlier than 18 hours prior to flight.

26. **Air-space deconfliction.** A KAF OPS member then attends an airspace deconfliction meeting at RC(S) as the contractor does not possess the requisite security

clearance to attend. The KAF OPS member then produces a de-confliction report and emails to the contractor and FSU TK. All support details and arrangements are advised to supported units by KAF OPS.

### **Conducting transport services**

27. **Cargo preparation and positioning.** FSU TK and FSU KAF are to liaise with customer units in order to raise a cargo manifest for the specific services. Customer units are to provide cargo in an appropriate state for air transport.

28. **Cargo handover and reception.** The handover and reception of cargo between the ADF and contractor should be a clear and distinct event and require a signature from the ADF representative on the contractor's delivery docket at the time of handover and reception. At TK the loading/unloading point is in the vicinity of the aircraft or rear ramp. At KAF, general cargo is to be handed to the contractor's ground personnel prior to its flight for loading. Other cargo, such as explosive ordnance, is to be loaded from airside ramps.

29. **Loading and unloading assistance.** The contractor is responsible for the loading and unloading of the aircraft. ADF personnel may provide assistance where determined by FSU KAF. ADF personnel and manual handling equipment is to be limited to the extent necessary for the delivery of the transportation service. ADF personnel are not to assist the contractor in any manner in the performance of any third party tasks.

### **Daily flight logs**

30. The contractor will provide a daily flight log to FSU KAF and FSU TK, cc'd to FSU OPS which contains relevant details of the transport services provided that day, details of the contractor's performance and any other relevant services received from the contractor. It is to detail any WHS concerns and failure of customer units to provide support as detailed by KAF OPS at loading and unloading locations.

### **Fuel supply and reconciliation**

31. The Commonwealth will provide the contractor with aviation fuel for the aircraft. All aviation fuel supplied is to be through the MLSR between AS and the UK. The contractor is responsible for advising fuel requirements to FSU KAF utilising extant MLSR procedures. Fuel re-supply at TK can be supported when requested by the contractor.

32. **Accounting for fuel usage.** All fuel uplifts are to be recorded and all dockets/receipts are to be retained by FSU KAF (fuel reconciliation).

33. **Third party fuel.** Under the terms of the contract, the contractor is required to repay the Commonwealth for the cost of fuel used in the performance of third party tasks. Fuel utilised to perform third party tasking is to be separately identified by the contractor and verified by FSU KAF. This information must be consolidated into the monthly report and will be used by the Joint Fuels and Lubricants Agency to raise an invoice against the contractor.

### **Delays and postponements**

34. Close communications between the contractor and FSU throughout the performance of the transport service is essential for the effective coordination of services. In the event of delays the contractor is required to provide several notices at key timings and may request a postponement of the transportation service or seek a waiver of responsibilities in relation to the delay event. The process for managing delay and postponement is as follows:

- a. The contractor is to notify OC KAF of the cause and nature of any delay within two hours of becoming aware of the delay.
- b. The contractor is to notify OC KAF in writing of the anticipated duration of the delay, the steps it will take to minimise the delay and whether it will claim postponement of a delivery time for cargo, within four hours of becoming aware of the delay.
- c. The contractor is to submit a revised flight plan within six hours of becoming aware of the delay.
- d. If the contractor submits a claim for postponement, OPSO FSU is to review and provide advice to CO FSU to approve or reject the claim in accordance with the provisions prescribed in the contract and contract management plan. FSU must provide justification for rejection of the claim in which event the contractor will be fully responsible for any delay in the performance of the transport services.

### **Replacement aircraft**

35. The contractor is required to provide a replacement aircraft in the event the primary aircraft is not available (excluding periods of 5 days per month for maintenance). The replacement aircraft is to be available within 48 hours of the primary aircraft becoming unavailable.

36. The contractor is contractually required to provide an aircraft that is operationally and functionally 'equivalent' to the primary MIL-26T, but has agreed to permanently base a second MIL-26T aircraft at KAF to act as the replacement aircraft. This should significantly reduce the risk to continued operations and assure access to the aircraft within 48 hours or earlier.

### **Coalition support**

37. OC KAF may authorise utilisation of the aircraft for the provision of transport services in support of coalition or ISAF contributing nations. It is important to ensure a clear understanding of and differentiation between tasks in support of coalition forces and contractor secured third party tasks. Authorised coalition tasks occur



within the allocated 88 hours per month and at the charge rates agreed under the terms of the contract. Contractor secured third party tasks are separately established between the contractor and the third party and on terms and conditions agreed between the contractor and the third party. It is important that HQFSU makes all reasonable efforts to fully utilise its allocated 88 hours per month for either ADF tasks or coalition tasks.

38. In determining approval of the aircraft to provide coalition support OC KAF should consider:

- a. operational necessity of the requested coalition task (urgency and priority task);
- b. the security threat assessment for the location of the requested task; .
- c. programmed tasks for the month and availability of hours to support the coalition task;
- d. Commonwealth assistance required at loading and/or unloading locations;
- e. the existence of any cooperative airlift agreement with the requesting coalition nation and the terms of any Implementing Agreement; and
- f. cost recovery through an extant MLSA.

#### **Cost recovery**

39. Its acknowledged that cost recovery was not applied for transportation services in support of coalition or ISAF during the term of the previous contract. While it is expected this will continue to be the case for this new contract, the following information is included in the event there is a change in cost recovery policy.

40. When the aircraft is utilised to support other nations, cost recovery (where applied) is to be in accordance with the details in FINMAN4.

41. Cost recovery will be actioned by HQJOC DDFIN-NR through HQJTF633 J05 for recovery action. A signed copy of the Mutual Logistics Support Request (MLSR with copy of the Daily Flight Log is to be submitted on completion of services.:

- a. HQFSU is to confirm the terms of the IA and advise the nature of the task through RFI to HQJOC LOG PLANS SO2 LOG DEV.
- b. HQJOC LOG PLANS SO2 LOG DEV will advise details of the relevant IA to inform the decision for FSU to enact cost recovery.
- c. If cost recovery is to occur, FSU is to provide all respective details to HQJOC DDFIN-NR through HQJTF633 J05 for recovery action. A signed copy of the Mutual Logistics Support Request (MLSR with copy of the Daily Flight Log is to be submitted on completion of services.

## **Administration**

42. **Reporting.** FSU is to provide HQJOC and HQ1JMOVGP feedback on any contracting issues, incidents, actions and future plans upon request of this information. HQFSU is to maintain a register of contractual and operational issues. Correspondence and actions taken are to be recorded in the relevant FSU Ops Log.

43. **Recording of correspondence.** All correspondence between the contractor and the Commonwealth is to be recorded in applicable Lotus Notes Operations Logs.

44. **Handover and takeovers.** Handovers and takeovers are required to ensure the uninterrupted transfer of all pertinent information between outgoing and incoming individuals appointed in key positions. FSU is to advise HQJOC and HQ1JMOVGP of changes in key positions. HQ1JMOVGP is to ensure the contractor is notified and contract registers are updated.

## **Contract management**

45. As the Contract Manager appointed under the initial CMP is no longer on the JTF633 OMD, the position has been split between OPSO FSU as the Operational Contract Manager, responsible for the oversight of the conduct of the contract service, and the Technical Contract Manager in CM BMC who has the relevant training and experience to advise the FSU on contractual matters. OPSO FSU and CM BMC will jointly assess contract performance and provide feedback to CO FSU.

46. **Performance.** Performance will be measured through the following key performance indicators and recorded in quarterly reports compiled by OPSO FSU and authenticated by CO FSU.

- a. aircraft serviceability and availability;
- b. achievement of scheduled ADF cargo tasks;
- c. hours utilised for scheduled ADF cargo tasks;
- d. WHS incidents/concerns;
- e. planning of tasks and relationships with contracted staff; and
- f. any impact of third party tasks. Monthly forecast plan (% of flights planned vs achieved); and
- g. flight performance, including available cargo carrying capacity per flight (balance offered, reflected in the available carrying capacity of the aircraft, and expressed as a percentage per flight).

## Performance reports

47. The Contract Managers are to collate a quarterly contract review report for CO FSU signature, to COMD 1 JMOVGP. The following performance parameters are to be addressed in each contract review:

- a. **Technical performance.** The extent to which the delivered service has met the requirement. (Assessment provided by Service Delivery Managers.)
- b. **Cost.** The contractor's effectiveness in forecasting, managing and controlling contract costs. (Assessment to be provided by J05 JTF633.)
- c. **Schedule.** The timeliness of the Contractor against completion of the task, transport requests, milestones, ability to vary the schedule to meet changed requirements, and administrative requirements. (Assessment provided by Service Delivery Managers.)
- d. **Contracting.** The Contractor's adherence to the terms and conditions of the contract, their ability to plan, manage and execute the contract. (Assessment to be provided by the Contract Managers.)
- e. **Relationship.** The extent of cooperative behaviour and business relations between the prime Contractor and FSU. This includes effectiveness in communicating and managing the contract and solving problems in a cooperative and timely manner. (Assessment to be provided by the Contract Managers.)

## Finance management

48. **Appropriation of funding.** Finance arrangements for OP SLIPPER are to be applied when utilising Contract No AO/002/12-13. The financial codes, fund number and WBS are to be in accordance with the bulk funds certificate provided by HQ JOC DFIN and managed in theatre by J05 JTF633.

49. **Budget.** The contract is funded for the initial period of six months at the maximum 88 block hours per month (including mobilisation payments) inclusive of estimated fuel costs. Funding of fuel in support of the contract will be retained by HQJOC and provided to JFLA through an inter-agency transfer.

50. **Payment terms.** Invoice payment terms are 30 days; each invoice submitted by the contractor is to be verified and approved by OC KAF prior to payment action by J05 JTF633's KAF Finance Officer.

51. **Contract pricing.** Pricing terms and values are Commercial-in-Confidence and will only be held by the Contract Manager, Contract Authority and other designated appointments.

52. **Recording.** J05JTF633 is to record all commitment and expenditure of Commonwealth funds in respect to the services provided under the contract. A

finance management workbook is to be maintained by J05 JTF633's KAF Finance Officer to record commitments raised (scheduling and requested services) and expenses incurred (invoices).

53. **Service credit.** The contract allows for a reduction in payment to the contractor where the contractor provides a lower level of service than required. The service credit has been agreed as a pre-estimate of the loss likely to be suffered by the Commonwealth as a result of no aircraft being available for use in performing the transport services and as a result of a delay. The service credit does not apply to:

- a. the delay of cargo delivery at the unloading location which arises from programmed maintenance (five days per month permitted); or
- b. where the ADF has approved a postponement claim submitted by the contractor.

54. The contractor is required to measure, calculate and apply the service credit to invoices submitted each month. FSU KAF is to validate the contractor's application of service credit and proactively manage the contractor's performance to ensure that service credit is applied accordingly.

#### **Fuel uplift reconciliation**

55. The OC KAF is to reconcile the uplift of fuel by the Contractor on a monthly basis. Reconciliation is to be recorded and maintained in the fuel reconciliation workbook (refer to example in enclosure 1).

56. HQ JOC DFIN is to ensure Commonwealth fuel supply requirements are appropriately budgeted and funding is provided to JFLA each financial year.

57. FSU KAF is to verify the daily flight log and the monthly fuel report provided by the contractor, including the identification of fuel use for both ADF tasks and contractor third party tasks.

58. HQ 1JMOVGP is to provide JFLA with a copy of the monthly fuel report for verification of payments made under the MLSR and raising of a monthly invoice for third party fuel usage.

#### **Contract governance**

59. **Operational Committee Review.** Operational and performance reviews are to occur at quarterly (three monthly) intervals in KAF and attended by VTC for TK and AMAB based appointments. The operational committee consists of: CO FSU, OPSO FSU, CM BMC, OC TK, TK OPS, OC KAF, KAF OPS, KAF Finance Officer, and Dyncorp/Vertical T staff. The operational committee is to review the performance of services, contracting issues and actions, and future operational plans.

60. **Executive Committee Review.** The executive committee consists of COMD 1JMOVGP (or delegate), J45 (or delegate) and the contractor's contract authority. A review of contract performance is to occur prior to the end of each contract period

should include, but not be limited to performance, compliance, disputes, variations, and remuneration.

61. **Annual renewals.** HQ1JMOVGP is to ensure the Contractor demonstrates annual compliance and currency with airworthiness certifications, insurances, liabilities and indemnities.

### **Non-performance**

62. Adverse or under performance is to be addressed promptly and at the regular operational committee review meetings. Contractor non-performance will be dealt through the following graduated steps:

- a. initial contractor review between OC KAF and Contractor;
- b. subsequent review by CO FSU, advised by the Contract Managers;
- c. referral by CO FSU to HQ1JMOVGP to submit formal notification to the contractor on non-compliance or default;
- d. dispute resolution as initiated by HQ1JMOVGP through Defence Legal; and
- e. alternative options as advised by Defence Legal for resolution (termination due to default, withholding payment, and claim for damages).

### **Disputes**

63. If a dispute arises then the Commonwealth and contractor have agreed to undertake the following steps.

- a. The complainant shall raise the matter with the other party setting out the background and the issues in dispute and the outcome desired.
- b. If the dispute is not resolved in accordance with the contract, the complainant shall raise the matter through their contract authority, to the other party's contract authority. The parties shall make every effort to resolve the dispute fairly. In doing so each party agrees to use their best efforts to:
  - (1) communicate the background facts leading to or causing the dispute;
  - (2) set out the action required to settle the dispute;
  - (3) agree a mutually acceptable way to resolve the issue; and
  - (4) if the dispute is resolved, identify how the resolution of the dispute has or could enhance the business relationship between the parties in the future.



## **Termination**

64. In the event where the services under this contract are no longer required i.e. the campaign plan for OP SLIPPER significantly changes, HQ1JMOVGP is to negotiate with the contractor (with legal assistance) cancellation fees resulting from cancellation and the ability to renegotiate services to support other Defence or Coalition operational tasking.

## **Variations**

65. Variations to the contract shall be staffed between each respective contract authority. When proposing/accepting variations care should be taken to ensure that any variation to the contract does not:

- a. change the initial scope of the agreed contract under which the tenderer was selected to conduct the services,
- b. contain a contingent liability which the contract approval delegate is not authorised to approve on behalf of the Commonwealth, and
- c. pose an increase in risk or reduction in service to the Commonwealth without an appropriate cost reduction that is agreeable to the Commonwealth.

66. All ADF proposals for a contract variation are to be submitted to HQ 1JMOVGP utilising the user change request (refer to example in enclosure 2). Contractor originated contract change proposals will be vetted and recommended by the Operational Authority prior to the acceptance by the Contract Authority.

## **Insurance and indemnities**

67. The insured amounts and maximum deductibles relevant to contract AO/002/12-13 are specified within the contract.

## **Conclusion**

68. This contract management plan outlines the services that will be provided by the Contractor in order to deliver rotary wing support to forward operating bases in the Uruzgan Province, and between the key logistic nodes of KAF and TK. In order for this contract to be a success, all key appointments are to be familiar with their responsibilities and are to maintain solid and supportive lines of communication with the Contractor at all times.

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CAVEATS: ~~Common Sense for Confidential~~



## Headquarters Joint Operations Command Correspondence Cover Sheet

Originating HQJOC Branch POC Details		Network	EDMS/DRMS Object ID	Document entered into Executive Correspondence Register
Rank/Name	Mr Robert Northrop	<input type="checkbox"/> DSN <input checked="" type="checkbox"/> DRN	AM1164941 (Only one reference)	Serial No: 705
Branch/Posn	DD Operational Contracts			Date: 19/3/13
Phone Contact	6128 4817			
Document Title: REQUEST FOR EXTENSION OF CURRENT OPERATIONAL CONTRACTS				Branch Correspondence Details
Additional Staffing Instructions:				

Originator	Action Required/Staff Comments
	For despatch. 22 20 MAR 13 ASRCME 31/4
Referred To	
Date Referred	
Due Date	

Originator	Action Required/Staff Comments
Referred To	
Date Referred	
Due Date	

20 MAR 2013

REGISTRY INSTRUCTIONS		SPACE FOR ADDITIONAL STAFF COMMENTS ON REVERSE SIDE ►		
<input type="checkbox"/> Scan & E-Mail only - DRN / DSN <input type="checkbox"/> Scan & Create DOCUMENT in EDMS / DRMS <input checked="" type="checkbox"/> Scan & replace DOCUMENT in EDMS / DRMS <input checked="" type="checkbox"/> DO NOT SCAN Corro Coversheet	EDMS/DRMS Folder ID	Completed Steps	Initial	Date
DISTRIBUTION INSTRUCTIONS		Updated/Created		
<input type="checkbox"/> Send Hard Copies to <input checked="" type="checkbox"/> Send E-Copies to Distribution list, Mr Robert Northrop. 31/4		EC Sent		
<input type="checkbox"/> Shred Hard Copy. <input checked="" type="checkbox"/> Return Hard Copy to 31/4	Name Rank Signature	HC Sent		
DTG DOCUMENT PLACED IN BRANCH OUT TRAY		CDR		
		Initial Register		
		Shred (7 Days)		
		Original Returned		
		CDR #		
		Internal Register #		

**Additional Staff Comments/Advice**

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CAVEATS: ~~Common Sense for Confidential~~

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22

CAVEATS: \_\_\_\_\_

<b>Originator</b>	<b>Action Required/Staff Comments</b>
<b>Referred To</b>	
<b>Date Referred</b>	
<b>Due Date</b>	
<b>Originator</b>	<b>Action Required/Staff Comments</b>
<b>Referred To</b>	
<b>Date Referred</b>	
<b>Due Date</b>	
<b>Originator</b>	<b>Action Required/Staff Comments</b>
<b>Referred To</b>	
<b>Date Referred</b>	
<b>Due Date</b>	

**SHEET TO BE INCLUDED IF ADDITIONAL COMMENTS REQUIRED**

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CAVEATS: \_\_\_\_\_

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~~COMMERCIAL IN CONFIDENCE~~



**SUPPORT BRANCH JI/4**  
Headquarters Joint Operations Command  
**MINUTE**

AM1164941

**DGSC** (Through: DSCC)  
**COMD IJMOVGP** (Through: SO1 Ops/Plans IJMOVGP)  
**COS HQJTF633** (Through: BM HQJTF633)

**For information:**

J05  
J45  
J43 (Attn: DD Op Contracts)

**REQUEST FOR EXTENSION OF CURRENT OPERATIONAL CONTRACTS**

**References:**

22 [Redacted]

F. Contract No: AO/002/12-13 - ADF Helicopter Heavy lift Sustainment

22

1. Following consideration of future plans regarding operations within the Middle East Area of Operations (MEAO), HQJOC has determined an ongoing requirement for the services provided under ref A through G.

2. As such, HQJOC requests that JLC, IJMOVGP and HQJTF633 commence the administrative action required to extend the following contracts for the relevant time periods:

a. **JLC**

22

[Redacted]

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b. **1JMOVGP**

- (1) **AO/002/12-13 - Helicopter Heavy lift Sustainment (expiry 30 Jun 13)**  
Extension of 4 months to 30 Oct 2013; and

22

3. 22

22

4. Cost agreement for these contracts and funding has been provided in the Defence Portfolio Budget Statements under the MEAO – Continuation of Australia's Military Contribution budget measure.

5. The HQJOC POC for this matter is Mr Robert Northrup, Deputy Director Operational Contracts on (02) 6128 4817 or robert.northrup@defence.gov.au.

22

**H.K. MARSHALL**  
AIRCDRE  
J1/4

Tel: (02) 6128 4100

20 Mar 13

**Enclosure:**

1. Current Operational Contacts Snapshot

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~~COMMERCIAL IN CONFIDENCE~~

## Current Operational Contracts

Correct as at  
19 Mar 13

Contract	Title	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D
		a	p	a	u	u	u	e	c	o	e	a	e	a	p	a	u	u	a	e	c	o	e
		r	r	y	n	l	g	p	t	v	c	n	b	r	r	y	n	l	g	p	t	v	c
		1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	
		3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4	4	4	4	4	4	

Changes to  
Op Contracts  
required NLT May 13

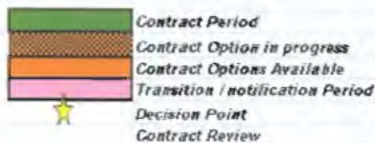
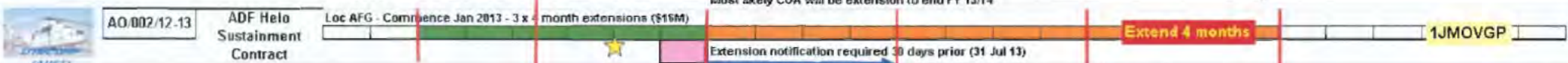


Chart owner: DD Op Contracts, HQJOC

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## JOINT OPERATIONS COMMAND

### Headquarters 1st Joint Movements Group

B1, HQJOC-B, CANBERRA, ACT 2600  
Tel: 02 6128 4949 Fax: 02 6128 4106

AM1365765

**DynCorp (Aust.) Pty Limited**

47F

3-5 Phipps Close  
DEAKIN ACT 2600

Dear 47F

#### **CONTRACT AO/002/12-13 – EXECUTION OF SECOND EXTENSION – RESPONSE TO DYNCORP PROPOSAL**

1. I refer to our contract AO/002/12-13 and confirm that the Commonwealth wishes to execute the second option to extend the contract by an additional four month period to provide services through to 28 Feb 14.

2. The Commonwealth intends that the contract extension is executed in accordance with the offer made by DynCorp at enclosure 1, dated 14 Oct 13. This agreement supercedes both the prior dialogue between 1JMOVGP and DynCorp referenced within enclosure 2 and the Commonwealth's previous proposals within that enclosure. I am pleased that we have been able to reach an agreement regarding the specific requirements of the contract extension and this letter formally advises the Commonwealth's intent to extend the contract in accordance with contract clause 3.2(b) in conjunction with DynCorp's undertaking at enclosure 1. The agreed requirements are as follows:

- a. In accordance with paragraph 4.3 of Schedule 2 of the contract, for the period 01 Nov 13 to 28 Feb 14, rotary wing services will be required at a Minimum Capability of 32 Block Hours, priced at a Monthly Standby Rate of USD 669,040.00, and a Maximum Capacity of 50 Block Hours at the Hourly Flying Rate of USD 16,066.00; and
- b. In the event that hours are required in excess of the Maximum Capacity of 50 Block Hours, the Hourly Flying Rate will be in accordance with DynCorp's pricing offered at enclosure 1.

3. I wish to request DynCorp's acceptance in writing of these changes in order to formalise the contract extension. As discussed with 47F on 25 Sep 13, the Commonwealth believes this will be the final extension to the contract due to the Australian Defence Force (ADF) drawdown plans in the Middle East Area of Operations (MEAO). Formal notice to this effect will be given at the earliest opportunity.


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4. Defence values the services provided by DynCorp and your support toward the ADF's contribution in the MEAO. We thank you for your cooperation in implementing this extension and we look forward to another successful period of rotary wing operations.

Yours sincerely,

22

  
**S.J. TUCKERMAN, CSC**  
Colonel  
Commander  
1st Joint Movements Group

Ph: 02 6128 4400

*28* October 2013

**Enclosures:**

1. AM1366588 (letter) – Contract Extension AO 002 13 Mi26 DynCorp, 14 Oct 13
2. AM1356403 – 131010 – 1JMOVGP – Letter – DynCorp Rotary Wing Services contract extension – Advice to execute second extension – Clarification – Signed, 10 Oct 13

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**Colonel S. J. Tuckerman CSC**  
Commander 1<sup>st</sup> Joint Movements Group  
B1, Headquarters Joint Operations Command  
CANBERRA ACT 2600

Dear Colonel Tuckerman,

**CONTRACT AO/002/12-13 - EXECUTION OF SECOND EXTENSION –  
RESPONSE TO COMMONWEALTH ADVICE**

I refer to the Commonwealth letter AM 1365765 dated 28 October 2013, DynCorp letter dated 14 October 2013, and the subject Contract.

DynCorp agrees to the execution of the second option to extend the Contract, and the arrangements detailed in the Commonwealth letter dated 28 October 2013, in response to the DynCorp offer in the letter dated 14 October 2013.

DynCorp appreciates the excellent working relationship and cooperation between our organisations, and greatly values this business engagement with Commonwealth.

Yours sincerely,

22

Managing Director  
DynCorp (Aust.) Pty Limited

Phone: 22

29 October 2013

**Contract Lifecycle and Milestones**

<b>Phase</b>	<b>Milestone</b>	<b>Date</b>
	Contract Signature	10 Dec 12
In-Service Support	Service Commencement Date	01 Jan 13
	Operational Committee Review	30 Mar 13
	Decision Point to Exercise Option 1	01 Apr 13
	Operational Committee Review	30 Jun 13
	Option 1 Service Commencement Date	01 Jul 13
	Operational Committee Review	30 Sep 13
	Decision Point to Exercise Option 2	01 Sep 13
	Option 2 Service Commencement Date	01 Nov 13
	Operational Committee Review	30 Dec 13
	Decision Point to Exercise Option 3	01 Jan 14
	Option 3 Service Commencement Date	01 Mar 14
	Operational Committee Review	30 Mar 14
Disposal	Contract End	30Jun 14



### Contract Lifecycle and Milestones

Phase	Milestone	Date
Need/Requirement	Tender Released	23 Oct 10
	Tender Closure	24 Nov 10
Acquisition	Preferred Tender Identified	02 Feb 11
	Contract Signature	24 Feb 11
In-Service Support	Service Commencement Date	12 Mar 11
	Operational Committee Review	01 Jun 11
	Decision Point to Exercise Option 1 Operational and Executive Committee Review	01 Aug 11
	Option 1 Service Commencement Date	01 Sep 11
	Operational Committee Review	01 Dec 11
	Operational Committee Review	01 Mar 12
	Decision Point to Exercise Option 2 Operational and Executive Committee Review	01 Jun 12
	Option 2 Service Commencement Date	01 Jul 12
Disposal	Contract End	31 Dec 12

ANNEX B TO  
FILE  
DEC 12

## Contract AO/002/12-13 Communication Directory

CONTACT	POSITION	CONTACT DETAILS
47F	Managing Director, Dyncorp (Aust)	47F
	RW Contractor Administrator	
	Dyncorp AFG Manager	
	Crew and Ground Personnel Manager – Vertical-T (Crew – Project Manager)	
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Lieutenant Colonel Duncan Polich	CO – FSU (Operational Authority)	Tel: +61 2 6224 4484 Email:
Flight Lieutenant Louise Edwards	OIC Contracts – HQ FSU (Defence Contract Manager)	Tel: +61 2 6215 6976 Email:
Major John Wells	OPSO – HQ FSU (Operational Administrator)	Tel: +61 2 6224 4479 Email:
Warrant Officer Class Two Rodney Nairn	OPSWO – HQ FSU	Tel: +61 2 6224 4409 Email:
Major Liz Barnett	OC – FST-KAF (Service Delivery Manager)	Tel: +61 2 6267 9602 Email:
Flight Lieutenant Jason O'Toole	OPSO – FST-KAF	Tel: +61 2 6267 9605 Email:
Sergeant Renae Coulter	FO – FST-KAF	Tel: +61 2 6215 6703 Email:
Major Justin Andersen	OC – FST-TK (Service Delivery Manager)	Tel: +61 2 6215 5371 Email:
Captain Matthew Dempsey	OPSO – FST-TK	Tel: +61 2 6215 5341 Email:

ANNEX B TO  
AM710573  
14 DEC 11

## Contract AO/004/10-11 Communication Directory

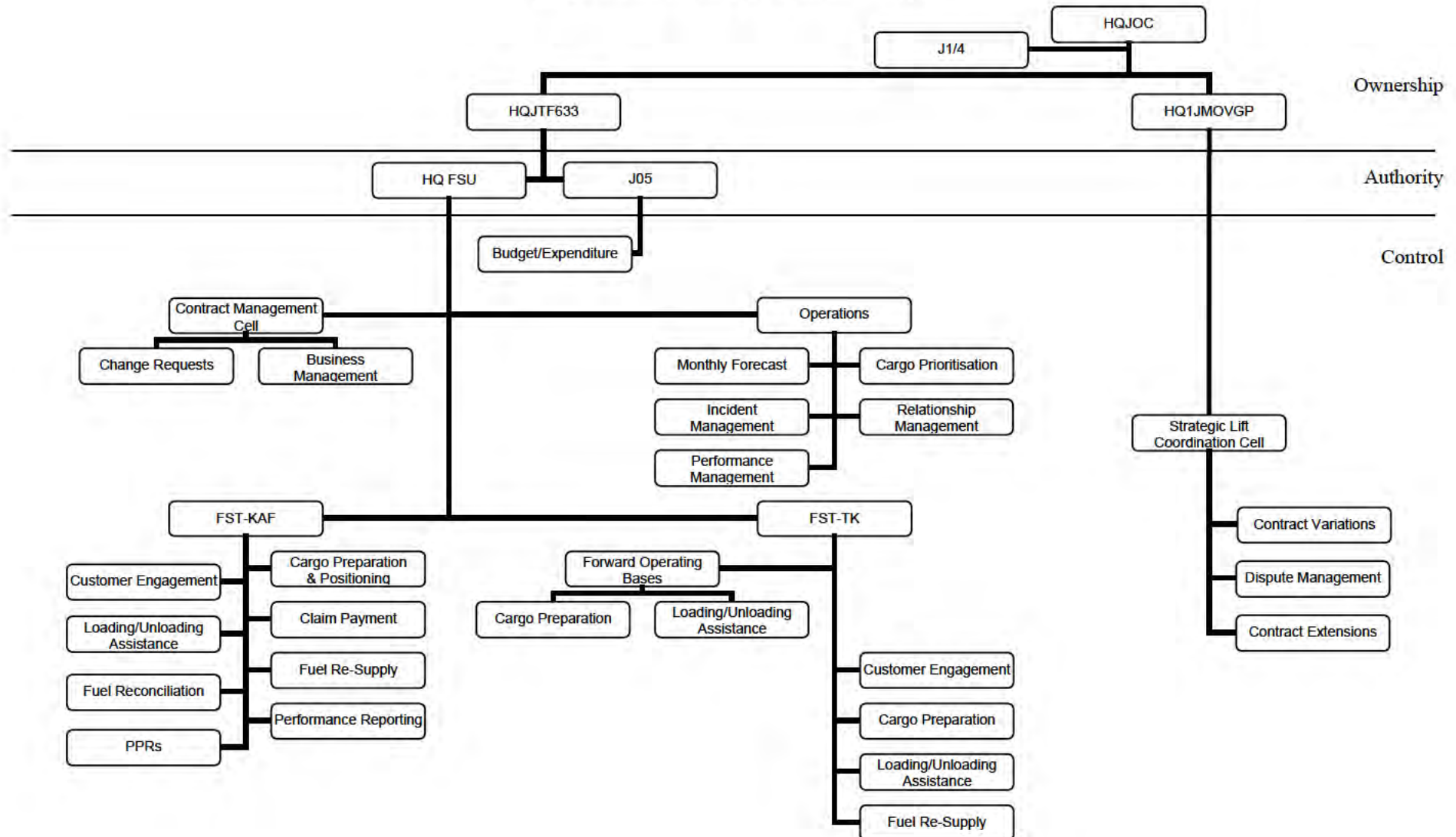
CONTACT	POSITION	CONTACT DETAILS
47F	Managing Director – DynCorp Australia (Vertical-T Contractor Representative)	47F
	Administration Manager – DynCorp Australia	
	Project Manager Afghanistan – PME International (Ground Handling Service Provider)	
	Assistant Project Manager Afghanistan – PME International	
	Crew and Ground Personnel Manager – Vertical-T (Crew – Project Manager)	
Group Captain Rob Barnes	COMD 1JMOVGP – HQ1JMOVGP (Defence Contract Authority)	Tel: +61 2 6128 4400 Email: <a href="mailto:robert.barnes2@defence.gov.au">robert.barnes2@defence.gov.au</a>
Lieutenant Colonel Adrian Walker	SO1 OPS/PLANS – HQ1JMOVGP	Tel: +61 2 6128 4182 Email: <a href="mailto:adrian.walker@defence.gov.au">adrian.walker@defence.gov.au</a>
Squadron Leader Scott Hales	SO2 SLCC – HQ1JMOVGP	Tel: +61 2 6128 4436 Email: <a href="mailto:scott.hales@defence.gov.au">scott.hales@defence.gov.au</a>
Lieutenant Colonel Duncan Polich	CO – FSU (Operational Authority)	Tel: +61 2 6224 4484 Email: <a href="mailto:duncan.polich@z22.defence.gov.au">duncan.polich@z22.defence.gov.au</a>
Flight Lieutenant Louise Edwards	OIC Contracts – HQ FSU (Defence Contract Manager)	Tel: +61 2 6215 6976 Email: <a href="mailto:louise.edwards@z22.defence.gov.au">louise.edwards@z22.defence.gov.au</a>
Major John Wells	OPSO – HQ FSU (Operational Administrator)	Tel: +61 2 6224 4479 Email: <a href="mailto:john.wells1@z22.defence.gov.au">john.wells1@z22.defence.gov.au</a>
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Flight Lieutenant Jason O'Toole	OPSO – FST-KAF	Tel: +61 2 6267 9605 Email: <a href="mailto:jason.otoole@z22.defence.gov.au">jason.otoole@z22.defence.gov.au</a>
Sergeant Renae Coulter	FO – FST-KAF	Tel: +61 2 6215 6703 Email: <a href="mailto:renae.coulter@z22.defence.gov.au">renae.coulter@z22.defence.gov.au</a>
Major Justin Andersen	OC – FST-TK (Service Delivery Manager)	Tel: +61 2 6215 5371 Email: <a href="mailto:justin.andersen@z22.defence.gov.au">justin.andersen@z22.defence.gov.au</a>
Captain Matthew Dempsey	OPSO – FST-TK	Tel: +61 2 6215 5341 Email: <a href="mailto:matthew.dempsey@z22.defence.gov.au">matthew.dempsey@z22.defence.gov.au</a>

**Contract AO/004/10-11 Communication Directory**

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ANNEX C TO  
FILE  
DEC 12

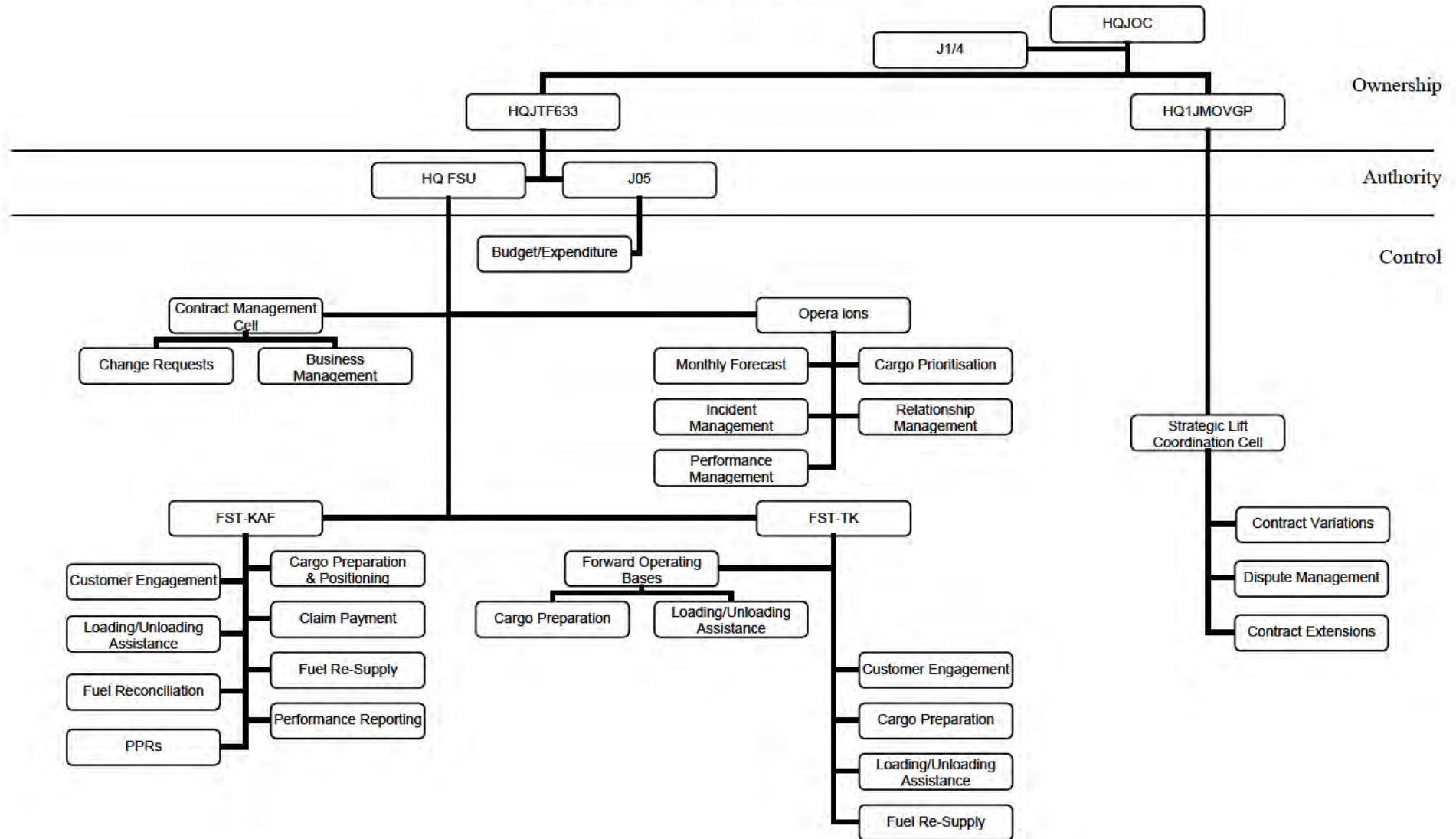
# Organisational Responsibility





ANNEX C TO  
AM710573  
14 DEC 11

## Organisational Responsibility



## **Contract Pricing Schedule**

### **Relevant Currency**

The relevant currency is US Dollars (USD).

### **Mobilisation**

The mobilisation cost (once-off payment for initial positioning flight at USD \_\_\_\_\_ and contractor's preparation of landing site at Kandahar at USD \_\_\_\_\_) is **USD** \_\_\_\_\_.

### **Monthly Standby Rate**

The Monthly Standby Rate (inclusive of ACMI, 50 Block Hours, and Ground Handling Services) is **USD** \_\_\_\_\_.

### **Hourly Flying Rate**

The Hourly Flying Rate (for block hours flown greater than 50 hours and less than 88 hours per month) is **USD** \_\_\_\_\_.

### **Price Basis**

The Contract Price includes all costs and amounts payable by the Commonwealth in respect of the Services, including those specified in Contract Clause 19.5.

### **Invoice Requirements**

Specified at Contract Clause 19.6.

### **Taxes and Duties**

Specified at Contract Clause 19.8.

### **Service Credit**

Specified at Contract Clause 19.10.

**ANNEX E TO  
AM710573  
14 DEC 11**

## **Risk Management**

<b>Risks</b>	<b>Consequences</b>	<b>Management of Risks</b>
Unauthorised variation of the contract	Scope of work performance varied without approval under CCP. Work performed without due consideration and regard to remuneration. Financial commitment without approval.	Relationship Mgt Quarterly reviews Variation Process
Availability of Aircraft	Aircraft becomes unavailable and replacement required. Delay to transport services	Replacement Aircraft Delays and Postponement Process
Non-conformance of Sub-Contractors	Sub-performance or discontinuity of services provided by sub-contractors.	Contract Clause 9
Contractor delays to transport services	Delay to schedule and/or loading of aircraft. Additional costs incurred.	Contract Clause 13
Commonwealth delays to transport services or cancellation of transport services	Delay to schedule and/or loading of aircraft. Commonwealth right to delay service.	Contract Clause 13.6
Non-performance of Approvals and Certifications (e.g. Air [or Foreign] Operator's Certificate issued by CASA)	Non-compliance with the terms of the Contract. Inability to perform transport services. Replacement aircraft exercised.	Contract Clause 16
Severe and consequential undue and improper performance of the Contractor's obligations	Lower level of service than required. Reduced service to operational requirements. Consideration of termination.	Contract Clause 9 Contract Clause 22 Contract Clause 23
Insolvency of the contractor or severe risk from contractor's financial or corporate viability	Consideration of termination.	Contract Clause 23



# CONTRACT MANAGEMENT PLAN

**CONTRACT: AO/004/10-11**

**ROTARY WING SERVICES FOR SUSTAINMENT  
OPERATIONS IN AFGHANISTAN**

Version 1.0

14 Dec 11

AO/004/10-11 Contract Management Plan is hereby approved for action as required. I am satisfied that the arrangements detailed in this document meet the Department of Defence's requirements.

Issued by:

Approved by:

s22

s22

**A. WALKER**  
LTCOL  
SO1 OPS/PLANS HQ1JMOVGP

**R.S. BARNES**  
GPCAPT  
COMD 1JMOVGP

Date: 14 Dec 11

Date: 14 Dec 11

**DOCUMENT CONTROL SHEET*****Amendment Record***

<b>Revision Date</b>	<b>Description</b>	<b>Changes Marked</b>
14 Dec 11	First Issue Version 1 (original issue)	

***Distribution List***

<b>Organisation</b>	<b>Position</b>
FSU	CO
HQ1JMOVGP	SO1 OPS/PLANS
HQJOC	J1/4
HQJOC	J45
HQJOC	DFIN
HQJTF633	COFS
HQJTF633	J05
HQJTF633	J4MOV
JFLA	DD(OPS)

**Queries**

If you have any questions regarding this document or any suggestions for improving this document, please contact:

HQ1JMOVGP Strategic Lift Coordination Cell:  
[StrategicLift.CoordinationCell@defence.gov.au](mailto:StrategicLift.CoordinationCell@defence.gov.au)



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### ANNEXES:

- A. Contract Lifecycle and Milestones
- B. Contract Communication Directory
- C. Organisational Responsibility Chart
- D. Contract Pricing Schedule
- E. Risk Management

### ENCLOSURES:

- 1. Transport Services Flowcharts
- 2. Contract Issues Register
- 3. Performance Management Workbook
- 4. Finance Management Workbook
- 5. Fuel Reconciliation Workbook
- 6. User Change Request

## Introduction

1. A requirement was identified by JTF633 for rotary wing services to support the distribution of stores and equipment in Afghanistan between Kandahar, Tarin Kot and ADF forward operating bases in the Uruzgan Province. The Commonwealth has engaged Air Company Vertical-T LLC (Vertical-T) as the contractor for providing rotary wing support to the sustainment operations in Afghanistan.
2. **Purpose.** The purpose of this document is to outline the services that will be provided by the contractor and service delivery requirements. It also details the tasks and responsibilities for the management and administration of the contract throughout its lifecycle. In various places this plan specifies that certain appointments, outside of IJMOVGP, are to undertake certain actions. These actions are necessary for appropriate contract administration. Any appointment experiencing difficulty in meeting these requirements, should initially raise the matter with the Contract Authority.
3. **Scope.** The scope of this document is to provide management and administrative guidance for the application of the rotary wing services under contract AO/004/10-11.
4. **Key Deliverables.** The services provided under the contract are:
  - a. an exclusive MIL-26T aircraft based in Kandahar (registered RA-06274), operated by Vertical-T with the capacity for a maximum cargo uplift of 20,000kg;
  - b. guaranteed minimum of 50 block hours per month with the option for additional flying up to a total 88 block hours per month;
  - c. transport services to the designated locations of Kandahar Airfield, Tarin Kot Airfield, and forward operating bases/patrol bases located within 70nm of Tarin Kot;
  - d. transport services for consigned cargo consisting of general cargo, dangerous goods, weapons,<sup>1</sup> ammunition and explosive ordnance;
  - e. aircraft and crew able to perform transport services at all times other than periods of programmed maintenance (not exceeding five days per month), and within crew flight and duty limits;
  - f. a replacement aircraft (KA 32S reregistered YA-KAH 6225) within 48 hours;
  - g. contractor local representatives with a 24/7 telephone information service; and
  - h. ground handling services, manual handling equipment and suitable equipment to load, tie-down/secure, unload cargo and external lift.
5. **Contract Period.** The contract is for an initial term of 12 March 2011 to 31 August 2011 with the following two options:
  - a. a contract extension of ten months to 30 Jun 12 (contractor notified on 01 Aug 11 of extension); and

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<sup>1</sup> Movement of weapons needs to conform with eDSM

- b. a second contract extension of six months to 31 Dec 12 (contractor to be notified by 01 May 12).
6. Contract lifecycle and milestones associated with reviews to support decision points are detailed in annex A.

### **Management and Administrative Control**

7. **Key Appointments.** Key appointments for contract AO/004/10-11:

- a. HQJOC J1/4 as Contract Signatory;
- b. DLOGPLANS, HQJOC as Project Sponsor;
- c. DFIN, HQJOC as Funds Controller;
- d. COMD 1JMOVGP as Contract Authority;
- e. CO FSU as Operational Authority;
- f. HQFSU OIC CMC as Contract Manager;
- g. HQFSU OPSO as Operational Administrator; and
- h. OC FST-KAF and OC FST-TK as Service Delivery Managers.

8. **Levels of Command.** The levels of command are as follows:

- a. **Operational Command (OPCOMD).** The MIL-26T and secondary aircraft are assigned under OPCOMD CJTF633.
- b. **Operational Control (OPCON).** The MIL-26T and secondary aircraft are assigned OPCON to CO FSU.
- c. **Technical Control (TECHCON).** COMD 1JMOVGP has TECHCON of contract management elements for FSU.

9. **Direct Liaison Authority.** DIRLAUTH is approved for FSU to coordinate provision of services with the contractor with the following conditions:

- a. communication with the contractor relates to agreed services established with the contractor,
- b. communication with the contractor enables an effective interface to achieve the provision of services, and
- c. FSU fosters and maintains an effective relationship with the contractor in order to meet its obligations for the provision of services.

10. **Points of Contact.** The key points of contact to facilitate the execution of contract AO/004/10-11 are contained in annex B.

**Roles and Responsibilities**

11. Organisational responsibility is shown at annex C.
12. **HQJOC.** HQJOC J1/4 is to:
  - a. through J45:
    - (1) sponsor the requirement for heavy lift rotary wing support for OP SLIPPER, and
    - (2) refer disputes, breaches or non-compliance of contract and requests for contract variations to COMD 1JMOVGP for resolution or approval.
  - b. through DFIN:
    - (1) manage funding control for contract AO/004/10-11, and
    - (2) manage cost recovery of contracted services provided to coalition partners.
13. **HQ1JMOVGP.** HQ1JMOVGP is to:
  - a. manage the Contract Management Plan for AO/004/10-11;
  - b. manage Commonwealth responsibilities in accordance with the transition in activities defined in Contract AO/004/10-11;
  - c. process and approve variations to Contract AO/004/10-11;
  - d. manage disputes, breaches or non-compliance to Contract AO/004/10-11; and
  - e. manage extensions to Contract AO/004/10-11.
14. **HQJTF633.** HQJTF633 is to:
  - a. manage funding and financial reporting issued for contract AO/004/10-11, and
  - b. recommend to HQJOC J1/4 variations to contracted requirements.
15. **JFLA.** JFLA is to:
  - a. manage in-theatre fuel supply arrangements for contracted aircraft under contract AO/004/10-11, and
  - b. liaise with FST in order to verify all fuel uplifted at either KAF through the Mutual Logistics Support Request (MLSR) between AS and the UK or at TK through the US.
16. **FSU.** HQFSU is to:
  - a. manage contract and service delivery in accordance with the approved Contract Management Plan including:

- (1) manage Commonwealth assistance in support of transport services;
  - (2) liaise with customer units to achieve scheduling, load planning and prioritisation of cargo;
  - (3) manage delegation of contract management positions;
  - (4) manage finance and payment of invoices;
  - (5) refer disputes, breaches or non-compliance of contract and requests for contract variation through HQJOC to HQ1JMOVGP for resolution or approval; and
  - (6) develop key performance indicators and monitor performance of transport services.
- b. monitor performance of the contractor; and
- c. ensure effective communications between subordinate units and the contractor.

### **Service Delivery Management**

17. **Overview.** Service delivery management and Commonwealth assistance require both the ADF and the contractor to work in partnership for the delivery of transport services; flowcharts illustrating processes involving ADF involvement are at Enclosure 5. How the Contractor intends to deliver the service is contained within the Vertical-T Services Plan. This plan was approved prior to contract implementation, distributed to key appointments within the FSU and the original is maintained at HQ1JMOVGP.

- a. **Routes.** The MIL-26T aircraft is based at Kandahar Airport and provides transport services between Kandahar Airport, Tarin Kot Airfield and forward operating bases out to 70nm from Tarin Kot.
- b. **Availability.** The MIL-26T aircraft is contracted for 88 block hours per month. The first 50 hours will be charged at a set rate with any additional hours (up to 38) being charged at the additional flying rate. Defence has agreed to five days per month being allocated for scheduled maintenance and crew duty rest periods. All other periods are available for aircraft tasking.
- c. **Planning for Transport Services**
  - (1) **Monthly Forecast Report.** At 14 days prior to the next month, the FSU is to provide the Contractor with a notice of anticipated transport services.
  - (2) **Monthly Forecast Plan.** Within 5 days of the Contractor receiving the Monthly Forecast Report, the Contractor will present a flight schedule as the Monthly Forecast Plan to be approved by HQFSU.
  - (3) **Approval of the Monthly Forecast Plan.** On approval of the Monthly Forecast Plan, HQFSU is to submit Movement Request Forms (MRFs) and/or Prior Permission Required (PPRs) for Tarin Kot and KAF (if parking on the military ramp is required).



- (4) **Rejection of the Monthly Forecast Plan.** If HQFSU rejects the Monthly Forecast Plan, HQFSU is to advise the Contractor who then has a further four days to resubmit the Monthly Forecast Plan for approval.
- d. **Process for Requesting Transport Services.** In the planning stages of requesting and confirming the transport services, HQFSU is requested to concurrently liaise with customer units and personnel responsible for packaging and positioning cargo. FSU are to ensure the agreed flight timings are not compromised or are appropriately adjusted and notified to the contractor. The transport service flowchart at Enclosure 1.
- (1) **Advance Departure Notice.** No later than 48 hours prior to the scheduled transport service, FST-KAF is to release the Advance Departure Notice to the Contractor. The advance departure notice details the requirement of the transport service and includes a manifest of the cargo.
  - (2) **Flight Plan.** No later than 36 hours prior to the scheduled transport service, the Contractor will confirm the requested service with the submission of the flight plan for FST-KAF approval.
  - (3) **Pre-Departure Notice.** No later than 24 hours prior to the scheduled transport service, FST-KAF is to approve the flight plan and release the pre-departure notice to the Contractor. This notice confirms the agreed arrangement for delivery, including cargo, timings and loading/unloading assistance. The pre-departure notice is to contain any amendments to the transport service or cargo load.
  - (4) If amendments or cancellation of the transport service is necessary FST-KAF is requested to provide reasons to the Contractor through HQFSU.
  - (5) Within 6 hours of receiving the pre-departure notice the Contractor will acknowledge the notice.
- e. **Process for Performing the Transport Services**
- (1) **Cargo Preparation and Positioning.** In the lead-up to transport services FSTs are to liaise with customer units in order to raise a manifest of cargo being transported on specific services. Adequate time for consolidating, preparing, packaging and manifesting cargo for each requested transport service needs to be afforded to the FSTs.

- (2) **Handover and Reception of Cargo from Contractor.** The handover and collection of cargo prior to and on completion of each transport service needs to be a clear and distinct event. The Contractor will require a signature from the ADF member at the time of handover and reception of cargo on the contractor delivery docket.
    - (a) **Tarin Kot / FOBs.** The loading/unloading point will be in the vicinity of the aircraft or rear ramp.
    - (b) **KAF.** General cargo is to be handed to the Contractor's ground personnel prior to its flights for loading. Other cargo, such as explosive ordnance, is to be loaded from airside ramps and the contractor is to be requested through the Advance Departure Notice.
  - (3) **Loading and Unloading Assistance.** The contractor is responsible for the loading and unloading of the aircraft. When requested by the Contractor (or as determined by FSU) the ADF may provide assistance for the loading or unloading of the aircraft at KAF. ADF personnel and manual handling equipment is to be limited to the extent necessary for the delivery of services at Tarin Kot and FOBs. Loading and unloading assistance provided by the ADF should be detailed and confirmed through the advance and pre-departure notices.
- f. **Daily Flight Logs.** The Contractor will provide a daily flight log to the HQFSU which contains relevant details of the transport services provided that day, details of the contractor's performance and any other relevant services received from the Contractor.
  - g. **Fuel Supply.** The Commonwealth has agreed to provide the Contractor with aviation fuel for the aircraft. All aviation fuel supplied is to be through the MLSR between AS and the UK. The Contractor is responsible for advising fuel requirements to FST-KAF utilising extant MLSR procedures. Fuel re-supply at Tarin Kot can be supported when requested by the Contractor. All fuel uplifts are to be recorded by the FST and all fuel dockets/receipts are to be retained by the FST.
  - h. **Managing Delays and Postponement.** Communication between the Contractor and FSTs throughout the performance of the transport service is essential for the coordination of services. In the event of delays the contractor is required to provide several notices at key timings and in doing so may request postponement of the transport service or seek a waiver of responsibilities in relation to the delay event. In summary, the process for managing delay and postponement is:
    - (1) Within 2 hours after becoming aware of a delay, by any cause, the Contractor notifies HQFSU of the cause and nature of the delay.
    - (2) Within 4 hours after becoming aware of a delay by any cause, the Contractor notifies HQFSU in writing of the steps it shall take to minimise the delay, the anticipated duration of the delay and whether it shall be claiming postponement of a delivery time for the relevant cargo.

- (3) Within 6 hours after becoming aware of a delay by any cause, the Contractor submits a revised flight plan.
- (4) If the contractor submits a claim for postponement, HQFSU is to review the claim in accordance with the provisions prescribed in the contract or contract management plan. Should HQFSU reject the claim for postponement and provides reason of the rejection, the Contractor will be fully responsible for any delay in the performance of the transport services. Disputes are covered later in this plan.

**i. Process for Utilising the Replacement Aircraft**

- (1) The Contractor has agreed to provide a replacement aircraft in the event the MIL-26T is not available (excluding periods of 5 days for maintenance per month). The replacement aircraft is to be available within 48 hours of the MIL-26T becoming unavailable. FSU is required to approve the Contractor's replacement aircraft in writing. The contractor is obliged to provide a replacement aircraft that is operationally and functionally equivalent to the MIL-26T. Through the contract, the Commonwealth has accepted the Vertical-T's KA32S Kamov as a replacement aircraft. The contractor will have the MIL-26T aircraft available as soon as possible but no later than seven days from it originally becoming unavailable.
- (2) Where a replacement aircraft is utilised, the block hours and fuel claimed by the contractor will be no greater than what would have been completed utilising the MIL-26T. For example, if a smaller aircraft was utilised that that required greater hours and fuel to perform a task, only the hours and fuel that would have been used by the MIL-26T may be claimed by the Contractor.

**j. Process for Utilising the Aircraft for Coalition Support.**

- (1) The aircraft is contracted for the exclusive use of the ADF. The Contractor is not permitted to task the aircraft or use it for transport services other than that requested and authorised by HQFSU. Furthermore, if the operator intends or requests to utilise the aircraft for services other than in support of the ADF it must be referred to HQFSU in writing. HQFSU must in turn provide its decision in writing to the contractor.
- (2) HQFSU may authorise utilisation of the contracted aircraft for the provision of transport services in support of coalition or ISAF contributing nations. Extant programming and request procedures are to apply and the (coalition) cargo transported is to be consigned by FSU.
- (3) In determining whether to approve the aircraft to provide coalition support, CO FSU is to consider:
  - (a) operational necessity of the requested coalition task (urgency and priority task);
  - (b) hours flown, programmed tasks for the month and availability of hours to support the coalition task;

- (c) Commonwealth assistance at loading and unloading locations provided by ADF and/or coalition partners;
  - (d) Contractor's consideration and acceptance of the task;
  - (e) whether a cooperative airlift agreement exists with the requesting nation, and the terms of any Implementing Agreement; and
  - (f) cost recovery action.
- (4) Implementing Arrangements (IA) for cooperative airlift exist with most coalition countries. Subject to the terms of the IA, for each country, cost recovery arrangements may range on the basis of reimbursable costs, exchange transactions and full cost recovery. Cost recovery is determined on whether the cooperative airlift support provided was a dedicated mission (full aircraft available) or airlift provided on an opportunity basis (space or partial aircraft made available).
- (5) When the contracted aircraft is to be utilised to support other nations the cost recovery arrangements are to be in accordance with the details in FINMAN4:
- (a) FSU is to confirm the terms of the IA and advise the nature of the task through an RFI to HQJOC LOG PLANS SO2 LOG DEV.
  - (b) HQJOC LOG PLANS SO2 LOG DEV will advise details of the relevant IA hence inform the decision for FSU to enact cost recovery.
  - (c) If cost recovery is to occur, FSU is to provide all respective details to HQJOC DDFIN through HQJTF633 J05 for recovery action. A signed copy of the Mutual Logistics Support Request (MLSR) with a copy of the Daily Flight Log is to be submitted on completion of services.
  - (d) If cost recovery action is not to occur, FSU is to provide all respective details to HQJOC DDFIN through HQJTF633 J05 for confirmation prior to confirming that the ADF will not cost recover. A signed copy of the Mutual Logistics Support Request (MLSR) with a copy of the Daily Flight Log is to be submitted on completion of services.

## Administration

18. **Reporting.** FSU is to notify HQJOC and HQ1JMOVGP of any contracting issues or incidents and actions and/or future contract issues and plans. HQFSU will maintain a register of contractual and operational issues; an example Contract Issues Register, is at Enclosure 2.

19. **Recording of Correspondence.** All correspondence between the Contractor (all levels) and the Commonwealth is to be recorded within Defence Record Management Systems.

20. **Handover and Takeovers.** Handovers and takeovers are required to ensure the uninterrupted and formal transfer of all pertinent information between outgoing and incoming individuals appointed in key positions. HQFSU is to advise HQJOC and HQ1JMOVGP of

changes in key positions. HQ1JMOVGP is to ensure the Contractor is notified and contact registers are updated.

## 21. Contract Management.

- a. **Performance.** Performance will be measured through the following key performance indicators and recorded in the Performance Management Workbook (refer to example at Enclosure 3) maintained by FSU:
  - (1) achievement of monthly forecast plan (% of flights planned vs achieved); and
  - (2) flight performance, including available cargo carrying capacity per flight (balance offered, reflected in the available carrying capacity of the aircraft, and expressed as a percentage per flight).
- b. Outcomes will be measured through:
  - (1) quarterly operation committee reviews,
  - (2) reporting provided by FSU,
  - (3) requests for feedback from stakeholders and customers, and
  - (4) contractor provided monthly flight reports.
- c. **Performance Reports.** The Contract Manager is to provide a contract review on a quarterly basis to the Contract Authority. The following performance parameters are to be addressed in each contract review:
  - (1) **Technical Performance.** The extent to which the delivered service met the requirements of the service required (focus on technical quality of the service).
  - (2) **Cost.** The Contractor's effectiveness in forecasting, managing and controlling contract costs.
  - (3) **Schedule.** The timeliness of the Contractor against completion of the task, transport requests, milestones, ability to vary the schedule to meet changed requirements, and administrative requirements.
  - (4) **Contracting.** The Contractor's adherence to the terms and conditions of the contract, their ability to plan, manage and execute the contract.
  - (5) **Relationship.** The extent of cooperative behaviour and business relations between the prime Contractor's effectiveness in communicating and managing the contract and solving problems in a cooperative and timely manner.

## 22. Finance Management.

- a. **Appropriation of Funding.** Finance arrangements for OP SLIPPER are to be applied when utilising Contract No AO/004/10-11. The financial codes, fund



number and WBS are to be in accordance with the bulk funds certificate provided by HQJOC DFIN.

- b. **Budget.** The contract is funded for the initial period of six months, and first option of extension of ten months at the maximum 88 block hours per month (including mobilisation payments) inclusive of estimated fuel costs. Funding of fuel in support of the contract will be retained by HQJOC and provided to JFLA through an inter-agency transfer.
- c. **Payment Terms.** Invoice payment terms are 30 days; each invoice submitted by the contractor is to be verified and approved and approved by FST-KAF OPSO prior to payment action by FST-KAF FO.
- d. **Contract Pricing.** Pricing terms and values are Commercial-in-Confidence and will only be held by the Contract Manager, Contract Authority and other designated appointments. The contract does not allow for the contract to be indexed for movements in the consumer price index; a summary of contract pricing is included in annex D (NOTAL).
- e. **Recording.** HQFSU is to record all commitment and expenditure of Commonwealth funds in respect to the services provided under the contract. A finance management workbook (refer to example at Enclosure 4) is to be maintained by FST-KAF FO to record commitments raised (scheduling and requested services) and expenses incurred (invoices).
- f. **Service Credit.** The contract (Clause 19.10 Service Credit) allows for a reduction in payment to the contractor where the contractor provides a lower level of service than required.
  - (1) Service credit has been agreed as a pre-estimate of the loss likely to be suffered by the Commonwealth as a result of:
    - a. no aircraft being available for use in performing the transport services, and
    - b. as a result of a delay.
  - (2) Service Credit does not apply to:
    - a. the delay of cargo delivery at the unloading location which arises from programmed maintenance (five days per month permitted); or
    - b. where the ADF has approved a postponement claim submitted by the contractor.
  - (3) The contractor is required to measure, calculate and apply the Service Credit to invoices submitted each month. FST-KAF is to validate the contractor's application of service credit and proactively manage the contractor's performance to ensure that service credit is applied accordingly.

**23. Fuel Uplift Reconciliation** (management of Commonwealth supplied fuel).

- a. The Contract Manager is to reconcile the uplift of fuel by the Contractor on a monthly basis. Reconciliation is to be recorded and maintained in the fuel reconciliation workbook (refer to example at Enclosure 5).
- b. HQJOC DFIN is to ensure Commonwealth fuel supply requirements are appropriately budgeted and funding is provided to JFLA each financial year.
- c. FST-KAF is to verify the daily flight log and the monthly fuel report provided by the contractor.
- d. HQ1JMOVGP is to provide JFLA with a copy of the monthly fuel report for verification of payments made under the MLSR.

**24. Contract Governance.****a. Operational Committee Review.**

- (1) Operational and performance reviews of the contract are to occur at quarterly (three monthly) intervals at a location convenient for all parties. The operational committee consists of each respective contract manager, CO FSU (or delegate) and OC FSTs. If required other key positions, such as operations managers, may attend the quarterly review.
- (2) The operational committee is to review the performance of services, contracting issues and actions, and/or future operational issues and plans. Operational committee reviews are scheduled in annex A.

**b. Executive Committee Review.**

- (1) The executive committee consists of COMD 1JMOVGP, J45 staff and the Contractor's contract authority. A review of contract performance is to occur prior to the end of each contract period and is to cover:
  - (a) performance,
  - (b) compliance,
  - (c) disputes,
  - (d) variations, and
  - (e) remuneration.

- (2) Executive committee reviews are scheduled in annex A.

**c. Annual Renewals.** Annually, HQ1JMOVGP is to ensure the Contractor demonstrates compliance and currency with the following obligations and approvals:

- (1) airworthiness certifications; and

- (2) insurances, liabilities and indemnities.

## 25. Contingencies.

- a. **Non-Performance.** Adverse or under performance is to be addressed promptly and at the regular operational committee review meetings. Contractor non-performance will be dealt through:
  - (1) initial contractor review between HQFSU and Contractor;
  - (2) a referral by HQFSU to HQ1JMOVGP to submit formal notification to the contractor on non-compliance or default;
  - (3) if adverse performance continues, the dispute resolution process outlined below is to be instigated by HQ1JMOVGP through Defence Legal; and
  - (4) alternative options as advised by Defence Legal for resolution (termination due to default, withholding payment, and claim for damages).
- b. **Termination.** In the event where the services under this contract are no longer required i.e. the campaign plan for OP SLIPPER significantly changes, HQ1JMOVGP is to negotiate with the contractor (with legal assistance) for the following:
  - (1) cancellation fees resulting from cancellation, and
  - (2) the ability to renegotiate service to support other Defence or Coalition operational tasking.
- c. **Disputes.** If a dispute arises then the Commonwealth and Contractor have agreed to undertake the following steps.
  - (1) The complainant shall raise the matter with the other party setting out the background and the issues in dispute, and the outcome desired.
  - (2) If the dispute is not resolved in accordance with the contract, the complainant shall raise the matter through their Contract Authority, to the other party's Contract Authority. The parties shall make every effort to resolve the dispute fairly. In doing so each party agrees to use their best efforts to:
    - (a) clearly communicate the background facts leading to or causing the dispute;
    - (b) set out clearly what action is required to settle the dispute;
    - (c) select a way of resolving the dispute and explain why that way of resolving the dispute can be said to be a fair resolution of the dispute; and
    - (d) review the specific means applied to resolve the dispute in order to enhance the business relationship between the parties and avoid such disputes in the future.

- (3) If a dispute can not be resolved between both parties, in accordance with Contract Clause 22 both parties are to attempt negotiation by alternative dispute resolution processes.

**d. Variations.**

- (1) Variations to the contract shall be staffed between each respective contract authority. When proposing/accepting variations care should be taken so as to ensure that:
  - (a) any variation to the contract does not change the initial scope of the agreed contract on the basis that the tenderer was selected to conduct the services;
  - (b) any variation to the contract does not contain a contingent liability which the contract approval delegate is not authorised to approve on behalf of the Commonwealth; and
  - (c) any variation does not pose an increase in risk or reduction in service to the Commonwealth without an appropriate cost reduction that is agreeable to the Commonwealth.
- (2) All ADF proposals for a contract variation are to be submitted to HQ1JMOVGP utilising the User Change Request (refer to example at Enclosure 6). Contractor originated contract change proposals will be vetted and recommended by the Operational Authority prior to the acceptance by the Contract Authority.

- e. Insurance and Indemnities.** The insured amounts and maximum deductibles relevant to contract AO/004/10-11 are specified within the contract.

**26. Risk Management.** Risk is part of the environment in which Defence operates and is managed through the systematic identification, analysis, treatment, and, where appropriate, acceptance of risks. Risk management strategies were built into the procurement process during development of the contract; those risks identified and the management strategies are shown at annex E.

**27. Review of the Contract.**

- a. Contract Extension.** The expected outcomes that would predicate an extension of contract are:
  - (1) continued operational requirement for rotary wing services for sustainment services in Afghanistan;
  - (2) satisfactory performance of contract and services provided by the contractor;
  - (3) satisfactory utilisation of services; and
  - (4) operational and executive committee reviews, and resolved contractual disputes.

b. **Preparation For Re-tender.** The Timetable is as follows:

- (1) 8 months prior to contract expiry – HQJOC LOG PLANS develops a business case/statement of requirement which is both reviewed and approved by DFIN and the contract approval delegate;
- (2) 6 months prior – SLCC draft procurement strategy, acquisition strategy, draft Request for Tender (RFT) documentation, gain delegate (proposal, procurement) approval;
- (3) 5 months prior – release RFT;
- (4) 4 months prior – close RFT and evaluate RFT;
- (5) 3 months prior – source approval, negotiations and contract approval;
- (6) 2 months prior – contract signatory; and
- (7) Within 60 days prior – finalise transition in plan, transition out plan, contract management plan.

**Conclusion**

28. This contract management plan outlines the services that will be provided by the Contractor in order to deliver rotary wing support to forward operating bases in the Uruzgan Province. In order for this contract to be a success, all key appointments are to be familiar with their responsibilities and are to maintain solid and supportive lines of communication with the Contractor at all times.



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## **Contract Pricing Schedule**

### **Relevant Currency**

The relevant currency is US Dollars (USD).

### **Transition-in milestone payment**

The transition-in milestone payment is a one off cost of **USD 34,428** to be charged in the January 2013 (first) invoice, on successful completion of transition-in contract activities.

### **Monthly Standby Rate**

The Monthly Standby Rate (inclusive of ACMI, 50 Block Hours, and Ground Handling Services) is **USD 940,927**.

### **Hourly Flying Rate**

The Hourly Flying Rate (for block hours flown greater than 50 hours and less than 88 hours per month) is **USD 15,720**.

### **Price Basis**

The Contract Price includes all costs and amounts payable by the Commonwealth in respect of the Services, including those specified in Contract Clause 19.3.

### **Invoice Requirements**

Specified at Contract Clause 19.4.

### **Taxes and Duties**

Specified at Contract Clause 19.6.

### **Service Credit**

Specified at Contract Clause 19.8.

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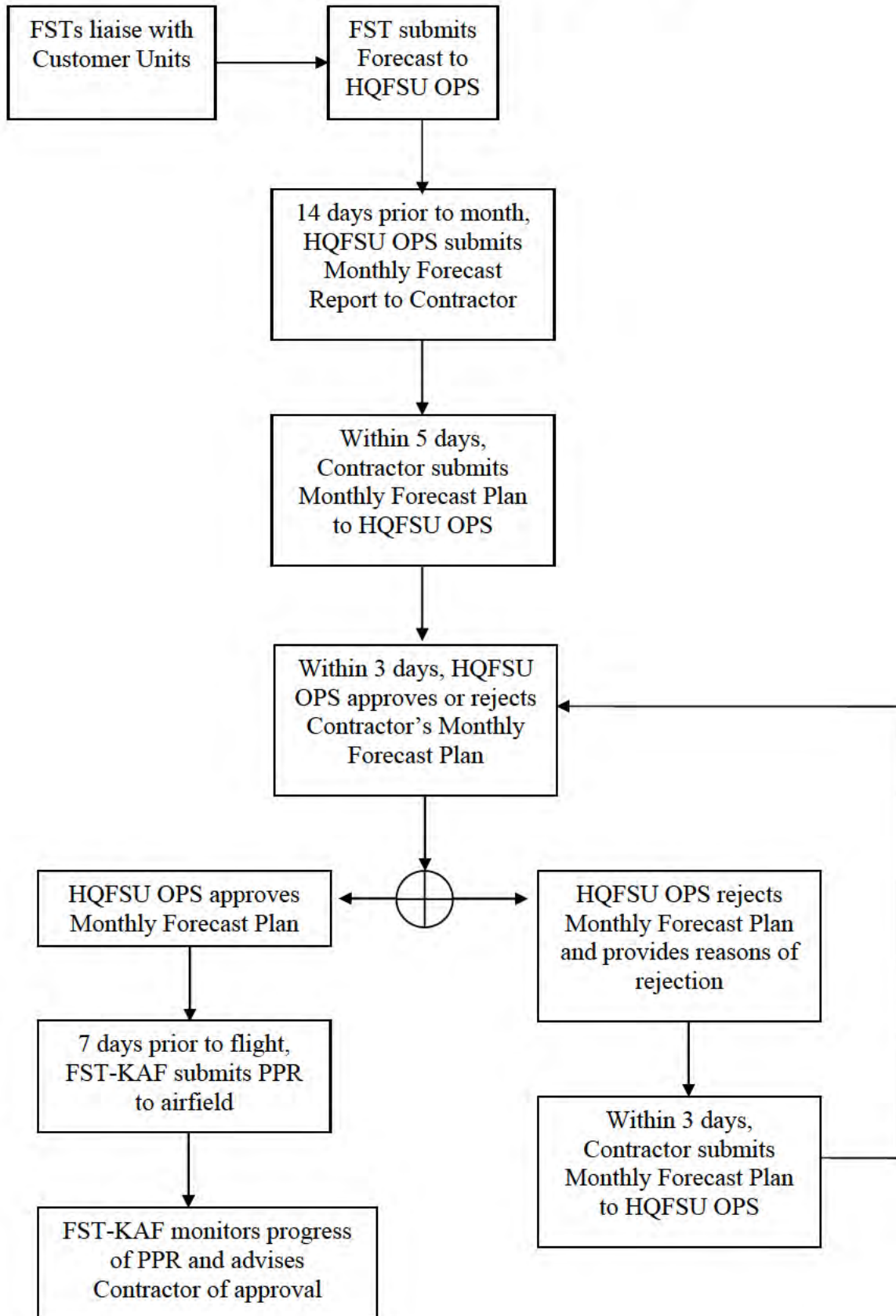
CONTRACT AO/002/12-13

FUEL RECONCILIATION WORKBOOK

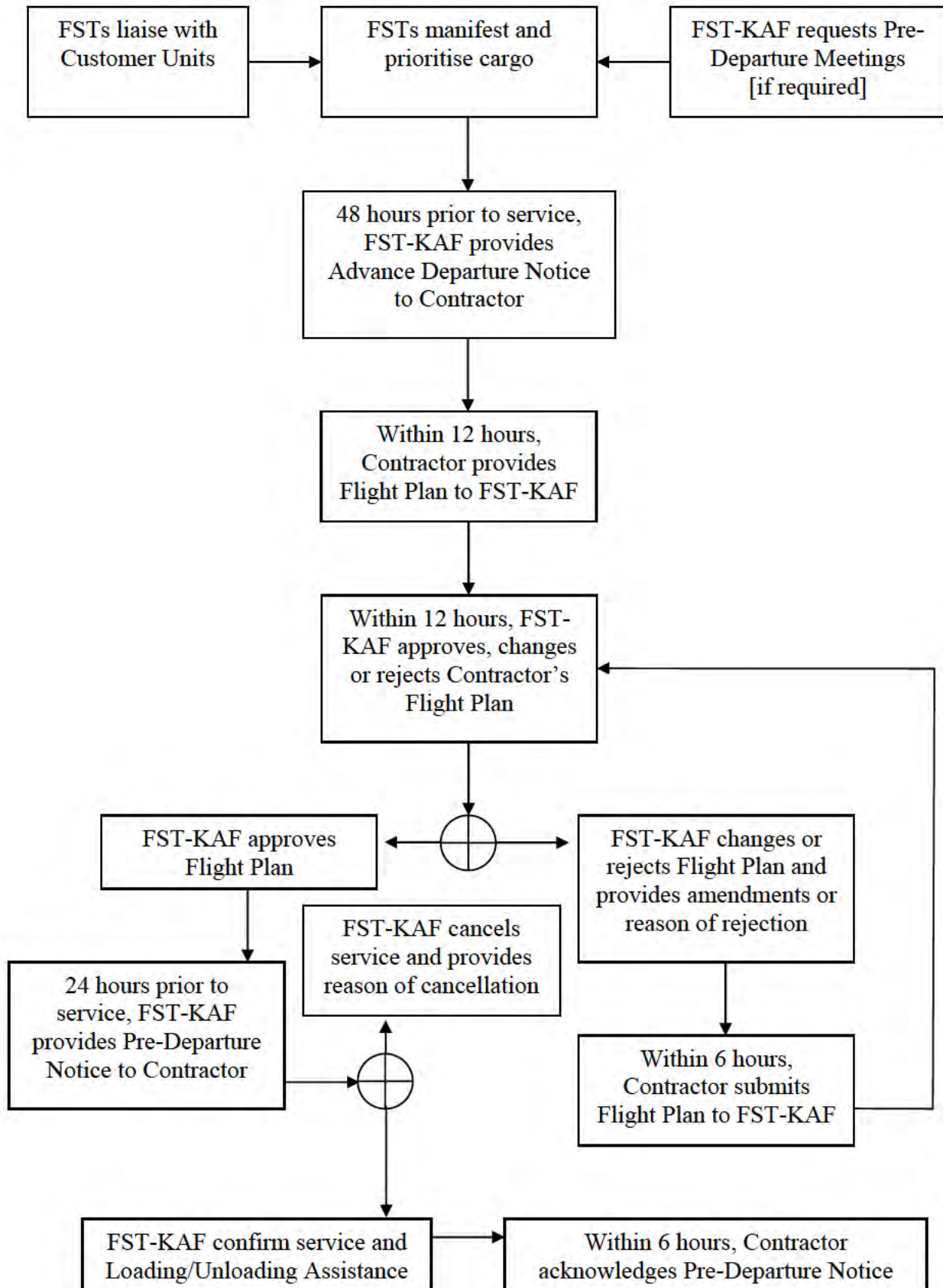
ADF TASKING						
Serial	Supply Date	Location	Supplier	Reciever	Uplift Amount (lbs)	Docket
<i>e.g</i>	<i>01-Jan-13</i>	<i>KAF</i>	<i>Supreme</i>		<i>10,000</i>	<i>01221342</i>
1						
2						
3						
4						
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7						
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9						
10						

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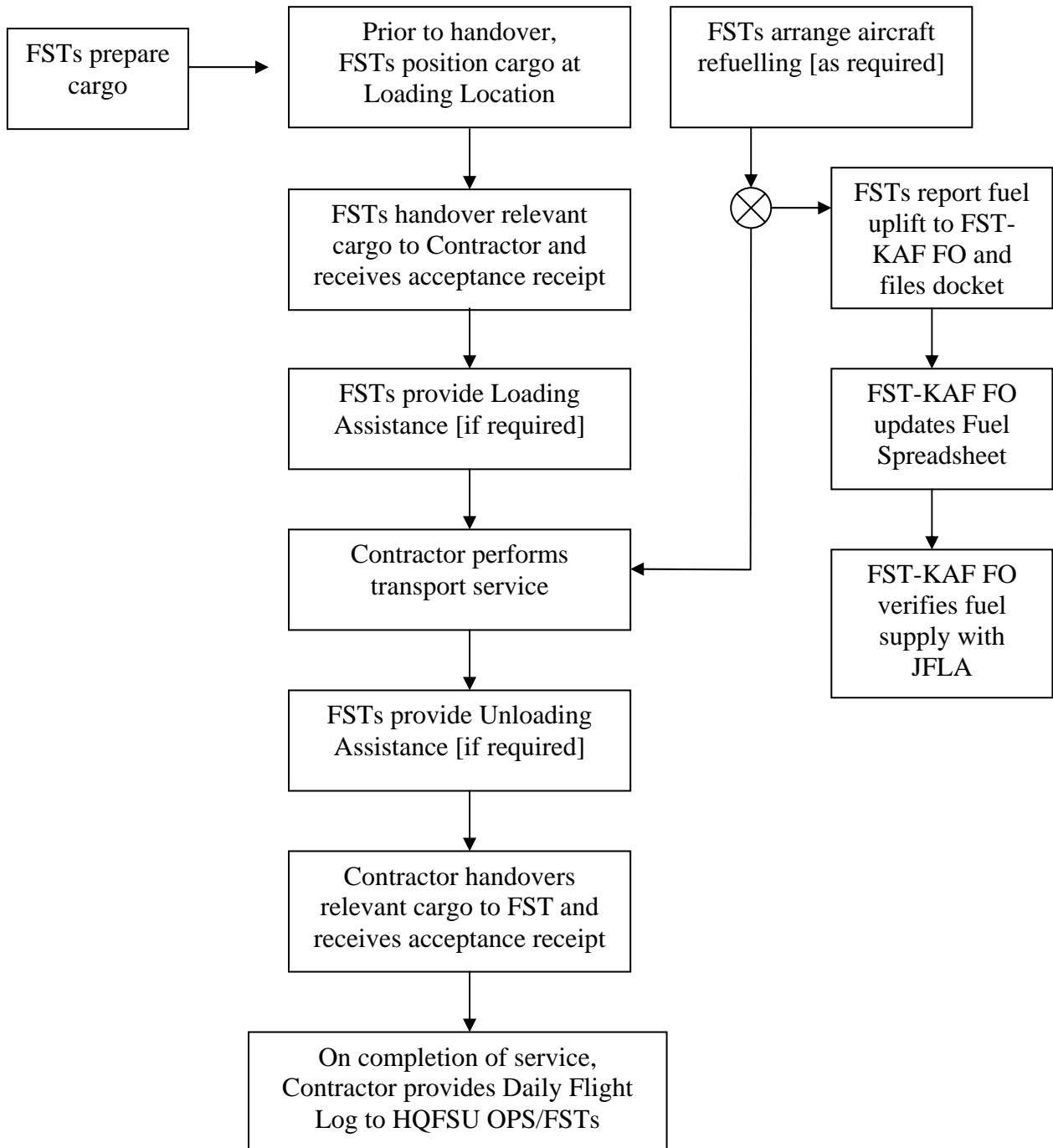
### PLANNING FOR TRANSPORT SERVICES



## PROCESS FOR ACQUIRING TRANSPORT SERVICES

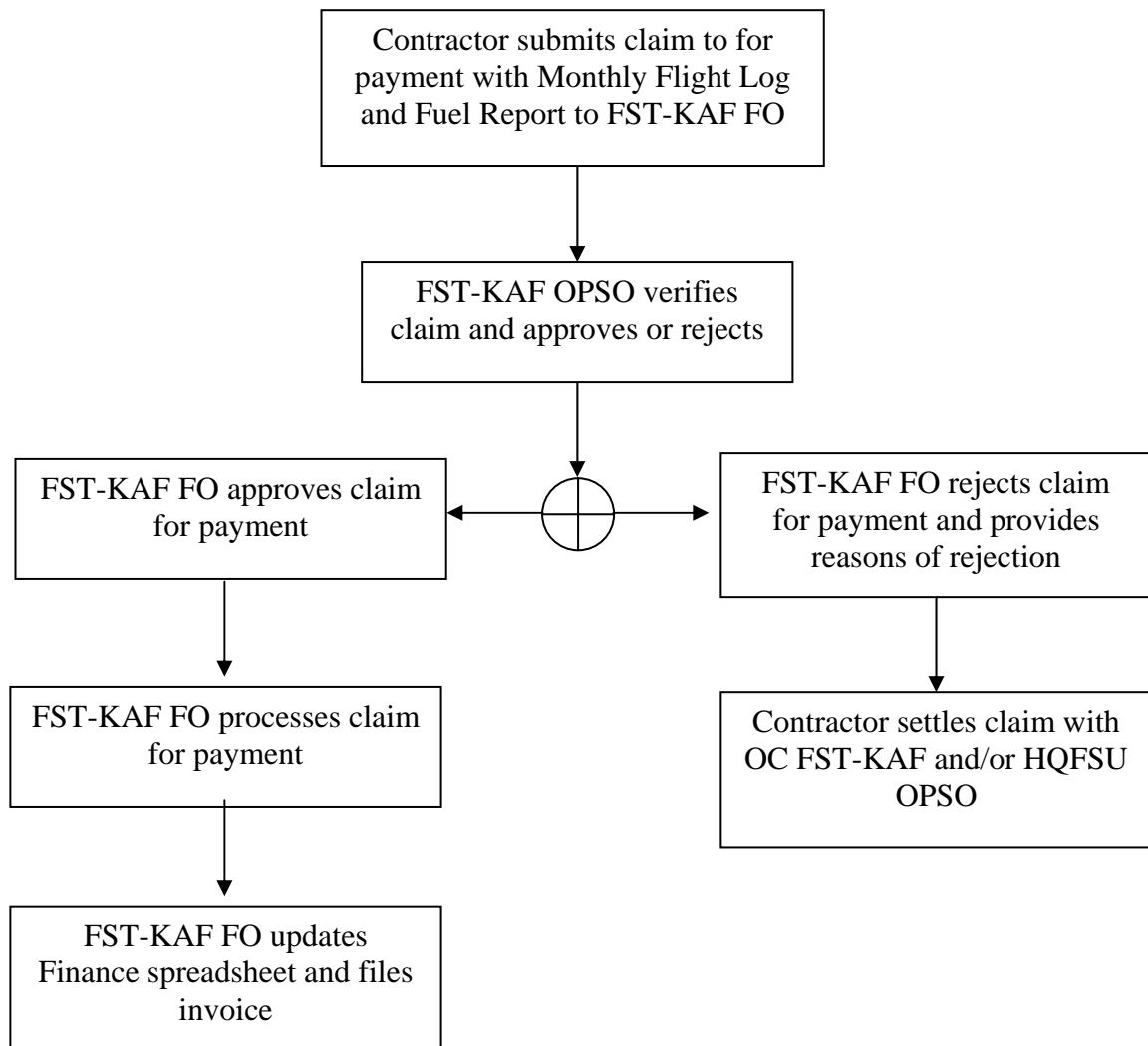


## PROCESS FOR PERFORMING TRANSPORT SERVICES

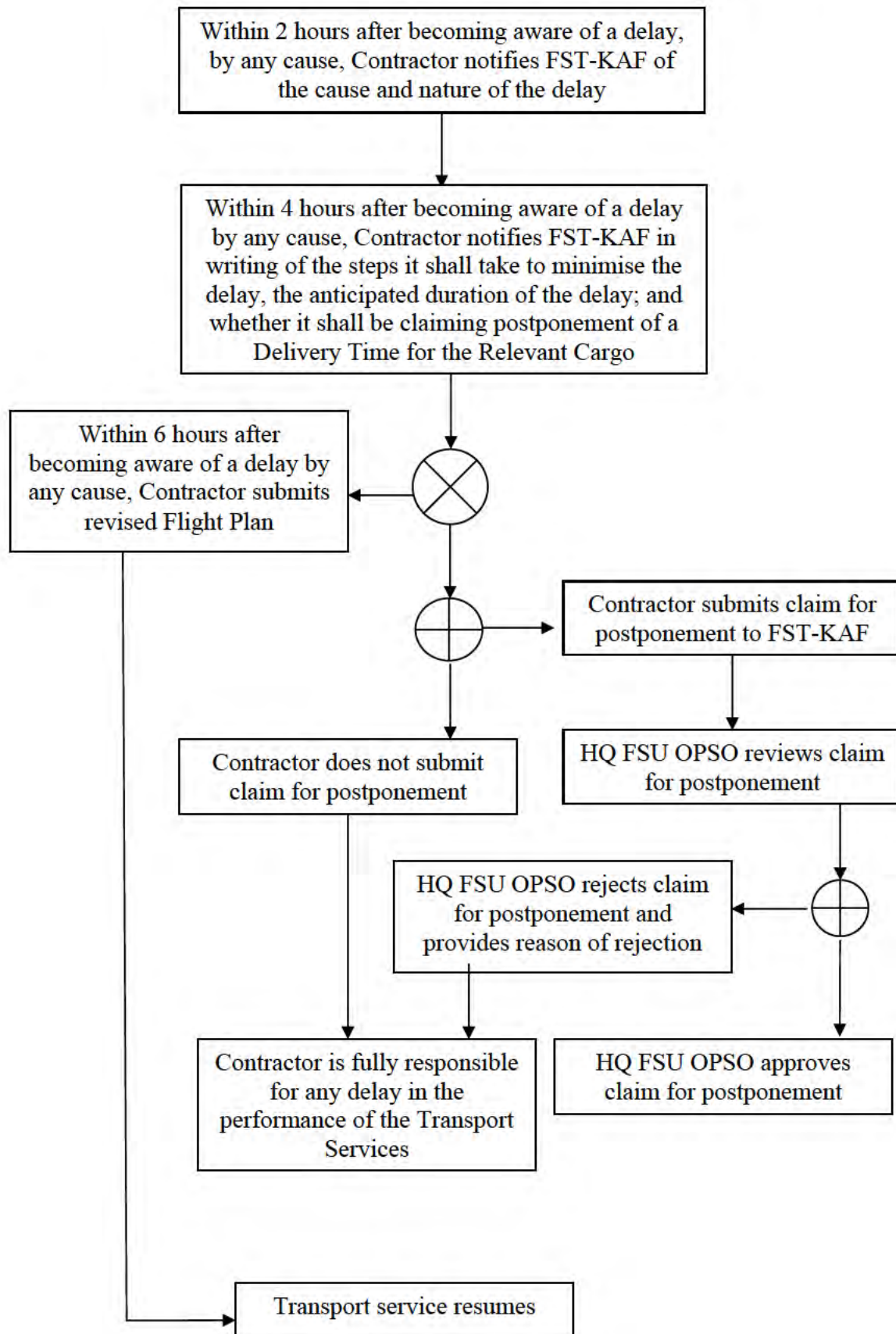




## PROCESS FOR PAYMENT



## PROCESS FOR MANAGING DELAYS AND POSTPONEMENT



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22

ENCLOSURE 2 TO  
AM710573  
14 DEC 11

CONTRACT AO/004/10-11

ISSUES REGISTER

Serial	Date	Originator & POC	Issue	Action Taken	Contractor Response	Solution	Date Resolved
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							

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## Force Support Unit 5 – MEAO MINUTE

COMD (HQ1JMOVGP)  
J45 (HQJOC)  
CO (FSU)

### USER CHANGE REQUEST – CONTRACT AO/002/12-13

#### References:

- A. Contract AO/002/12-13 of 10 Dec 12
- B. [supporting refs]
- C. [supporting refs]

<b>Originator</b>	
<b>Reference in Contract</b>	
<b>Context</b>	
<b>Details of Proposed Change</b>	Old Text:
	New Text:
<b>Justification for Proposed Change</b>	
<b>Effect of Proposed Change</b>	e.g. Scope of Work/Contract Price/Quality/Performance/Risk

~~22~~ ~~COMMERCIAL-IN-CONFIDENCE~~

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2

<b>Request Contact</b>	
<b>Operational Authority Supporting Comments</b>	
<b>HQJOC LOG PLANS Supporting Comments</b>	
<b>Contract Authority Supporting Comments</b>	

~~22~~ ~~COMMERCIAL-IN-CONFIDENCE~~



[SECURITY CLASSIFICATION]

ENCLOSURE 3 TO  
AM710573  
14 DEC 11

CONTRACT AO/004/10-11

PERFORMANCE MANAGEMENT WORKBOOK

Key Point Outcomes		Performance Bench Mark	Performance Indicators	Performance Analysis
KPO 1	Aircraft Availability	Aircraft available at all times for up to 88 block hours per month (except for five maintenance days per month and crew flight and duty limits)	Calender days per month Total days available for tasking per month Total maintenance days per month Total days programmed per month Total hours programmed per month Total hours flown per month	Aircraft online availability for tasking Flexibility for air movement of sustainment cargo Demonstration of reliability to meet operational requirements
KPO 2	Transport Service Utilisation	Maximum payload uplift capacity of the MIL-26T 20,000kg; available capacity per transport service is determined in individual Flight Plans	Block Hours Takeoff Weight (internal and external) Fuel Usage	Effective utilisation of air transport asset Effectiveness of ADF load planning and prioritisation Adequacy of aircraft to meet sustainment cargo requirements

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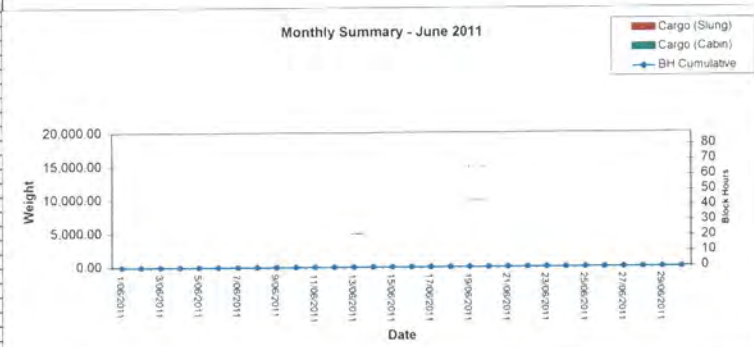
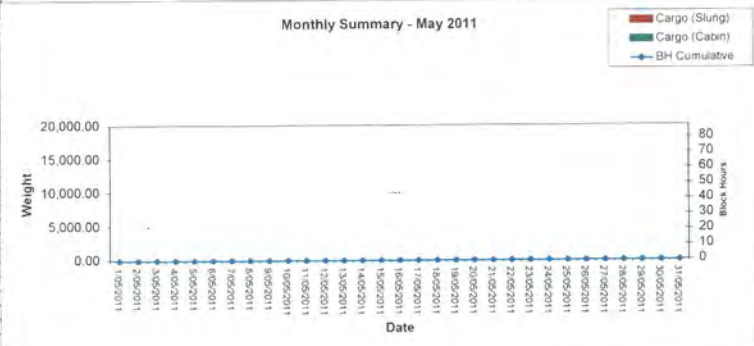
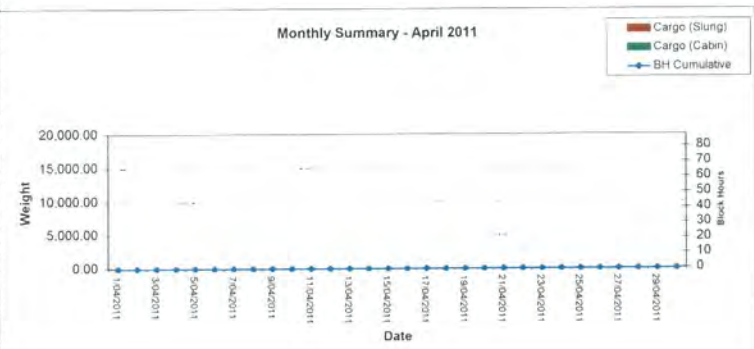
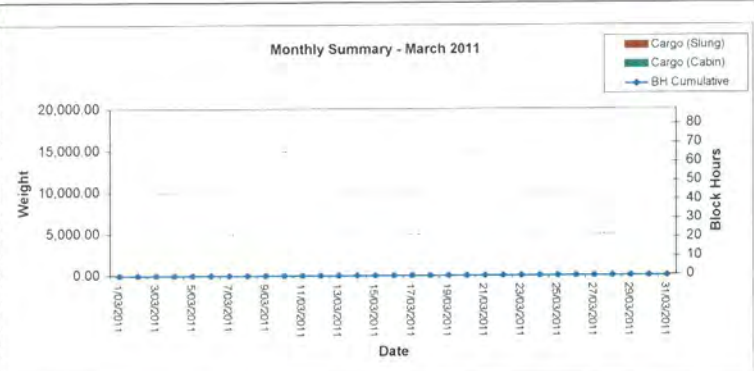
Month	Calendar Days	Maintenance Days	Available Days	Flying Days Programmed	Hours Programmed	Unscheduled Maintenance Days	Days MI-26 Flown (Actual)	Days KA32 Flown (Actual)	Hours Flown (Actual)	Actual Days Available	Avg Hours Flown per Flying Day	% Hours Flown vs Programmed
Mar-11	31	5	26							26	#DIV/0!	#DIV/0!
Apr-11	30	5	25							25	#DIV/0!	#DIV/0!
May-11	31	5	26							26	#DIV/0!	#DIV/0!
Jun-11	30	5	25							25	#DIV/0!	#DIV/0!
Jul-11	31	5	26							26	#DIV/0!	#DIV/0!
Aug-11	31	5	26							26	#DIV/0!	#DIV/0!
Sep-11	30	5	25							25	#DIV/0!	#DIV/0!
Oct-11	31	5	26							26	#DIV/0!	#DIV/0!
Nov-11	30	5	25							25	#DIV/0!	#DIV/0!
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Feb-12	29	5	24							24	#DIV/0!	#DIV/0!
Mar-12	31	5	26							26	#DIV/0!	#DIV/0!
Apr-12	30	5	25							25	#DIV/0!	#DIV/0!
May-12	31	5	26							26	#DIV/0!	#DIV/0!
Jun-12	30	5	25							25	#DIV/0!	#DIV/0!
Jul-12	31	5	26							26	#DIV/0!	#DIV/0!
Aug-12	31	5	26							26	#DIV/0!	#DIV/0!
Sep-12	30	5	25							25	#DIV/0!	#DIV/0!
Oct-12	31	5	26							26	#DIV/0!	#DIV/0!
Nov-12	30	5	25							25	#DIV/0!	#DIV/0!
Dec-12	31	5	26							26	#DIV/0!	#DIV/0!



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Date	Block Hours	BH Cumulative	Cargo (Cabin)	Cargo (Slung)	Fuel
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2-Mar-11		0			
3-Mar-11		0			
4-Mar-11		0			
5-Mar-11		0			
6-Mar-11		0			
7-Mar-11		0			
8-Mar-11		0			
9-Mar-11		0			
10-Mar-11		0			
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12-Mar-11		0			
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14-Mar-11		0			
15-Mar-11		0			
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26-Mar-11		0			
27-Mar-11		0			
28-Mar-11		0			
29-Mar-11		0			
30-Mar-11		0			
31-Mar-11		0			
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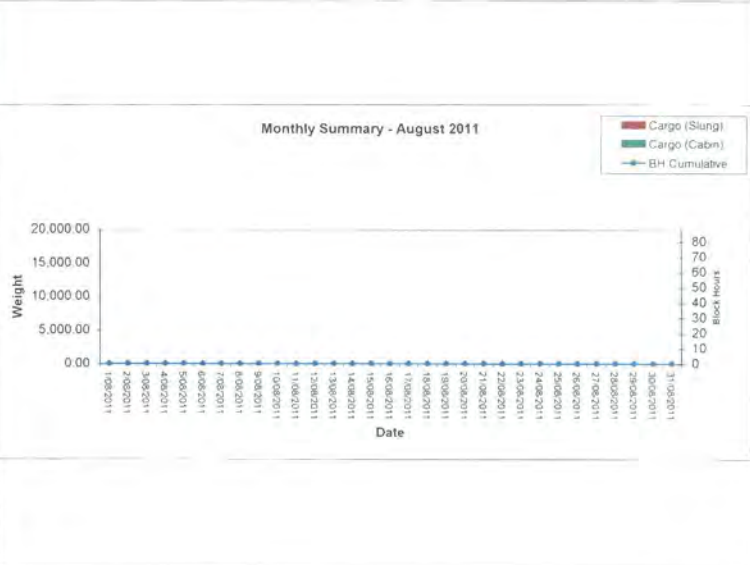
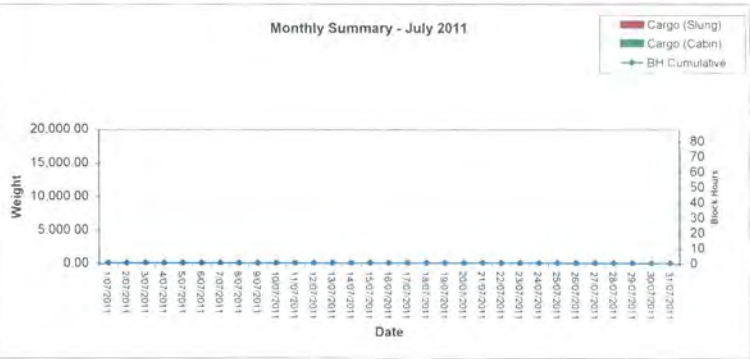


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Monthly Summary	0	0	0.00	0.00	0.00



[SECURITY CLASSIFICATION]

~~22~~ ~~COMMERCIAL-IN-CONFIDENCE (After first entry)~~

ENCLOSURE 4 TO  
AM710573  
14 DEC 11

CONTRACT AO/004/10-11

FINANCIAL MANAGEMENT WORKBOOK

FY XX/XX

Serial	Date Received	Invoice Date	Description	Value (USD)	Action Taken	Completion Date
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
Total				\$0.00		

~~22~~ ~~COMMERCIAL IN CONFIDENCE (After first entry)~~



~~COMMERCIAL IN CONFIDENCE (After first entry)~~  
s22

ENCLOSURE 5 TO  
AM710573  
14 DEC 11

CONTRACT AO/004/10-11

FUEL RECONCILIATION WORKBOOK

Serial	Supply Date	Location	Supplier	Reciever	Uplift Amount (lbs)	Docket
<i>e.g</i>	<i>1-Mar-11</i>	<i>KAF</i>	<i>Supreme</i>	<i>PME Intl</i>	<i>10,000</i>	<i>01221342</i>
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						

~~COMMERCIAL IN CONFIDENCE (After first entry)~~  
s22



[SECURITY CLASSIFICATION]

Force Support Unit 5 – MEAO  
**MINUTE**

COMD (HQ1JMOVGP)  
J45 (HQJOC)  
CO (FSU)

**USER CHANGE REQUEST – CONTRACT AO/004/10-11**

**References:**

- A. Contract AO/004/10-11 of 23 Feb 11
- B. [supporting refs]
- C. [supporting refs]

<b>Originator</b>	
<b>Reference in Contract</b>	
<b>Context</b>	
<b>Details of Proposed Change</b>	Old Text:
	New Text:
<b>Justification for Proposed Change</b>	
<b>Effect of Proposed Change</b>	e.g. Scope of Work/Contract Price/Quality/Performance/Risk

<b>Request Contact</b>	
<b>Operational Authority Supporting Comments</b>	
<b>HQJOC LOG PLANS Supporting Comments</b>	
<b>Contract Authority Supporting Comments</b>	

22

**From:** Bacon, Siobhan CAPT - RAN  
**Sent:** Saturday, 26 November 2011 3:01 PM  
**To:** Colrain, Alex LEUT 1; Northrup, Robert MR  
**Cc:** Walden, Harry LTCOL  
**Subject:** FW: Change to Mi-26 Billing and Invoicing Agent [SEC=UNCLASSIFIED]  
**Attachments:** RE: - Replacement aircraft Mi-26 [SEC=UNCLASSIFIED]; Annex B - Contract Communication Directory AO-004-10-11.doc

**Categories:** UNCLASSIFIED

UNCLASSIFIED

UNCLASSIFIED

Alex, for your action/info

Rob, you may also be interested in this one

*Siobhan Bacon*

CAPT S.T. Bacon RAN  
Acting J1/4  
HQJOC  
02 6128 4100  
A/H s22

---

**From:** Walker, Adrian LTCOL  
**Sent:** Thursday, 24 November 2011 18:14  
**To:** Polich, Duncan  
**Cc:** Wells, John 1; Maiden, Emma; HQ JMCC; Coughlan, Anthony; Bates, Sally; Ottaviano, Simon CAPT; Swinden, Greg CMDR; Davis, Marlena MS; Anderson, Ian MR 9; Barnes, Robert GPCAPT 2; Cole, Cliff LTCOL; Billett, Graeme MR; Hales, Scott SQNLDR; Strategic Lift Coordination Cell; Bacon, Siobhan CAPT - RAN; Walden, Harry LTCOL; King, Mick COL; Nathan, David LTCOL  
**Subject:** Change to Mi-26 Billing and Invoicing Agent [SEC=UNCLASSIFIED]

UNCLASSIFIED

Duncan,

Writing belatedly to inform you of changes to the Mi-26 contract arrangements. From an operational perspective the level and arrangements for service from the Mi-26 Contractor should be no change. However if this proves not to the case please let me know immediately so I can fix it.

However the billing Agent which has transferred from Vertical Australia to DynCorp Australia. My SO3 SLCC (who manages the Mi-26 contract) on behalf of the Contract Authority has provided the corresponding details and issues arising from this change in his email immediately below this one. I will ask him to finalise these arrangements with HQ633 J05 and your staff in SEPCOR to ensure the correct vendor is paid and all outstanding matters are correctly dealt with. But initial guidance is provided in his email below.

From the email chain I note there appears to be some confusion about Vertical Australia's relationship with Vertical-T. In short Vertical Australia is NOT a subsidiary of Vertical-T in spite of the impression the similarity in name suggests. The only relationship was that of agent / sub-contractor and this has now been formally terminated through an exchange of Letters between 1JMOVGP and Vertical-T accepting DynCorp as the new agent.

If you need any clarification please let me know, otherwise your staff can contact FLTLT Jeff Tanner directly with any points of clarification.

Cheers, Adrian

**A. WALKER**  
LTCOL  
SO1 OPS/PLANS HQ1JMOVGP

Ph: 02 6128 4182  
Mb: 22

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---

**From:** Tanner, Jeffrey FLTLT  
**Sent:** Thursday, 24 November 2011 12:13  
**To:** Walker, Adrian LTCOL  
**Cc:** Hales, Scott SQNLDR  
**Subject:** FW: - RE: - RE: Invoices and Payments [SEC=UNCLASSIFIED]

UNCLASSIFIED

Sir,

I wrote to HQFSU (OIC Contracts) on 21 Nov 11 (see attached) initially advising of the change in Vertical-T's Agents.

Could you please formally notify CO FSU of the change, and in addition raise the following points from our perspective. SQNLDR Hales has reviewed these points.

I have updated the Communication Directory with 47F details (see attached).

To close Vertical Australia:

- Invoice RW26/014 is to be rejected and not paid as instructed by Vertical Australia
- Copies of all invoices received from Vertical Australia are to be provided to SLCC
- Purchase order with Vertical Australia Pty Ltd is to be closed

To open DynCorp Australia:

- No change in process for the supply, verification and acceptance of services performed under contract
- Purchase order with DynCorp (Australia) is to be created with Vendor Record **1158478** (account details have been confirmed)
- DynCorp Australia is to supply an invoice for the current billing period
- DynCorp Australia Representative is 47F, Managing Director, 02 6282 9500 (FSU contact details have been supplied to DynCorp Australia)

Thanks and regards,

**Jeff Tanner**  
FLTLT  
SO3 SLCC  
HQ1JMOVGP



Tel: (02) 6128 4190  
Fax: (02) 6128 4117

---

**From:** Louise.Edwards@z22.defence.gov.au [mailto:Louise.Edwards@z22.defence.gov.au]  
**Sent:** Wednesday, 23 November 2011 16:44  
**To:** Tanner, Jeffrey FLTLT  
**Cc:** Hales, Scott SQNLDR  
**Subject:** FW: - RE: - RE: Invoices and Payments [SEC=UNCLASSIFIED]

UNCLASSIFIED

Jeff,

From your email on Monday (below), I assumed that the actual change would not be occurring for a while considering no formal advice has been given to FSU about dates or changes in process. I then emailed you back about dates and received an out of office.

However the below email trail was received by KAF this morning where Vertical T is recalling invoices. More information is required.

*FYI, at the end of last week we were notified by Vertical-T that they were seeking a change in their appointed Agent from Vertical Australia: Mr Yuri Tchernobryvko to DynCorp(Australia). We considered this change and wrote back to Vertical-T approving the change in contract.*

*Essentially, this means that Vertical Australia are no longer involved with this contract and all correspondence and payment of monies is to cease; with full duties and payment to be assumed by DynCorp(Australia). There is no change to the scope or level of service provided by Vertical-T or subcontractors.*

*At this stage, I am still preparing advice for FSU to address some matters which comes as a result of a change in Agent. In particular, FST-KAF will need to, for example close the current purchase order and create a new order with DynCorp. I expect to have this ready for you in the next few days.*

*I suspect PME Intl may be slightly out of the loop as they are still communicating with Vertical Australia.*

Can you please let me know the following:

- When is formal guidance being presented to CO FSU about this change?
- Will there be any change to any of our processes within FSU and especially FST-KAF?
- When will POs need to be raised for Dynacorp?

Is there any more information about this change over?

Thanks

Louise Edwards  
FLTLT  
OIC Contracts and Procurement Cell  
FSU-5

02 6215 6976  
VOIP: 63637

-----Original Message--Sent by: "Yuri.T Vertical-A" <yuri.tcher@verticalaustralia.com.au> on 23/11/2011

5:29:54-----

Original sent to: <Elisabeth.Barnett, <Louise.Edwards,  
Original cc'd to: <John.Wells1, <peter.callow, <jason.otoole,

Morning Liz,

Vertical-T will perform according to the contract between Vertical-T and ADF, no changes.  
MIL26 will fly as per schedule.

However Vertical Australia Pty LTD no longer is the Agent of Vertical-T and does not have any involvement into this contract. That is why last invoice issued by Vertical Australia must be recalled.

I believe you will be informed by the contractor or the contractor representative on procedures in relation to finance or other matters.

Sincerely,  
Yuri Tchernobryvko  
MD  
Vertical Australia Pty Limited  
Ph: +22 [REDACTED]  
[Yuri.Tcher@verticalaustralia.com.au](mailto:Yuri.Tcher@verticalaustralia.com.au)

---

**From:** Elisabeth.Barnett@z20.defence.gov.au [<mailto:Elisabeth.Barnett@z20.defence.gov.au>]  
**Sent:** Wednesday, November 23, 2011 4:07 PM  
**To:** Louise.Edwards@z22.defence.gov.au; yuri.tcher@verticalaustralia.com.au  
**Cc:** John.Wells1@z22.defence.gov.au; peter.callow@z22.defence.gov.au;  
jason.otoole@z20.defence.gov.au  
**Subject:** FW:- RE: Invoices and Payments [SEC=UNCLASSIFIED]

UNCLASSIFIED

Louise, Yuri,

The email below does not quite make sense to me. Does this mean that Vertical T is no longer support Mi-26 operations?

If you could please clarify it would be greatly appreciated.

Regards,

Liz

E.M.BARNETT  
Major  
Officer Commanding  
Force Support Team - Kandahar  
Force Support Unit - Five

Tel:(02) 6267 9602  
ROSHAN: 07 9787 5774  
DSN VOIP: 63720

22

-----Original Message--Sent by: "Yuri.T Vertical-A" <yuri.tcher@verticalaustralia.com.au> on 23/11/2011 4:52:37 AM-----

Original sent to: "'Edwards, Louise'" <Louise.Edwards, <Renae.Coulter,  
Original cc'd to: <Elisabeth.Barnett, <Jason.OToole,

Dear All,

Please be advised that Vertical Australia Pty LTD is recalling the invoice RW26/0014 in relation to the "Service Contract AO/004/10-11", because Vertical Australia is no longer represent Vertical-T LLC as the Agent.

Thanks and Best wishes to All.

Sincerely,  
Yuri Tchernobryvko  
MD  
Vertical Australia Pty Limited  
Ph: +<sup>22</sup>  
[Yuri.Tcher@verticalaustralia.com.au](mailto:Yuri.Tcher@verticalaustralia.com.au)

---

**From:** Yuri.T Vertical-A [<mailto:yuri.tcher@verticalaustralia.com.au>]  
**Sent:** Monday, November 14, 2011 10:37 AM  
**To:** 'Edwards, Louise'; 'Renae.Coulter@z20.defence.gov.au'


**Cc:** 'Elisabeth.Barnett@z20.defence.gov.au'; 'Jason.OTOole@z20.defence.gov.au'  
**Subject:** Invoices and Payments

**Attention to:**

**Contract Management / Account Payables**

**REF: “Service Contract AO/004/10-11”**

Please find in attached file - The Invoice for the next billing period, including extra hours for NOV-DEC and Signed Summary of Services for the last OCT-NOV , 2011

**Sincerely,**  
**Yuri Tchernobryvko**  
**MD**  
**Vertical Australia Pty Limited**  
**Ph: +** <sup>22</sup>   
**[Yuri.Tcher@verticalaustralia.com.au](mailto:Yuri.Tcher@verticalaustralia.com.au)**

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**From:** King, Mick COL  
**Sent:** Friday, 16 December 2011 3:45 PM  
**To:** Northrup, Robert MR  
**Subject:** FW: Mi-26 APPROVED Contract Management Plan [SEC=UNCLASSIFIED]  
**Attachments:** Contract Management Plan AO-004-10-11.pdf; Contract Management Plan AO-004-10-11 Attachments.zip

**Categories:** UNCLASSIFIED

UNCLASSIFIED

UNCLASSIFIED

Colonel Mick King  
Director Logistics Operations (J43)  
Headquarters Joint Operations Command - Bungendore  
B1-1-L149  
PO Box 7928  
CANBERRA BC ACT 2610

Tel: 02 6128 4423  
Fax: 02 6128 4105  
Mobile: 22  
Email: [mick.king@defence.gov.au](mailto:mick.king@defence.gov.au)

---

**From:** Tanner, Jeffrey FLTLT  
**Sent:** Thursday, 15 December 2011 17:01  
**To:** Polich, Duncan; Walden, Harry LTCOL; Swinden, Greg CMDR; Davis, Marlena MS; Black, Gary MR; Billett, Graeme MR; Walker, Adrian LTCOL  
**Cc:** Wells, John 1; Bacon, Siobhan CAPT - RAN; Colrain, Alex LEUT 1; King, Mick COL; Nathan, David LTCOL; Ottaviano, Simon CAPT; HQ JMCC; Anderson, Ian MR 9; Everingham, Tony LCDR; Simpson, Karren MS; Barnes, Robert GPCAPT 2; Cole, Cliff LTCOL; HQ1JMOVGP; Strategic Lift Coordination Cell; Rosenberger, Paul LTCOL; Darbyshire, Sean MAJ; Coughlan, Anthony; Marshall, Hayden AIRCDRE 1; Olding, Meegan MAJ; Edwards, Louise  
**Subject:** Mi-26 APPROVED Contract Management Plan [SEC=UNCLASSIFIED]

UNCLASSIFIED

Good afternoon Sirs et al,

Please find attached the approved Contract Management Plan (CMP) for Rotary Wing Services in support of Sustainment Operations in AFG.

Thankyou to all who provided feedback in the development of this document.

Thanks and regards,

**Jeff Tanner**  
FLTLT  
SO3 SLCC  
HQ1JMOVGP

Tel: (02) 6128 4190  
Fax: (02) 6128 4117

---

**From:** Walker, Adrian LTCOL

**Sent:** Thursday, 20 October 2011 17:57

**To:** Polich, Duncan; Walden, Harry LTCOL; Swinden, Greg CMDR; Coughlan, Anthony; Maiden, Emma; Davis, Marlena MS; Black, Gary MR; Billett, Graeme MR; Vetuna, John MAJ

**Cc:** Wells, John 1; Gallasch, Dianne BRIG; Bacon, Siobhan CAPT - RAN; Colrain, Alex LEUT 1; King, Mick COL; Nathan, David LTCOL; Ottaviano, Simon CAPT ; HQ JMCC; Anderson, Ian MR 9; Everingham, Tony LCDR; Simpson, Karren MS; Barnes, Robert GPCAPT 2; Cole, Cliff LTCOL; HQ1JMOVGP; Strategic Lift Coordination Cell; Rosenberger, Paul LTCOL; Darbyshire, Sean MAJ

**Subject:** Mi-26 DRAFT Contract Management Plan [SEC=~~IN CONFIDENCE-COMMERCIAL~~]

~~IN CONFIDENCE-COMMERCIAL~~

Ladies and Gentlemen,

Please find attached the draft Contract Management Plan (CMP) for Rotary Wing Services in support of Sustainment Operations in AFG for your review and consideration. I acknowledge this has taken a significant period of time to develop with a range of early iterations provided as guidance - most of your organisations will have seen varying drafts of this document already. I believe the CMP has now reached sufficient maturity and I intend to provide the CMP to my Comd on Tue 01 Nov for approval and release.

I request your comments so any issues or enhancements can be addressed and incorporated. Please note this is a CMP and is not intended to replace your SOP / SI / BLI in using this service. Rather it provides the contractual framework with sufficient guidance to ensure appropriate application of roles and responsibilities for utilising this contract.

Your comments are requested to be emailed to "Strategic Lift Coordination Cell" prior to business (0800hr CBR) on Mon 31 Oct. Where changes are inserted into document please use Track Changes.

Many thanks,

**A. WALKER**

LTCOL

SO1 OPS/PLANS HQ1JMOVGP

Ph: 02 6128 4182

Mb: 22

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22

**From:** Northrup, Robert MR  
**Sent:** Monday, 5 December 2011 11:28 AM  
**To:** Armour, John CAPT - ARMY  
**Subject:** FW: Mi26 RW Contract [SEC-~~IN-CONFIDENCE:COMMERCIAL~~]  
**Attachments:** 212570813\_1\_Rotary Wing Afghanistan Contract with Vertical T (Execution version 22 02 11).PDF

**Categories:** ~~IN-CONFIDENCE~~

~~IN-CONFIDENCE:COMMERCIAL~~

~~IN-CONFIDENCE:COMMERCIAL~~

John,

Here is a copy of the current Mi26 contract with Vertical-T. Please upload into our contacts folder for review as needed.

Interestingly the contract with extensions runs out in Dec 2012. What will happen after...

Regards

Rob

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---

**From:** Tanner, Jeffrey FLTLT  
**Sent:** Monday, 5 December 2011 11:16  
**To:** Northrup, Robert MR  
**Subject:** Mi26 RW Contract [SEC-~~IN-CONFIDENCE:COMMERCIAL~~]

~~IN-CONFIDENCE:COMMERCIAL~~

Good morning Rob,

Please find attached a copy of the Mi26 contract with Vertical-T.

The current term is valid to 30 Jun 12.

Thanks and regards,

**Jeff Tanner**  
FLTLT  
SO3 SLCC  
HQ1JMOVGP

Tel: (02) 6128 4190

Fax: (02) 6128 4117

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**From:** Quirke, Martin SQNLDR  
**Sent:** Monday, 17 December 2012 10:42 AM  
**To:** Northrup, Robert MR  
**Subject:** FW: RW Contract and CMP ~~[SEC- IN CONFIDENCE:COMMERCIAL]~~  
**Attachments:** RW Contract\_Execution Copy.pdf; AO\_002\_1213\_CMP.doc; Annex C - Organisational Responsibility Chart AO-002-12-13.doc; Annex A - Contract Lifecycle and Milestones AO-002-12-13.doc; Annex B - Contract Communication Directory AO-002-12-13.doc; Enclosure 2 - User Change Request AO-002-12-13.doc; Enclosure 1 - Fuel Reconciliation Workbook AO-002-12-13.xls; Contract Pricing Schedule AO-002-12-13.doc

**Categories:** ~~IN CONFIDENCE~~

~~IN CONFIDENCE:COMMERCIAL~~

FYI

---

**From:** Quirke, Martin SQNLDR  
**Sent:** Thursday, 13 December 2012 17:12  
**To:** Benfield, Charmaine  
**Cc:** Buechel, Stuart; Casey, Lucinda LCDR  
**Subject:** RW Contract and CMP ~~[SEC- IN CONFIDENCE:COMMERCIAL]~~

~~IN CONFIDENCE:COMMERCIAL~~

Charmaine

The RW contract was finally signed this afternoon. (Minutes ago, in fact). The contractor is Dyncorp (Aust) with Vertical-T LLC as aircraft operator and sub-contractor. Dyncorp Freezone will be providing ground handling services.

Accordingly attached, please find an execution copy of the final contract. Also attached is a draft Contract Management Plan for your review and input. It is very similar to the current CMP with only the necessary changes that reflect this new contract. In particular, the POC list in annex B requires updating.

Request your return of this document at your earliest convenience. The intent is for COL Tuckerman to sign off on it when he returns from leave on 21 Jan 13. The transition in date commences 18 Dec. Mr Bob Breen and the new AFG in country manager will be on their way to the MEAO in the near future to bed in the new contract arrangements.

My duty done, I am now backing out of the SLCC seat. LCDR Luci Casey (copied in) has carriage of this issue going forward. Best of luck with the new contract.

Regards

**Marty Quirke**  
SQNLDR  
SO2 SLCC, HQ1JMOVGP  
HQJOC-B, B1-G-E162  
CANBERRA BC ACT 2610

Tel: +61 (0) 2 6128 4436  
Fax: +61 (0) 2 6128 4106  
Mob: +61 (22

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**From:** Tanner, Jeffrey FLTLT  
**Sent:** Wednesday, 21 March 2012 4:38 PM  
**To:** Northrup, Robert MR; Baxter, Peter LTCOL 1  
**Cc:** Colrain, Alex LEUT 1; Quirke, Martin SQNLDR  
**Subject:** OP SLIPPER RW SOW [SEC=UNCLASSIFIED:~~COMMERCIAL~~]  
**Attachments:** 02 100817 RW Procurement Strategy AO0041011.pdf

**Categories:** UNCLASSIFIED

UNCLASSIFIED:~~COMMERCIAL~~

Hi Sir, Rob,

With compliments of LTCOL Walker, please find attached a copy of the Procurement Strategy for the current RW SPT contract. This document describes the SOW and CONOPS that was used for the procurement.

Thanks and regards,

**Jeff Tanner**  
FLTLT  
SO3 SLCC  
HQ1JMOVGP

Tel: (02) 6128 4190  
Fax: (02) 6128 4117

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**From:** Tanner, Jeffrey FLTLT  
**Sent:** Tuesday, 22 November 2011 5:04 PM  
**To:** Edwards, Louise  
**Cc:** Wells, John 1; Colrain, Alex LEUT 1; Hales, Scott SQNLDR  
**Subject:** RE: - Replacement aircraft Mi-26 [SEC=UNCLASSIFIED]

**Categories:** UNCLASSIFIED

UNCLASSIFIED

Hi Louise,

Cheers, things like should come to HQ1JMOVGP. Overnight, the Agent (DynCorp) has written to us advising the same details of the aircraft swap. I will prepare a response to them and include you also.

FYI, at the end of last week we were notified by Vertical-T that they were seeking a change in their appointed Agent from Vertical Australia: Mr Yuri Tchernobryvko to DynCorp(Australia). We considered this change and wrote back to Vertical-T approving the change in contract.

Essentially, this means that Vertical Australia are no longer involved with this contract and all correspondence and payment of monies is to cease; with full duties and payment to be assumed by DynCorp(Australia). There is no change to the scope or level of service provided by Vertical-T or subcontractors.

At this stage, I am still preparing advice for FSU to address some matters which comes as a result of a change in Agent. In particular, FST-KAF will need to, for example close the current purchase order and create a new order with DynCorp. I expect to have this ready for you in the next few days.

I suspect PME Intl may be slightly out of the loop as they are still communicating with Vertical Australia.

The DynCorp(Australia) representative is also based in Australia, and is 47F. If you have any urgent need to contact the Agent, please let me know and I will provide the details more promptly.

Cheers.

Thanks and regards,

**Jeff Tanner**  
FLTLT  
SO3 SLCC  
HQ1JMOVGP

Tel: (02) 6128 4190  
Fax: (02) 6128 4117

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---

**From:** Louise.Edwards@z22.defence.gov.au [mailto:Louise.Edwards@z22.defence.gov.au]  
**Sent:** Monday, 21 November 2011 21:20  
**To:** Tanner, Jeffrey FLTLT  
**Cc:** Wells, John 1  
**Subject:** FW:- Replacement aircraft Mi-26 [SEC=UNCLASSIFIED]



UNCLASSIFIED

G'day Jeff,

Long time no speak.

Below is an email trail requesting Commonwealth approval for Vertical T to use a different aircraft from the Kamov as their standby aircraft.

IAW with clause 4.3 (b) of the contract, Commonwealth approval needs to be granted.

Can 1JMOVGP approve this?

Thanks

Louise Edwards  
FLTLT  
OIC Contracts and Procurement Cell  
FSU-5

02 6215 6976  
VOIP: 63637

-----Original Message--Sent by: Elisabeth Barnett on 16/11/2011 15:43:36-----

Original sent to: John Wells1,  
Original cc'd to: Louise Edwards, Emma Maiden, Jason OToole, Duncan Polich, william.mark, Renae Coulter,

UNCLASSIFIED

John,

Please see attached email from <sup>47F</sup> (incidentally, he will be moving on from Vertical T in the coming weeks - replaced by <sup>47F</sup> I think TBC).

This email relates to the replacement (standby aircraft) that Vertical T are required to provide to the ADF for support for sustainment missions etc.

<sup>47F</sup> has mentioned that some correspondence/authorisation etc will be required from the Commonwealth to get this alternate aircraft recognised under existing arrangements.

For your action pls.

Regards,

Liz

E.M.BARNETT  
Major

Officer Commanding  
Force Support Team - Kandahar  
Force Support Unit - Five

Tel:(02) 6267 9602  
ROSHAN: 07 9787 5774  
DSN VOIP: 63720

22

-----Original Message--Sent by: "47F" <[REDACTED]>@pme-international.com> on 16/11/2011 10:48:17 AM-----

Original sent to: <Elisabeth.Barnett,  
Original cc'd to: <jason.otoole, <Louise.Edwards, 47F [REDACTED]>,

G'Day Major Barnett,

The below email is in reference to the replacement aircraft for the ADF Sustainment Contract.

There are currently two Vertical T MI26Ts located at KAF. The second MI26T was used on a Dutch contract. This contract ends as at 30 Nov 11.

This second aircraft will now remain at KAF as the replacement aircraft for the ADF Sustainment contract -replacing the KA 32S.

IAW the contract clause, as stated below, Vertical T will require the Commonwealth's prior written approval to use MI26T, Registered Number RA-06275, as the replacement aircraft in the event the primary aircraft becomes unavailable. The replacement aircraft will be readily maintained and will be available on short notice. I believe that this will enhance the aims of the contract.

Cheers

47F

47F

Project Manager - Afghanistan

PME International  
Your Aviation and Logistics specialists  
P.O.Box: 77174, Dubai, UAE  
Phone (Dubai): +971 22 [REDACTED]  
Fax (Dubai): +971 (0) 4283 0203  
Mob. (Afghanistan): +93 22 [REDACTED]  
Email: [REDACTED]@pme-international.com  
Web: www.pme-international.com

-----Original Message-----

From: 22 [REDACTED]@gmail.com]  
Sent: Wednesday, November 16, 2011 2:25 PM  
To: 47F [REDACTED]@pme-international.com  
Subject: Replacement aircraft

Dear 47F [REDACTED],

Pls be advised that Vertical-T has made a decision not to relocate both RA-06259 & RA-06275 to Russia. RA-06259 is going to be located in KAF as a Primary Aircraft, as it was heretofore and RA-06275 will be used as a Replacement Aircraft. Until now KA 32S (YA-KAH6225) has been used as a Replacement Aircraft but this helicopter isn't equivalent to Mi-26T, whereas under the Clause 4.3(e) the Replacement Aircraft should be operationally and functionally equivalent to the Primary one. Moreover KA 32S was operated by KabulAir which went into liquidation.

Under the Clause 4.3 (b) the Contractor must obtain Commonwealth's prior written approval of a Replacement Aircraft. Considering the above you're kindly requested to forward this information to Customer ASAP.

I'm looking foeward for ADF comments.

--

Best regards

47F [REDACTED]  
VERTICAL-T AIR COMPANY  
Crew Manager(Mi-26)  
Kandahar air field(KAF)  
mob.phone:+22 [REDACTED]

22

**From:** Anthony.Lamers@z22.defence.gov.au  
**Sent:** Friday, 12 April 2013 7:35 PM  
**To:** Bouwman, Glen 1  
**Cc:** Stander, Abraham; State, Andrew; Northrup, Robert MR;  
Charmaine.Benfield@z22.defence.gov.au; Robertson, Bradley  
**Subject:** Re: Fw: Mi26 Extension [~~SEC-RESTRICTED~~]

~~RESTRICTED~~

Glenn,

I have discussed this with Bram Stander, who represented the J4 at the subject meeting. There were no concerns from J4 on this extension. If the analysis shows that 75 hrs is required, then I endorse this.

Tony

**Anthony Lamers**  
MAJ  
J4 Maint  
HQJTF633 MAAR

VOIP: 63345  
Unclass: 02 6215 6508



**From:** Glen Bouwman1/Z22/DEPR/AU  
**To:** Andrew State/Z22/DEPR/AU@DEPR, Anthony Lamers/Z22/DEPR/AU@DEPR  
**Cc:** robert.northrup@defence.gov.au, Charmaine Benfield/Z22/DEPR/AU@DEPR, Bradley Robertson/Z22/DEPR/AU@DEPR  
**Date:** 12/04/2013 08:33 AM  
**Subject:** Fw: Mi26 Extension [~~SEC-RESTRICTED~~]

**Version**  
DIE Mail TPL 8.51 v1.0

**Sender Details**  
Glen Bouwman1

**Protective Marking**  
~~SEC-RESTRICTED~~

~~RESTRICTED~~

Andy, Tony

JOC require confirmation from RFC/J4 that the proposed block operating hours have been

endorsed (5a of the attached minute refers).

Regards

**Glen Bouwman**  
Business Manager  
HQ JTF633  
Tel: 02 6224 4406  
Mob: +22 [REDACTED]  
VOIP: 63624

----- Forwarded by Glen Bouwman1/Z22/DEPR/AU on 12/04/2013 08:28 -----

From: "Northrup, Robert MR" <robert.northrup@defence.gov.au>  
To: "Bouwman, Glen 1" <Glen.Bouwman1@z22.defence.gov.au>  
Date: 12/04/2013 01:17  
Subject: FW: Mi26 Extension [SEC-RESTRICTED]  
22

---

**Version**  
Titus 3.3.8.1

**Sender Details**  
"Northrup, Robert MR"

**Protective Marking**  
~~SEC-RESTRICTED~~  
22

~~RESTRICTED~~  
Glen,

Can you follow this up as Nick is on leave.

Kind regards

**Rob Northrup**

**Deputy Director Operational Contacting**

**J43 (Directorate of Logistics Operations)**

**Headquarters Joint Operations Command (Bungendore)**  
**Department of Defence**

( 02 612 84817½ 02 612 84106½: [robert.northrup@defence.gov.au](mailto:robert.northrup@defence.gov.au)½+ B1-1-L145

**Please consider the environment before printing this email**

---

**From:** Casey, Lucinda LCDR  
**Sent:** Friday, 12 April 2013 11:15  
**To:** State, Andrew; Edwards, Nicholas  
**Cc:** Krauklis, Neil LEUT; Gassdorf, Jody; Prucha, Joshua MAJ; Northrup, Robert MR; Bellas, Shawn SQLDR  
**Subject:** Mi26 Extension [SEC-RESTRICTED]  
22

~~RESTRICTED~~

Good Morning Gentlemen,

## **Mi26 CONTRACT - EXERCISING OPTION ONE - JUL to OCT 2013**

I have prepared a DB and the letter to send to DynCorp (Aust) for the extension of AO/002/12-13 (Rotary Wing Services for OP SLIPPER - Mi26); however before I send this out, could you please confirm that the RFC and J4 approve/endorse the recommendation that the Mi26 Block Operating hours continue to operate at the maximum capability of 50 to 88 hours for the 1st extension.

I have attached the Minute from FSU to COMD 1 JMOVGP for your information.

Thanking you in advance,

*Lucinda*

**L.K.CASEY**

LCDR, RAN

SO2 SLCC, HQ1JMOVGP

HQJOC-B, B1-G-E148

CANBERRA BC ACT 2610

Tel: +61 (0) 2 6128 4949

Fax: +61 (0) 2 6128 4106

Mob: +22

Email: [Lucinda.Casey@defence.gov.au](mailto:Lucinda.Casey@defence.gov.au)

(Strategic Lift Co-ordination Cell, Headquarters 1st Joint Movements Group)

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[attachment "Mi26 Contarct EX Opt 1.pdf" deleted by Anthony Lamers/Z22/DEPR/AU]

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22

**From:** Haraki, Maedb MISS  
**Sent:** Friday, 11 October 2013 7:42 AM  
**To:** Watson, Paul CAPT 12  
**Cc:** Nelson, Renee MRS 2; Northrup, Robert MR  
**Subject:** RE: Mi26 Services Contract [SEC=UNCLASSIFIED]

**Categories:** UNCLASSIFIED

UNCLASSIFIED

Good morning Paul,

I have given Renee read/write/create privileges to this folder. If there are any problems encountered, please let me know.

Kind regards,  
Maedb

---

**From:** Watson, Paul CAPT 12  
**Sent:** Thursday, 10 October 2013 15:15  
**To:** Haraki, Maedb MISS  
**Cc:** Nelson, Renee MRS 2; Northrup, Robert MR  
**Subject:** FW: Mi26 Services Contract [SEC=UNCLASSIFIED]

UNCLASSIFIED

Hi Maedb,

Please can you help? I would like to allow Renee (CC'd) access to the Current Contracts folder (reference attached) so she can keep the documents up to date.

What do I need to do?

Cheers

Paul

**P.A. WATSON**

Captain

[S03 Operational Contracts](#)

[Headquarters Joint Operations Command](#)

JOC-B1-0-B023 | Bungendore | NSW 2621

Tel: (02) 612 84457 | Mobile: 22

Email: [paul.watson12@defence.gov.au](mailto:paul.watson12@defence.gov.au)

HQJOC J43 Maintenance Group Mailbox: [HQJOC.J43Maint@defence.gov.au](mailto:HQJOC.J43Maint@defence.gov.au)

<http://intranet.defence.gov.au/jocweb/sites/Home/>

---

**From:** Nelson, Renee MRS 2  
**Sent:** Thursday, 10 October 2013 11:52

**To:** Watson, Paul CAPT 12  
**Subject:** RE: Mi26 Services Contract [SEC=UNCLASSIFIED]

UNCLASSIFIED

Hey Paul

the system is telling me that I have insufficient privileges

Ren

---

**From:** Watson, Paul CAPT 12  
**Sent:** Thursday, 10 October 2013 11:15  
**To:** Nelson, Renee MRS 2  
**Subject:** Mi26 Services Contract [SEC=UNCLASSIFIED]

UNCLASSIFIED

Hi Renee,

Please can you put the updated contract documentation in this folder please.

Cheers

Paul

**P.A. WATSON**  
Captain  
[SO3 Operational Contracts](#)  
[Headquarters Joint Operations Command](#)  
JOC-B1-0-B023 | Bungendore | NSW 2621  
Tel: (02) 612 84457 | Mobile: 22 [REDACTED]  
Email: [paul.watson12@defence.gov.au](mailto:paul.watson12@defence.gov.au)  
HQJOC J43 Maintenance Group Mailbox: [HQJOC.J43Maint@defence.gov.au](mailto:HQJOC.J43Maint@defence.gov.au)  
<http://intranet.defence.gov.au/jocweb/sites/ Home/>

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**From:** Northrup, Robert MR  
**Sent:** Thursday, 5 December 2019 3:04 PM  
**To:** Izzard, Belinda MRS; Rogerson, Matthew COL  
**Cc:** Hamer, David MR 1; Clark, Dean LTCOL; White, Phillip CMDR  
**Subject:** RE: QB19-000617 - For your urgent review [SEC=UNCLASSIFIED]  
**Attachments:** 212570813\_1\_Rotary Wing Afghanistan Contract with Vertical T (Execution version 22 02 11).PDF; Contract Management Plan AO-004-10-11.pdf; Contract Management Plan AO-004-10-11 Attachments.zip; FW RW Contract and CMP SEC IN-CONFIDENCE COMMERCIAL .msg; OP SLIPPER RW SOW SEC UNCLASSIFIED COMMERCIAL .msg; FW: Change to Mi-26 Billing and Invoicing Agent [SEC=UNCLASSIFIED]

**Categories:** UNCLASSIFIED

## UNCLASSIFIED

Good Afternoon All,

I have check my strategic account and can provide the following information regarding the Vertical lift. (See attached.)

- 212570813\_1\_Rotary Wing Afghanistan Contract with Vertical T (Execution version 22 02 11) (003)
- Contract Management Plan AO-004-10-11
- Contract Management Plan AO-004-10-11 Attachments.zip
- CMP word .docs
- 02 100817 RW Procurement Strategy AO0041011
- Change to Mi-26 Billing and Invoicing Agent

If you require and further information please contact me via my deployed account

**Rob Northrup**  
**Contract Manager**

CMC

HQJTF633

Desk: (02) 6224 4282

Mobile: +22

SVOIP: 63323

Email: [Robert.northrup@mil.defence.gov.au](mailto:Robert.northrup@mil.defence.gov.au)

HQJTF633 CMC [HQJTF633CMC@mil.defence.gov.au](mailto:HQJTF633CMC@mil.defence.gov.au)

For calls to the UAE from Australia dial: 0011 + 971 + area code + telephone number.

For calls from the UAE to Australia dial: 00 + 61 + area code + telephone number.

-----  
Kind regards

**Rob Northrup**  
**Deputy Director Operational Contracting**  
**J43 (Directorate of Logistics Operations)**  
**Headquarters Joint Operations Command (Bungendore)**  
**Department of Defence**

**Phone: +61 (2) 612 84817**

Mobile: 22  
Fax: +61 (2) 612 84106  
Email: [robert.northrup@defence.gov.au](mailto:robert.northrup@defence.gov.au)  
Mail: B1-1-LS33

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---

**From:** Izzard, Belinda MRS <[belinda.izzard@defence.gov.au](mailto:belinda.izzard@defence.gov.au)>  
**Sent:** Thursday, 5 December 2019 6:52 AM  
**To:** Clark, Dean LTCOL <[dean.clark@defence.gov.au](mailto:dean.clark@defence.gov.au)>; Northrup, Robert MR <[robert.northrup@defence.gov.au](mailto:robert.northrup@defence.gov.au)>; White, Phillip CMDR <[phillip.white@defence.gov.au](mailto:phillip.white@defence.gov.au)>  
**Cc:** Hamer, David MR 1 <[david.hamer1@defence.gov.au](mailto:david.hamer1@defence.gov.au)>  
**Subject:** RE: QB19-000617 - For your urgent review [SEC=UNCLASSIFIED]

UNCLASSIFIED

Hi all,

Given answers could come through when I'm not at my desk, I've CC'd David from CASG into this email trail. Please 'reply all' when answering – that way no hold up for CASG.

Thanks for everyone working together quickly on this; much appreciated.

Belinda

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---

**From:** Clark, Dean LTCOL <[dean.clark@defence.gov.au](mailto:dean.clark@defence.gov.au)>  
**Sent:** Thursday, 5 December 2019 1:45 PM  
**To:** Izzard, Belinda MRS <[belinda.izzard@defence.gov.au](mailto:belinda.izzard@defence.gov.au)>; Northrup, Robert MR <[robert.northrup@defence.gov.au](mailto:robert.northrup@defence.gov.au)>; White, Phillip CMDR <[phillip.white@defence.gov.au](mailto:phillip.white@defence.gov.au)>  
**Subject:** FW: QB19-000617 - For your urgent review [SEC=UNCLASSIFIED]  
**Importance:** High

UNCLASSIFIED

Belinda,

I will pass this on to the contracting pers to run their eyes over and comment as necessary.

Phil and Rob,

FYA.

Dean

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---

**From:** Izzard, Belinda MRS <[belinda.izzard@defence.gov.au](mailto:belinda.izzard@defence.gov.au)> **On Behalf Of** HQJOC Ministerials and Coordination  
**Sent:** Thursday, 5 December 2019 1:00 PM  
**To:** Lisowska, Iwona MS <[iwona.lisowska@defence.gov.au](mailto:iwona.lisowska@defence.gov.au)>; Clark, Dean LTCOL <[dean.clark@defence.gov.au](mailto:dean.clark@defence.gov.au)>  
**Subject:** FW: QB19-000617 - For your urgent review [SEC=UNCLASSIFIED]  
**Importance:** High

UNCLASSIFIED

Hello all,

As per my discussion with Iwona, CASG have asked if we could please cast our eye over the attachment as a matter of urgency. I know you are waiting on Rob's input, but I am hoping the info CASG has drafted can be easily verified by either of you and isn't something that needs Rob to check.

If you could let me know, I can liaise with CASG.

Thanks again,

Belinda

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---

**From:** Hamer, David MR 1 <[david.hamer1@defence.gov.au](mailto:david.hamer1@defence.gov.au)> **On Behalf Of** CASG COORD  
**Sent:** Thursday, 5 December 2019 12:47 PM  
**To:** HQJOC Ministerials and Coordination <[hqjocministerials.coordination@defence.gov.au](mailto:hqjocministerials.coordination@defence.gov.au)>  
**Cc:** CASG COORD <[casg.coord@defence.gov.au](mailto:casg.coord@defence.gov.au)>  
**Subject:** QB19-000617 - For your urgent review [SEC=UNCLASSIFIED]  
**Importance:** High

UNCLASSIFIED

Hello HQJOC / Belinda

As discussed earlier by phone, could HQJOC please review and clear the additional information in the QB as a matter of urgency ?

Should you need any further information please do not hesitate to contact me.  
Kind regards

**David Hamer**

CASG Coordination

**Department of Defence** | Capability Acquisition and Sustainment Group

R2-5-A084 | Russell Offices | CANBERRA | ACT 2600

P: (02) 6265 5589

E: [david.hamer1@defence.gov.au](mailto:david.hamer1@defence.gov.au)

Office Days: Monday/Tuesday/Thursday/Friday

*I acknowledge the traditional custodians of the lands and waters where I live and work, and pay my respects to elders past and present.*

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---

**From:** Fairweather, Shane MR 1 <[shane.fairweather1@defence.gov.au](mailto:shane.fairweather1@defence.gov.au)>  
**Sent:** Thursday, 5 December 2019 12:34 PM  
**To:** CASG COORD <[casg.coord@defence.gov.au](mailto:casg.coord@defence.gov.au)>; CASG GBM Office <[casggbmoffice@dpe.protected.mil.au](mailto:casggbmoffice@dpe.protected.mil.au)>; Scott, Kelly MRS 1 <[kelly.scott1@defence.gov.au](mailto:kelly.scott1@defence.gov.au)>  
**Subject:** RE: QB19-000617 - For your urgent review [SEC=UNCLASSIFIED]

UNCLASSIFIED

Kelly,

Updated version, can you get JOC Corod to clear the added section lease,

Cheers

Shane

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---

**From:** Hamer, David MR 1 <[david.hamer1@defence.gov.au](mailto:david.hamer1@defence.gov.au)> **On Behalf Of** CASG COORD  
**Sent:** Thursday, 5 December 2019 12:17 PM  
**To:** CASG GBM Office <[casggbmoffice@dpe.protected.mil.au](mailto:casggbmoffice@dpe.protected.mil.au)>; Fairweather, Shane MR 1 <[shane.fairweather1@defence.gov.au](mailto:shane.fairweather1@defence.gov.au)>  
**Cc:** CASG COORD <[casg.coord@defence.gov.au](mailto:casg.coord@defence.gov.au)>  
**Subject:** QB19-000617 - For your urgent review [SEC=UNCLASSIFIED]  
**Importance:** High

UNCLASSIFIED

Hello Shane

Here is QB19-000617 as it stands at present – could you please review and let us know if you would like it recalled for further edits/updates ?

Kind regards

**David Hamer**

CASG Coordination

**Department of Defence** | Capability Acquisition and Sustainment Group

R2-5-A084 | Russell Offices | CANBERRA | ACT 2600

P: (02) 6265 5589

E: [david.hamer1@defence.gov.au](mailto:david.hamer1@defence.gov.au)

Office Days: Monday/Tuesday/Thursday/Friday

*I acknowledge the traditional custodians of the lands and waters where I live and work, and pay my respects to elders past and present.*

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# Services Contract (Rotary Wing Services for Sustainment Operations in Afghanistan)

Commonwealth of Australia represented by the  
Department of Defence

ABN 68 706 814 312

and

DynCorp (Aust.) Pty Limited

ABN 87 107 783 675

Reference: 06 3000 6736

2012

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**THIS AGREEMENT** is made on December 2012

**BETWEEN:**

- (1) **Commonwealth of Australia** represented by and acting through the **Department of Defence** ABN 68 706 814 312 (the "**Commonwealth**"); and
- (2) **DynCorp (Aust.) Pty Limited**, ABN 87 107 783 675, whose registered address is at 3-5 Phipps Close, Deakin in the Australian Capital Territory (the "**Contractor**").

**RECITALS**

- (A) The Commonwealth requires the provision of transportation services for the movement of cargo by air within the Middle East Area of Operations (the "**MEAO**").
- (B) The transportation services are required to support the Australian Defence Force (the "**ADF**") operations and the Commonwealth's ad hoc requirements.
- (C) The Contractor agrees to provide the Services on the terms and conditions set out in this Contract.

**OPERATIVE PROVISIONS**

**THE PARTIES AGREE AS FOLLOWS:**

1. **INTERPRETATION**

1.1 **Definitions**

In this Contract, unless the contrary intention appears, terms have the meanings given to them in the Glossary at Schedule 1.

1.2 **Interpretation**

In this Contract, unless the contrary intention appears:

- (a) headings are for the purpose of convenient reference only and do not form part of this Contract;
- (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) 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;
- (f) a reference to a clause includes a reference to a subclause of that clause;
- (g) a reference to an item is a reference to an item of a Schedule to this Contract;
- (h) a reference to 'US\$', 'USD' or '\$US' means the United States of America 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.

### 1.3 **Precedence of documents**

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

- (a) these Conditions of Contract;
- (b) the Schedules;
- (c) any document incorporated by express reference as part of this Contract,

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

### 1.4 **Objectives**

The objectives of this Contract are to:

- (a) to provide an effective capability to the ADF that:
  - (i) supports the ADF's mission to 'fight and win';
  - (ii) supports the Commonwealth's policy of Defence self-reliance; and
  - (iii) minimises the Commonwealth's costs of moving Relevant Cargo;
- (b) to encourage the most efficient possible use of resources for moving Relevant Cargo;
- (c) to work within a framework that ensures personnel and materiel safety, and assures compliance with all laws and other regulatory requirements; and
- (d) to achieve these joint objectives through a culture of mutual respect and co-operation, and in an environment that fosters continuous improvement, cost efficiency, transparency and open, honest and timely communication.

## 2. **COMMENCEMENT AND TERM**

### 2.1 **Term**

Subject to clause 2.2, this Contract commences on the Effective Date and, unless terminated earlier in accordance with this Contract or otherwise, expires on 30 June 2013.

### 2.2 **Options to extend**

- (a) The Commonwealth may, in its absolute discretion, extend the Term:
  - (i) for a period of up to 4 months beyond the end of the Term (**first extension**);
  - (ii) for a further period of up to 4 months beyond the first extension (**second extension**); and
  - (iii) for a further period of up to 4 months beyond the second extension (**third extension**).

- (b) The Commonwealth may exercise its options to extend the Term under clause 2.2(a) by giving written notice to the Contractor at any time but not later than one month prior to the expiry of the then current Term by notice.
- (c) Subject to clause 3.2(a), where the Commonwealth exercises its option to extend the Term of this Contract under clause 2.2(a), the Contract will continue for the extended Term on the same terms and conditions.

### 2.3 Transition-in activities

- (a) Subject to its obligations under clause 2.4, the Commonwealth has no obligations under this Contract until the Services Start Date. However, this clause 2.3(a) does not limit or affect any right the Commonwealth has, whether under this Contract or otherwise.
- (b) The Contractor **must**, on or before the Transition In Date:
  - (i) deliver, and obtain the Commonwealth's Approval of, the Services Plan in accordance with clause 3.10;
  - (ii) provide the Commonwealth with details of the Local Representative and the Contractor Representative;
  - (iii) provide each of the following to the Commonwealth:
    - (A) a certified copy of each Air Operator's Certificate;
    - (B) copies of all documentation submitted to the Aviation Authorities in relation to the Aircraft;
    - (C) evidence that the Contractor is certified as meeting all applicable ICAO and IATA standards;
    - (D) the list of Contractor Personnel present in Afghanistan as required under clause 7.1, together with the following:
      - (aa) copies of any security and background checks required by the Commonwealth;
      - (bb) copies of passports, identification documents, visas, and other documents required to enter and exit Afghanistan;
      - (cc) copies of Geneva Conventions Identification Cards, if the Contractor Personnel has been issued such a card by a member state;
      - (dd) evidence that the Contractor Personnel has received personal security/protection training;
    - (E) evidence the Contractor has effected the insurance arrangements required under clause 21;
  - (iv) brief the Commonwealth on the accident and reporting procedures of the Contractor;
  - (v) provide the Commonwealth with details of the Telephone Service;

- (vi) obtain, and provide copies to the Commonwealth of, all Approvals required in order for the Contractor to provide the Services in accordance with this Contract; and
  - (vii) provide the Commonwealth with any other information in relation to the Contractor, the Contractor Personnel or the performance of the Services, as required by the Commonwealth by notice to the Contractor at least 5 Working Days before the Transition In Date.
- (c) The Contractor **must**, as soon as possible but no later than the Services Start Date:
- (i) ensure the Aircraft is positioned at the Base Airport and ready to be used by the Contractor in providing the Transport Services;
  - (ii) ensure all personnel required to operate the Aircraft and provide the Transport Services are sufficiently close to the Base Airport to provide those services and meet the requirements of clause 7.1; and
  - (iii) be ready, willing and able to perform Transport Services under this Contract.
- (d) The Commonwealth may, by notice to the Contractor, waive compliance with a requirement of clause 2.3(b) or 2.3(c). A waiver may be subject to conditions specified in the notice.
- (e) The Contractor **must** notify the Commonwealth as soon as the requirements of clause 2.3(b) and 2.3(c) have been met.
- (f) If the Commonwealth is satisfied that all the requirements of clause 2.3(b) and 2.3(c) have been complied with or waived (and, if waived subject to conditions, that all the conditions have been complied with), the Commonwealth **must** notify the Contractor as soon as practicable.
- (g) If the Commonwealth is not satisfied that all the requirements of clause 2.3(b) and 2.3(c) have been complied with or waived on or before the Transition In Date or the Services Start Date (as applicable), then, without limiting the Commonwealth's other rights under this Contract or at law, the Commonwealth may give a Default Notice to the Contractor in accordance with clause 23.1 and, if the Contractor fails to comply with the Default Notice within the period specified therein, terminate this Contract under clause 23.3(g).
- (h) The Contractor releases the Commonwealth from any liability it otherwise may have had to the Contractor, and the Contractor will not be entitled to make any Claim against the Commonwealth, arising out of or in connection with a termination effected pursuant to clause 2.3(g).

#### 2.4 **Aircraft parking arrangements**

- (a) The Contractor **must** continue to maintain parking approvals for the Aircraft (including, when required, the replacement aircraft referred to in clause 4.3), at the Base Airport or other suitable parking location specified by the Commonwealth.
- (b) The Commonwealth **must** use its reasonable endeavours to assist the Contractor in maintaining the approval required under clause 2.4(a).

### 3. **PROVISION OF THE SERVICES**

#### 3.1 **Description of the Services**

The Contractor **must**, in accordance with this Contract:

- (a) provide the Transport Services as tasked by the Commonwealth under this Contract, being at least the Minimum Capability per month and up to the Maximum Capacity per month;
- (b) provide, operate and maintain all Aircraft required for the provision of the Transport Services;
- (c) obtain all Approvals necessary for the performance of the Transport Services;
- (d) plan and coordinate the performance of the Transport Services;
- (e) safely and securely move the Relevant Cargo from each Loading Location to each Unloading Location by the relevant Delivery Time and as set out in an Advance Departure Notice as confirmed or varied by a Pre-Departure Notice;
- (f) except where this Contract expressly provides otherwise, provide, operate and use all suitable equipment, materials and consumables including cranes, forklifts and ramps and bridging plates required for the loading, tie down/securing, slinging and unloading of the Relevant Cargo and for the provision of the Services; and
- (g) provide all appropriately qualified personnel for performing the Services.

#### 3.2 **Commonwealth's right to review Block Hours**

- (a) Where the Commonwealth gives a notice to extend the Term of this Contract in accordance with clause 2.2(a), the Commonwealth may, in its discretion, reduce the Minimum Capability and Maximum Capacity for each month in the extension period to the following:

Minimum Capability:	32 Block Hours
Maximum Capacity:	50 Block Hours

- (b) The Commonwealth will notify the Contractor in writing of any modification to the Minimum Capability and the Maximum Capacity.
- (c) In the event that the Minimum Capability and the Maximum Capacity are reduced in accordance with this clause 3.2, the Monthly Standby Rate and the Hourly Flying Rate will increase to the amounts provided in Items 4.2 and 4.3 of Schedule 2 for a Minimum Capability of 32 Block Hours and a Maximum Capacity of 50 Block Hours.

#### 3.3 **Commonwealth's right to modify its use of the Aircraft**

- (a) In addition to the Commonwealth's rights in clause 3.2, where the Commonwealth gives a notice to extend the Term of this Contract in accordance with clause 2.2(a), the Commonwealth may in its discretion and in respect of each or any of the periods for which the Commonwealth extends the Term require the exclusive use of the Aircraft for each month in that extension period.

- (b) The Commonwealth will notify the Contractor in writing of any proposed modification to its use of the Aircraft under clause 3.3(a), in which case the parties will negotiate in good faith to agree on any resulting amendments to the Monthly Standby Rate and Hourly Flying Rate to apply during the relevant extension period.
- (c) If the Commonwealth and the Contractor cannot agree on amendments to the Monthly Standby Rate and Hourly Flying Rate after holding negotiations in accordance with clause 3.3(b) above prior to the commencement of the relevant extension period of the Term, the Monthly Standby Rate and the Hourly Flying Rate will, subject to clause 3.2(c), remain as they were prior to the commencement of the said extension period.

### 3.4 Requirements for the Services

The Contractor **must** ensure the Services are performed:

- (a) in accordance with this Contract;
- (b) in a manner that is consistent with achieving the objectives set out in clause 1.4;
- (c) to the satisfaction of the Commonwealth Representative;
- (d) diligently, effectively and to a high professional standard;
- (e) using personnel who:
  - (i) are suitably qualified with appropriate skills and experience;
  - (ii) hold an appropriate current certificate, authorisation, clearance or accreditation at all times during the provision of the Services, including (where applicable) in accordance with the Aircraft Operating Certificate for the Aircraft and the rules and regulations of the countries in which the Aircraft will operate; and
  - (iii) are able to comply with the requirements of clauses 3.13 and 3.14, where applicable;
- (f) in accordance with all relevant laws, statutes, regulations, by-laws and policies of the Commonwealth, with the requirements of any State, Territory or local authority, and with all relevant orders, directives, and instructions issued by ISAF;
- (g) in accordance with any applicable laws of any foreign countries including those in which the Aircraft will operate;
- (h) subject to the remainder of this clause 3.4, in accordance with the Contractor's Company Operations Manual governing the operation of the Aircraft; and
- (i) in accordance with the reasonable directions from time to time of the Commonwealth Representative.

### 3.5 Obligations regarding Relevant Cargo

- (a) The Contractor **must** ensure that:
  - (i) the Relevant Cargo is kept safe and secure at all times while it is in the care custody or control of the Contractor or a Subcontractor;
  - (ii) any safety or security requirements specified by the Commonwealth from time to time are complied with; and

- (iii) the Relevant Cargo is only handled by suitably qualified persons or by persons supervised by suitably qualified persons, in a safe, responsible, competent and skilful manner.
- (b) Where the departure of an Aircraft is delayed (except to the extent the delay is caused by the Commonwealth, its officers, employees and agents), the Contractor **must** ensure that the Relevant Cargo is securely stored in accordance with any directions given by the Commonwealth.
- (c) The Contractor **must**, immediately upon becoming aware that any Relevant Cargo in its care, custody or control is lost, destroyed or damaged, notify the Commonwealth Representative of the event in writing.
- (d) The Contractor **must** not, and **must** ensure that the Contractor Personnel does not, without the prior written approval of the Commonwealth Representative:
  - (i) use the Relevant Cargo;
  - (ii) modify the Relevant Cargo; or
  - (iii) transfer possession or control of the Relevant Cargo to any other person, other than to the Commonwealth at the relevant Unloading Location.
- (e) The Relevant Cargo remains the property of the Commonwealth at all times. The Commonwealth retains the right to reasonably identify the Relevant Cargo as its property and the Contractor **must** ensure that any means of identification are preserved.
- (f) The Contractor must not, and must ensure that its officers, agents, employees and Subcontractors do not:
  - (i) represent itself or themselves (as the case may be) as being the owner of the Relevant Cargo; or
  - (ii) create or allow to be created any lien, charge, mortgage or encumbrance over any Relevant Cargo.

### 3.6 Dangerous Goods

- (a) Subject to clause 3.6(c), the Contractor **must** carry all Relevant Cargo specified in an Advance Departure Notice, including any Relevant Cargo which comprise Dangerous Goods.
- (b) In respect of any Relevant Cargo which comprise Dangerous Goods, the Contractor **must** comply with 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 2010* (as amended from time to time) unless the Commonwealth grants an express written waiver.
- (c) Where the Relevant Cargo includes Dangerous Goods, the Commonwealth **must**:
  - (i) specifically identify the Dangerous Goods in the relevant Advance Departure Notice or Pre-Departure Notice 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 Cargo to the Contractor at the Loading Location;
- (iii) ensure that the Dangerous Goods are packaged and labelled 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.

### 3.7 Ground Handling Services

- (a) The Contractor will be responsible for providing all Ground Handling Services for the loading and unloading of Relevant Cargo from the Aircraft at all Loading Locations and Unloading Locations for each Transport Service, except to the extent the Commonwealth agrees to provide assistance in accordance with clause 12.4.
- (b) Without limiting clause 3.7(a), the Contractor **must** load and unload all Relevant Cargo at each Loading Location and Unloading Location, including:
  - (i) loading the Relevant Cargo at the Loading Location and from a point agreed between the parties, in the vicinity of the landing zone, onto the Aircraft; and
  - (ii) unloading the Relevant Cargo from the Aircraft at the Unloading Location and to a point agreed between the parties, in the vicinity of the landing zone.
- (c) The Contractor **must** load and unload all unit load devices required for the Transport Services.

### 3.8 Tie down

- (a) The Contractor **must** safely and securely tie down all Relevant Cargo and/or load devices in or on the Aircraft in accordance with:
  - (i) the loading instructions in the operating manual for the Aircraft;
  - (ii) any requirements of any Aviation Authorities; and
  - (iii) any applicable laws, directions, Approvals or standards.
- (b) The Contractor **must**, upon completion of the loading and tie down/securing of the Relevant Cargo (including where the Commonwealth has provided assistance), examine the tie down/securing of the Relevant Cargo to ensure that it is safe and secure.

### 3.9 External transport of Relevant Cargo

If any Relevant Cargo is proposed to be secured externally to the Aircraft using a cargo sling, the Contractor **must**:

- (a) ensure that the pilot and other Contractor Personnel involved are suitably qualified to prepare for, and carry out, the external loading operations;

- (b) ensure that the Relevant Cargo is safely and securely loaded into the cargo sling, and the cargo sling is safely and securely attached to the Aircraft, in accordance with:
  - (i) all applicable operating manuals;
  - (ii) the requirements of any Aviation Authorities; and
  - (iii) any applicable laws, directions, Approvals or standards; and
- (c) ensure that the transportation of the Relevant Cargo using the cargo sling will not impede the safe operation of the Aircraft or present a risk to any person or property.

### 3.10 Planning for the Transport Services

- (a) The Contractor **must** undertake all necessary planning for the performance of the Transport Services, including in relation to:
  - (i) route selection;
  - (ii) take-off procedures;
  - (iii) fuel requirements;
  - (iv) crew resourcing;
  - (v) flight timing;
  - (vi) weather conditions;
  - (vii) potential threats and hazards and diversion sites;
  - (viii) loading and unloading requirements;
  - (ix) emergency procedures;
  - (x) flight and duty limits;
  - (xi) security arrangements; and
  - (xii) maintenance procedures, documentation and spare parts,

in each case, in accordance with all applicable laws, treaties and international agreements, regulations, directives, instructions, standards, policies and procedures and in accordance with this Contract.
- (b) The Contractor **must**, before the Transition In Date, submit to the Commonwealth a plan ("**Services Plan**") addressing the matters referred to in clause 3.10(a).
- (c) Within 3 days of receipt of the Services Plan, the Commonwealth **must** notify the Contractor whether it:
  - (i) approves the Services Plan; or
  - (ii) rejects the Services Plan, in which case the Commonwealth **must** provide reasons for the rejection.
- (d) If the Services Plan is rejected by the Commonwealth under clause 3.10(c), the Contractor **must**, within 3 days of the Commonwealth's notification of rejection,

submit a revised Services Plan to the Commonwealth, amended to meet the requirements of the Commonwealth and this clause 3.10.

- (e) Without limiting its rights to request Transport Services under this Contract, the Commonwealth **must**, no less than 14 days before the start of a month, provide the Contractor a with report ("**Monthly Forecast Report**") setting out its anticipated Transport Services requirements for the next month.
- (f) The Contractor **must**, within 5 days of receiving the Monthly Forecast Report, submit to the Commonwealth a plan ("**Monthly Forecast Plan**"), addressing the matters referred to in clause 3.10(a) and taking into account the information provided in the Monthly Forecast Report.
- (g) Within 3 days of receipt of the Monthly Forecast Plan, the Commonwealth **must** notify the Contractor whether it:
  - (i) approves the Monthly Forecast Plan; or
  - (ii) rejects the Monthly Forecast Plan, in which case the Commonwealth **must** provide reasons for the rejection.
- (h) If the Monthly Forecast Plan is rejected by the Commonwealth under clause 3.10(g), the Contractor **must**, within 3 days of the Commonwealth's notification of rejection, submit a revised Services Plan to the Commonwealth, amended to meet the requirements of the Commonwealth and this clause 3.10.
- (i) The Contractor acknowledges that approval of a Services Plan in accordance with clause 3.10(c) or a Monthly Forecast Plan under clause 3.10(g) does not:
  - (i) constitute a representation by Commonwealth that the Services Plan or Monthly Forecast Plan is feasible or appropriate, or that it meets the requirements of this Contract;
  - (ii) limit the Contractor's responsibility to provide the Services in accordance with the requirements of this Contract; or
  - (iii) constitute a waiver of any right of the Commonwealth under this Contract, or of any cause of action out of any act or omission of the Contractor or any of the Contractor Personnel.
- (j) The Contractor **must** provide the Transport Services in accordance with the approved Services Plan and approved Monthly Forecast Plan, noting that the Monthly Forecast Plan will override the Services Plan to the extent of any inconsistency.

### 3.11 **Obtaining information for the Transport Services**

Without limiting clause 3.10, the Contractor **must** obtain all information required to properly plan the performance of the Transport Services, including:


- (a) aeronautical or navigational information;
- (b) information on weather conditions or conditions at or near any landing location; or
- (c) information on the threats and hazards likely to be faced in performing the Transport Services; and
- (d) information on the conditions generally prevailing in the sector(s) in which the Transport Services are to be performed.

### 3.12 Prohibited Countries

Unless otherwise agreed by the Commonwealth in writing or where necessary in an emergency situation, the Contractor **must** ensure that, in providing the Transport Services:

- (a) each Aircraft only operates within Afghanistan and does not fly within 10km of an international border of Afghanistan; and
- (b) without limiting 3.12(a), none of the Aircraft land in or otherwise overfly any of the following prohibited countries:

33(a)(iii)



- (v) any other foreign state specified by the Commonwealth, at its absolute discretion, from time to time.

### 3.13 Communication in Afghanistan

- (a) The Contractor **must** ensure that at all times during the Term there is an on-site representative ("**Local Representative**") located at the Base Airport who:
  - (i) reads, writes and speaks fluent English; and
  - (ii) unless otherwise agreed by the Commonwealth in writing, is an employee of the Contractor.
- (b) The language for all communications, written or verbal, is English. All Contractor or Subcontractor aircrew and ground crew **must** be able to comprehend and communicate effectively in English.

### 3.14 Communication requirements for pilots

- (a) All Contractor or Subcontractor pilots **must** be proficient in English to ICAO Level 4 standards in all of the six skill areas:
  - (i) pronunciation;
  - (ii) structure;
  - (iii) vocabulary;
  - (iv) fluency;
  - (v) comprehension; and
  - (vi) interactions.
- (b) The Contractor is responsible for verifying this standard and producing documentation indicating an ICAO English Assessment Test upon request by the Commonwealth.

- (c) Pilots **must** communicate directly with ATC or other ground crew and **must** not use an English-speaking crew chief or any other intermediary to translate radio communications.
- (d) The Commonwealth reserves the right to remove any pilot from operations, who, in the opinion of the Commonwealth, does not speak sufficiently fluent English or understand ATC instructions.

**3.15 No passengers**

The Contractor must not, when performing a Transport Service or any Third Party Tasking, use the Aircraft to carry any Non-Operational Personnel.

**3.16 Non-beneficiary of immunities etc conferred on the Commonwealth**

The Contractor is not entitled to benefit from:

- (a) any immunity from the laws of Afghanistan or other jurisdiction; or
- (b) other protection,

conferred on the Commonwealth under any agreement or arrangement made from time to time between the Commonwealth and the Government of the Islamic Republic of Afghanistan, unless otherwise agreed by the Commonwealth in writing.

**3.17 On-site representative**

In relation to each Transport Service, the Contractor **must** nominate an on-site representative (which may be a member of the aircrew) at each Loading Location and the Unloading Location.

**4. REQUIREMENTS OF THE AIRCRAFT**

**4.1 Provision of Aircraft**

The Contractor **must**, at its cost:

- (a) provide the Aircraft to transport the Relevant Cargo and provide all labour, equipment, ground support equipment, plant, consumables (excluding fuel) and materials required for the performance of the Transport Services in accordance with this Contract; and
- (b) perform all necessary maintenance in respect of the Aircraft to ensure an Aircraft is available at all times to perform Transport Services in accordance with this Contract.

**4.2 Priority but not exclusive use of Aircraft**

- (a) This clause 4.2 applies unless and until the Commonwealth requires exclusive use of the Aircraft under clause 3.3.
- (b) The Aircraft may be used for Third Party Tasking, provided that:
  - (i) while the Aircraft is being used to provide the Transport Services, that Aircraft is exclusively used for that purpose unless the Commonwealth gives its prior written consent;

- (ii) any use of the Aircraft for Third Party Tasking will not affect, impede or delay the provision of the Transport Services in accordance with this Contract;
  - (iii) the requirements for the Transport Services take precedence over any third party or Contractor use of the Aircraft, unless the Commonwealth agrees otherwise in writing in relation to a particular proposed third party or Contractor use; and
  - (iv) the Contractor obtains the Commonwealth's prior consent in relation to any proposed use of the Aircraft (including the replacement aircraft) for any Third Party Tasking, which consent must not be unreasonably withheld.
- (c) For the avoidance of doubt, the end costs of any Third Party Tasking is to be borne solely by the Contractor.
- (d) In considering whether to give its consent under clause 4.2(b)(i), the Commonwealth will take into account (without limiting any other matters) the nature of the Third Party Tasking including any risks associated with the Third Party Tasking being undertaken concurrently with Transport Services.
- (e) If the Aircraft is being used, or planned to be used for any Third Party Tasking and the Commonwealth considers that such usage will affect, impede or delay the provision of the Transport Services, the Commonwealth may direct the Contractor not to use the Aircraft for that Third Party Tasking, regardless of whether the Commonwealth has provided consent under clause 4.2(b)(iv).
- (f) The Contractor **must** ensure that an Aircraft, and a crew that is able to operate the Aircraft, is available to perform the Transport Services at all times during the Term other than:
  - (i) during reasonable third party or Contractor use of the Aircraft that does not affect, impede or delay the provision of the Transport Services in accordance with this Contract;
  - (ii) any periods of programmed maintenance not exceeding five days in a given month; or
  - (iii) to the extent the crew is unavailable due to the crew flight and duty limits specified in an approved Services Plan being reached in a given month.

#### 4.3 Replacement Aircraft

- (a) Without limiting the Contractor's obligations or the Commonwealth's rights under this Contract, in the event that an Aircraft is not available (other than due to programmed maintenance not exceeding five days in a given month), the Contractor **must** (at no cost to the Commonwealth, including in relation to position in the replacement aircraft) ensure that, within 48 hours of that Aircraft being unavailable and without interfering with the provision of the Services, a replacement aircraft is available for the provision of Transport Services at the Base Airport.
- (b) The Contractor **must** obtain the Commonwealth's prior written approval of a replacement aircraft that it proposes to use under clause 4.3(a).
- (c) Where a replacement aircraft is used to provide Transport Services, the Contractor agrees that:



- (i) the number of Block Hours claimed by the Contractor in relation to the provision of Transport Services using the replacement aircraft will be no greater than the number of Block Hours that could have reasonably been claimed by the Contractor, had the Transport Services been provided using the Primary Aircraft; and
- (ii) the Commonwealth may (at its election) either:
  - (A) require the Contractor to repay to the Commonwealth; or
  - (B) reduce the amount of the Contract Price for that month by,  
  
an amount in respect of fuel to enable the replacement aircraft to provide the Transport Services to the extent that the amount of such fuel is greater than the amount of fuel that would have reasonably been used had the Transport Services been provided using the Primary Aircraft.
- (d) The Contractor **must** recommence using the Primary Aircraft for Transport Services as soon as possible, but no later than seven (7) days after the Primary Aircraft became unavailable, unless otherwise agreed by the parties.
- (e) Without limiting any right of the Commonwealth under this Contract, the Contractor **must** take all reasonable steps available to it, and use its best endeavours to ensure that any replacement aircraft that it proposes to use under clause 4.3(a) is operationally and functionally equivalent to the Primary Aircraft.

#### 4.4 Aircraft requirements

The Contractor **must** ensure, and represents and warrants, that at all times during the Term:

- (a) each Aircraft is designated as a Cargo Only Aircraft;
- (b) the available cargo carrying capacity of each Aircraft, unless approved by the Commonwealth in relation to a replacement aircraft under clause 4.3(a), to hold Relevant Cargo is at least 11,000 kg and 120m<sup>3</sup> over a minimum transit distance of 70 nautical miles;
- (c) each Aircraft **must** be fully equipped and certified to conduct external load operations, including the carriage of Relevant Cargo by suspending the Relevant Cargo below the Aircraft in a cargo sling; and
- (d) each Aircraft is:
  - (i) compliant with the airworthiness requirements and all other requirements set out in this Contract;
  - (ii) airworthy and fit for the purpose of carrying the Relevant Cargo;
  - (iii) fitted and equipped with:
    - (A) UHF, VHF and FM two-way radios (frequency range 30-400 MHz) to allow for communication with Australian and Coalition Military ground units;
    - (B) satellite communication capabilities (including a satellite mobile phone) in case of an emergency landing outside of a secure area; and

- (C) an Emergency Locator Transmitter ("**ELT**") compatible with the theatre and users' search and rescue capabilities.

#### 4.5 **Aircraft not a State Aircraft**

Each Aircraft providing a Transport Service will operate as a Civil Aircraft and not a State Aircraft and the Contractor **must** ensure that none of the Aircraft are represented to be State Aircraft, unless otherwise agreed by the Commonwealth in writing.

### 5. **OPERATION OF AIRCRAFT**

#### 5.1 **Base airport**

- (a) The Contractor **must** operate from, and maintain each Aircraft at, Kandahar Airfield (OAKN) Afghanistan ("**Base Airport**") at Echo Ramp or any other suitable parking location specified by the Commonwealth Representative.
- (b) The Contractor **must** obtain and maintain all Approvals required for long term civil parking of each Aircraft at the Base Airport.
- (c) The Contractor **must** obtain all necessary materials, tools, plant, equipment, facilities, vehicles, fuel, spares, consumables and all other items which are required to enable the Contractor to operate from, and maintain each Aircraft at, the Base Airport.

#### 5.2 **Operational control of the Aircraft**

The Contractor **must** at all times ensure that:

- (a) the Contractor maintains operational control of the Aircraft and crew;
- (b) the crew is under the control of and only authorised to take orders from the Contractor; and
- (c) the Aircraft is properly staffed and crewed, equipped and fuelled.

#### 5.3 **Fuel**

- (a) The Commonwealth **must** make available to the Contractor fuel for each Aircraft at the locations, dates and times and in the volumes necessary to enable the Transport Services to be provided in accordance with this Contract.
- (b) Notwithstanding clause 5.3(a), the Contractor **must** refuel the Aircraft to enable the Transport Services to be provided, wherever possible using fuel made available by the Commonwealth under clause 5.3(a).
- (c) If applicable, the Commonwealth **must** arrange for an ADF member to accompany the Contractor when obtaining fuel and will pay for the purchase of fuel.
- (d) Subject to clause 5.3(e), the Contractor **must** only use the fuel purchased by the Commonwealth:
  - (i) for the Aircraft; and
  - (ii) in providing Transport Services.
- (e) The Contractor may use fuel for any Third Party Tasking and, to the extent that fuel is used for a Third Party Tasking, the Contractor **must** reimburse the Commonwealth for the cost of that fuel, which costs are to be determined by the

Commonwealth Representative on the basis of information provided by the Contractor under clause 19.5. The Commonwealth will, by notice to the Contractor, require the Contractor to pay those amounts, in which case the Contractor **must** pay such amounts to the Commonwealth within 30 days of the Commonwealth's notice.

- (f) If the Commonwealth determines that the Contractor has used fuel other than in accordance with clause 5.3(d), the Commonwealth may (at its election) by written notice to the Contractor require the Contractor to repay the purchase price of that fuel to the Commonwealth, in which case the Contractor **must** pay such amount within 30 days of the Commonwealth's notice.
- (g) The Contractor **must** obtain and retain a receipt from the fuel provider for each purchase of fuel under this clause 5.3.

#### 5.4 **Prohibition on carrying weapons etc**

- (a) The Contractor **must** ensure that the Aircraft is not fitted with (whether temporarily or otherwise) any weapons except for electronic counter-measures or other similar anti-missile counter-measures.
- (b) Except under the provisions of clause 7.1(k)(ii), the Contractor must not transport any weapons, Explosive Ordnance or ammunition in the Aircraft, except where the weapons, Explosive Ordnance or ammunition is Relevant Cargo.

#### 5.5 **Detailed airworthiness requirements**

- (a) The Contractor **must**:
  - (i) at all times during the Term, possess a valid Air Operator's Certificate in respect of each Aircraft;
  - (ii) promptly upon request by the Commonwealth, demonstrate to the reasonable satisfaction of the Commonwealth that the Contractor operates each Aircraft in accordance with the relevant Air Operator's Certificates and the requirements of the relevant Aviation Authorities;
  - (iii) promptly 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 an Aviation Authority, operations manuals, maintenance records, individual licences (aircrew and maintenance), flight records, safety incident reports and investigation reports);
  - (iv) develop and implement an accident and incident reporting system which requires the timely notification of any accident or incident to each relevant Aviation Authority and the Commonwealth. The Contractor **must**, promptly upon request by the Commonwealth, provide details of the accident and incident reporting system to the Commonwealth;
  - (v) comply with the *Work Health and Safety Act 2011* (Cth) where applicable to the provision of the Services or aviation safety;
  - (vi) ensure that the Aircraft is registered in a country recognised by IATA and complies with Afghan airworthiness requirements, as well as the airworthiness requirements of any other country in which the Aircraft is operated in providing the Transport Services;

- (vii) maintain records of any contracts, inspections or documents used to establish the airworthiness of the Aircraft;
  - (viii) following any accident or incident caused by or involving any Aircraft or otherwise relating to the provision of the Services, immediately notify each relevant Aviation Authority 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 Commonwealth to do so;
  - (ix) permit any relevant Aviation Authority and 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 authority 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;
  - (x) comply with all conditions placed upon them by an Aviation Authority and by the Air Operator's Certificate; and
  - (xi) promptly upon request by the Commonwealth provide access to documentation, records and other information to enable the Commonwealth to maintain records of any investigations, incident occurrence reports or the flying safety history of the Contractor.
- (b) The Contractor **must** ensure that each Aircraft used in the provision of the Services is only 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 Aviation Authorities;
  - (iv) in accordance with the orders, instructions, directives or requirements issued from time to time by the relevant Aviation Authorities.

## 5.6 Access to the Aircraft

- (a) The Contractor **must** provide the Commonwealth, its nominee or any Aviation Authority, full and unimpeded access to:
- (i) each Aircraft; and
  - (ii) any records of the Contractor, any Subcontractor or any Related Body Corporate of the Contractor or Subcontractor, relating to the Aircraft or its Approvals, however and wherever stored or located for the purpose of inspection or copying.

In the case of records stored on a medium other than in writing, the Contractor **must** make available on request at no additional cost to the Commonwealth such reasonable facilities or tools as may be necessary to enable a legible reproduction to be created.

- (b) The Contractor **must** ensure that the Commonwealth is granted a right for the Commonwealth or a person authorised by the Commonwealth to enter any premises occupied by the Contractor, a Subcontractor or a Related Body Corporate for the purposes set out in clause 5.6(a).
- (c) The Contractor **must** provide (and **must** ensure that the Contractor Personnel provide) all assistance reasonably requested by the Commonwealth or a person authorised by the Commonwealth to enable the Commonwealth to exercise the rights contemplated under this clause 5.6.

#### 5.7 **Noise control**

In providing the Transport Services, the Contractor **must** 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.

#### 5.8 **Rejection of Aircraft**

- (a) The Commonwealth may reject any Aircraft, proposed to be used by the Contractor to provide the Transport Services, which does not meet the requirements of this clause 5. If the Commonwealth rejects an Aircraft under this Contract, 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 5.8(a), the Commonwealth may:
  - (i) require the Contractor to provide an alternative Aircraft which complies with the requirements of this Contract; or
  - (ii) give a notice terminating this Contract in accordance with clause 23.3(k) with effect from the date specified in the notice. The Contractor releases the Commonwealth from any liability it otherwise may have had 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.

#### 5.9 **Australian Defence Force**

The Contractor **must**, and **must** ensure that the Contractor Personnel:

- (a) comply with the reasonable directions of the ADF; and
- (b) if requested by a Commonwealth Representative or ADF personnel authorised by a Commonwealth Representative:
  - (i) submit any items in its care, custody or control, or in the care, custody or control of any Contractor Personnel to the ADF for the purposes of inspection by the ADF;
  - (ii) provide access to the Aircraft or the Contractor's facilities for the purposes of inspection by the ADF; and
  - (iii) answer any questions or provide any information to the ADF.

#### 5.10 **Notification obligations**

If at any time the Contractor discovers or considers it has encountered or found Unexploded Ordnance, Explosive Ordnance or any other hazardous substance (not forming part of the Relevant Cargo) on or near a Designated Location or an Aircraft, it **must**:

- (a) protect it and not damage, disturb or touch it further;
- (b) clearly mark the location of the item;
- (c) immediately give notice to the Commonwealth of the discovery, encounter or finding, who will issue instructions for dealing with it; and
- (d) ensure that all persons and Relevant Cargo are protected from exposure to it and are kept clear of the item.

#### 5.11 **Aircraft recovery**

- (a) In the event that the Aircraft becomes disabled, damaged or destroyed while undertaking the Transport Services, the Contractor acknowledges and agrees that:
  - (i) it is responsible for recovering the Aircraft as soon as is reasonably practicable; and
  - (ii) any recoverable Relevant Cargo will be returned to the Commonwealth.
- (b) In the event that the Aircraft becomes disabled or damaged in enemy territory:
  - (i) the Contractor will make every reasonable effort to destroy the Relevant Cargo to prevent it from being recovered by the enemy; and
  - (ii) the Commonwealth may (but is not obliged to) destroy the Relevant Cargo to prevent it from being recovered by the enemy.
- (c) The Commonwealth may, at its discretion, assist in any Aircraft recovery carried out under this clause 5.11.

### 6. **PROCESS FOR ACQUIRING TRANSPORT SERVICES**

#### 6.1 **Advance Departure Notice**

- (a) The Commonwealth may, at any time during the Term in its absolute discretion, require the Contractor to provide a Transport Service by giving at least 48 hours' notice ("**Advance Departure Notice**") to the Contractor.
- (b) The Advance Departure Notice **must** provide details of the following in relation to the Transport Service:
  - (i) the Relevant Cargo to be moved by the Contractor, including whether the Contractor will be required to transport Dangerous Goods in accordance with clause 3.6 and, if so, the information about the Dangerous Goods required under clause 3.6;
  - (ii) the relevant Loading Location(s) and Unloading Location(s) in respect of each item of Relevant Cargo;
  - (iii) the date(s) and time(s) from which the Commonwealth will make the Relevant Cargo available to the Contractor for loading at each Loading Location; and



- (iv) the Delivery Time(s) for the Relevant Cargo, which **must** be at least 48 hours after the Contractor receives Advance Departure Notice, or as otherwise agreed between the parties.
- (c) The Contractor **must** notify the Commonwealth within 6 hours after receiving an Advance Departure Notice for a Transport Service if:
  - (i) the Transport Service would interfere with or delay the provision of one or more other Transport Services previously required by the Commonwealth under this Contract ("**Other Services**");
  - (ii) the Transport Service cannot be completed by the specified Delivery Time because of Other Services being carried out by the Contractor; or
  - (iii) the Contractor will be unable to load or unload the Relevant Cargo at a Forward Operating Base/Patrol Base using the loading/unloading capability that is integral to the Aircraft and/or using its Contractor Personnel.
- (d) If the Contractor does not give a notice under clause 6.1(c), the Contractor **must** provide the Transport Service and deliver and unload the Relevant Cargo by the relevant Delivery Times as specified in the Advance Departure Notice in accordance with this Contract.
- (e) If the Contractor gives a notice under clause 6.1(c), the Commonwealth may, acting reasonably, vary or cancel the Transport Service or one or more of the Other Services in accordance with clause 6.3(b).

## 6.2 **Flight Plan**

- (a) Within 12 hours (or such lesser reasonable period notified by the Commonwealth) after receiving an Advance Departure Notice, the Contractor **must** give the Commonwealth a plan ("**Flight Plan**") setting out the following details:
  - (i) the Loading Date in respect of each Loading Location, which the Contractor **must** ensure is after the date(s) and times(s) referred to in clause 6.1(b)(iii);
  - (ii) the Scheduled Departure Time for each Loading Location;
  - (iii) the load plan that details the planned load and weight allocation and identifies any excess capacity that can be used by the Commonwealth in respect of the Transport Service;
  - (iv) any Commonwealth assistance required by the Contractor in loading or unloading the Relevant Cargo at a Forward Operating Base/Patrol Base, because of the circumstances notified under clause 6.1(c)(iii); and
  - (v) whether the available capacity in the relevant Aircraft has been exceeded and, if so, by how much.
- (b) The Contractor **must** ensure that the Scheduled Departure Times specified in the Flight Plan for a Transport Service will enable the Contractor to deliver and unload the Relevant Cargo to the Unloading Location(s) before the relevant Delivery Time.
- (c) Within 12 hours after receipt of a Flight Plan, the Commonwealth **must** notify the Contractor whether it:
  - (i) approves the Flight Plan; or

- (ii) rejects the Flight Plan, in which case the Commonwealth **must** provide reasons for the rejection.
- (d) The Contractor acknowledges that approval of a Flight Plan in accordance with clause 6.2(c) does not:
  - (i) constitute a representation by Commonwealth that the Flight Plan is feasible or appropriate, or that it meets the requirements of this Contract;
  - (ii) limit the Contractor's responsibility to provide Transport Services in accordance with the requirements of this Contract; or
  - (iii) constitute a waiver of any right of the Commonwealth under this Contract, or of any cause of action out of any act or omission of the Contractor or any of the Contractor Personnel.
- (e) If the Flight Plan is rejected by the Commonwealth under clause 6.2(c), the Contractor **must**, within 6 hours of the Commonwealth's notification of rejection, submit a revised Flight Plan to the Commonwealth, amended to meet the requirements of the Commonwealth and this clause 6.2, whereupon the provisions of clauses 6.2(b), 6.2(c) and 6.2(d) will reapply to the revised Flight Plan.
- (f) Where the Commonwealth changes a Transport Service in accordance with clause 6.3(b)(ii), the Contractor **must** submit a revised Flight Plan for Commonwealth approval in accordance with this clause 6.2 within 6 hours of receipt of the notice from the Commonwealth. Clauses 6.2(c), (d) and (e) will apply to the revised Flight Plan.

### 6.3 **Pre-Departure Notice**

- (a) At least 24 hours prior to the Scheduled Departure Time (or as otherwise agreed between the parties) for a Transport Service, the Commonwealth **must** provide to the Contractor a notice ("**Pre-Departure Notice**") that:
  - (i) confirms or cancels the Transport Service;
  - (ii) accepts or rejects the Contractor's claim that it requires Commonwealth assistance to load or unload the Relevant Cargo at a Forward Operating Base/Patrol Base, as notified to the Commonwealth under clause 6.1(c)(iii) and as described in the Flight Plan under clause 6.2(a)(iv); and
  - (iii) confirms the details in the Advance Departure Notice, or notifies the Contractor of any changes to the Transport Service as contemplated under clause 6.3(b).
- (b) The Commonwealth may in its absolute discretion, by notice to the Contractor:
  - (i) at any time before the Scheduled Departure Time for a Transport Service, cancel the Transport Service; or
  - (ii) no later than 24 hours before the Scheduled Departure Time for a Transport Service, change the details of the Transport Service, including by:
    - (A) changing the Loading Location(s) and/or Unloading Location(s) in respect of Relevant Cargo;
    - (B) removing and/or adding Loading Locations and/or Unloading Locations;

- (C) changing the Relevant Cargo to be moved;
  - (D) including additional Relevant Cargo to make use of any excess capacity in the relevant Aircraft; or
  - (E) changing the Delivery Time(s) for the Relevant Cargo.
- (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 any cancellation of, or change to, a Transport Service in accordance with clause 6.3(b).
- (d) The Contractor **must** notify the Commonwealth within 6 hours of receiving notice under clause 6.3(b)(ii) if:
- (i) the change to the Transport Service set out in that notice would interfere with or delay the provision of one or more other Transport Services previously required by the Commonwealth ("**Other Services**"); or
  - (ii) in the case of a change to the Delivery Time, the Transport Service cannot be completed by the revised Delivery Time because of Other Services being carried out by the Contractor.
- (e) Unless the Contractor gives a notice in accordance with clause 6.3(d), the Contractor **must** deliver the Transport Service specified in the notice under clause 6.3(b)(ii).
- (f) If the Contractor gives a notice under clause 6.3(d), the Commonwealth may, acting reasonably, change or cancel the Transport Service or one or more of the Other Services in accordance with clause 6.3(b).

#### 6.4 **Pre-departure meetings**

- (a) The Commonwealth may, in an Advanced Departure Notice, require representatives of the Contractor to meet with Commonwealth representatives at a date and location:
- (i) where possible, stated in the Advanced Departure Notice; or
  - (ii) otherwise, determined by the Commonwealth and agreed by the Contractor,
- to discuss the Transport Services required under this clause 6.
- (b) The Commonwealth may require the Contractor to attend additional meetings at a date and location determined by the Commonwealth and agreed by the Contractor.
- (c) At the meeting, the parties may:
- (i) agree to amend the details of the Advance Departure Notice; and
  - (ii) agree the timing and order in which the Commonwealth is to deliver the Relevant Cargo to the Loading Location(s) or the timing and order in which the Contractor is to deliver the Relevant Cargo to the Unloading Location.

7. **CONTRACTOR PERSONNEL**

7.1 **Obligations regarding Contractor Personnel**

- (a) The Contractor **must** provide all flight and cabin crew, technical crew, engineering services and Ground Handling Services necessary to provide the Transport Services.
- (b) The Contractor **must** make arrangements for the engagement of all staff and labour, local or otherwise, and for their payment, housing, feeding and transport and provide all necessary accommodation and welfare facilities, including for their religious observances, for Contractor Personnel, including sanitary conveniences and an adequate supply of drinking water.
- (c) The Contractor **must** pay rates of wages, and observe conditions of labour, which are not lower than those established for the trade or industry where the work is carried out. If no established rates or conditions are applicable, the Contractor **must** pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally by employers whose trade or industry is similar to that of the Contractor.
- (d) 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 handle, other than for the purposes of loading or unloading, the Relevant Cargo.
- (e) The Contractor **must** at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst the Contractor Personnel, and to preserve peace and protection of persons and property.
- (f) The Contractor **must** ensure that Contractor Personnel do not carry or use alcohol or Prohibited Substances whilst:
  - (i) in Afghanistan; or
  - (ii) performing the Services.
- (g) The Contractor **must** ensure that the Contractor Personnel do not conduct any activities in connection with this Contract while intoxicated or affected by alcohol or Prohibited Substances.
- (h) The Contractor acknowledges and agrees that any Contractor Personnel who carry or use alcohol or Prohibited Substances will not be allowed to conduct any activities in connection with this Contract and will be removed.
- (i) The Contractor **must** obtain consent from all Contractor Personnel to submit to Prohibited Substances and alcohol testing as required by the Commonwealth.
- (j) The Contractor must not and must ensure that Contractor Personnel do not carry any Explosive Ordnance.
- (k) The Contractor must not and must ensure that Contractor Personnel do not carry any weapons or ammunition except:

- (i) where the weapons or ammunition are Relevant Cargo; or
- (ii) where the weapons or ammunition are carried by aircrew for the sole purpose of self-defence of themselves or other Contractor Personnel that are aircrew, provided that:
  - (A) the weapons are only classified as handguns or rifles up to semi-automatic rifles; and
  - (B) each member of the aircrew does not carry more than one weapon;
  - (C) the ammunition is non-explosive or non-expanding ammunition;
  - (D) the aircrew have been appropriately trained and qualified on those weapons;
  - (E) the aircrew have been issued with rules on the use of force and firearms that are to the satisfaction of the Commonwealth; and
  - (F) the possession and use of such weapons is otherwise in strict compliance with applicable laws and regulations in the relevant country.
- (l) The Contractor must not and must ensure that Contractor Personnel do not, in the course of performing the Services, give, barter or otherwise dispose of to any person or persons, any weapons, Explosive Ordnance or ammunition of any kind.
- (m) The Contractor **must** ensure that at all times during the Term, each of the Contractor Personnel:
  - (i) has undertaken the security and background checks as required by the Commonwealth and the Commonwealth Representative has reviewed the checks and considers that such checks appear to be complete and acceptable;
  - (ii) has all necessary passports, visas, and other documents required to enter and exit Afghanistan;
  - (iii) has a Geneva Conventions Identification Card;
  - (iv) has received personal security training, including in respect of:
    - (A) safety and security issues;
    - (B) safety and security contingency planning activities; and
  - (v) where the Contractor Personnel is a member of the aircrew and carries a weapon, is trained and qualified on the use of that weapon and has been issued with rules on the use of force and firearms that are to the satisfaction of the Commonwealth.
- (n) The Contractor **must** establish and maintain a list that:
  - (i) identifies all Contractor Personnel present in Afghanistan in connection with the Services; and
  - (ii) provides emergency contact details for all Contractor Personnel.

The Contractor **must** provide a copy of this list to the Commonwealth before the Transition In Date and **must** keep such list updated at all times during the Term.

- (o) The Contractor acknowledges that it has a legal duty of care for the work health and safety of Contractor Personnel and that this responsibility extends to the performance of the Services in Afghanistan.

## 7.2 Removal of Contractor Personnel

- (a) The Commonwealth may, at any time give a notice in writing to the Contractor, directing the Contractor to remove any Contractor Personnel including the Contractor's Representative or any Key Person, who the Commonwealth considers:
  - (i) persists in any misconduct or lack of care;
  - (ii) carries out duties incompetently or negligently;
  - (iii) fails to comply with a direction or request of the Commonwealth under clause 8.2;
  - (iv) fails to conform with any provisions of this Contract;
  - (v) persists in any conduct which is prejudicial to safety, health, or the protection of the environment;
  - (vi) breaches, or causes the Contractor to be in breach of, this Contract;
  - (vii) breaches any law, regulation or regulatory requirement, or the terms or conditions of any Approval;
  - (viii) breaches any local or Commonwealth security requirements;
  - (ix) in the opinion of the local government or Commonwealth, presents a security or other risk;
  - (x) persists in conduct which is unlawful, riotous or disorderly, including any culturally or religiously offensive conduct, or does not preserve the peace and protection of persons and property;
  - (xi) is found to be carrying or using alcohol or a Prohibited Substance whilst:
    - (A) in Afghanistan; or
    - (B) performing the Services;
  - (xii) refuses to submit to alcohol or Prohibited Substance testing as required by the Commonwealth; or
  - (xiii) is otherwise unacceptable to the local government or the Commonwealth.
- (b) If the Commonwealth gives the Contractor a notice under clause 7.2(a), the Contractor **must** promptly appoint (or cause to be appointed) a suitable replacement person.
- (c) The Contractor will not be relieved from any of its liabilities or obligations under this Contract and is not entitled to make, and the Commonwealth will not be liable for, any Claim arising out of or in connection with the removal of any of the Contractor Personnel in accordance with this clause 7.2.



### 7.3 **Obligations regarding Key Persons**

- (a) The Contractor **must** ensure that each person named in Item 3 of Schedule 2 is appointed to the Key Staff Position nominated for that person.
- (b) In the event that a Key Person will or may become unavailable for the performance of Services under this Contract for a period of four consecutive weeks or more the Contractor **must**:
  - (i) immediately notify the Commonwealth of the impending unavailability; and
  - (ii) promptly appoint (or cause to be appointed) a suitable replacement,
- (c) If the Contractor is required to replace a Key Person under clause 7.2 or 7.3(b)(ii):
  - (i) the Contractor **must** obtain the prior written consent of the Commonwealth to the replacement person. The Contractor **must** provide the Commonwealth with any information the Commonwealth requests in order to determine whether to consent to the replacement person; and
  - (ii) if a replacement person is not accepted by the Commonwealth under clause 7.3(c) within three months of the Commonwealth or the Contractor (as the case may be) first receiving notice under clause 7.2(a) or 7.3(b)(i) (as applicable), the Commonwealth may terminate this Contract under clause 23.3(k) with effect from the date specified in the notice. 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.

### 7.4 **Non-representation as Auxiliary to the ADF**

The Contractor **must** ensure that it does not represent itself or its personnel as being auxiliary to the ADF.

## 8. **COMMONWEALTH DIRECTIONS**

### 8.1 **General directions**

- (a) The Contractor **must** comply with the reasonable directions of the Commonwealth Representative, or an Authorised Person appointed as their delegate under clause 25.1.
- (b) 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 Contract.
- (c) Unless authorised by this Contract or a direction given under clause 8.1(a), 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.

### 8.2 **Emergency situations**

- (a) The Contractor acknowledges and agrees that, if an emergency situation arises in Afghanistan, the Contractor and the Contractor Personnel **must** comply with all directions and requests issued by an appropriate Commonwealth officer.

- (b) Where the Commonwealth reasonably believes that the Contractor or any Contractor Personnel has acted in breach of clause 8.2(a), the Commonwealth may:
  - (i) give a direction to the Contractor under clause 7.2 to remove such personnel from further duties in relation to the performance of the Services; or
  - (ii) remove the personnel from further duties in relation to the performance of the Services.
- (c) The Contractor acknowledges that it is responsible for notification of designated next of kin in the event any of the Contractor Personnel dies including presumed dead, or is injured, isolated, missing, detained, captured, or abducted.
- (d) If any of the Contractor Personnel is or becomes isolated, missing, detained, captured, abducted or killed, the Commonwealth may, in its absolute discretion, provide assistance in recovery actions.
- (e) The Contractor will, subject to notice to the Commonwealth Representative or ADF Commander, have the right to leave the area of operation at any time if, in its reasonable opinion, the changes to threat level adversely affect the safety or security of any of the Contractor Personnel.

## 9. **SUBCONTRACTS**

### 9.1 **Prohibition on subcontracting**

The Contractor must not subcontract the whole or any part of the work under this Contract, except:

- (a) to an Approved Subcontractor in accordance with this clause 9; or
- (b) with the prior written approval of the Commonwealth.

### 9.2 **Conditions for Subcontracting**

- (a) The Contractor may Subcontract the provision of the Subcontracted Services to an Approved Subcontractor provided that:
  - (i) the Subcontract includes clauses that:
    - (A) are functionally equivalent to the provisions of this Contract referred to in Item 2.2 of Schedule 2; and
    - (B) the Commonwealth notifies are required as a condition of approving the Subcontract;
  - (ii) the Subcontract is not inconsistent with the obligations of the Contractor under this Contract;
  - (iii) the Subcontract does not permit that Approved Subcontractor to further subcontract the whole or any part of the Subcontracted Services; and
  - (iv) the Commonwealth has approved the terms of the Subcontract with that Approved Subcontractor.

- (b) The Contractor **must** ensure that a Subcontract is not amended or terminated except with the prior written approval of the Commonwealth, which approval must not be unreasonably withheld.
- (c) The Contractor **must** immediately notify the Commonwealth Representative of:
  - (i) any disputes arising under an Approved Subcontract; and
  - (ii) the occurrence of any event or circumstance that will or is likely to give the Contractor or an Approved Subcontractor a right to terminate an Approved Subcontract.

### 9.3 **Qualifications of Approved Subcontractor**

The Contractor **must** ensure that any Approved Subcontractor:

- (a) has sufficient expertise, qualifications and skills to perform the Subcontracted Services;
- (b) has in place adequate resources and personnel who are appropriately experienced, qualified and skilled to perform its obligations under the Subcontract;
- (c) has in place adequate security arrangements to satisfy the security and confidentiality provisions of the Subcontract as required by this Contract; and
- (d) is of sufficient financial standing to enable it to perform its obligations under the Subcontract.

### 9.4 **Supervision and enforcement**

- (a) The Contractor **must** ensure that the work of an Approved Subcontractor is properly managed and supervised, and **must** ensure performance of an Approved Subcontractor's obligations under the Subcontract.
- (b) The Contractor **must** take all reasonable and appropriate action, including legal action, to manage, protect or enforce its rights (including warranty rights) under or in connection with a Subcontract.

### 9.5 **Contractor not relieved of obligations**

- (a) The Contractor, by subcontracting any part of the Services to an Approved Subcontractor under this Contract or by obtaining the Commonwealth Representative's approval of a Subcontractor, will not be relieved of its liabilities or obligations under this Contract, and will be responsible for all Subcontractors.
- (b) Without limiting the other provisions of this clause 9, if the Contractor subcontracts the performance of any of the Services to an Approved Subcontractor:
  - (i) the Contractor is responsible for the acts and omissions of that Approved Subcontractor;
  - (ii) the Contractor **must** ensure that the Approved Subcontractor complies with all of the obligations of the Contractor under this Contract in relation to the Services subcontracted to the Approved Subcontractor; and
  - (iii) the Contractor indemnifies the Commonwealth, its officers, employees and agents, against any Loss sustained or incurred arising out of or in connection with:

- (A) any fraud, negligence, unlawful act or omission or wilful misconduct of that Approved Subcontractor or any of its officers, employees or agents;
- (B) any Claim by that Approved Subcontractor 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) any breach by that Approved Subcontractor of the terms of its Subcontract including any failure by that Approved Subcontractor to comply with the terms of this Contract which are applicable to it.

#### 9.6 Other obligations regarding Subcontracts

- (a) 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 in accordance with this clause 9.
- (b) The Contractor, if requested by the Commonwealth Representative, **must** provide a copy of any Subcontract, which copy need not contain prices.
- (c) The Contractor **must** not enter into a Subcontract under this Contract with a Subcontractor named by the Australian 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).

### 10. CONTRACTOR ACKNOWLEDGEMENTS AND WARRANTIES

#### 10.1 Contractor's acknowledgements

The Contractor acknowledges and agrees that:

- (a) its provision of the Services on time, to the required safety, quality and capability, in accordance with this Contract is important to the ADF's ability to perform its functions;
- (b) the performance of the Services will require Contractor Personnel to be located within an operational environment and as such:
  - (i) Contractor Personnel will be exposed to a range of risks, threats and dangerous conditions; and
  - (ii) the Contractor accepts the risks associated with performing the Services in such conditions and releases the Commonwealth from all Claims and liability which it may have or claim to have, but for this release, against the Commonwealth arising out of or in connection with operating in such conditions;
- (c) its Local Representative is authorised to give and receive notices on behalf the Contractor and any notices given or received by the Local Representative are deemed to have been given or received by the Contractor and the Commonwealth is entitled to rely on such notices as being effective;
- (d) neither the Contractor nor any Contractor Personnel is part of or in any way connected with the ADF;

- (e) the Contractor and the Contractor Personnel are not, and do not enjoy the privileges of, civilian personnel employed by the Department of Defence;
- (f) the Contractor and the Subcontractors conduct activities under or in connection with this Contract at its own risk and subject to all local laws; and
- (g) the Commonwealth may, if required, disclose aspects of this Contract and the identities of the Contractor, Subcontractors or other Contractor Personnel to the International Security Assistance Force, or other countries in connection with its activities in Afghanistan and the Contractor **must** inform all Subcontractors of this possibility.

## 10.2 Contractor warranties

- (a) The Contractor represents and warrants that at all times:
  - (i) 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 and will meet the requirements of this Contract;
  - (ii) the Services will be fit for the purpose or purposes required in this Contract;
  - (iii) it has the necessary expertise, experience, capacity and capability required to perform the Services in accordance with this Contract at the highest standard of industry practice.
- (b) The Contractor **must** meet all costs of, and incidental to, the discharge of the warranties and obligations under clause 10.2(a).
- (c) The Contractor acknowledges that the Commonwealth enters into this Contract in reliance on the Contractor's warranties in this clause 10.2(a), and the Contractor's skill and judgement in rendering the Services.

## 11. INTELLECTUAL PROPERTY

### 11.1 Ownership of Intellectual Property

- (a) Nothing in this Contract 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.

### 11.2 Intellectual Property Licence

- (a) Without limitation to any licence granted to the Commonwealth by the Contractor or any Related Body Corporate 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 that is owned by the Contractor, including the right to sub-licence, for any purpose within the power of the Commonwealth with respect to the defence of the Commonwealth, including purposes that are necessary or incidental to that purpose.
- (b) The Contractor **must** ensure that the Commonwealth is granted a licence from each Subcontractor on the same terms as clause 11.2(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.

#### 11.3 **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 11, the Contractor **must** deliver to the Commonwealth Representative within 20 days of request, any TD in relation to the Aircraft or equipment associated with the delivery of the Services deemed necessary by the Commonwealth to exercise its rights under this Contract at no additional cost to the Commonwealth.
- (b) The Commonwealth may provide TD to a third party for the purposes mentioned in clause 11.2(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 11.2(a) to perform those acts efficiently and effectively.

#### 11.4 **Release to Third Parties**

If the Commonwealth makes available to another person any 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.

#### 11.5 **Moral Rights**

The Contractor **must**:

- (a) obtain from each and any author of IP vesting in or licensed to the Commonwealth under this Contract a written consent which extends directly or indirectly to:
  - (i) the performance of acts permitted under any licence provided under clause 11;
  - (ii) any dealings with Foreground IP owned by the Commonwealth as a consequence of this Contract including the Commonwealth's licensees; and
  - (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 Contract,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.



## 12. **COMMONWEALTH OBLIGATIONS**

### 12.1 **Provision of the Relevant Cargo**

The Commonwealth **must** make the Relevant Cargo available to the Contractor:

- (a) at the Loading Location on or before the Loading Date, in accordance with the Advance Departure Notice or Pre-Departure Notice (as applicable); and
- (b) in a condition that is suitable for air transport, including packaged or consolidated into manageable loads.

### 12.2 **Commonwealth not generally required to assist Contractor**

The Contractor acknowledges that the Commonwealth is not responsible for assisting the Contractor to perform the Services or its other obligations under this Contract. Without limiting the foregoing, the Commonwealth is not obliged to:

- (a) except as contemplated under clause 12.4, perform, or provide any assistance in connection with, loading and unloading of the Relevant Cargo, or with Ground Handling Services;
- (b) perform, or provide any assistance in connection with, any maintenance of the Aircraft;
- (c) except as contemplated under clause 2.4(b), obtain, or assist the Contractor to obtain, any Approvals;
- (d) provide, or assist the Contractor to obtain, any fuel at any Loading Location, any Unloading Location or any technical stops between a Loading Location and an Unloading Location, except as contemplated under clause 5.3;
- (e) provide, or assist the Contractor to obtain:
  - (i) aeronautical or navigational information;
  - (ii) information on weather conditions or conditions at any landing location;
  - (iii) except as contemplated in clause 12.3, information on the threats and hazards likely to be faced and the conditions generally prevailing in the sector(s) in which the Transport Services are to be performed; or
  - (iv) any other information in connection with the performance of the Transport Services;
- (f) provide any transportation, accommodation, food and drinking water, medical support or training for any of the Contractor Personnel;
- (g) provide a security detachment to accompany the move of the Relevant Cargo;
- (h) provide any materials, tools, plant, equipment, facilities, vehicles, fuel, spares, consumables and all other items to operate or maintain the Aircraft or otherwise perform the Services, except as contemplated under clause 12.4; or
- (i) obtain, or assist the Contractor to obtain, any necessary diplomatic, landing and overflight clearances for any Aircraft.

### 12.3 Information on threats and hazards

- (a) Subject to any security restrictions, the Commonwealth **must**:
  - (i) use its best endeavours to provide to the Contractor information on the threats and hazards that are:
    - (A) known to the Commonwealth Representative referred to in clause 25.1(a)(i); and
    - (B) relevant to, or likely to affect, the provision of particular Transport Services by the Contractor; and
  - (ii) take all reasonable steps to ensure that Contractor Personnel are advised of Operational security ("**OPSEC**") and force protection measures in place in Afghanistan that the Commonwealth considers (in its discretion) will or have the potential to affect the Transport Services, including by conducting briefings for Contractor Personnel on OPSEC and force protection measures as deemed appropriate by the Commonwealth Representative.
- (b) The Contractor must not, and must ensure that Contractor Personnel do not, disclose any information provided under this clause 12.3.
- (c) Upon being advised of the matters in clause 12.3(a)(ii), Contractor Personnel are deemed to have agreed to be bound by all of those OPSEC and force protection measures of which they have been advised, including in relation to the confidentiality of the information provided, and the Contractor **must** ensure that all Contractor Personnel comply with such measures.

### 12.4 Loading and unloading assistance

Where:

- (a) a Transport Services involves delivery of Relevant Cargo to a Forward Operating Base/Patrol Base; and
- (b) the Commonwealth has indicated in the Pre-Departure Notice under clause 6.3(a)(ii), that it agrees to provide assistance to load or unload the Relevant Cargo at a Forward Operating Base/Patrol Base (including, if applicable, the provision of materials, tools, plant, equipment, facilities, vehicles, fuel, spares, consumables or other items),

the Commonwealth **must** provide such assistance at that Forward Operating Base/Patrol Base in accordance with the Pre-Departure Notice.

### 12.5 Contractor obligations regarding Commonwealth property

- (a) The Contractor must not, without the prior written approval of the Commonwealth:
  - (i) use Commonwealth property other than for the purposes of this Contract;
  - (ii) modify Commonwealth property; or
  - (iii) transfer possession or control of Commonwealth property to any other person; or
  - (iv) create or allow to be created any lien, charge, mortgage or encumbrance over any Commonwealth property.

- (b) On leaving Afghanistan, any Contractor or Subcontractor personnel in possession of Commonwealth property, including passes and protective clothing, **must** return this property to the Commonwealth before departing Afghanistan.
- (c) 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 Cargo or any other Commonwealth property.
- (d) Notwithstanding any other provision of this Contract, the Contractor takes full responsibility and risk for the tie down/securing of all Relevant Cargo. 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 Cargo.

#### 12.6 **Contractor access to Designated Locations**

- (a) The Contractor **must** comply with, and ensure that the Contractor Personnel comply with, any relevant Commonwealth safety and security requirements, regulations, standing orders, or codes of behaviour for the Designated Locations.
- (b) The Commonwealth Representative **must** use its best endeavours to notify the Contractor of any special security or access terms that apply to a Designated Location (other than the Base Airport) that the Commonwealth Representative considers affects or could affect the provision of the Transport Services by the Contractor.
- (c) The Contractor **must** comply with any special security or access terms notified to it by the Commonwealth Representative pursuant to clause 12.6(b).

### 13. **DELAY AND POSTPONEMENT**

#### 13.1 **Contractor to prevent delay**

The Contractor shall take all reasonable steps to prevent and minimise delay in the delivery of Relevant Cargo and to mitigate both parties' Loss due to any such delay.

#### 13.2 **Obligations in the event of delay**

- (a) The Contractor shall, within 2 hours after becoming aware that delivery of Relevant Cargo will or may be delayed, by any cause, notify the Commonwealth Representative of the cause and nature of the delay.
- (b) The Contractor shall, within 4 hours after becoming aware that delivery of Relevant Cargo will or may be delayed by any cause, notify the Commonwealth Representative in writing:
  - (i) of the steps it shall take to minimise the delay;
  - (ii) the anticipated duration of the delay; and
  - (iii) whether it shall be claiming postponement of a Delivery Time for the Relevant Cargo.

### 13.3 **Postponement claims**

The Contractor shall be entitled to postponement of a Delivery Time for the delivery of Relevant Cargo under a Transport Service only to the extent that the delay is not caused or contributed to by the Contractor or any Contractor Personnel through its acts or omissions and the event ("**Delay Event**") giving rise to the claim:

- (a) delays the Contractor in the delivery of Relevant Cargo under a Transport Service;
- (b) is beyond the reasonable control of the Contractor and the Contractor Personnel;
- (c) could not have been reasonably contemplated and allowed for by the Contractor before entering the Contract; and
- (d) is not provided for elsewhere in the Contract,

and provided that the Contractor:

- (e) as soon as possible upon, but no later than 6 hours after, becoming aware of the Delay Event, submits to the Commonwealth Representative a revised Flight Plan in relation to the delayed Transport Service for the Commonwealth's consideration;
- (f) demonstrates to the Commonwealth Representative's reasonable satisfaction that the Transport Service cannot be performed in such a way so that the Relevant Cargo could be delivered by the relevant Delivery Time(s) as is reasonable with regard to the circumstances;
- (g) makes all reasonable endeavours to minimise the delay and mitigate both parties' Loss; and
- (h) supports the claim with substantiating documentation to the reasonable satisfaction of the Commonwealth Representative.

### 13.4 **No postponement unless approved**

- (a) If the Contractor does not submit a revised Flight Plan within the time as required by clause 13.3(e) or if the Commonwealth Representative rejects the postponement claim, the Contractor will:
  - (i) not be entitled to postponement of the Delivery Time for the Transport Service;
  - (ii) be fully responsible for any Loss arising from the delay; and
  - (iii) continue to comply with its obligations under the Contract.
- (b) To avoid doubt, unless and until a claim for postponement is approved by the Commonwealth Representative under clause 13.3, the Contractor is fully responsible for any delay in the performance of the Transport Services.

### 13.5 **No adjustment to Contract Price**

The Contractor acknowledges and agrees that, despite any postponement of a Delivery Time in respect of a Transport Service, the Contractor will not be entitled to an adjustment of the Contract Price as a result of any Delay Event.

### 13.6 **Delay**

The Commonwealth will have no liability to the Contractor and the Contractor will not be entitled to make any Claim against the Commonwealth, for a delay in the performance of a Transport Service as a result of an act or omission of the Commonwealth or any of its officers, employees, agents or contractors.

## 14. **PERFORMANCE MANAGEMENT**

### 14.1 **Notification of matters affecting performance**

The Contractor **must** promptly notify and fully disclose to the Commonwealth, in writing, any material or significant event or occurrence actual or threatened during the performance of this Contract which may adversely affect the Contractor's ability to perform any of its obligations under this Contract.

### 14.2 **Assessment of Contractor's performance**

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

- (a) the Commonwealth may conduct internal assessments of the Contractor's performance under this Contract without any obligation to disclose the results of that assessment to the Contractor; and
- (b) if, in the Commonwealth Representative's opinion, the Contractor's performance of this Contract 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 Contract under clause 23.3(k). 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.

### 14.3 **Performance review meeting**

- (a) Where the Commonwealth gives the Contractor notice under clause 14.2(b), the parties will meet to review and discuss the Contractor's performance under this Contract.
- (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. The Commonwealth's notice **must** use its best endeavours to specify any particular issues then known for discussion at the performance review meeting or specify particular issues to be addressed by the Contractor.
- (c) Within 14 days of receipt of a notice under clause 14.3(b), the Contractor **must** provide the Commonwealth with a report:
  - (i) detailing the Contractor's performance under this Contract;
  - (ii) addressing any particular issues identified in the Commonwealth's notice under clause 14.3(b);
  - (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 Services Start Date and the date of the last performance review meeting pursuant to this clause 14.3 and ending on the date of the Commonwealth's notice under clause 14.3(b) (the "**Review Period**").

- (d) The parties **must** meet at the time and place specified in the Commonwealth's notice issued under clause 14.3(b) and agreed by the Contractor to discuss the Contractor's performance under the Contract, the matters identified in clause 14.3(c), and the report prepared by the Contractor under clause 14.3(c).
- (e) 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.

## 15. **RECORDS, REPORTS AND MEETINGS**

### 15.1 **Telephone service**

- (a) The Contractor **must** provide and maintain a 24 hour a day, 7 day a week telephone service in accordance with this clause 15.1.
- (b) The Commonwealth **must** be able to contact relevant personnel (including the Contractor Representative and the Local Representative) at any time via the telephone service in respect of any matter relating to this Contract.
- (c) The Contractor **must** provide the Commonwealth with the telephone number(s) for the Telephone Service at least 5 days prior to the Transition In Date.
- (d) The Contractor **must** immediately notify the Commonwealth of any changes to the telephone number(s) for the Telephone Service.

### 15.2 **Records**

- (a) The Contractor **must**, and **must** ensure that each Subcontractor:
  - (i) keep records relating to this Contract 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 15.2(a) available to the Commonwealth in accordance with clause 15.3.

### 15.3 **Commonwealth access**

- (a) During the performance of this Contract, the Contractor **must** ensure that the Commonwealth, or any person authorised by the Commonwealth, is provided with access to the premises, records and accounts of the Contractor and its Subcontractors relevant to or impacting on performance of work under this Contract. The Commonwealth or any person authorised by the Commonwealth may copy any records or accounts for the purposes of this Contract.



- (b) Without limiting the generality of clause 15.3(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 Contract;
  - (ii) performing Audit and Surveillance activities in relation to Quality;
  - (iii) determining whether and to what extent steps should be taken to register or otherwise protect any rights of the Commonwealth in respect of IP; and
  - (iv) verifying any invoices or costs claims submitted by the Contractor under this Contract. For the purpose of this verification, the Contractor **must** permit the Commonwealth to, or take all necessary steps to enable the Commonwealth to exercise its rights in this clause 15.3 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 Contract.
- (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.

#### 15.4 Meetings

The Contractor **must** attend such meetings as reasonably requested by the Commonwealth Representative in relation to this Contract. Unless the Commonwealth determines otherwise, such meetings will be held at Canberra, the UAE or another location agreed between the parties and on the dates and at times determined by the Commonwealth Representative and agreed by the Contractor.

#### 15.5 Daily flight logs

The Contractor **must**, at the end of each Transport Service, provide to the Commonwealth Representative a copy of the flight log, which **must** set out the following for the Transport Service:

- (a) the Loading Locations, Unloading Locations and route taken;
- (b) the Relevant Cargo;
- (c) the departure and arrival times;
- (d) the number of Block Hours and actual flight time attributable to:
  - (i) the provision of the Transport Services;
  - (ii) (if applicable) the provision of Third Party Tasking;
- (e) the loaded fuel, final fuel and fuel spent in respect of:

- (i) the provision of Transport Services; and
- (ii) (if applicable) the provision of Third Party Tasking;
- (f) the take-off weight;
- (g) details of the pilot and crew; and
- (h) the total distance travelled.

## 16. **APPROVALS, POLICY AND LAW**

### 16.1 **Approvals**

- (a) The Contractor **must** obtain all necessary Approvals required in order for the Contractor to provide the Services before the Transition In Date.
- (b) The Contractor **must** maintain all necessary Approvals at all times during the Term.
- (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 any Non Australian Government Approval) in accordance with clause 16.1(b), the Commonwealth may issue a Default Notice under clause 23.1 and, if the Contractor fails to comply with the Default Notice within the period specified therein, terminate this Contract under clause 23.3(g). The Contractor releases the Commonwealth from any liability it otherwise may have had 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 16.1(b) and except where the Contractor satisfies the Commonwealth that it has used its best endeavours to obtain the Non-Australian Government Approval, the Commonwealth may issue a Default Notice under clause 23.1 and, if the Contractor fails to comply with the Default Notice within the period specified therein, terminate this Contract under clause 23.3(g). The Contractor releases the Commonwealth from any liability it otherwise may have had 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

### 16.2 **Non-Australian Government Approvals**

- (a) Non-Australian Government Approvals will include Prior Permission Request ("**PPR**"), Movement Request Form ("**MRF**") or such other approvals as specified in Aeronautical Information Publication ("**AIP**") – Afghanistan in order to gain the necessary access between civil and military airports.
- (b) As all civil operators in Afghanistan require an ISAF callsign, the Commonwealth will provide a valid ISAF call sign (ISF XXXX) for each Aircraft.
- (c) Where required, the Commonwealth will submit the MRF and PPR provided by the Contractor to Combined Air Operations Centre (the "**CAOC**") at Al Udied, United Arab Emirates.

### 16.3 Terrorism and Dealing with Assets

- (a) The Contractor's acknowledges the provisions of the *Charter of United Nations Act 1945* (Cth) and the *Charter of United Nations (Dealing with Assets) Regulations 2008*. This regulation requires anyone who holds assets or funds belonging to a person or organisation designated as a terrorist to freeze immediately those assets or funds. It is an offence to make any assets available to a terrorist. The list of terrorists and more information is available at [http://www.dfat.gov.au/icat/unsct/financial\\_sanctions.html](http://www.dfat.gov.au/icat/unsct/financial_sanctions.html).
- (b) The Contractor **must** comply (and **must** ensure that each of the Contractor Personnel complies) with the *Charter of United Nations Act 1945* (Cth).
- (c) The Contractor:
  - (i) represents and warrants that neither it, nor any of the Contractor Personnel, is; and
  - (ii) **must** ensure that it, and its Contractor Personnel, will not become, at any time, named on the list of persons and entities designated as terrorists under the *Charter of United Nations (Terrorism and Dealing with Assets) Regulations 2008*.
- (d) Without limiting the other provisions of this clause 16.3, the Contractor acknowledges sections 102 and 103 of the *Criminal Code* (Cth). The Contractor **must** (and **must** ensure that the Contractor Personnel) comply with sections 102 and 103 of the *Criminal Code* (Cth).
- (e) Without limiting the Commonwealth's rights under this Contract or otherwise, if the Contractor or any Contractor Personnel is or becomes named on the list of persons and entities designated as terrorists under the *Charter of United Nations (Terrorism and Dealing with Assets) Regulations 2008*, the Commonwealth may immediately terminate this Contract under clause 23.3(k). 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.

### 16.4 Montreux Document obligations

Without prejudice to the Contractor's actual status and without limiting its other obligations under this Contract or under applicable law, the Contractor **must** comply with the Montreux Document, including the following obligations as set out in that document, during the Term:

- (a) the Contractor **must**, and **must** ensure that the Contractor Personnel, comply with all relevant laws including those of Afghanistan, Australia, the Contractor's country of incorporation and any other relevant country;
- (b) the Contractor **must** ensure that the Contractor Personnel:
  - (i) behave in a mature and professional manner that reflects positively on the Commonwealth;
  - (ii) dress appropriately in plain clothes;
  - (iii) cooperate with Afghanistan Police and other relevant authorities;
  - (iv) abide by Afghanistan laws and regulations, including traffic regulations;

- (v) treat local civilians with dignity and respect;
  - (vi) do not deal in, possess or use Prohibited Substances, including performance enhancing drugs, prohibited by Australian and/or Afghanistan law;
  - (vii) do not discuss operational information with anyone other than the ADF;
  - (viii) do not engage in any offensive combat operations, alone or in conjunction with any other company or agency or with Afghanistan security or military forces, or perform law enforcement functions for any other agency;
  - (ix) do not use force and firearms except if necessary in self-defence or defence of third persons; and
  - (x) immediately report to, and cooperate with, competent authorities in the case of the use of force and/or firearms.
- (c) promptly upon request from the Commonwealth, the Contractor **must** provide assurances that:
- (i) the Contractor and the Contractor Personnel have no reliably attested record of involvement in serious crime (including organised crime, violent crime, sexual offences, violations of international humanitarian law, bribery and corruption) and, insofar as the Contractor or any Contractor Personnel had engaged in past unlawful conduct, appropriate remedial action has been taken, including by effectively cooperating with official authorities, taking disciplinary measures against those involved, and, where appropriate and consistent with findings of wrongdoing, providing individuals injured by their conduct with appropriate reparation; and
  - (ii) the Contractor has conducted comprehensive inquiries under applicable law regarding the extent to which any of the Contractor Personnel have a reliably attested record of not having been involved in serious crime or have not been dishonourably discharged from armed or security forces;
- (d) the Contractor **must** provide for non-criminal accountability mechanisms for improper or unlawful conduct of any Contractor Personnel, including:
- (i) removal of individual wrongdoers from the performance of this Contract; and
  - (ii) referral of the matter to competent investigative authorities; and
- (e) the Contractor **must** respect applicable laws on the use of force and firearms.

#### 16.5 Compliance with Laws and Regulations

The Contractor **must** comply with, and **must** ensure that all Contractor Personnel comply with, all applicable:

- (a) laws and regulatory requirements of Australia, Afghanistan or a third country;
- (b) treaties and international agreements;
- (c) Australian regulations, directives, instructions, policies, and procedures;

- (d) orders, directives, and instructions issued by the ADF Commander, including those relating to aircraft operations, force protection, security, health, safety, or relations and interaction with local nationals;
- (e) orders, directives, and instructions issued by ISAF, including those relating to aircraft operations, force protection, security, health, safety, or relations and interaction with local nationals; and
- (f) orders issued by a third country.

#### 16.6 **Staff and Labour**

- (a) The Contractor **must** comply with all the relevant workplace relations, work health and safety and workers' compensation laws applicable to the Contractor Personnel in the jurisdiction in which they are based, including laws relating to their employment, health, safety, welfare, religious observance, immigration and emigration, and **must** allow them all their legal rights.
- (b) The Contractor **must** fully comply, and ensure its Subcontractors fully comply, with any judgment against it from any Court or Tribunal (including overseas jurisdictions but excluding judgments under appeal or instances where the period for appeal or payment or settlement has not expired) relating to a breach of workplace relations law, work health and safety law or workers' compensation law.

#### 16.7 **Unlawful Inducements**

Without limiting any other provision of this Contract, the Contractor **must** comply (and **must** ensure that each of the Contractor Personnel complies) at all times with all laws and Commonwealth of Australia policies regarding the offering of unlawful inducements in connection with this Contract. Without limiting the preceding sentence, the Contractor acknowledges section 70 of the *Criminal Code* (Cth). The Contractor **must** comply (and **must** ensure that each of the Contractor Personnel complies) with section 70 of the *Criminal Code* (Cth).

#### 16.8 **Policy requirements**

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 Contract:

- (a) Conflict of Interest policy as detailed in the DPPM, Section 3, Chapter 3.13;
- (b) Contract Publication policy as detailed in the DPPM;
- (c) Defence and Industry policy as detailed in the Defence Industry Policy Statement;
- (d) Defence Stocktaking policy as detailed in DI(G) LOG 4-3-014;
- (e) 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;
- (f) Environment policy as detailed in Defence Environmental Policy;
- (g) Equal Opportunity for Women in the Workplace policy as detailed in the DPPM, Section 3, Chapter 3.10;

- (h) Fraud Control policy as detailed in DI(G) FIN 12-1 The Control of Fraud in Defence and the Recovery of Public Moneys;
- (i) Hazardous Substance policy as detailed in DPPM, Section 3, Chapter 3.10;
- (j) 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;
- (k) Information Privacy Principles of the Privacy Act;
- (l) Maximising Employment Opportunities for Aboriginal and Torres Strait Islanders policy as detailed in DPPM, Section 3, Chapter 3.10; and
- (m) Ozone Depleting Substances policy as detailed in DPPM, Section 3, Chapter 3.16.

#### 16.9 **Conflicts of interest**

- (a) The Contractor:
  - (i) undertakes that, to the best of its knowledge, as at the start of the Term, no conflict of interest exists which is likely to affect the performance of its obligations under this Contract by itself or by any of the Contractor Personnel; and
  - (ii) **must** notify the Commonwealth in writing immediately if such a conflict or risk of such a conflict of interest arises.
- (b) Within seven days after giving notice under clause 16.9(a)(ii), 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 Contract in accordance with clause 23.3(k). The Contractor releases the Commonwealth from any liability it otherwise may have had 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.

#### 16.10 **Work Health and Safety**

- (a) The Contractor shall:
  - (i) comply with, and shall ensure that all Subcontractors comply with, the applicable WHS Legislation when providing the Services including the obligation under the WHS Legislation to consult, co-operate and co-ordinate activities with the Commonwealth and any other person who, concurrently with the Contractor, bears a work health and safety duty in relation to the same matter; and
  - (ii) in carrying out work under the Contract ensure, so far as is reasonably practicable, the health and safety of:
    - (A) Commonwealth personnel;
    - (B) Contractor personnel and Subcontractor personnel; and
    - (C) other persons,



in connection with the Services.

- (b) Without limiting the application of the WHS Legislation, the Contractor acknowledges that to the extent that Commonwealth personnel are located on the Contractor's or Subcontractor's premises in connection with the Contract, such personnel shall be taken to be workers for the purposes of the WHS Legislation.
- (c) The Contractor represents and warrants that:
  - (i) it has given careful, prudent and comprehensive consideration to the work health and safety implications of the work to be performed by it under the Contract; and
  - (ii) the proposed method of performance of that work complies with, and includes a system for identifying and managing work health and safety risks which complies with, all applicable legislation relating to work health and safety including the WHS Legislation.
- (d) The Contractor shall:
  - (i) provide the Transport Services in such a way that the Commonwealth and Commonwealth personnel are able to undertake any roles or obligations in connection with the Services (such as in relation to testing or auditing); and
  - (ii) ensure that the Commonwealth and Commonwealth personnel are able to make full use of the Services for the purposes for which they are intended, and to maintain, support and develop them,

without the Commonwealth or Commonwealth personnel contravening any legislation relating to work health and safety including the WHS Legislation, any applicable standards relating to work health and safety or any Commonwealth or Defence policy relating to work health and safety.

- (e) Without limiting the Contractor's obligations under the Contract or at law, the Contractor shall:
    - (i) provide, and shall ensure that a Subcontractor provides, to the Commonwealth Representative within 10 Working Days of a request by the Commonwealth Representative any information or copies of documentation requested by the Commonwealth Representative and held by the Contractor or Subcontractor (as the case may be) to enable the Commonwealth to comply with its obligations under the WHS Legislation in relation to the Contract;
    - (ii) provide copies of:
      - (A) all notices and communications issued by a regulator, agent of the regulator or a health and safety representative to the Contractor or a Subcontractor relating to work health and safety matters; and
      - (B) all notices, communications and undertakings given by the Contractor or a Subcontractor to the regulator, agent of the regulator or a health and safety representative,
- in connection with or related to the Services to the Commonwealth Representative within 10 Working Days of receipt or submission of the notice, communication or undertaking by the Contractor or Subcontractor (as the case may be); and

- (iii) provide, and shall ensure that a Subcontractor provides, to the Commonwealth Representative within 10 Working Days of a request by the Commonwealth Representative written assurances specifying that to the best of the Contractor's or the Subcontractor's (as the case may be) knowledge that it and its officers, employees, agents and subcontractors are compliant with:
  - (A) the WHS Legislation; and
  - (B) any relevant or applicable standards or codes of practice relating to work health and safety,and that the Contractor or Subcontractor (as the case may be) has made reasonable enquiries before providing the written assurances.
- (f) The Contractor shall ensure that if the WHS Legislation requires that:
  - (i) a person (including a Subcontractor) be authorised or licensed (in accordance with the WHS Legislation) to carry out any works at the workplace, that person is so authorised or licensed and complies with any conditions of such authorisation or licence; and/or;
  - (ii) a workplace, plant or substance (or design), or work (or class of work) be authorised or licensed, that workplace, plant or substance (or design), or work (or class of work) is so authorised or licensed.
- (g) If the Contractor becomes aware of any intention on the part of a regulatory authority to cancel, revoke, suspend or amend an authorisation relating to work health and safety, it shall immediately notify the Commonwealth giving full particulars (so far as they are known to it).
- (h) Without limiting clause 15.3, the Contractor shall give the Commonwealth Representative and any person authorised by the Commonwealth Representative access to:
  - (i) premises to conduct site inspections for the purpose of monitoring the Contractor's compliance with any applicable laws, Authorisation or Approved plans in connection with work health and safety; and
  - (ii) all internal and third party audit results in relation to work health and safety.
- (i) The Commonwealth Representative may direct the Contractor to take specified measures that the Commonwealth Representative considers reasonably necessary to comply with the WHS Legislation and/or deal with an event or circumstance that has, or is likely to have, an adverse effect on the health or safety of persons in connection with the provision of the Services. The Contractor shall comply with the direction.
- (j) The Contractor shall not use ACM in providing the Transport Services and shall not take any ACM onto Commonwealth Premises in connection with providing the Transport Services.
- (k) The Contractor shall ensure that any Subcontracts contain equivalent provisions to those set out in this clause 16.10.

#### 16.11 Environmental obligations

The Contractor **must** perform its obligations under this Contract 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).

#### 16.12 Privacy

(a) The Contractor **must**:

- (i) use or disclose Personal Information obtained during the course of providing Services under this Contract, only for the purposes of this Contract;
- (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 Contract; 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 Contract, 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 Contract (if any) that are inconsistent with an National Privacy Principle or an Approved Privacy Code binding a party to this Contract;
- (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 Contractor Personnel who is required to deal with Personal Information for the purposes of this Contract, is made aware of the obligations of the Contractor as set out in this clause 16.12.

- (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 16.12, whether by the Contractor or any Contractor Personnel;
  - (ii) it becomes aware that a disclosure of Personal Information may be required by law; or
  - (iii) it is approached by the Office of the Australian Information 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 Contract, contains provisions to ensure that the Subcontractor has the same awareness and obligations as the Contractor has under this clause 16.12, including the requirement in relation to Subcontracts.

#### 16.13 **Disclosure of information to ISAF etc**

The Commonwealth may, at its discretion and without notice to the Contractor, disclose any information about the Contract, any Subcontract or any Contractor Personnel (including where that information is Commercial-in-Confidence Information) with any agency of the Commonwealth, the Government of the Islamic Republic of Afghanistan and its agencies, and ISAF.

### 17. **COMMERCIAL-IN-CONFIDENCE INFORMATION**

- (a) If in connection with this Contract, Commercial-in-Confidence Information is provided by a party ("**protected party**") to the other party ("**recipient party**"), the recipient party **must** protect the confidential nature of the information and not disclose the information except:
  - (i) if disclosure of the information is required by law or statutory or portfolio duties;
  - (ii) to the extent that the Commonwealth would otherwise be prevented from exercising its IP rights under this Contract; or
  - (iii) to the extent disclosure of the information by the Commonwealth to any members of the International Security Assistance Force, or other countries in connection with the Commonwealth's activities in Afghanistan.
- (b) If it is necessary for a recipient party to disclose Commercial-in-Confidence Information provided by a protected party, other than to a legal adviser or for a purpose within an exception listed in clause 17(a), the recipient party **must** obtain the written consent of the protected party.
- (c) The Commonwealth may require the Contractor to ensure that any Contractor Personnel execute a deed of undertaking in a form acceptable to the Commonwealth prior to the disclosure of any Commercial-in-Confidence Information of the Commonwealth to such Contractor Personnel. 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) The parties agree that those parts of this Contract listed at Item 6 of Schedule 2 are Commercial-in-Confidence Information of the relevant party as at the start of the Term.
- (f) 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 Contract,except where the Contractor is required to retain such Commercial-in-Confidence Information under law or in accordance with prudent corporate governance procedures.
- (g) If the Commonwealth makes a demand under clause 17(f), 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.
- (h) 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.
- (i) Return or destruction of the documents referred to in this clause 17 does not release the Contractor from its obligations under this Contract.

## 18. DEFENCE SECURITY

### 18.1 Security obligations

The Contractor **must**, and **must** ensure that the Contractor Personnel will:

- (a) undertake any security checks, clearances or accreditations as required by the Commonwealth;
- (b) notify the Commonwealth of any changes to circumstances which may affect its capacity to provide Services in accordance with the Commonwealth's security requirements; and
- (c) provide a written undertaking in respect of security or access to any Commonwealth place, area or facility in the form required by the Commonwealth.

### 18.2 Security of information

- (a) The Contractor **must** ensure that all information in its possession relating to the performance of this Contract is safeguarded and protected according to any level of security classification.
- (b) No security classified information furnished or generated under this Contract may be released to a third party, including a representative of another country, without prior written approval of the originator through the Commonwealth Representative.

- (c) 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 Contract has been lost or disclosed to unauthorised parties, including a representative of another country.
- (d) 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 Part 2:33 of the Defence Security Manual, as amended from time to time.
- (e) If there has been a breach by the Contractor, a Subcontractor, or any of their officers, employees or agents, of this clause 18, the Commonwealth Representative may terminate the Contract under clause 23.3(k).
- (f) The Contractor **must** ensure the requirements of clause 18 are included in all Subcontracts where the Subcontractor requires access to security classified information in order to perform the obligations of the Subcontract.
- (g) Unless otherwise agreed in writing by the Commonwealth, the Contractor shall bear the cost of complying with the Commonwealth's security requirements under the Contract.

## 19. **PRICE AND PAYMENT**

### 19.1 **Contract Price**

Subject to clause 19.8, the Contract Price for each month during the Term commencing on the Services Start Date is, subject to clause 4.3(c) in relation to a replacement aircraft, the sum of:

- (a) the Monthly Standby Rate, which includes the provision of Transport Services up to the Minimum Capability in that month; and
- (b) if the Block Hours actually and reasonably flown by the Aircraft in providing Transport Services during that month exceeds the Minimum Capability, the number of Block Hours in excess of the Minimum Capability multiplied by the Hourly Flying Rate up to the Maximum Capacity per month.

### 19.2 **Payment**

The Commonwealth **must** pay to the Contractor:

- (a) the Transition In Milestone Payment within 30 days of the later of the Contractor providing an invoice to the Commonwealth that complies with the requirements of clause 19.4; and
- (b) the Contract Price for each month within 30 days of the later of:
  - (i) the end of the relevant month; or
  - (ii) the Contractor providing an invoice to the Commonwealth that complies with the requirements of clause 19.4,

provided the Contractor has provided the Services to the satisfaction of the Commonwealth during the month to which the invoice relates.



### 19.3 **Price basis**

- (a) The Contract Price includes all costs and amounts payable by the Commonwealth in respect of the Services including:
  - (i) landing fees and enroute charges;
  - (ii) landing, airport and departure taxes;
  - (iii) the Ground Handling Services;
  - (iv) obtaining weather information;
  - (v) NOTAMs;
  - (vi) load control;
  - (vii) obtaining all necessary Approvals; and
  - (viii) all charges referable to the provision of the Services, whether incidental or ancillary.
- (b) The Contractor warrants that the Contract Price:
  - (i) make adequate provisioning for all of the Contractor's costs associated with the Aircraft, labour, on and off site overheads (including insurance), goods, materials, tools, plant, equipment, facilities, vehicles, consumables, providing the Transport Services, costs associated with the crew, maintenance and insurance and all other items which are required to enable the Contractor to comply with its obligations under this Contract or which are reasonably inferred from this Contract, notwithstanding that they are not expressly mentioned; and
  - (ii) comprises the total consideration payable by the Commonwealth to the Contractor for the provision of the Services, and the Contractor will not otherwise make any claim in respect of payment for the provision of the Services.

### 19.4 **Invoice requirements**

The Contractor **must** ensure that it submits a single invoice, relating to the activities undertaken in the month to which the invoice relates, which:

- (a) in relation to the first invoice only:
  - (i) is submitted at the end of the first month of Transport Services following the Services Start Date; and
  - (ii) sets out the amount of the Transition In Milestone Payment to be paid;
- (b) clearly shows the details for the Contract Price;
- (c) specifies the Commonwealth's reference number for this Contract;
- (d) includes such supporting documents as this Contract or the Commonwealth Representative requires;

- (e) contains sufficient information to enable the Commonwealth, acting reasonably, to identify the Services and circumstances that gave rise to the claim for payment contained within the invoice, including details of:
  - (i) the dates on which Transport Services were provided; and
  - (ii) a summary of the Block Hours provided on each date and, in the case of Transport Services for which a replacement aircraft was used, a summary of the Block Hours that would have been provided had the Primary Aircraft been used to provide the Transport Services; and
- (f) contains a statement by the Contractor that the information in the invoice is complete and accurate;
- (g) is a valid tax invoice for the purposes of the GST Act; and
- (h) sets out the amount payable by the Commonwealth in respect of GST for supplies made under this Contract that are taxable supplies.

#### 19.5 Fuel reconciliation

- (a) The Contractor **must** prepare and submit with each invoice referred to in clause 19.4 a report ("**Fuel Report**") relating to the preceding month that contains:
  - (i) a summary of the fuel purchased under clause 5.3 during that month;
  - (ii) the dates on which Transport Services were provided during that month;
  - (iii) the amount of fuel used in undertaking the Transport Services on each date and, in the case of Transport Services for which a replacement aircraft was used, the amount of fuel that would have been used in undertaking the Transport Services had the Primary Aircraft been used;
  - (iv) the amount of fuel used in connection with any Third Party Tasking, being the amount of fuel purchased, subtracting the amount of fuel described in clause 19.5(a)(iii);
  - (v) the cost of fuel used in connection with Third Party Tasking, based on the amount determined under clause 19.5(a)(iv); and
  - (vi) copies of receipts or "chits" for every fuel purchase made under clause 5.3 during that month.

#### 19.6 Taxes and duties

- (a) Subject to clause 19.6(h), all taxes, duties (including stamp duty) and government charges imposed or levied in Australia or overseas in connection with this Contract will be met by the Contractor and will be included within the Contract Price.
- (b) Subject to clause 19.6(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 Contract.
- (c) For the purposes of clause 19.6(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 19 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 Contract, 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 19.6(f) will be a debt recoverable by the Commonwealth in accordance with clause 25.9.
- (h) The Commonwealth will be responsible for paying any customs duty associated with the movement of the Relevant Cargo.

#### 19.7 Denomination of payments

All payments under this Contract will be payable by the Commonwealth in the Relevant Currency.

#### 19.8 Service Credit

- (a) If, during any month, the Contractor does not deliver and unload any Relevant Cargo at the Unloading Location by the relevant Delivery Time, for any reason, the Contract Price for that month will be reduced by the amount (if any) (**Service Credit**) determined by the following formula:

$$\text{Service Credit} = \left( \text{Contract Price} \times \frac{A}{B} \right)$$

where:

A = the number of days between the first Delivery Time stated in the Advance Departure Notice (as varied by the Pre-Departure Notice) for the relevant Transport Service, and the day on which all Relevant Cargo for that Transport Service is delivered and unloaded at each Unloading Location (**Delay Days**).

B = number of calendar days in the month.

- (b) Clause 19.8(a) does not apply to the extent that a failure to deliver and unload Relevant Cargo at the Unloading Location by the Delivery Time arises as a result of:
  - (i) programmed maintenance not exceeding five days in a given month; or
  - (ii) an event or circumstances for which the Contractor is entitled to postponement of the Delivery Time in relation to the Relevant Cargo.

- (c) The Contractor acknowledges that the Service Credit:
  - (i) represents a reduction in the Contract Price to reflect the provision by the Contractor of a lower level of service than is required under this Contract; and
  - (ii) is a reasonable pre-estimate of the loss likely to be suffered by the Commonwealth as a result of no Aircraft being available for use in performing the Transport Services and as a result of a delay in the performance of a Transport Service.
- (d) The Contractor **must**:
  - (i) measure the Delay Days;
  - (ii) provide to the Commonwealth, together with the invoice under clause 19.4, a report detailing the Delay Days;
  - (iii) use appropriate measurement and monitoring tools and procedures to measure the Delay Days accurately; and
  - (iv) provide, on request, to the Commonwealth:
    - (A) information and access to those measurement and monitoring tools and procedures to verify that they accurately measure the Contractor's performance; and
    - (B) ad hoc reports on Delay Days.

## 20. **LIABILITY**

### 20.1 **Commonwealth entitled to claim damages**

Subject to clause 20.7 and the other provisions of this Contract, the Contractor acknowledges that in the event that the Contractor fails to provide the Services in accordance with the terms of this Contract the Commonwealth may suffer loss for which it will be entitled to claim damages from the Contractor.

### 20.2 **Contractor risk**

Subject to clause 20.7, the Contractor bears the risk of loss or destruction of, or damage to the Relevant Cargo from the time that the Relevant Cargo is delivered by the Commonwealth to the Contractor at the relevant Loading Location until the time that the Relevant Cargo is delivered to the Commonwealth and unloaded at the relevant Unloading Location, except to the extent that such loss, destruction or damage is not caused or contributed to by the Contractor or any Contractor Personnel through its acts or omissions.

### 20.3 **Injury etc to 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 Contract, 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).

#### 20.4 **Property damage and public risk**

Subject to clause 20.7, the Contractor **must** indemnify the Commonwealth, its officers, employees and agents against any Loss 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 20.3 applies;
- (b) by any person in respect of loss of, damage to or destruction of any property (including property of the Commonwealth other than any Relevant Cargo); and
- (c) that comprises costs and expenses of defending or settling any claim referred to in clauses 20.4(a) and 20.4(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).

#### 20.5 **Damage to Relevant Cargo**

- (a) Subject to clauses 5.11, 20.5(b) and 20.7, the Contractor **must** indemnify the Commonwealth, its officers, employees and agents against any Loss sustained or incurred in respect of loss of, or damage to or destruction of any Relevant Cargo from the time that the Relevant Cargo is delivered to the Contractor at the relevant Loading Location until the time that the Relevant Cargo is collected by the Commonwealth at the relevant Unloading Location.
- (b) Clause 20.5(a) does not apply to the extent that the loss, damage or destruction of the Relevant Cargo was:
  - (i) not caused or contributed to by the Contractor or any Contractor Personnel through its acts or omissions;
  - (ii) caused by fair wear and tear as a result of the transportation of the Relevant Cargo; or
  - (iii) caused by the Relevant Cargo being jettisoned in an emergency situation, where that situation was not caused or contributed to by the Contractor or any Contractor Personnel.
- (c) For the purpose of clause 20.5(b)(i), loss, damage or destruction of the Relevant Cargo that was caused or contributed to by the nature or presence of any cargo relating to any Third Party Taking is deemed to be loss, damage or destruction that was caused or contributed to by the Contractor.

#### 20.6 **Confidentiality and Security indemnity**

The Contractor **must** indemnify the Commonwealth, its officers, employees and agents against any Loss sustained or incurred in respect of any failure by the Contractor or the Contractor Personnel to comply with clause 17 and clause 18 of this Contract.

## 20.7 Limitation of Liability

- (a) Subject to clauses 20.7(c) and 20.7(e), the liability of the Contractor to the Commonwealth arising out of the Contractor's performance of this Contract will be limited as follows:
  - (i) for loss of, or damage to or destruction of, Defence Property, in aggregate to A\$5,000,000; and
  - (ii) for a breach of contract or negligent act or omission not mentioned in clause 20.7(a)(i) in aggregate to A\$20,000,000.
- (b) Subject to clauses 20.7(c) and 20.7(e), the Contractor is not liable for loss of, or damage to or destruction of, Defence Property to the extent that the loss, damage or destruction was caused or contributed to by:
  - (i) war, hostilities, invasion, act of foreign enemies;
  - (ii) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war;
  - (iii) riot, disorder, strike or lockout by persons other than the Contractor's Personnel and other employees of the Contractor and Subcontractors;
  - (iv) ionising radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such radiation or radio-activity; and
  - (v) natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity,except to the extent that the loss, damage or destruction:
  - (vi) could reasonably have been prevented, avoided or overcome by the Contractor; and
  - (vii) was caused or contributed to by the Contractor or any Contractor Personnel through its acts or omissions.
- (c) The limitations in clauses 20.7(a) and 20.7(b) 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; or
  - (vi) the IP indemnity provided by the Contractor under clause 20.8.
- (d) The limitations in clause 20.7(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).



- (e) To avoid doubt, if more than one limitation mentioned in clause 20.7(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.

## 20.8 **Intellectual Property**

The Contractor **must** indemnify the Commonwealth and its officers, employees, agents, licensees and sub-licensees against any Loss sustained or incurred by the Commonwealth which arises out of any Claim 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 11 or otherwise under this Contract; 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 Contract).

## 21. **INSURANCE**

### 21.1 **Contractor insurance**

The Contractor **must**, by the Transition In Date, effect and maintain or cause to be effected and maintained the following insurances at the times in the manner and form and specified in this clause 21.1 (except to the extent that the relevant risk is insured against under another insurance effected in compliance with this clause 21.1), and any other insurances as may be required by applicable law.

- (a) **(Employer's liability and worker's compensation insurance)**: employer's liability and worker's compensation insurance which insures any injury, damage, expense, loss or liability suffered or incurred by any person engaged by the Contractor or its contractors (or their dependants) in performing the Transport Services giving rise to a claim under statute or at common law in each jurisdiction where the Services will be carried out, the Contractor's employees normally reside or where their contract of employment was made;
- (b) **(Hull all risk insurance)**: hull all risk insurance in respect of each Aircraft for US\$7,000,000;
- (c) **(Aviation liability insurance)**: aviation liability insurance which covers the liability of the Contractor (including to the Commonwealth) in respect of third party legal liability for:
  - (i) injury or death to persons or loss of or damage to tangible property with a limit of liability of not less than \$20 million for each occurrence and in the aggregate;
  - (ii) loss of, damage to, or loss of use of, the cargo to be transported in connection with this Contract, for a sum insured of not less than US\$20 per kilogram of cargo.

## 21.2 Insurance policy requirements

The Contractor **must** ensure, and where relevant procure that its Subcontractors ensure, that:

- (a) each insurance referred to in clause 21.1 (with the exception of the statutory insurances):
  - (i) **must** apply in relation to Afghanistan and the Contractor's performance of this Contract in Afghanistan;
  - (ii) are effected with reputable insurers with a financial security rating of "A+" or better by Standard & Poors or the equivalent rating with another recognised rating agency, or any other reputable insurer;
  - (iii) are on terms (including deductible levels) approved in writing by the Commonwealth, which approval must not be unreasonably withheld;
  - (iv) are effected on terms which require twenty (20) Working Days' notice of cancellation to be given by the insurer to insured;
  - (v) where there is more than one person comprising the insured, provide that a notice of claim by one insured will be accepted by the insurer as notice by all insureds;
  - (vi) provide that the insurer waives all rights, remedies or relief to which it might become entitled by way of subrogation against named insureds;
- (b) each insurance referred to in this clause 21.1 (with the exception of the statutory insurances and the insurance referred to in clause 21.1(b)) **must** insure the "Commonwealth of Australia represented by the Department of Defence" for principal's liability;
- (c) each insurance referred to in clause 21.1 (with the exception of the statutory insurances and the insurance referred to in clause 21.1(a) and 21.1(b)) **must**:
  - (i) operate (with the exception of limits of indemnity) as if there was a separate policy of insurance covering each person comprising the insured, including to provide coverage for claims by one insured against another;
  - (ii) provide that the insurer agrees not to impute the acts, omissions, states of mind, knowledge or any non-disclosure of one insured to any other insured for the purpose of determining any insured's right to cover;
- (d) once approved by the Commonwealth, the terms of the insurances are not changed in a manner materially adverse to the insurance cover to be provided. The Contractor **must** indemnify the Commonwealth for its reasonable legal and other costs (if any) associated with determining whether or not to approve any such requested change.

## 21.3 Subcontractor insurance

Notwithstanding any other provision of this Contract, the Contractor **must** ensure each Subcontractor is insured as required by this clause 21 (including with respect to the amount of insurance, types of insurance and period of insurance) and, abide by the provisions of this clause 21, as is appropriate given the of the services or work to be performed by them, as if they were the Contractor.

#### 21.4 **Period and evidence of insurance**

- (a) The Contractor **must** maintain the insurance required under this clause 21 for the duration of this Contract and in respect of any insurances written on an claims made basis. The Contractor **must** also maintain relevant insurances to provide reasonable cover for obligations that survive expiry or termination of this Contract, or as otherwise specified by the Commonwealth.
- (b) The Contractor **must**:
  - (i) by the Transition In Date;
  - (ii) in the event that the Contract is extended beyond the Initial Term, on each anniversary of the Transition In Date; and
  - (iii) on request by the Commonwealth at any time, including after expiry or termination of this Contract,

produce satisfactory evidence of currency and coverage of the insurance to the Commonwealth Representative.
- (c) The evidence required by clause 21.4(b) **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.

#### 21.5 **Other insurance rights and obligations**

- (a) If the Contractor does not comply with clauses 21.4(b) and 21.4(c), the Commonwealth may, but is not obliged to, effect the relevant insurances (and the Contractor **must** provide all reasonable assistance and information to allow the Commonwealth to do so including by providing underwriting information and disclosures to brokers and insurers) and may:
  - (i) recover the cost of doing so as a debt due and payable on demand by the Commonwealth from the Contractor; or
  - (ii) deduct the premiums payable for the insurances from amounts payable to the Contractor under this Contract or otherwise.
- (b) The Contractor **must** punctually pay, or cause to be paid, all premiums in respect of all insurances referred to in this clause 21.
- (c) Any deductibles payable under any of the insurances referred to in this clause 21 shall be the responsibility of the Contractor except to the extent that the Contractor

has no liability, or is relieved from liability, under this Contract in respect of the loss or liability the subject of the insurance claim.

- (d) The Contractor **must** ensure, and where relevant procure that its Subcontractors ensure, that in relation to any insurance policy required to be maintained by this clause 21 it:
  - (i) does not do anything or fail to do anything or (insofar as it is reasonably within its power) permit anything to occur which prejudices any insurance;
  - (ii) if necessary, rectifies anything which might prejudice any insurance;
  - (iii) reinstates an insurance policy if it lapses;
  - (iv) does not cancel, adversely vary or allow an insurance policy to lapse without the prior written consent of the Commonwealth;
  - (v) immediately notifies the Commonwealth of any event which may result in an insurance policy lapsing or being cancelled;
  - (vi) gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance;
  - (vii) immediately informs the Commonwealth whenever it receives or gives a notice under or in connection with any insurance policy including any claim (with the exception of claims or potential claims by the Commonwealth against the Contractor) or notice of cancellation;
  - (viii) subject to its obligations to insurers, informs the Commonwealth immediately if it becomes aware of any actual, threatened or likely claims (with the exception of claims or potential claims by the Commonwealth against the Contractor) under any of the insurances referred to in this clause 21 which could materially reduce available limits of indemnity or which may involve the Commonwealth, and **must** reinstate or replace any depleted aggregate limit, resulting from claims that are unrelated to the Transport Services, if requested to do so in writing by the Commonwealth; and
  - (ix) does everything reasonably required by the Commonwealth or any other person for whose benefit the policy is effected to enable the Commonwealth or that other person to claim and to collect or recover monies due under any insurance policy.
- (e) The Contractor must not do anything which has been notified to the Contractor in writing by the Commonwealth that may invalidate or otherwise prejudice any insurance held by the Commonwealth in relation to the Transport Services.
- (f) Neither failure to comply, nor full compliance, by the Contractor with this clause 21 will limit or relieve the Contractor of its liabilities and obligations under any other term of this Contract.

## 22. **DISPUTE RESOLUTION**

### 22.1 **Prohibition on court proceedings**

A party must not commence court proceedings relating to any dispute arising from this Contract except where:

- (a) that party seeks urgent relief from a court;
- (b) the parties cannot agree to an alternative dispute resolution process under this clause 22 within 60 days after notice of the dispute; or
- (c) the parties agreed to an alternative dispute resolution process under this clause 22 but the dispute has not been resolved at the conclusion of the alternative dispute resolution process.

### 22.2 **Dispute resolution process**

- (a) If a party gives notice of a dispute between the parties and the dispute cannot be settled by negotiation (including negotiation between senior management of the parties) within 30 days of such notice, the parties may agree to use an alternative dispute resolution process to attempt to resolve the dispute.
- (b) If a party fails to comply with this clause 22, the other party is not required to undertake dispute resolution for the dispute in accordance with this clause 22.

### 22.3 **Obligations to perform continue**

The parties **must** at all times during the dispute continue to fulfil their obligations under this Contract.

## 23. **TERMINATION**

### 23.1 **Default Notice**

- (a) If:
  - (i) the Contractor breaches an obligation under this Contract; and
  - (ii) the Commonwealth (in its discretion) considers that the breach is capable of being remedied

the Commonwealth may issue a notice to the Contractor (**Default Notice**) requiring it remedy the default within the period specified in the notice, which period **must** be no less than 14 days from the date of receipt of the Default Notice.

- (b) If the Commonwealth issues a Default Notice under clause 23.1(a), the Contractor **must**:
  - (i) remedy the default specified in the notice within the period specified in the Default Notice at no additional cost to the Commonwealth;
  - (ii) comply with any directions given to the Contractor by the Commonwealth in relation to the default specified in the Default Notice; and
  - (iii) mitigate all loss, costs (including the costs of its compliance with any directions) and expenses in connection with the default specified in the Default Notice, including those arising from affected Subcontracts.

## 23.2 Commonwealth step-in right

Where the Contractor fails to remedy a default subject to a Default Notice within the period specified in the notice, the Commonwealth, without limiting the Contractor's warranties and obligations under this Contract, 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 25.9.

## 23.3 Termination for default

In addition to its other rights, the Commonwealth may immediately terminate or reduce the scope of this Contract by notice in writing to the Contractor, if the Contractor:

- (a) becomes:
  - (i) bankrupt or insolvent;
  - (ii) subject to one of the forms of external administration provided for in Chapter 5 of the *Corporations Act 2001*; or
  - (iii) subject to any form of administration under the laws of a non-Australian jurisdiction, which is the same as, or substantially equivalent to those referred to in clause 23.3(a)(ii);
- (b) is wound up by resolution or an order of the court;
- (c) suffers execution against any of its assets which has an adverse effect on the Contractor's ability to perform its obligations under this Contract;
- (d) makes an assignment of its estate for the benefit of creditors or enters into any arrangement or composition with its creditors;
- (e) ceases to carry on business;
- (f) subject to clause 16.1, fails to obtain or ceases to hold any Approval;
- (g) fails to start to remedy, or fails to remedy a breach of an obligation under this Contract, that is subject to a Default Notice, as required in a Default Notice;
- (h) without limiting the Commonwealth's other rights under this clause, has committed a Default that has been subject to a Default Notice on two or more prior occasions, whether or not the Contractor has remedied the Default on those occasions;
- (i) breaches an obligation under this Contract that the Commonwealth considers (in its discretion) is not capable of being remedied;
- (j) breaches any of its obligations under clause 11, clause 16.1 clause 18, or clause 24,
- (k) commits any breach (other than a breach the subject of a Default Notice) for which this Contract provides a notice of termination for default may be given;
- (l) assigns its rights other than in accordance with the requirements of this Contract;
- (m) has otherwise regularly or persistently failed to meet any, some or all requirements of this Contract, whether or not the Commonwealth has issued a Default Notice, including where the Contractor has failed to provide any Transport Services in accordance with an Advance Departure Notice more than once in any rolling period of 12 months;



- (n) the Aircraft required for a Transport Service is not available for use to provide the Transport Service; or
- (o) the Commonwealth rejects an Aircraft under clause 5.8;

#### 23.4 **Obligations in the event of termination**

- (a) If this Contract is terminated under this clause 23 or otherwise:
  - (i) 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;
  - (ii) subject to clause 25.10, the parties will be relieved from future performance, without prejudice to any right of action that has accrued at the date of termination;
  - (iii) subject to the process set out in clause 23.5 the right to recover damages, including full contractual damages, will not be affected; and
  - (iv) 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; and
  - (v) 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.
- (b) To avoid doubt, and despite anything else in this Contract, if the Contractor delays in delivering Services or complying with any other obligation in accordance with this Contract, each day of delay is a new breach of this Contract 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 Contract for a previous breach of this Contract.
- (c) The rights of the Commonwealth to terminate or reduce the scope of this Contract under this clause 23 are in addition to any other right or remedy the Commonwealth may have in relation to this Contract.

#### 23.5 **Termination or reduction in scope for convenience**

- (a) In addition to any other rights it has under this Contract, the Commonwealth may at any time terminate or reduce the scope of this Contract by notifying the Contractor in writing.
- (b) If the Commonwealth Representative issues a notice under clause 23.5(a), the Contractor **must**:
  - (i) stop or reduce (as the case may be) work in connection with this Contract 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 reduction in scope, including those arising from affected Subcontracts.

- (c) Subject to clause 23.5(d), if the Commonwealth Representative issues a notice under clause 23.5(a), the Commonwealth will only be liable for:
  - (i) payments under the payment terms of this Contract for Services provided before the effective date of termination or reduction in scope;
  - (ii) in the case of a reduction in scope, the payments unaffected by the notice; and
  - (iii) any reasonable costs incurred by the Contractor solely in connection with the termination or reduction in scope that are directly attributable to the termination or reduction in scope,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 23.5(c).
- (d) The Contractor will not be entitled to:
  - (i) profit anticipated on any part of this Contract terminated; or
  - (ii) any lost opportunity as a result of the Contractor entering into the Contract 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 23.5.

## 24. CHANGE OF CONTROL

### 24.1 Prohibition on Change of Control

- (a) The Contractor **must** ensure that there is no Change of Control of the Contractor unless and until the Contractor first obtains the written consent of the Commonwealth.
- (b) To avoid doubt, the Commonwealth may, in its absolute discretion, withhold any consent under clause 24.1(a), or give its consent subject to conditions.

### 24.2 Termination right

If there is a Change of Control without the Contractor first obtaining the Commonwealth's consent under clause 24.1(a), the Commonwealth may terminate this Contract under clause 23.3(k).

### 24.3 Definitions

For the purposes of this clause 24:

**Change of Control** means, in relation to the Contractor, where a person who did not (directly or indirectly) effectively Control the Contractor at the start of the Term, either alone or together with others, acquires Control of the Contractor; and

**Control**

means:

- (a) the ability to exercise or control the exercise of the right to vote in respect of more than 50% of the voting shares or other form of voting equity in a corporation;
- (b) the ability to dispose or exercise control over the disposal of more than 50% of the shares or other form of equity in a corporation;
- (c) the ability to appoint or remove or where a majority of the directors of a corporation;
- (d) the ability to exercise or control the exercise of the casting of a majority of the votes at the meeting of the board of directors of a corporation; and
- (e) any other means, direct or indirect, of dominating the decision making and financial and operating policies of a corporation.

25. **GENERAL**

25.1 **Commonwealth Representative**

(a) The Commonwealth Representatives are:

- (i) in relation to matters involving the day-to-day administration of the Contract: Officers Commanding Force Support Team KAF and TK

or

- (ii) in relation to matters that relating to a dispute under the Contract, the meaning of the Contract or in relation to a proposed variation to the Contract: Commander 1 Joint Movement Group

unless otherwise notified to the Contractor in writing, and have authority to represent the Commonwealth in respect of those matters.

- (b) The Commonwealth Representative may delegate its functions to a person, or authorise that person to carry out its functions on its behalf (**Authorised Person**). 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, from time to time, and the scope of their delegation or authorisation.

25.2 **Contractor Representative**

(a) The Contractor Representatives are:

- (i) in relation to matters involving the day-to-day administration of the Contract: 47F Regional Contractor Representative (Afghanistan)

or

- (ii) in relation to matters that relating to a dispute under the Contract, the meaning of the Contract or in relation to a proposed variation to the Contract: 47F Managing Director, DynCorp (Aust.) Pty Limited,

unless otherwise notified to the Commonwealth in writing, and has authority to represent the Contractor in respect of those matters.

- (b) Any notice or communication given to, or received from, a person referred to in clause 25.2(a) will be deemed to have been duly given to, or received from (as applicable) the Contractor.

### 25.3 Post Defence separation employment

- (a) The Contractor **must** ensure that any employee who is a former Employee of Defence complies with the requirements of DWRM 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 Contract, the selection of the Contractor or the performance of the project or activity to which this Contract relates; or
  - (ii) in the 12 months immediately preceding the request for approval was an Employee of Defence,
 to perform or contribute to the performance of this Contract.
- (c) The Commonwealth Representative **must** not unreasonably withhold approval of a person under clause 25.3(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 25.3(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 Contract;
  - (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 Contract;
  - (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 Contract; and
  - (v) the policy set out in DWRM and DI(G)PERS 25-4, as applicable.
- (d) Each restriction created by clause 25.3(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).

#### 25.4 **Applicable law**

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

#### 25.5 **Language and Measurement**

- (a) All information delivered as part of the Services under this Contract **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.

#### 25.6 **Entire Contract**

- (a) This Contract 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 Contract.

#### 25.7 **Waiver**

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

#### 25.8 **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 Contract.

#### 25.9 **Right of Commonwealth to Recover Money**

- (a) Without limiting the Commonwealth's rights under this Contract, if the Contractor owes any debt to the Commonwealth in relation to this Contract, 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) The Commonwealth **must** give the Contractor prior notice of its intention to exercise its rights under clause 25.9.
- (c) If the Commonwealth deducts the amount of a debt from any payment, it **must** notify the Contractor in writing that it has done so.
- (d) 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.

- (e) Nothing in this clause 25.9 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.

#### 25.10 **Survivorship**

Any provision of this Contract which expressly or by implication from its nature is intended to survive the termination or expiration of this Contract 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.

#### 25.11 **Severability**

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

#### 25.12 **Notices**

- (a) Unless the contrary intention appears, any notice or communication under this Contract will be effective if it is in writing (including electronic form, such as email), signed (including by electronic signature block) and delivered to the Contractor or the Commonwealth, as the case may be, at the following addresses, which may be varied from time to time by written notice from the varying party to the other party:

- (i) to the Contractor:

- (A) where the matter involving the day-to-day administration of the Contract:

Address: Suite 7, Football House  
3-5 Phipps Close  
DEAKIN ACT 2600

Email: 47F [REDACTED] [@dyn-aust.com.au](mailto:47F@dyn-aust.com.au)

Attention: 47F [REDACTED]

Mobile +6122 [REDACTED] (Australia)

+22 [REDACTED] (Kandahar, Afghanistan)

- (B) where the matter relates to a dispute under the Contract, the meaning of the Contract or a proposed variation to the Contract:

Address: Suite 7, Football House  
3-5 Phipps Close  
DEAKIN ACT 2600

Email: 47F [REDACTED] [@dyn-aust.com.au](mailto:47F@dyn-aust.com.au)

Attention: 47F [REDACTED]

Mobile 22 [REDACTED]



(ii) to the Commonwealth:

(A) where the matter involving the day-to-day administration of the Contract:

Address: HQJOC  
Bungendore ACT 2600

Email: [strategiclift.coordinationcell@defence.gov.au](mailto:strategiclift.coordinationcell@defence.gov.au)

Attention: SO2SLCC

(B) where the matter relates to a dispute under the Contract, the meaning of the Contract or a proposed variation to the Contract:

Address: HQJOC  
Bungendore ACT 2600

Email: [strategiclift.coordinationcell@defence.gov.au](mailto:strategiclift.coordinationcell@defence.gov.au)

Attention: Commander 1 Joint Movement Group

(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 in electronic form (such as email) when the email message enters the addressee's information system; or

(iii) in the case of delivery by hand, on delivery.

#### 25.13 **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:

(i) being employees, partners or agents of the Commonwealth; or

(ii) having any authority to bind or make representations on behalf of the Commonwealth

(b) The Contractor, its officers, employees, agents and Subcontractors will not by virtue of this Contract 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.

(c) 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 acting for or on behalf of the Commonwealth or as otherwise.

#### 25.14 **Counterparts**

(a) This document may be executed in counterparts.

(b) The counterparts, taken together, form one document.

(c) This Contract is taken to have been executed on the date that the last party executes a counterpart.

## SCHEDULE 1

### GLOSSARY

Term	Meaning
<b>ACM</b>	means Asbestos Containing Material and has the meaning given in subregulation 5(1) of the <i>Work Health and Safety Regulations 2011</i> (Cth).
<b>ADF</b>	means the Australian Defence Force.
<b>Advance Departure Notice</b>	means the notice provided by the Commonwealth under clause 6.1(a) of the Conditions of Contract.
<b>Aircraft</b>	means: <ul style="list-style-type: none"> <li>(a) each aircraft specified in Item 1.1 of Schedule 2; and</li> <li>(b) any replacement aircraft specified in Item 1.2 of Schedule 2 or approved by the Commonwealth in writing,</li> </ul> provided that IATA has not sought to impose any limitations on the operation of the aircraft or the Contractor.
<b>Aircraft Operations Manual</b>	means the manual and associated documents accepted or approved by an Aviation Authority detailing the operational procedures to be adopted in relation to an Aircraft.
<b>Air Operator's Certificate</b>	means an Approval issued by an Aviation Authority in respect of an Aircraft, authorising the holder to operate the Aircraft.
<b>Approvals</b>	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 Cargo in accordance with this Contract including: <ul style="list-style-type: none"> <li>(a) confirmation of slot times, aircraft handling arrangements and airport approvals;</li> <li>(b) all approvals, certification, consents, permissions or similar required to carry Dangerous Goods on the Aircraft including, where necessary, the permission of the relevant Aviation Authorities;</li> <li>(c) approvals from the relevant Aviation Authorities applicable to a country to operate an Aircraft;</li> <li>(d) flight authorisations;</li> <li>(e) landing and over-flight authorisations;</li> <li>(f) parking authorisation from a relevant airport corporation; and</li> <li>(g) departure authorisation.</li> </ul>
<b>Approved Flight Plan</b>	means the flight plan approved by the Commonwealth under clause 6.2(c) of the Conditions of Contract as may be amended in accordance with clause 6.2(f) of the Conditions of Contract.

Term	Meaning
<b>Approved Privacy Code</b>	has the same meaning as in the Privacy Act.
<b>Approved Subcontractor</b>	means a Subcontractor listed in Item 2 of Schedule 2.
<b>Approved Subcontract</b>	means a contract between the Contractor and an Approved Subcontractor.
<b>ATC</b>	means Air Traffic Control.
<b>ATO</b>	means the Australian Taxation Office.
<b>Audit</b>	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.
<b>Authorised Person</b>	has the meaning given to that term in clause 25.1(b) of the Conditions of Contract.
<b>Aviation Authority</b>	means: <ul style="list-style-type: none"> <li>(a) each Government Agency of a country that is a recognised by the IATA having the responsibility for airworthiness and operation of civil aircraft in a country that has issued an Air Operator's Certificate in relation to an Aircraft; and</li> <li>(b) the Afghanistan Ministry of Transport and Civil Aviation or body responsible for airworthiness and operation of civil aircraft in Afghanistan.</li> </ul>
<b>Background IP</b>	means IP, other than Third Party IP, that: <ul style="list-style-type: none"> <li>(a) is in existence at the Effective Date or is subsequently brought into existence other than as a result of the performance of this Contract or any Subcontract (or both); and</li> <li>(b) is embodied in, or attached to, the Services or is otherwise necessarily related to the performance of the Services.</li> </ul>
<b>Base Airport</b>	has the meaning given to that term in clause 5.1(a) of the Conditions of Contract.
<b>Block Hour</b>	means each hour or fraction of an hour of operation of the Aircraft: <ul style="list-style-type: none"> <li>(a) beginning when the Aircraft's engine(s) engage for the purpose of a flight; and</li> <li>(b) ending when the Aircraft's engine(s) stop after the Aircraft reaches its parking position at the end of a flight.</li> </ul>
<b>Civil Aircraft</b>	means all aircraft other than State Aircraft.

Term	Meaning
<b>Claim</b>	<p>means any claim, action, demand or proceeding including any claim, action, demand or proceeding:</p> <ul style="list-style-type: none"> <li>(a) under, arising out of, or in any way in connection with, this Contract; or</li> <li>(b) otherwise at law or in equity including: <ul style="list-style-type: none"> <li>(i) by statute;</li> <li>(ii) in tort for negligence or otherwise, including negligent misrepresentation; or</li> <li>(iii) for restitution, including restitution based on unjust enrichment.</li> </ul> </li> </ul>
<b>Coalition</b>	<p>means the coalition of nations participating in military operations in Afghanistan with the Commonwealth of Australia at any relevant time during the Term.</p>
<b>Commercial-in-Confidence Information</b>	<p>means information (whether or not owned by the Commonwealth) that:</p> <ul style="list-style-type: none"> <li>(a) is by its nature confidential;</li> <li>(b) the recipient party knows or ought to know is confidential; or</li> <li>(c) the routes, the destinations, the movements, the deployments, the personnel and/or the cargo the subject of a Transport Service;</li> </ul> <p>but does not include information which:</p> <ul style="list-style-type: none"> <li>(d) is or becomes public knowledge other than by breach of this Contract;</li> <li>(e) is in the possession of the recipient party without restriction in relation to disclosure before the date of receipt; or</li> <li>(f) has been independently developed or acquired by the recipient party.</li> </ul>
<b>Commonwealth Representative</b>	<p>means Commonwealth's representative nominated in clause 25.1 of the Conditions of Contract or any other person notified by the Commonwealth to the Contractor from time to time.</p>
<b>Conditions of Contract</b>	<p>means the provisions of this Contract that are in the document titled Services Contract (Rotary Wing Services for Sustainment Operations in Afghanistan).</p>
<b>Contract</b>	<p>means the Conditions of Contract and all Schedules and all documents incorporated by reference.</p>
<b>Contract Price</b>	<p>means the price set out in clause 19 of the Conditions of Contract.</p>

Term	Meaning
<b>Contractor Personnel</b>	means: (a) any of the employees, officers, agents or Subcontractors of the Contractor; and (b) any of the employees, officers or agents of a Subcontractor, that are involved in the performance of this Contract.
<b>Contractor Representative</b>	means the Contractor's representative nominated in clause 25.2 of the Conditions of Contract.
<b>Contractor's Company Operations Manual</b>	means the "Vertical-T Air Company Maintenance Organisational Manual" published by Air Company Vertical-T LLC and dated 31 January 2009.
<b>Dangerous Goods</b>	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 2010 or which are classified according to the IATA Dangerous Goods Regulations 2010.
<b>day</b>	means a calendar day.
<b>Default Notice</b>	means a notice issued by the Commonwealth under clause 23.1 of the Conditions of Contract
<b>Defence</b>	means the Department of Defence or the ADF.
<b>Defence Property</b>	means property of the Commonwealth: (a) administered by the Department of Defence; or (b) used by, or in the possession or under the control of the ADF or an institution of the ADF, and includes the Relevant Cargo.
<b>Delivery Time</b>	means the date and time by which Relevant Cargo must be delivered to the relevant Unloading Location specified in an Advanced Departure Notice under clause 6.1(a) of the Conditions of Contract as confirmed or changed in a Pre Departure Notice under clause 6.3(a) of the Conditions of Contract.
<b>Designated Location</b>	means each of the following: (a) Kandahar Airfield (OAKN), Afghanistan; (b) Tarin Kowt (OATN), Afghanistan; and (c) each Forward Operating Base/Patrol Base.
<b>DI(G) PERS 25-4</b>	means the Defence document "Notification of Post Separation Employment".

Term	Meaning
<b>document</b>	includes: <ul style="list-style-type: none"> <li>(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</li> <li>(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.</li> </ul>
<b>DPPM</b>	means the Defence Procurement Policy Manual.
<b>DRWM</b>	means the Defence Workplace Relations Manual.
<b>Effective Date</b>	means the date on which this Contract is signed by the parties, or if signed on different days, the date of the last signature.
<b>Employee</b>	means: <ul style="list-style-type: none"> <li>(a) an employee of the Department of Defence; or</li> <li>(b) a member or reserve member of the ADF.</li> </ul>
<b>Equipment</b>	means any equipment owned, used by or otherwise in the possession of the Commonwealth.
<b>Explosive Ordnance</b>	means all munitions containing explosives, nuclear fission or fusion materials and biological and chemical agents. This includes bombs and warheads; guided and ballistic missiles; artillery, mortar, rocket and small arms ammunition; all mines, torpedoes and depth charges, demolition charges; pyrotechnics; clusters and dispensers; cartridge and propellant actuated devices; electro-explosive devices; clandestine and improvised explosive devices; and all similar or related items or components explosive in nature.
<b>Flight Plan</b>	has the meaning given to that term in clause 6.2(a) of the Conditions of Contract.
<b>Foreground IP</b>	means IP which is created under or otherwise in connection with the performance of this Contract or any Subcontract (or both), other than Third Party IP.
<b>Forward Operating Base/Patrol Base</b>	means an ADF operated location with a helicopter landing location, as notified by the Commonwealth to the Contractor from time to time not greater than 70 nautical miles distance from Tarin Kowt (OATN), Afghanistan.
<b>Fuel Costs</b>	means the purchase price of fuel for the Aircraft reasonably and properly paid by the Contractor for the purposes of undertaking the Transport Services.
<b>Geneva Conventions Identification Card</b>	means an identity card issued in accordance with the provisions of Annex I to the <i>Protocol Additional to the Geneva Conventions of 12 August 1949</i> .



Term	Meaning
<b>Ground Handling Services</b>	means all activities associated with: <ul style="list-style-type: none"> <li>(a) the loading, tie-down, securing and unloading of Relevant Cargo;</li> <li>(b) receipt and despatch of the Aircraft; and</li> <li>(c) the provision of all personnel, equipment and supplies necessary for the performance of these activities including ramp service, and field operation services.</li> </ul>
<b>GST Act</b>	means the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
<b>Hourly Flying Rate</b>	means the rate specified at Item 4.3 of Schedule 2.
<b>IATA</b>	means the International Air Transport Association.
<b>ICAO</b>	means the International Civil Aviation Organisation.
<b>ISAF</b>	International Security Assistance Force
<b>Information Privacy Principle</b>	has the same meaning as in the Privacy Act.
<b>infringement</b>	in clause 20.8 includes unauthorised acts which would, but for the operation of section 163 of the <i>Patents Act 1990</i> (Cth), section 100 of the <i>Designs Act 2003</i> (Cth), section 183 of the <i>Copyright Act 1968</i> (Cth), and section 25 of the <i>Circuits Layout Act 1989</i> (Cth), constitute an infringement.
<b>Initial Term</b>	means the period referred to in clause 2.1 of the Conditions of Contract.
<b>Intellectual Property or IP</b>	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.
<b>Key Person</b>	means a person filling a Key Staff Position.
<b>Key Staff Position</b>	means a position that requires a person with highly specialised skills or such abilities that are crucial to the success of this Contract, as identified in accordance with Item 3 of Schedule 2.
<b>Loading Date</b>	means, in respect of a Transport Service, the date and time on which the Contractor proposes to load the Relevant Cargo on to an Aircraft at the Loading Location, as set out in the relevant Advance Departure Notice or as varied in a Pre-Departure Notice.

Term	Meaning
<b>Loading Location</b>	means, in respect of Relevant Cargo, a Designated Location specified as the Loading Location for the Relevant Cargo in the relevant Advanced Departure Notice or as varied in the Pre-Departure Notice.
<b>Local Representative</b>	has the meaning given to that term in clause 3.13(a) of the Conditions of Contract.
<b>Loss</b>	means liability, loss, damage, compensation and costs and expenses (including the costs of the investigation, defence and settlement of a relevant claim or demand) and any legal costs and expenses in relation thereto on a solicitor and own client basis, and any costs of the party claiming compensation for the Loss of investigating, prosecuting and otherwise enforcing its rights under this Contract related to the Loss.
<b>Maximum Capacity</b>	means: (a) 88 Block Hours per month; or (b) if the Commonwealth has reduced the Maximum Capacity under clause 3.2 of the Conditions of Contract, the number of Block Hours per month specified in that clause.
<b>Minimum Capability</b>	means: (a) 50 Block Hours per month; or (b) if the Commonwealth has reduced the Minimum Capability under clause 3.2 of the Conditions of Contract, the number of Block Hours specified in that clause.
<b>month</b>	means a calendar month.
<b>Monthly Forecast Plan</b>	Has the meaning given to that term in clause 3.10(f) of the Conditions of Contract.
<b>Monthly Forecast Report</b>	has the meaning given to that term in clause 3.10(e) of the Conditions of Contract.
<b>Monthly Standby Rate</b>	means the rate specified in Item 4.2 of Schedule 2
<b>Montreux Document</b>	means the <i>Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies During Armed Conflict</i> , dated 17 September 2008 as amended from time to time.
<b>Moral Rights</b>	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.
<b>National Privacy Principle</b>	has the same meaning as in the Privacy Act.

Term	Meaning
<b>Non-Australian Government Approvals</b>	means any Approvals issued by a foreign government, organisation, agency, body or entity, including those listed in clause 16.2 of the Conditions of Contract.
<b>Non-Operational Personnel</b>	means persons who are not directly involved in or responsible for the performance of the Transport Services or Third Party Tasking (as applicable), including persons required in relation to the operation or navigation of the Aircraft who do not need to be present on the Aircraft to perform their duties.
<b>Office of the Australian Information Commissioner</b>	means the Office of the Australian Information Commissioner established by the <i>Australian Information Commissioner Act 2010</i> (Cth).
<b>Operator</b>	means, in respect of Transport Services, the Subcontractor who will be the operator of the Aircraft (where applicable).
<b>Personal Information</b>	has the same meaning as in the Privacy Act.
<b>Pre-Departure Notice</b>	means the notice provided in accordance with clause 6.3(a) of the Conditions of Contract.
<b>Primary Aircraft</b>	means the aircraft specified in item 1.1 of Schedule 2.
<b>Privacy Act</b>	means the <i>Privacy Act 1988</i> (Cth).
<b>Prohibited Substances</b>	means a narcotic substance as defined in the <i>Customs Act 1901</i> (Cth) or any other substance determined to be a prohibited substance by the Commonwealth.
<b>Quality</b>	means the degree to which a set of inherent characteristics fulfils requirements.
<b>Related Bodies Corporate</b>	has the meaning given by section 9 of the <i>Corporations Act 2001</i> (Cth).
<b>Relevant Cargo</b>	means the goods, equipment and other items to be transported from a Loading Location to an Unloading Location, as specified in an Advance Departure Notice or as confirmed or varied in a Pre Departure Notice.
<b>Relevant Currency</b>	means the currency specified in Item 4.1 of Schedule 2
<b>Relevant Period</b>	means each of: <ul style="list-style-type: none"> <li>(a) 24 months;</li> <li>(b) 12 months; and</li> <li>(c) 6 months,</li> </ul> before the request for the approval contemplated by clause 25.3(b) of the Conditions of Contract was made.
<b>Scheduled Departure Time</b>	means the date(s) and time(s) that a Transport Service is scheduled to depart each Loading Location as specified in the relevant Approved Flight Plan.

Term	Meaning
<b>Schedule</b>	means a schedule to this Contract, and includes any attachment or annex to that schedule.
<b>Service Provider</b>	means a consultant or other service provider engaged by the Department of Defence or the ADF.
<b>Services</b>	means the goods and services, including items of equipment, other goods, IP and TD, required to be provided by the Contractor under this Contract.
<b>Services Plan</b>	has the meaning given to that term in clause 3.10(b) of the Conditions of Contract.
<b>Services Start Date</b>	means 1 January 2013.
<b>State Aircraft</b>	has the meaning given to that term in the <i>Air Navigation Act 1920</i> (Cth).
<b>Subcontracted Services</b>	means the part of the Services to be performed by an Approved Subcontractor, as set out in item 2 of Schedule 2
<b>Subcontractor</b>	means any person, other than the Commonwealth, that directly or indirectly furnishes goods and services, for the purposes of this Contract, to the Contractor; and Subcontract has a corresponding meaning.
<b>Surveillance</b>	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).
<b>tax invoice</b>	has the same meaning as in the GST Act.
<b>taxable supply</b>	has the same meaning as in the GST Act.
<b>Technical Data or TD</b>	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.
<b>Term</b>	means the term of the Contract determined in accordance with clause 2 of the Conditions of Contract.
<b>Third Party IP</b>	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.

Term	Meaning
<b>Third Party Tasking</b>	means any services performed by the Contractor (including for third parties) using the Aircraft that are not Transport Services.
<b>Transition In Date</b>	means 18 December 2012.
<b>Transition In Milestone Payment</b>	means a one-off payment amount arising following the Services Start Date, provided all Services have been performed as required under the Contract, and in the amount set out in Item 4.4 of Schedule 2.
<b>Transport Service</b>	means the air transportation of Relevant Cargo between the Designated Locations using the Aircraft to be undertaken by the Contractor, as set out in an Advance Departure Notice as confirmed or varied by a Pre-Departure Notice.
<b>Unexploded Ordnance</b>	means Explosive Ordnance which has been primed, fused, armed or otherwise prepared for action, and which has been fired, dropped, launched, projected or placed in such a manner as to constitute a hazard to operations, installations, personnel or material and remains unexploded either by malfunction or design or for any other cause.
<b>UN Class Number</b>	means, in respect of Dangerous Goods, the class number of each item of the Dangerous Goods as defined by Part 2 of the <i>UN Recommendations on the Transport of Dangerous Goods – Model Regulations, 12<sup>th</sup> Revised Edition</i> published by the United Nations Economic Commission for Europe as amended or replaced from time to time.
<b>Unloading Location</b>	means, in respect of Relevant Cargo, the location specified as the Unloading Location for the Relevant Cargo in the relevant Advance Departure Notice or as varied in the Pre-Departure Notice.
<b>UN Number</b>	means, in respect of Dangerous Goods, the serial number of each item of the Dangerous Goods specified in Part 3 of the <i>UN Recommendations on the Transport of Dangerous Goods – Model Regulations, 12<sup>th</sup> Revised Edition</i> published by the United Nations Economic Commission for Europe as amended or replaced from time to time.



Term	Meaning
<b>WHS Legislation</b>	<p>means:</p> <ul style="list-style-type: none"> <li>(a) the <i>Work Health and Safety Act 2011</i> (Cth) and the <i>Work Health and Safety Regulations 2011</i> (Cth); and</li> <li>(b) the Work Health and Safety Act and Work Health and Safety Regulations in each of the applicable States and Territories including the: <ul style="list-style-type: none"> <li>(i) <i>Work Health and Safety Act 2011</i> (NSW) and the <i>Work Health and Safety Regulations 2011</i> (NSW);</li> <li>(ii) <i>Work Health and Safety Act 2011</i> (QLD) and the <i>Work Health and Safety Regulations 2011</i> (QLD);</li> <li>(iii) <i>Work Health and Safety Act 2011</i> (ACT) and the <i>Work Health and Safety Regulations 2011</i> (ACT); and</li> <li>(iv) <i>Work Health and Safety (National Uniform Legislation) Act 2011</i> (NT) and the <i>Work Health and Safety (National Uniform Legislation) Regulations</i> (NT).</li> </ul> </li> </ul>
<b>Working Day</b>	<p>means:</p> <ul style="list-style-type: none"> <li>(a) in relation to the giving of a notice or other communication, any day other than a Saturday, Sunday or public holiday in the place to which the notice or other communication is sent; and</li> <li>(b) 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;</li> <li>(c) for any other purpose, any day other than a Saturday, Sunday or public holiday in Canberra, Australia.</li> </ul>



## SCHEDULE 2

### CONTRACT DETAILS

#### 1. AIRCRAFT DETAILS

##### 1.1 Primary aircraft

Aircraft make, type and model: Rostvertol Mi26T cargo helicopter

Aircraft State and registration marks: Registration mark: EW-342TF Serial number 34001212503

Country of registration: Republic of Belarus

Maximum payload uplift capacity 20,000 kg

Air Operator's Certificate RFATA No 79 15 December 2011 valid until suspended

RFATAITA AP 08-11-24 25 April 2011 valid until 25 April 2014

Base Airport Kandahar Airfield

Maintenance Base Kandahar Airfield

##### 1.2 Replacement aircraft

Aircraft make, type and model: Rostvertol Mi26T cargo helicopter

Aircraft State and registration marks: Registration mark: RA-06274 Serial Number 34001212502

Country of registration: Russian Federation

#### 2. APPROVED SUBCONTRACTORS

##### 2.1 Named approved subcontractors and subcontracted services

Subcontractor name	Services to be subcontracted
DynCorp International Free Zone LLC with its registered address at Floor 20, Al Shatha Tower, PO Box 500367 Dubai, United Arab Emirates Commercial License number 19707	Provision of labour.
Air Company Vertical-T LLC, a company registered in the Russian Federation, Registration No 1026901919450	Provision of Transport Services.

**2.2 Clauses required in subcontracts**

The following references are to clauses of the Conditions of Contract, insofar as they relate to the Subcontracted Services for the relevant Approved Subcontractor.

Clause	Description
3.4	Requirements for the Services
3.5	Obligations regarding Relevant Cargo
3.6	Dangerous Goods
3.8	Tie down
3.9	External transport of Relevant Cargo
3.16	Non-beneficiary of immunities etc conferred on the Commonwealth
5.9	Australian Defence Force
5.10	Notification obligations
5.11	Aircraft recovery
7	Contractor Personnel
8	Commonwealth directions
9.1	Prohibition on subcontracting
12.2	Commonwealth not generally required to assist Contractor
13.2	Obligations in the event of delay
14.1	Notification of matters affecting performance
15.3	Commonwealth access
16	Approvals, policy and law
17	Commercial-in-Confidence Information
18	Defence Security
20	Liability
21	Insurance
23.5	Termination or reduction in scope for convenience
24	Change of Control
25.3	Post Defence separation employment
25.4	Applicable law
25.13	Negation of Employment and Agency

### 3. KEY STAFF AND KEY STAFF POSITIONS

The key staff and key staff positions are set out in the table below:

Key staff member's name	Key staff position
<b>Ground crew</b>	
47F	Chief engineer (for the period 1 January 2012 – 31 March 2013)
	Chief engineer (for the period 1 April 2013 – 30 June 2013 and, unless agreed otherwise, any extension period exercised under clause 2.2)
	Engineer for helicopter and engine (for the period 1 January 2012 – 31 March 2013)
	Engineer for helicopter and engine (for the period 1 April 2013 – 30 June 2013 and, unless agreed otherwise, any extension period exercised under clause 2.2)
	Avionics engineer (for the period 1 January 2012 – 31 March 2013)
	Avionics engineer (for the period 1 April 2013 – 30 June 2013 and, unless agreed otherwise, any extension period exercised under clause 2.2)
	Technician for helicopter and engine (for the period 1 January 2012 – 31 March 2013)
	Technician for helicopter and engine (for the period 1 April 2013 – 30 June 2013 and, unless agreed otherwise, any extension period exercised under clause 2.2)
	Avionics technician (for the period 1 January 2012 – 31 March 2013)
	Avionics technician (for the period 1 April 2013 – 30 June 2013 and, unless agreed otherwise, any extension period exercised under clause 2.2)
<b>Flight crew</b>	
47F	Pilot-in-command (for the period 1 January 2012 – 31 March 2013)
	Pilot-in-command (for the period 1 April 2013 – 30 June 2013 and, unless agreed otherwise, any extension period exercised under clause 2.2)
	Pilot (for the period 1 January 2012 – 31 March 2013)

Key staff member's name	Key staff position
47F	Pilot (for the period 1 April 2013 – 30 June 2013 and, unless agreed otherwise, any extension period exercised under clause 2.2)
	Navigator (for the period 1 January 2012 – 31 March 2013)
	Navigator (for the period 1 April 2013 – 30 June 2013 and, unless agreed otherwise, any extension period exercised under clause 2.2)
	Flight engineer (for the period 1 January 2012 – 31 March 2013)
	Flight engineer (for the period 1 April 2013 – 30 June 2013 and, unless agreed otherwise, any extension period exercised under clause 2.2)
	Load master №1 (for the period 1 January 2012 – 31 March 2013)
	Load master №1 (for the period 1 April 2013 – 30 June 2013 and, unless agreed otherwise, any extension period exercised under clause 2.2)
	Load master №2 (for the period 1 January 2012 – 31 March 2013)
	Load master №2 (for the period 1 April 2013 – 30 June 2013 and, unless agreed otherwise, any extension period exercised under clause 2.2)

#### 4. PRICE

##### 4.1 Relevant Currency

The relevant currency is: US Dollars (**USD**)

##### 4.2 Monthly Standby Rate

Minimum Capability: Monthly Standby Rate:

50 Block Hours	USD 940,927.00
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32 Block Hours	USD 669,040.00
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Note – this rate is to be applied in the event that the Commonwealth exercises its discretion to decrease the Minimum Capability in accordance with clause 3.2(a)

#### 4.3 Hourly Flying Rate

Maximum Capacity: Hourly Flying Rate:

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88 Block Hours	USD 15,720.00
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50 Block Hours	USD 16,066.00
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Note – this rate is to be applied in the event that the Commonwealth exercises its discretion to decrease the Maximum Capacity in accordance with clause 3.2(a)

#### 4.4 Transition In Milestone Payment

The Transition In Milestone Payment amount is: USD 34,428

#### 5. NOT USED

#### 6. Commercial-in-Confidence Information

The following parts of the Contract are designated Contractor commercial-in-confidence information:

##### Information and reference

Nil

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**EXECUTED** as an agreement.

**EXECUTED** by the **Commonwealth of Australia** represented by the Department of Defence:

\_\_\_\_\_  
Signature of authorised representative

\_\_\_\_\_  
Name of authorised representative

In the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Date

**EXECUTED** by **DynCorp (Aust.) Pty Limited**  
in accordance with section 127 of the  
*Corporations Act 2001* (Cth):

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/secretary

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Name of director/secretary

\_\_\_\_\_  
Date