



# Newcastle Airport

## General Conditions of Use

Effective Date: 1 July 2025

**Please Note:** These are the Conditions of Use under which you use the Facilities and Services provided by Newcastle Airport Pty Ltd at Newcastle Airport. If you use any Facilities and Services at the Airport, you accept these Conditions of Use.

### Contact Details:

All questions and communications regarding these Conditions of Use are to be directed to:

Newcastle Airport  
Private Bag 2001, Raymond Terrace, NSW, 2324, Australia  
Email: [hello@newcastleairport.com.au](mailto:hello@newcastleairport.com.au)

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# Agreed terms

## 1. Definitions and Interpretation

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**Act of Insolvency** means an event that occurs in any of the following circumstances:

- a) an application is made to the court for an order, or an order is made that you are to be wound up;
- b) an application is made to the court for an order appointing an administrator, receiver, receiver and manager, liquidator or provisional liquidator in respect of you or any of your assets, or one of them is appointed, whether or not under an order;
- c) you enter into a deed of company arrangement or scheme of arrangement with all or any class of your creditors;
- d) you resolve to wind yourself up, or otherwise dissolve yourself and you give notice of your intention to do so;
- e) you are or you state that you are insolvent;
- f) as a result of the operations of section 459F of the *Corporations Act 2001* (Cth) (the “Act”) you are taken to have failed to comply with statutory demand;
- g) you made a statement from which it may reasonably be deducted by us that you are the subject of an event described in section 459C(2) of the Act;
- h) you are the subject of an event described in section 459C(2) of the Act; or
- i) anything analogous having a substantially similar effect to any of the events specified above happens under the law of the applicable jurisdiction.

**Airservices Australia** means the body established pursuant to the *Air Services Act 1995* (Cth).

**Air Transport Operations** has the meaning given in the *Civil Aviation Safety Regulations 1998* (Cth), and includes RPT Services, medical transport operations and charter operations (including as defined in the Operating Deed).

**Aircraft** means an aircraft (and any of its parts and accessories) registered to or operated by you that uses the Facilities and Services at the Airport.

**Airport** means the civil airport facility known as “Newcastle Airport” located at the Airport Site.

**Airport Charges** means the fees and charges for use of the Facilities and Services including the Government Mandated Services Charge, and the ATC Charge and the ARFF Charge for services provided by Department of Defence, all as varied from time to time in accordance with this Conditions of Use.

**Airport Site** means the land on which the Airport is located including, but not limited to, the following parcels of land: Lot 11 of DP 844528, Lot 103 of DP 873512, Lot 102 of DP 873511; Lot 41 of DP 1045602, Lot 42 of DP 1045602, Lot 43 of DP 1045602, Lot 1 of DP 854099 and Lot 21 of DP 1053667.

**ARFF** means airfield rescue and fire-fighting services.

**ARFF Charge** means the charge for ARFF services provided by Department of Defence at the Airport.

**ASIC** means Aviation Security Identity Card.

**ATC** means air traffic control.

**ATC Charge** means the charge for ATC services provided by Department of Defence at the Airport.

**Authority** means any government, statutory, public or other authority or body having jurisdiction over the Airport or any matter or thing relating to the Airport.

**Base** means the RAAF Base Williamtown.

**Certificate of Registration** means the registration issued by the Civil Aviation Safety Authority (CASA) for an Australian registered aircraft, or the equivalent registration authority for foreign registered aircraft.

**Conditions of Use** means this document as varied from time to time (including the Schedules).

**Confidential Information** means all and any information and documents relating to us or to the Airport whether in written, electronic or other form.

**CTAF-R Conditions** means Common Traffic Advisory Frequency - Radio conditions including, but not limited to, any requirement concerning the operation of an airport that does not have a control tower.

**Defence Aviation Support Services** means air traffic control services, airfield rescue and fire-fighting services, navigational aids, airfield lighting and any other services supplied at the Airport by the Department of Defence or any of their employees, subcontractors or agents from time to time.

**Delegate** means the delegate of the Department of Defence.

**Department of Defence** means the Commonwealth of Australia government department known as the "Department of Defence".

**Effective Date** means the effective date of these Conditions of Use, as shown on page 1 of these Conditions of Use.

**Facilities and Services** means the facilities and services provided by NAPL identified in Schedule Three.

**Flight Services** means any and all of the civil aircraft services (including but not limited to Air Transport Operations) you provide that arrive and/or depart from the Airport, both domestic and international.

**Force Majeure Event** means any accident, emergency, unplanned repairs and maintenance, acts of God, acts of any governmental or super-national authority, war, acts of terrorism, national emergency, riots, civil commotion, fire, explosion, flood, epidemic or strikes, cyber security incident, or other event beyond the reasonable direct or indirect control of a party, which prevents, restricts or limits the performance obligations by that party pursuant to this Agreement and which could not have been prevented, overcome or remedied by that party acting prudently.

**General Aviation Activity** means the operation of civil aircraft not engaged in Air Transport Operations, and includes but is not limited to, joy ride flights, training flights and club-flying flights.

**Government Mandated Services Costs** means the reasonable costs that we incur in providing you with the Government Mandated Services imposed on the Airport by law or by an Authority.

**Government Mandated Services** means the following services:

- a) security screening;
- b) checked bag screening; and
- c) other services that we are required by law or an Authority to provide to you associated with the Facilities and Services.

**Government Mandated Services Charge** means the charge for providing the Government Mandated Services published by NAPL from time to time and amended in accordance with clause 23.

**Itinerant Aircraft** means any aircraft operating to the Airport other than pursuant to a separate agreement with NAPL.

**Late Arrival** means an arrival at the Airport between 2200 and 0600.

**MTOW** means the maximum take-off weight of an Aircraft as shown on the Certificate of Registration for that Aircraft, or if not shown on the Certificate of Registration as specified by the manufacturer.

**NAPL** means Newcastle Airport Pty Ltd ACN 060 254 542.

**NAPL Policies and Procedures** means NAPL's policies and procedures in connection with the Airport

including, without limitation:

- a) the NAPL Operations Manual;
- b) the NAPL Environmental Management Plan;
- c) the NAPL Emergency Plan; and
- d) the Conditions of Use,

as varied from time to time by NAPL.

**Noise Management Plan** means any plan the Department of Defence and NAPL are required to comply with in relation to minimising and managing noise created by aircraft activity and other activities carried on at the Base and the Airport.

**Office of Transport Security** means the Commonwealth of Australia government entity which is responsible for Australia's aviation transport security from time to time.

**Operating Deed** means the operating deed attached at Schedule Four, as amended from time to time.

**Our Employees and Agents** means our employees, agents, customers, contractors, subcontractors, consultants and trustees.

**Permitted Use** means the use of the Facilities and Services in whole or part for the purposes of aircraft landing, taxiing, taking-off, parking, loading or unloading passengers baggage and freight, processing passengers and baggage through terminals, servicing aircraft at the completion of or prior to a flight and incidental uses directly required to operate a flight, but specifically excludes any Retailing Activity.

**Personal Information** has the same meaning as in the *Privacy Act 1988* (Cth).

**Registered Operator** means, in respect of an aircraft, the individual specified as the registered operator on the aircraft register held by CASA.

**Retailing Activity** means the collection of any sum, fee, charge or surcharge for any purpose except for the collection of ancillary sums at the point of check-in and where the collection occurs at a check-in counter or check-in kiosk, and specifically excludes the collection of all sums, fees, charges and surcharges for all purposes where the activity occurs airside.

**RPT Services** means regular public transport services by air for the purpose of transporting persons generally or transporting cargo for persons generally for hire or reward in accordance with fixed schedules to and from fixed terminals over specific routes with or without intermediate stopping places between terminals.

**Specified Rate** means the rate ordinarily charged by the Commonwealth Bank of Australia on overdraft current accounts (or the nearest equivalent) not exceeding \$50,000 for customers having the same credit rating as us. A certificate issued to us and signed by the manager or assistant manager of that Bank is prima facie evidence of the Specified Rate.

**Timetable** means the timetable (as varied from time to time) of the dates and times your Flight Services will be conducted which must be approved by NAPL and the Department of Defence.

**Workplace Health and Safety Plan** means a plan concerning the management and minimisation of workplace health and safety risks arising in relation to the Flight Services provided by you.

**Your Business** means the business of conducting Flight Services carried on by you.

**Your Employees and Agents** means your employees, agents, contractors, sub-contractors and consultants whilst engaged in work connected with Your Business.

## **2. Interpretation**

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### **2.1 In these Conditions of Use:**

- a) "you or your" means the owner or operator of an aircraft, jointly and severally, and includes an individual or enterprise by whom, or on whose behalf, an aircraft is operated at or otherwise uses the Airport, including the holder of a Certificate of Registration and

Registered Operator of an aircraft and, where relevant includes Your Employees and Agents, and

- b) “we, us or our” means NAPL.
- 2.2 When these Conditions of Use require something not to be done this includes not allowing or permitting a thing to be done.
- 2.3 A word or expression in the singular includes the plural and the plural includes the singular.
- 2.4 Except in clause 22, a reference to an individual includes an individual and a corporation.
- 2.5 Headings, examples and notes are for guidance only and do not govern the meaning of these Conditions of Use.
- 2.6 A reference to:
  - a) an individual’s use of the Airport includes a reference to an individual’s use of the Facilities and Services;
  - b) a law includes regulations and other instruments under it and any amendments or replacements of any of them;
  - c) a recital, clause, schedule or annexure is to a recital, clause, schedule or annexure of or to these Conditions of Use and a reference to the Conditions of Use includes all schedules, annexures and attachments;
  - d) a thing includes the whole or each part of it;
  - e) an organisation, body or person includes their employees, officers and agents as well as their respective successors in title, executors, administrators and assigns;
  - f) a document includes a variation or replacement of it;
  - g) a word denoting a gender includes all genders;
  - h) the word “including” implies that the immediately following list is not exhaustive and is without limitation; and
  - i) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time.
- 2.7 Unless otherwise provided in these Conditions of Use, if we are required to give our consent to any matter arising under these Conditions of Use, that consent must not be unreasonably withheld and, if consent is given by us, it is not effective unless it is in writing.

### **3. Term**

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- 3.1 These Conditions of Use are effective on and from the Effective Date and continue until we change or replace them.
- 3.2 Subject to applicable law, we may change or replace these Conditions of Use in whole or in part at any time. Any variation or replacement under this clause 3.2 will take effect from the date the variation or replacement is published on our website [www.newcastleairport.com.au](http://www.newcastleairport.com.au).
- 3.3 For operators of Itinerant Aircraft, these Conditions of Use apply strictly on a flight by flight basis. Use of the Airport shall constitute agreement with these Conditions of Use. Operators of Itinerant Aircraft who are required under the Operating Deed to execute an agreement with NAPL shall execute an agreement compliant with the Operating Deed before operating to the Airport or as soon as practicably possible (which must be no later than 10 business days after operating at the Airport).

### **4. Use of Airport**

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#### **Operating Hours**

- 4.1 Aircraft movements are only permitted between 0600 and 2200 each day.

- 4.2 The Operating Deed provides for the Delegate in his or her absolute discretion to grant dispensation for a Late Arrival.
- 4.3 You must submit all Late Arrival dispensation requests to us.
- 4.4 We are under no obligation to inform the Delegate of any dispensation request we receive. Should we, in our absolute discretion, provide a dispensation request to the Delegate, this does not constitute us endorsing the dispensation request and does not create any obligation on us to provide access to the Services and Facilities.

#### **Permitted Use**

- 4.5 Subject to these Conditions of Use, we will allow you to use the Facilities and Services for the Permitted Use.
- 4.6 You must not use the Facilities and Services for any other purpose other than the Permitted Use.
- 4.7 We will provide the Facilities and Services (which do not include the Defence Aviation Support Services) with all due care and skill in accordance with and subject to these Conditions of Use and all applicable laws.

#### **Defence Aviation Support Services**

- 4.8 You acknowledge that Department of Defence provides the Defence Aviation Support Services at the Airport and that air traffic control services may not always be available. At all times when air traffic control services are not available you must comply with CTAF-R Conditions.

#### **Regulatory Regime**

- 4.9 You must, at your own cost, comply with:
- a) the NAPL Policies and Procedures;
  - b) any reasonable conditions, instructions, orders and directions issued by us or Our Employees and Agents (as varied from time to time);
  - c) any conditions, instructions, orders and directions issued by the Department of Defence or the Office of Transport Security or either of their employees, subcontractors or agents;
  - d) any conditions, instructions, orders and directions given to you by any other relevant Authority in connection with the Airport or your Flight Services;
  - e) all laws applicable to the Airport or the Permitted Use including (but not limited to) the Civil Aviation Act 1988 (Cth), the Civil Aviation Regulations 1988 (Cth), the Civil Aviation Safety Regulations 1998 (Cth), the Aviation Transport Security Act 2004 (Cth), the Aviation Transport Security Regulations 2005 (Cth), the Air Navigation Act 1920 (Cth) and the Air Navigation Regulations (1947); and
  - f) all Airservices Australia and Department of Defence publications such as En Route Supplement Australia, Notices to Airmen (NOTAM) and Aeronautical Information Publications.
- 4.10 You must not do anything which causes or materially contributes to our failure to comply with any of the matters set out in clause 4.9.

#### **Mutual Cooperation**

- 4.11 You acknowledge and agree that your access to the Airport and its Facilities and Services is subject to the demands of other users of the Airport. In respect of other users of the Airport, you agree that you will not unreasonably obstruct, delay or otherwise interfere with other users of the Airport.

#### **Occupational Workplace Health and Safety Plan**

- 4.12 If requested by us, you must provide us with evidence that you have in place a Workplace Health and Safety Plan.

### **Closure of Airport / Withdrawal of Facilities or Services**

- 4.13 We may close or be directed to close all or part of the Airport and withdraw all or part of the Facilities and Services for any period (acting reasonably) for security or safety reasons or as a result of inclement weather. If this occurs we will use reasonable endeavours to give you reasonable notice of the closure of the Airport or Facilities and Services unless that is not possible.
- 4.14 You acknowledge that the Department of Defence has the discretion to prevent you from using the Airport including (but not limited to) landing at the Airport and taking off from the Airport. You agree to comply with any direction of the Department of Defence or their employees, subcontractors or agents concerning whether or how you may use the Airport.
- 4.15 We may interrupt a Facility or Service at any time if we believe it is necessary for repair and maintenance of the Facilities and Services or because of building and construction work occurring at the Airport. Where such repair or maintenance is planned, we must give you reasonable notice prior to the interruption. In all cases, we must use reasonable endeavours to minimise any interruption to Your Business.

### **Noise Management Plan**

- 4.16 You must comply with the Noise Management Plan in relation to your use of the Airport and your operation of Aircraft on or around the Airport.

### **General Aviation Activity**

- 4.17 Without limiting clause 6.1, you are not permitted to access the Airport for General Aviation Activity except:
- a) with our prior consent;
  - b) with the prior consent of the Delegate;
  - c) if the aircraft in question is subject to an in-flight emergency;
  - d) if the aircraft in question is an authorised civil assistance emergency flight; or
  - e) when civil personnel evacuations due to severe weather phenomena are required.

Where General Aviation Activity is permitted under this clause, you are only permitted to access the Aircraft Movement Facilities and Services as described in Schedule Three.

### **Fire and Emergency Training**

- 4.18 Upon request by us, you must provide to us a certificate in terms to our reasonable satisfaction, certifying that you and Your Employees and Agents have participated in fire and emergency training in accordance with all laws and regulatory requirements and are competent in the use of fire and emergency equipment. In addition, you must co-operate and participate in any emergency and security exercises as and when we require or as may be required under the Operating Deed from time to time.

### **Operating Deed**

- 4.19 Schedule Four contains the Operating Deed (or relevant extracts from the Operating Deed). You acknowledge that you have had the opportunity to review the Operating Deed.
- 4.20 You agree that the operation of any civil aircraft at the Airport is governed by the terms of the Operating Deed as varied by NAPL and the Commonwealth from time to time.
- 4.21 You agree to perform and observe the obligations in the Operating Deed imposed on us and on persons using the Airport so far as they relate to your use of the Airport.
- 4.22 You must not do or fail to do anything or cause anything to be done that would cause us to be in breach of the Operating Deed.
- 4.23 Where an activity requires Department of Defence's consent under the Operating Deed you agree not to carry out that activity without having the consent of the Department of Defence and



us. For your guidance the procedure for obtaining consents is set out in Schedule One.

### **Your Employees and Agents**

- 4.24 You are responsible for the acts and omissions of Your Employees and Agents as if they were your own acts or omissions. You must ensure that Your Employees and Agents comply with this Conditions of Use.

## **5. Check In**

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- 5.1 You may only use the Joint User Check in System if you obtain consent from us prior to use.
- 5.2 We will not unreasonably refuse a request to use the Joint User Check in System, but may refuse or limit access subject to availability.
- 5.3 If you use the Joint User Check in System you agree to pay the fee referred to in Schedule Two.
- 5.4 You must not install at the Airport any check in equipment or boarding gate equipment that belongs to you without prior written consent from us.

## **6. Your Services**

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- 6.1 You must obtain approval from us and the Department of Defence for any Flight Services. Any variation to the Flight Services must also be approved by us and the Department of Defence.
- 6.2 Any variation to the Timetable must be dealt with according to the procedure set out in Schedule One.
- 6.3 You must ensure that any sub-contractor engaged by you to perform all or part of the Flight Services will maintain in full force and effect all relevant insurances set out in these Conditions of Use.
- 6.4 If Department of Defence requires a change to your Timetable or flight schedule we must give you as much notice as reasonably practicable of the change required by Department of Defence.

## **7. Plant and Equipment**

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- 7.1 Use of any of your plant and equipment at the Airport that is required to be recharged must be approved by us. You must pay us for any electricity used in recharging any of your plant and equipment in accordance with invoices issued to you by us.
- 7.2 You must ensure that all of your plant and equipment at the Airport is kept in good working condition and has all valid and current registrations, certifications, approvals and calibrations required by applicable law. Without limiting the above, all motor vehicles at the Airport (including those used on the airside part of the Airport) must be registered at all times when on or at the Airport.

## **8. NAPL Policies and Procedures**

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- 8.1 The NAPL Policies and Procedures can be inspected at the following premises: Newcastle Airport Pty Limited,  
Airport Administration Office,  
Williamtown Drive, WILLIAMTOWN NSW 2318
- 8.2 If you want copies of the NAPL Policies and Procedures we agree to provide them to you.

## **9. Provision of Information**

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- 9.1 You must furnish to us, in such form as we may from time to time reasonably determine, information relating to your use of the Airport's Facilities and Services.
- 9.2 If requested by us in writing, you must provide us with the following information by electronic means and otherwise in such form as we reasonably determine:
- a) certification from a suitably qualified electrical engineer that all large, ground based,

electrically operated plant and equipment used by you or Your Employees and Agents is in good working order and complies with all relevant Australian standards and occupational health and safety requirements (and we may inspect any electrical plant and equipment at any time);

- b) your Timetable in respect of any RPT Services provided by you;
  - c) evidence that you have in place emergency and security procedures in relation to potential threats to your passengers, cargo and the Airport that comply with all relevant laws and the NAPL Policies and Procedures; and
  - d) the names, addresses, email addresses and telephone numbers (business, after hour and mobiles) of your key employees, subcontractors and agents (and you must ensure we can always get in contact with these persons at any time).
- 9.3 If you do not provide us with the information set out in clause 9.2(a) within 28 days of a written request to do so, we may inspect all of your plant and equipment of the kind described and obtain the appropriate certification at your cost.
- 9.4 In addition to the information required in clauses 9.1 and 9.2, within 7 days of the end of each month you must provide us with an excel spreadsheet setting out the following information for the immediately preceding month:
- a) the date of and flight number (if applicable) for each of your arriving and departing flights;
  - b) registration number of the Aircraft used for each of the above flights;
  - c) route number (if applicable) for each of the above flights;
  - d) passenger numbers for each of the above flights; and
  - e) details of the MTOW of the Aircraft used for each of the above flights.
- 9.5 If the information in clause 9.4(d) is not provided within the time period set out in that clause, each Aircraft arriving or departing from the Airport is deemed to have been carrying the maximum number of passengers permitted in that Aircraft. Any Airport Charges calculated on the basis of deemed passenger numbers will be recalculated on the basis of actual passenger numbers within a reasonable time of the actual passenger numbers being provided by you and any overpayment will be credited against future Airport Charges or refunded to you.

#### **Audit of Information Provided**

- 9.6 You must keep up to date and accurate records of the information required to be provided under clause 9.4 for at least a period of 3 years from the date the record or information was created.
- 9.7 If we ask you to do so you must give us a certificate signed by your auditor certifying that the information provided under clause 9.4 is correct. We must not ask you for an auditor's certificate more than once a year unless we have reasonable grounds for believing the information you have provided to us pursuant to clause 9.4 is misleading, inaccurate or incomplete.
- 9.8 We may at any time cause a complete audit to be made of the records relating to Your Business by an auditor selected by us for the purposes of verifying the accuracy or otherwise of the information provided by you under clause 9.4 or the certificate referred to in clause 9.7. You agree to promptly produce for inspection by the auditor all records and other information as may be reasonably required by the auditor concerning Your Business. The auditor's report will be conclusive proof (subject to demonstrable error) of the correct Airport Charges that should have been paid by you.
- 9.9 If the auditor's report discloses that the Airport Charges that were paid by you were inaccurate we may calculate the Airport Charges that should have been paid by you and demand payment of any unpaid Airport Charges and interest on those Airport Charges at the Specified Rate and you must pay such amounts in full within 7 days after demand. You may demand repayment of any overpaid Airport Charges and interest on those Airport Charges at the Specified Rate and we will pay such amounts that are owing by us promptly after demand.

- 9.10 The cost of the audit undertaken by us must be paid by you if:
- a) the Airport Charges paid by you on the basis of information you have given have been understated by more than 5% for any 12 month period; and/or
  - b) the auditor reports that, in his or her opinion, the records relating to Your Business are insufficient to enable a reasonably competent auditor to make an accurate determination of the Airport Charges that should have been paid.

## **10. Airport Charges and Payment**

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- 10.1 In consideration of us providing you with the Facilities and Services and facilitating ARFF and ATC services you must pay us the Airport Charges.
- 10.2 We will invoice you following the end of the month during which you used the Airport.
- 10.3 You must pay the Airport Charges to us without demand, set off, counterclaim, withholding or deduction.
- 10.4 Unless otherwise agreed with us in writing, you must pay the Airport Charges within 30 days from the date of our invoice to you.
- 10.5 Unless otherwise agreed by us in writing, you must pay the Airport Charges in Australian dollars by cash, bank cheque or electronic transaction as set out in our invoice to you.

### **Increase to Airport Charges**

- 10.6 Without limiting our other rights under these Conditions of Use, unless otherwise agreed with you in writing in a separate agreement, we may adjust the Airport Charges at any time, by way of publication on the Airport website.

### **Interest**

- 10.7 If you do not pay the Airport Charges on their due date you must pay us interest on that amount at the Specified Rate until the Airport Charges are paid.

### **Recovery of Costs**

- 10.8 If you do not pay the Airport Charges in accordance with the terms of these Conditions of Use, you must reimburse us all reasonable costs, charges or expenses (including legal costs on a full indemnity basis) incurred by us in recovering such unpaid Airport Charges from you.

### **Failure to Pay Charges**

- 10.9 If you have failed to pay us the Airport Charges by the relevant due date, we will provide notice requesting that you pay us the overdue amount. If you continue to fail to pay us the Airport Charges for a further 30 days after notice has been given to you, we may refuse to give your Aircraft access to the Facilities and Services until you have paid us all Airport Charges owed (plus interest) and any other costs, charges or expenses you are required to pay under these Conditions of Use.

## **11. Goods and Services Tax ("GST")**

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- 11.1 The Airport Charges are exclusive of GST. In respect of any liability we have for GST under these Conditions of Use, including the Airport Charges, you must pay us the full amount of the GST at the same time as making the payment to which the GST relates. In respect of each such payment we will provide you with a tax invoice before the GST is payable by you.

## **12. Security**

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- 12.1 You acknowledge the security requirements for the Airport and that we have certain obligations in this regard. You agree (at your cost) to:
- a) comply with and ensure Your Employees and Agents comply with all instructions relating to security on the Airport given by us, any relevant Authority or any other competent person;
  - b) if required by us (or any person authorised by the Commonwealth) arrange security

clearances for all of Your Employees and Agents engaged in Your Business;

- c) ensure Your Employees and Agents wear staff identification required from time to time by us or any relevant Authority; and
- d) in addition to the requirement in clause 12.1(a), (b) and (c), ensure that each of you and Your Employees and Agents qualify for and wear your ASIC in accordance with security requirements.

### **13. Moving Your Aircraft and Equipment**

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13.1 We may direct you to (at your cost):

- a) move an Aircraft to another position at the Airport; or
- b) remove an Aircraft from the Airport, within a reasonable period of time.

13.2 If you do not comply with our direction within the time period requested we may, at your cost, either move the Aircraft to another position at the Airport or remove it from the Airport.

13.3 In addition to the above, if your facilities, equipment or activity interrupt or compromise the safe and/or viable operation of the Airport, we may direct you to remove the relevant facilities or equipment or stop the relevant activity within a reasonable period of time, having regard to the interruption or risk. If you do not remove the relevant facilities or equipment within the specified period of time, we may do it, at your cost.

### **14. Training**

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14.1 If requested by us, you and Your Employees and Agents must, at your cost, undertake training in relation to Airport related activities including (but not limited to) security and emergency procedures. We will give you reasonable notice of when and where the training sessions will be held.

### **15. Insurance**

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15.1 You use the Airport and its Facilities and Services at your own risk. Any plant, equipment, consumables and Aircraft brought onto the Airport or its Facilities and Services are brought onto the Airport and its Facilities and Services at your risk and we are not responsible for any loss or damage to them except to the extent arising from our negligence, breach of this Conditions of Use or unlawful act.

15.2 You must, in connection with your use of the Airport maintain with reputable insurers in your name, and with us noted as an additional insured for our respective rights and interests in respect to the public liability and aviation liability insurance:

- a) public liability insurance for at least \$20 million;
- b) adequate aviation liability insurance which at a minimum complies with the Civil Aviation (Carriers' Liability) Act 1959 (Cth) and any applicable equivalent state and territory legislation;
- c) comprehensive motor vehicle insurance for all motor vehicles used by you on the Airport;
- d) aircraft hull insurance for all aircraft used by you on an agreed value basis including war risks and allied perils for their full replacement value;
- e) property insurance covering all of your plant, equipment and other property at any time located or used at the Airport for its full replacement value;
- f) workers' compensation insurance; and
- g) other insurances required by law or reasonably required by us.

15.3 You must ensure that all insurance policies to be taken out under clause 15.2 have no exclusions, endorsements or alterations which are outside market standard and include a principal's indemnity in favour of us covering any action, demand, liability, loss, damage or cost

covered by any indemnity in the Conditions of Use.

- 15.4 If we ask you must give us evidence of the insurance.
- 15.5 You must not knowingly do anything that may make our insurance invalid or able to be cancelled or that may increase our insurance premium.
- 15.6 We agree that you may satisfy the insurance requirements by way of a global policy of aviation all risks insurance, taken out by you or your parent company, that meets or exceeds the limits set out above.
- 15.7 We must at all times hold a public liability insurance policy for at least \$20 million and workers' compensation insurance, with a reputable insurer.

## **16. Guarantor**

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- 16.1 If you fail to pay any amount owing to us under these Conditions of Use by the relevant due date, then in addition to all of our other rights, we may require you to provide a guarantor who will guarantee your obligations under these Conditions of Use. The identity of the guarantor and the form of the guarantee must be acceptable to us acting reasonably and provided within 10 business days of demand by us.

## **17. Bank Guarantee and Security Deposit**

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- 17.1 If you fail to pay any amount owing to us under these Conditions of Use by the relevant due date, then in addition to all of our other rights and as security for payment of amounts payable under these Conditions of Use, we may require you to provide us (at our option):
  - a) an unconditional bank guarantee issued to us by an Australian trading bank (or if we agree some other reasonable financial institution), with no expiry date and on terms acceptable to us acting reasonably to pay on demand the amount specified by us in writing; or
  - b) a sum determined by us as a security deposit. We will deposit the security deposit in an interest bearing account in our name. The interest will be accumulated and added to the amount held by us as the security deposit.
- 17.2 We may use any bank guarantee or security deposit provided under this clause (in whole or part) to pay any amounts owing to us under these Conditions of Use including Airport Charges, interest on overdue amounts and our costs, expenses and losses (if any) due to your breach or in recovering amounts from you. You must immediately replace any amount used. If you have not operated an aircraft into the Airport for a period of 90 days we must refund to you any part of the above security amount not needed to recover our costs, expenses and losses (including interest), within 10 business days after you request it.

## **18. Exclusion of Liability and Indemnity**

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### **Exclusion of Liability**

- 18.1 Neither party (nor its respective directors, officers, employees or agents) are liable to the other for loss of or damage to any property owned or controlled by the other or any consequential or indirect loss arising from such loss or damage, unless or except to the extent that the loss or damage arises or results directly from any act, omission, neglect or default on its part, or to the extent that an insurance policy of the liable party covers any such claim.

### **Indemnity**

- 18.2 The indemnities and releases in these Conditions of Use are continuing obligations, separate and independent from the other obligations of the parties and survive termination of these Conditions of Use, for whatever reason. It is not necessary for a party to incur an expense or make a payment before enforcing a right or indemnity conferred by these Conditions of Use.
- 18.3 Subject to clause 18.1, you agree to indemnify and keep indemnified us, and our officers, employees and agents, from and against all claims, actions, liabilities and losses arising from, and any costs, charges and expenses incurred in connection with:

- a) loss of or damage to any property; or
- b) injury, disease or death to any person, caused by or to the extent contributed to by:
  - i. a negligent act or breach of these Conditions of Use by you or Your Employees and Agents;
  - ii. some danger created by you or Your Employees and Agents (whether or not the existence of that danger was or ought to have been known to it);
  - iii. the operation of any equipment, machinery or thing by any person by or on behalf of you or Your Employees and Agents; or
  - iv. any other act or thing by or on behalf of you which may arise from or in relation to you use or operation of the Airport,

provided that any amount payable by you under this indemnity will be reduced to the extent it was caused by our own negligence, breach of this Conditions of Use or unlawful act.

## **19. Additional Release**

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- 19.1 Further, you unconditionally release us from any claim, proceeding, dispute, action, demand, liability, injury, death, loss, damage, expense or cost occurring directly or indirectly in connection with:
- a) the provision of Defence Aviation Support Services;
  - b) the operation of the Airport under CTAF-R Conditions;
  - c) the closure of the Airport or the withdrawal or interruption of the provision of all or part of the Facilities and Services in accordance with these Conditions of Use;
  - d) any act, instruction, omission, decision, directive or activity of the Department of Defence or its employees, subcontractors or agents;
  - e) any Force Majeure Event affecting the Airport; and
  - f) us taking any action with respect to your Aircraft, facilities or equipment under clause 13, except to the extent arising from our negligence or default.

## **20. Confidentiality**

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- 20.1 A party (Receiver) receiving Confidential Information from the other party (Discloser) must not disclose to any person any Confidential Information supplied to it, except to:
- a) the Receiver's employees, officers, contractors and advisers;
  - b) the extent that such information is already known to the Receiving Party, in the public domain otherwise than as a result of a breach of these Conditions of Use;
  - c) the extent that the Discloser consents to such disclosure, or such disclosure is required to enforce these Conditions of Use in court; or
  - d) the extent such disclosure is required by law.
- 20.2 To the extent that the Receiver discloses any of the Discloser's Confidential Information to its employees, officers, contractors or advisers the Receiver must take all necessary steps to ensure that the Confidential Information is kept confidential including (at the Receiver's cost) requiring Your Employees and Agents to sign confidentiality agreements in a form approved by us, if required by us.
- 20.3 Upon termination or expiration of these Conditions of Use the Receiver must return to the Discloser all of the Discloser's Confidential Information.
- 20.4 This clause survives termination of these Conditions of Use.

## **21. Termination**

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- 21.1 We may terminate your access to the Airport immediately by giving notice in writing to you if:
- a) an Act of Insolvency occurs with respect to you;
  - b) the Department of Defence withdraws our authorisation to operate the Airport;
  - c) you do not comply with any provision of these Conditions of Use and after having been given written notice to remedy the breach within a reasonable time in the circumstances (which, in the case of a failure to pay Airport Charges in accordance with clause 10, is 30 days) you:
    - i. fail to remedy any non-compliance that can be remedied; or
    - ii. fail to pay compensation for any non-compliance that cannot be remedied.

## **22. Privacy Act**

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- 22.1 If you are an individual and not a corporate entity this clause applies.
- 22.2 Without limiting clause 9, you agree to provide us with any Personal Information we require in relation to your use of the Airport and the Facilities and Services as long as the information is collected for one or more of the following purposes:
- a) for the purpose of operating the airport, including by disclosing matters to civil aviation regulatory agencies and other law enforcement agencies as required by law or in accordance with prudent civil aviation practice;
  - b) for the purposes of calculation of the Airport Charges;
  - c) for the purpose of analysing and considering information concerning Airport usage, passenger numbers, flight paths and security procedures;
  - d) for the purpose of disclosing information concerning the Airport and Airport usage to a third party for their use in considering whether to purchase whole or part of the business of operating the Airport or to purchase, lease or licence the whole or part of the Airport site; and
  - e) for the purpose of marketing the Airport.
- 22.3 Failure to provide us with your Personal Information we require for one of the purposes set out above is a breach of these Conditions of Use.
- 22.4 You consent to us disclosing your Personal Information to any entity for any of the purposes set out in clause 22.2.
- 22.5 In collecting, using and disclosing your Personal Information we will comply with the provisions of the Privacy Act 1988 (Cth).

## **23. Variations to Airport Charges**

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- 23.1 We may increase or add to the Airport Charges by 30 days written notice to you or publication on our website, in the following circumstances:
- a) if Department of Defence charge us additional fees for the Defence Aviation Support Services than those already charged at the Effective Date;
  - b) if there is a change in service provider of all or part of the Defence Aviation Support Services (for example Airservices Australia) which affects the cost of the services; or
  - c) if there is an increase in our costs caused by a change in law or a requirement of any Authority.
- If any of the events set out in clauses 23.1(a), (b) or (c) occurs we will only increase the Airport Charges by an amount equivalent to the additional fees or increase in costs incurred by us.
- 23.2 The following charges are set by us on a 6 monthly basis in advance, calculated by reference to anticipated use of the Airport during that period:

- a) the ARFF Charge;
  - b) the ATC Charge; and
  - c) the Government Mandated Services Charge.
- 23.3 A charge set out above may be adjusted by us, acting reasonably, at the end of each 6 month period based on whether the charge applying during the 6 month period results in an under or over recovery of the following:
- a) in the case of the ARFF Charge, the amount levied by Department of Defence for providing ARFF services at the Airport Site;
  - b) in the case of the ATC Charge, the amount levied by Department of Defence for providing ATC services at the Airport Site; and
  - c) in the case of the Government Mandated Services Charge, the amount of Government Mandated Services Costs incurred by us.
- 23.4 We must use reasonable endeavours to ensure that the Government Mandated Services are provided in an efficient and cost effective manner.

## **24. Miscellaneous**

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### **24.1 Notice**

All notices and other communications to or by a party to these Conditions of Use:

- a) must be in writing; and
- b) must be signed by an authorised officer of the sender; and
- c) will be taken to be given or made (in the case of delivery or by post or email) when delivered, left or received at the address of the recipient shown in these Conditions of Use or to any other address it may have notified to the sender; or
- d) if delivery or receipt is on a day on which business is not generally carried on in the place to which the communication is sent or is later than 4.00 p.m. (local time), it will be taken to have been given or made at the commencement of business on the next day on which business is generally carried on in that place.

### **24.2 Waiver and exercise of rights**

The failure, delay, relaxation or indulgence on the part of any party in exercising any power or right conferred upon that party by these Conditions of Use does not operate as a waiver of that power or right, nor does any single exercise of any power or right preclude any other or further exercise of it or the exercise of any other power or right under these Conditions of Use.

### **24.3 Severability**

If any provision of these Conditions of Use is invalid, unlawful or void, other provisions which are self-sustaining and capable of separate enforcement with regard to the invalid, unlawful or void provision, are and continue to be valid and enforceable in accordance with their terms.

### **24.4 Governing law and jurisdiction**

This Agreement is governed by, and is to be construed in accordance with, the law of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any court hearing appeals from those courts.

### **24.5 Legal costs**

Subject to any express provision in this document to the contrary, each party shall bear its own legal and other costs and expenses relating directly or indirectly to the preparation of, and performance of its obligations under, this document.

### **24.6 Rights cumulative**



Subject to any express provision in this document to the contrary, the rights of a party under this document are cumulative and are in addition to any other rights of that party.

**24.7 Computation of time**

Where time is to be reckoned by reference to a day or event, that day or the day of that event is excluded.

**24.8 Joint and several liability**

An obligation of two or more persons binds them jointly and severally.

**24.9 Entire understanding**

- a) This document embodies the entire understanding and agreement between the parties as to the provision of the Facilities and Services.
- b) All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this document are merged in and superseded by this document and shall be of no force or effect whatever and no party shall be liable to any other party in respect of the those matters.
- c) No oral obligation or information provided to any party to another shall: (i) affect the meaning or interpretation of this document; or (ii) constitute any collateral agreement, warranty or understanding between any of the parties.

**24.10 No partnership**

These Conditions of Use do not create a partnership, joint venture or principal and agent relationship between the parties. Unless otherwise expressly stated a party does not have the authority to bind any other party or act as agent for any other party.

**24.11 No caveat**

You must not cause any caveat to be lodged against any part of the titles to the Airport claiming any alleged interest arising from these Conditions of Use.

# Schedule One – Procedure for Obtaining Consents

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1. Approvals of RPT Services are co-ordinated by NAPL with Department of Defence (RAAF Base Williamtown).
2. Changes to your Timetable (other than cancellations or reductions) require a minimum of 6 weeks' notice to allow Department of Defence approval to be obtained, such notice to be provided by you or on your behalf.
3. All other movements including (but not limited to) General Aviation Activity and non-RPT Air Transport Operations, must seek Department of Defence and NAPL approval via the procedures documented in the Department of Defence En Route Supplement Aust (ERSA).

## Schedule Two – Airport Charges

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Airport Charges are published on our website.

See [www.newcastleairport.com.au](http://www.newcastleairport.com.au) for a list of Airport Charges.

The charge for Government Mandated Services, ARFFS Charge and ATC Charge are reviewed every 6 months in January and July each calendar year and may change in response to any changes in civil aircraft movements, changes to mandated security requirements, security cost escalations or changes in charges imposed by RAAF Base Williamtown. For further details please see clause 24.

## Schedule Three – Facilities and Services

Item No.	Services
1	<p><b>Joint User Check In System:</b> CUTE check-in counters and combination check in service desks, for the check-in of passengers and baggage.</p> <p>Check-in counters include the provision of baggage scales and injector belts, chair, public address system at the service desk, an equipment drawer, an anti-fatigue mat, regulatory signage and a duress alarm.</p>
2	<p><b>Baggage facilities:</b> Baggage arrivals and departure systems including carousels, make up belts, oversize baggage acceptance, reclaim, provision and operation of checked baggage screening system (if and as required by laws), and sufficient tubs to meet check-in requirements.</p>
3	<p><b>Gates and Bays:</b> Gates and bays as required on a common user basis as determined by NAPL in its sole discretion from time to time. Facilities to allow passengers to board the aircraft including, boarding gate desks, suitable access to the aircraft apron, covered walkways as far as bay 8.</p>
4	<p><b>Aircraft Movement Facilities and Services:</b> Runways, taxiways and common apron for manoeuvring, parking and ground handling of aircraft.</p> <p>Infrastructure associated with runways and taxiways and visual navigation aids is owned by and provided by Department of Defence and should be considered with reference to the Operating Deed.</p> <p>Access to refuel aircraft and the provision of general facilities used to carry out such operations.</p> <p>FOD bins and regular emptying of bins. (You will manage your processes such that Foreign Object Debris (FOD) is not left on runways, taxiways or aprons. If you find FOD in these areas you must immediately remove or report to us for removal).</p>
5	<p><b>FIDS:</b> flight information display systems including screens at prominent locations throughout the Airport terminal capable of displaying flight information.</p>
6	<p><b>Public Areas:</b> Facilities in which passengers may wait prior to boarding aircraft.</p>
7	<p><b>Security:</b> End to end security including CBS, CCTV, goods screening and visitor screening.</p> <p>Screening of passengers and non-passengers and their hold and cabin luggage.</p> <p>Security or any other operational incidents (which have a direct impact on airline or airport security or operations) are to be advised to us and your local representative in a timely manner.</p> <p>We and you commit to ongoing and open discussion, sharing of information and statistics on the security screening process and facilitation at the Airport. This information exchange (where appropriate) is in order to optimise operations, customer satisfaction and continuous improvement across the terminal.</p>
8	<p><b>Toilets and water supplies:</b> landside and airside toilet facilities and fresh water supplies available to passengers and staff.</p>
9	<p><b>Emergency and Public address system:</b> a public address system within the Airport</p>

Item No.	Services
	terminal.
10	<b>Safety:</b> all reasonably practicable items and services to ensure the safety of users of the Facilities and Services.
11	<b>Ground Handling Areas:</b> sufficient space to meet reasonable needs for ground handling of aircraft including equipment staging, operation and storage, workshop, staff amenities.
12	<b>Loading Dock:</b> access to a loading dock or area to unload goods and services at the terminal
13	<b>Trash Compactors / General Waste Facilities:</b> all necessary facilities required for catering and aircraft cleaning waste costs are borne by you. You and we will agree the process for procuring such services to ensure costs are minimised and service levels are achieved.
14	<b>Government Mandated Services:</b> as defined in clause 1.

## Schedule Four – Operating Deed

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Commonwealth of Australia (Department of Defence)

and

Newcastle Airport Pty Limited

**Operating Deed**

relating to RAAF Base Williamtown

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**Deed****Date**

20 AUGUST 2016.

**Parties**

Name	The Commonwealth of Australia represented by the Department of Defence (DoD)
Address	Director General Logistics - Air Force Department of Defence R8-5-021 PO Box 7909 Canberra BC ACT 2610
Contact	Director General Logistics -Air Force
Name	Newcastle Airport Pty Limited ACN 060 254 542, in its personal capacity, in its capacity as agent of the Sublessees in accordance with the terms of the Agency and Trust Deed and in its capacity as trustee of the trust established under the Agency and Trust Deed (NAPL)
Address	'Administration Office', Williamtown Drive, Williamtown NSW 2318
Contact	Chief Executive Officer

**Operative part****1 Introduction and operation**

- (a) The terms of this Deed take effect on and from the Effective Date and will terminate on the expiry or earlier termination of this Deed in accordance with its terms.
- (b) This Deed supersedes and replaces the 2005 Operating Agreement on and from the Effective Date. The parties acknowledge and agree the 2005 Operating Agreement remains binding on the parties to it and, subject to the ATCS and ARFFS Deed, continues to apply to, for and in relation to the period from 24 June 2005 up to but excluding the Effective Date.
- (c) This Deed relates to the operations of civil aircraft at RAAF Base Williamtown on and from the Effective Date.
- (d) To the extent this Deed is inconsistent with a Specified Agreement, the provisions of the Specified Agreement prevail to the extent of the inconsistency.
- (e) An agreement, warranty, representation, covenant, waiver, release, right, duty or obligation on the part of NAPL binds it in its personal capacity, in its capacity as agent of the Sublessees in accordance with the terms of the Agency and Trust Deed

and in its capacity as trustee of the trust established under the Agency and Trust Deed.

## **2 Definitions and interpretation**

### **2.1 Definitions**

In this Deed, unless the contrary intention appears:

**2005 Operating Agreement** means the operating agreement in relation to RAAF Base Williamtown dated 24 June 2005 between DoD and NAPL (formerly known as Newcastle Airport Limited).

**Access** means access to the Licensed Area for Aircraft Movements, subject to and in accordance with the requirements of this Deed and each Specified Agreement.

**Address** means a party's address set out in the Parties section of this Deed.

**ADF** means the Australian Defence Force.

**AFHQ** means Air Force Headquarters, where the point of contact will be the officer holding the position of Director Strategic Infrastructure and Planning - Air Force or such other person or position notified by DoD to NAPL from time to time.

**Agency and Trust Deed** the deed of that name dated on or around 9 October 2013 between NAPL, the Councils and the Sublessees.

**Air Base Executive Officer** means the appointed ADF member (or authorised delegate) who manages the accountabilities, roles and responsibilities associated with the capability management and airworthiness of RAAF Base Williamtown and, ABXO has a corresponding meaning.

**Air Base Command Post** means the facility at RAAF Base Williamtown, which is the primary point of contact for RAAF Base Williamtown outside of Normal Working Hours, and ABCP has a corresponding meaning.

**Aircraft Movement** means an Arrival or a departure of a civil aircraft at RAAF Base Williamtown.

**Air Force Delegate** means the person holding the position of Commanding Officer 26 Squadron (CO 26SQN) or such person or position notified by CO 26SQN or his or her delegate to NAPL from time to time.

**Airport Entity** means each of the parties to the Multi-party Deed other than DoD.

**Airport Premises** means the First Premises and the Second Premises and also includes:

- (a) all adjoining land, and all improvements on such land, that are the subject of any lease between DoD, as lessor, and any of NAPL, either or both of the Councils or any other Airport Entity, as lessee, that is entered into after the date of this Deed; and
- (b) all other land, and improvements on such land, that the parties agree are to comprise or form part of the "Airport Premises" for the purposes of this Deed.

**Airside** means:

- (a) that part of the Airport Premises and/or RAAF Base Williamtown used for the surface movement of aircraft, as well as adjacent terrain and buildings (and any parts of those areas), to which access is controlled or which may directly or indirectly affect (or have the potential to affect) the operation or safety of aircraft movements

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and also includes those parts of the Airport Premises and/or RAAF Base Williamtown that are an Airside Area or a Landside Security Zone; and

- (b) any other part of the Airport Premises and/or RAAF Base Williamtown which is designated by DoD as "Airside" for the purposes of this Deed and/or any Specified Agreement from time to time.

**Airside Area** has the meaning given to that term in the ATSA.

**Approval** means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with RAAF Base Williamtown, Newcastle Airport and/or the activities contemplated by this Deed, the Lease or any Specified Agreement.

**Arrival** means the landing, taxi and parking of a Regular Public Transport Operations or Charter Operations aircraft on a parking apron under normal scheduled flight conditions.

**ARFFS** has the meaning given to that term in the ATCS and ARFPS Deed.

**ATCS and Air Traffic Control Services** has the meaning given to that term in the ATCS and ARPPS Deed.

**ATCS and ARFFS Deed** means the deed dated 9 October 2015 between DoD and NAPL concerning (among other things) the provision of ATCS and ARFPS for civil aircraft at Newcastle Airport, a copy of which is set out in Appendix A.

**ATSA** means the *Aviation Transport Security Act 2004* (Cth) and the regulations, orders, directions and other instruments made, enacted, issued or created under that Act and includes the ATSR and the orders, directions and other instruments made, enacted, issued or created under them.

**ATSR** means the *Aviation Transport Security Regulations 2005* (Cth).

**Authority** means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person.

**Aviation Security Identification Card** means an aviation security identification card issued under the ATSA.

**Business Day** means a day on which banks are open for general banking business in Newcastle, excluding Saturdays and Sundays.

**CAA** means the *Civil Aviation Act 1988* (Cth) and the regulations, orders, directions and other instruments made, enacted, issued or created under that Act and includes the CAR and CASR and the orders, directions and other instruments made, enacted, issued or created under them.

**CAR** means the *Civil Aviation Regulations 1988* (Cth).

**CASA** means the Civil Aviation Safety Authority established under the CAA.

**CASR** means the *Civil Aviation Safety Regulations 1998* (Cth).

**Change to Access** means any change to or variation in civil aviation access to the Licensed Area of any type or nature whatsoever, including the rescheduling, cessation or withdrawal of such access.

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**Charter Operations** means civil aircraft operations for any of the purposes specified in regulation 206(1)(b) of the CAR and includes civil air operations for the purpose of:

- (a) the carriage of passengers and/or cargo for hire or reward to or from any place, other than carriage in accordance with fixed schedules to and from fixed terminals or carriage for an operation mentioned in sub-regulation 262AM(7) of the CAR or under a permission to fly in force under sub-regulation 317(1) of the CAR; or
- (b) the carriage, in accordance with fixed schedules to and from fixed terminals, of passengers and/or cargo in circumstances in which the accommodation in the aircraft is not available for use by persons generally.

**Claim** means any claim, prospective claim, notice, demand, action, suit, cause of action, right of action, proceeding, litigation (including reasonable legal Costs), investigation, order or judgement of any kind whatsoever, whether known or unknown, present or future, and whether made by or otherwise involving or concerning a party to this Deed, a third party or otherwise.

**Cost** includes any cost, charge, expense, outgoing, payment or other expenditure of any nature (whether accrued or paid).

**Common Traffic Advisory Frequency** means the radio frequency used for air-to-air communication by pilots to coordinate their Arrivals, airfield movement and departures and CTAF has a corresponding meaning.

**Commonwealth Aircraft** means State Aircraft and also includes an aircraft that is in the possession or under the control of the Commonwealth, the ADF or a Commonwealth Authority or being used wholly or principally for a purpose of the Commonwealth, the ADF or a Commonwealth Authority.

**Commonwealth Authority** has the meaning given to the term "authority of the Commonwealth" in section 3 of the CAA.

**Conditions of Use Agreement** means a formal written and duly executed agreement between NAPL and an Operator or proposed Operator detailing (among other things) the terms and conditions on which NAPL may arrange for the Operator or proposed Operator to access and use the Licensed Area for Aircraft Movements, which agreement must be consistent with this Deed, relevant provisions of the Lease, each the Specified Agreement and any rules made by DoD and notified to NAPL in accordance with clause 3.1(d); and include a covenant by the Operator or proposed Operator that it will comply with all Laws and applicable requirements of this Deed, relevant provisions of the Lease, each Specified Agreement and any rules made by DoD and notified to NAPL in accordance with clause 3.1(d).

**Councils** means Newcastle City Council and Port Stephens Council.

**Crew** has the meaning given to that term in regulation 1.03 of the ATSR.

**CTAF Procedures** means the required procedure for using the Common Traffic Advisory Frequency.

**Effective Date** means the date of this Deed.

**En Route Supplement Australia** and **ERSA** means the Aviation Information Publication, En Route Supplement Australia as published by Ah-services Australia.

**ERSA, Williamtown Entry** means the entry in relation to RAAF Base Williamtown in the ERSA.

**Excepted Rotary Wing Aircraft Movement** means hover taxiing or repositioning of or by a Rotary Wing Aircraft where the taxiing or repositioning does not require or impede or otherwise interfere with the use of the runway or any taxiway or other part of the aerodrome traffic circuit at RAAF Base Williamtown.

**Flight** has the meaning given to that term in section 3 of the CAA.

**First Head Lease** means the lease of the First Premises between DoD, as lessor, and Newcastle City Council and Port Stephens Council, as lessees, registered as dealing number U968638, as varied by variations of lease registered as dealing numbers AB655955 and AI199571.

**First Premises** means Lot 11 of DP 844528, Lot 102 of DP 873511, Lot 103 of DP 873512, Lot 41 of DP 1045602, Lot 42 of DP 1045602 and Lot 43 of DP 1045602, being all of the land comprised in folio identifiers 11/844528, 102/873511, 103/873512, 41/1045602, 42/1045602 and 43/1045602.

**General Aviation Activity** means the operation of civil aircraft other than for Regular Public Transport Operations or Charter Operations and includes flights for joy-ride, training and/or club flying purposes.

**GST** has the meaning given to that term in the GST Law.

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

**GST Law** has the same meaning as "GST law" in the GST Act.

**Helicopter** has the meaning given to that term in regulation 2 of the CAR.

**Landside Security Area** has the meaning given to that term in the ATSA.

**Law** means:

- (a) any law applicable including common law, equity, legislation, ordinances, regulations, by-laws and other subordinate legislation; and
- (b) any Approval, including any condition or requirement under it.

**Lease** means First Head Lease, the Second Head Lease and the Multi-party Deed.

**Liability** means all liabilities, damages, losses, debts, Claims and Costs, including legal fees and disbursements, interest and penalties and Costs of investigation, litigation, settlement or judgment, of any kind and however arising, including those which are prospective or contingent, present or future, and those the amount of which for the time being are not ascertained or ascertainable.

**Licensed Area** means that part of RAAF Base Williamtown being runway 12/30 and taxiways A, B (to intersection of taxiway A), C, H, J and M.

**Material Change to Access** means any Change to Access that varies or results in a variation of or to the nature or level of civil aviation access to the Licensed Area for Aircraft Movements and that materially and adversely affects the operation of Newcastle Airport.

**Military Operations** includes military exercises and operations and any other DoD or other Commonwealth operational or national security requirement.

**Multi-party Deed** means the deed titled "Newcastle Airport - Multiparty Deed" and dated 9 October 2013.

**Newcastle Airport** means the commercial airport known as "Newcastle Airport" operated from the Airport Premises and RAAF Base Williamtown.

**Noise Management Plan** means any plan prepared or adopted by DoD in relation to minimising and managing noise created by aircraft activity and other activities carried on at RAAF Base Williamtown.

**Normal Working Hours** means 0900 to 1700 Monday to Friday, excluding public holidays.

**NOTAM** means "Notice to Airman", which is a notice containing information concerning the establishment or condition of, or a change in, an aeronautical facility, service, procedure or hazard the knowledge of which is essential to personnel concerned with flight operations, published under the Civil Aviation Safety Authority Manual of Standards (MOS139).

**Operator** means a civil aircraft operator who accesses and/or uses the Licenced Area.

**Ordnance-Related Activities** means activities by DoD involving the handling or carriage of ordnance or other explosive material.

**Partnership** means the unincorporated partnership known as the "Newcastle Airport Partnership", organised under the laws of New South Wales pursuant to the Partnership Deed.

**Partnership Deed** means the partnership deed dated 9 October 2013 between Newcastle Airport Partnership Company 1 Pty Limited as trustee for the Newcastle Airport Partnership Trust 1, Newcastle Airport Partnership Company 2 Pty Limited as trustee for the Partnership Airport Partnership Trust 2, Newcastle Airport Partnership Company 3 Pty Limited as trustee for the Newcastle Airport Partnership Trust 3 and Newcastle Airport Partnership Company 4 Pty Limited as trustee for the Newcastle Airport Partnership Trust 4.

**Pavement Classification Number and PCN** means a number expressing the bearing strength of a pavement for unrestricted operations by aircraft with an Aircraft Classification Number (ACN) value less than or equal to the PCN.

**Personnel** means, in respect of a party, that party's directors, officers, employees, servants, agents, representatives, contractors and subcontractors but does not include the other party to this Deed or that other party's directors, officers, employees, servants, agents, representatives, contractors and subcontractors.

**Pilot in Command** in relation to an aircraft, means the pilot responsible for the operation and safety of the aircraft during the Flight of the aircraft.

**Power** means any power, right, privilege, authority, discretion or remedy of any type or nature whatsoever.

**Procedures** means the Newcastle Airport RAAF Base Williamtown Operational Procedures document forming part of this Deed and set out in Annexure 2.

**RAAF Base Williamtown** means the Royal Australian Air Force base located at Williamtown, New South Wales.

**Regular Public Transport Operations** means civil aircraft operations for any of the purposes specified in regulation 206(1)(c) of the CAR and includes civil air operations for the purpose of transporting persons generally, and/or transporting cargo for persons generally, for hire or reward in accordance with fixed schedules to and from fixed terminals over specific routes with or without intermediate stopping places between terminals, and RPTO has a corresponding meaning.

**Rotary Wing Aircraft** means an aircraft supported in flight by the reaction of air on one or more rotors on substantially vertical axes and includes a Helicopter.

**Second Head Lease** means the lease of the Second Premises between DoD, as lessor, and Newcastle City Council and Port Stephens Council, as lessees, registered as dealing number AB655956, as varied by Variation of Lease registered as dealing number AI199904.

**Second Premises** means Lot 1 in DP 854099 and Lot 21 in DP 1053667, being all of the land comprised in folio identifier 1/854099 and 21/1053667.

**Security Interest** has the meaning given to the term "Loan Security" in the Multi-party Deed.

**Services** means the services provided by DoD to NAPL under this Deed but does not include ATCS or ARFFS.

**Severe Weather Phenomena** includes a wildfire and bushfire and a cyclone, hurricane, typhoon, heatwave, windstorm, dust storm, flood and other similar examples of severe weather.

**Specified Agreement** means:

- (a) the ATCS and ARFFS Deed; and
- (b) any other contract, document or arrangement DoD and NAPL agree in writing to be a "Specified Agreement" for the purposes of this Deed.

**State Aircraft** has the meaning given to that term in section 3 of the CAA.

**Sublessees** means:

- (a) Newcastle Airport Partnership Company 1 Pty Limited ACN 163 779 646 acting in its own capacity and in its capacity as trustee for the Newcastle Airport Partnership Trust 1;
- (b) Newcastle Airport Partnership Company 2 Pty Limited ACN 163 779 682 acting in its own capacity and in its capacity as trustee for the Newcastle Airport Partnership Trust 2;
- (c) Newcastle Airport Partnership Company 3 Pty Limited ACN 163 779 744 acting in its own capacity and in its capacity as trustee for the Newcastle Airport Partnership Trust 3;
- (d) Newcastle Airport Partnership Company 4 Pty Limited ACN 163 779 806 acting in its own capacity and in its capacity as trustee for the Newcastle Airport Partnership Trust 4,

each in their capacities as a partner of the Partnership.

**Trust** means the trust established under the Agency and Trust Deed.

**Trust Property** means all cash, property, rights and income of the Trust from time to time.

**Withdrawal Date** has the meaning given to that term in clause 3.3(d).

## 2.2 Interpretation

In this Deed, unless the contrary intention appears:

**(documents)** subject to clause 1(b), a reference to this Deed or another document includes any document which varies, supplements, replaces, assigns or novates this Deed or that other document.

**(references)** a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this Deed.

**(headings)** clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this Deed.

**(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns.

**(party)** a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns.

**(requirements)** a requirement to do any thing includes a requirement to cause that thing to be done, and a requirement not to do any thing includes a requirement to prevent that thing being done.

**(including)** including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind.

**(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning.

**(singular)** the singular includes the plural and vice-versa.

**(gender)** words importing one gender include all other genders.

**(parts)** a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation.

**(rules of construction)** neither this Deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

**(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it.

**(time and date)** a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in New South Wales, Australia, even if the obligation is to be performed elsewhere.

**(joint and several)** an agreement, representation, covenant, right or obligation:

- (a) in favour of two or more persons is for the benefit of them jointly and severally; and
- (b) on the part of two or more persons binds them jointly and severally.

**(writing)** a reference to a notice, consent, request, direction, approval or other communication under this Deed or an agreement between the parties means a written notice, request, direction, consent, approval, communication or agreement.

**(replacement bodies)** a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions.

**(Australian currency)** a reference to dollars or\$ is to Australian currency.

**(month)** a reference to a month is a reference to a calendar month.

**(year)** a reference to a year is a reference to twelve consecutive calendar months.



**(GST)** a reference to GST includes any notional or equivalent liability to pay GST and to where a party is treated under the GST Law as if it paid GST (including under or as a result of any regulation, direction, pronouncement, instrument, policy or guideline made under, in connection with or in relation to section 177-1 of the GST Act or any similar Law).

### 2.3 Lease

- (a) A capitalised term in this Deed that is defined in the Lease has the meaning given to that term in the Lease unless the term is also defined in this Deed, in which case the definition in this Deed prevails.
- (b) This Deed must be read in conjunction with the Lease and each Specified Agreement, including the promises by NAPL, the Councils and each other Airport Entity that they will:
  - (1) comply with all Laws relating to (among other things) the Airport Premises, the structures on those premises and the use and/or occupation of those premises and/or such structures (including Newcastle Airport); and
  - (2) without limiting the generality of the forgoing, comply with any conditions or other requirements specified or imposed by CASA pursuant to the CAA or any other Law.

### 2.4 DoD's consent

Except as otherwise expressly provided in this Deed or any Specified Agreement, if DoD is required to give its consent or approval to any matter or thing arising under or in connection with this Deed, that consent or approval:

- (a) may be given or withheld by DoD through the Air Force Delegate, acting reasonably; and
- (b) if given:
  - (1) may be given subject to such conditions as DoD may impose, acting reasonably; and
  - (2) is not effective unless it is given in writing except where consent or approval may be given verbally.
- (c) Verbal consent or approval may only be given where short notice operational decisions need to be made by the Air Force Delegate. In the event of disagreement between DoD and NAPL on whether verbal consent or approval may be given, the decision of the Air Force Delegate shall be final and conclusive. DoD will endeavour to provide written consent following a verbal consent where practicable and appropriate.

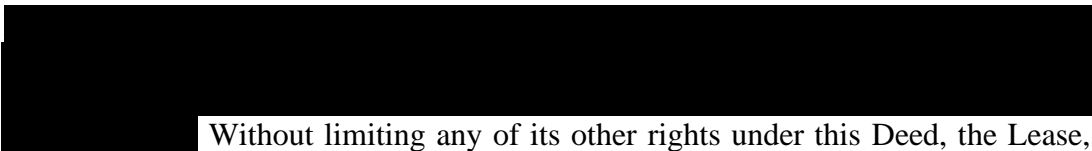
### 2.5

### 3 Licence and Access

#### 3.1 Licence

- (a) DoD grants to NAPL a non-exclusive, non-transferable licence for Access on and subject to the terms and conditions set out in this Deed, relevant provisions of the Lease, each Specified Agreement and any rules made by DoD and notified to NAPL in accordance with clause 3.1(d).
- (b) NAPL may only access and use the Licensed Area, and make arrangements for others to access and use the Licensed Area, strictly in accordance with this Deed, relevant provisions of the Lease, each Specified Agreement and any rules made by DoD and notified to NAPL in accordance with clause 3.1(d).
- (c) The Powers given by this Deed to NAPL are solely contractual and nothing in this Deed creates or gives NAPL or any other person any estate or interest in the Licensed Area or any other land.
- (d) DoD may from time to time make rules in relation to the Licensed Area, including the terms and conditions of access to and use of the Licensed Area by any person, and notify NAPL of such rules. NAPL must comply with, and use all reasonable endeavours, including through the terms of and by enforcing Conditions of Use Agreements and other contractual arrangements, to ensure that each other Airport Entity, each Operator and each other person that NAPL permits or allows to access the Licensed Area complies with, any rules made by DoD and notified to NAPL in accordance with this clause 3.1(d).

#### 3.2 Access

- (a) Subject to this Deed (including the other provisions of this clause 3 and clause 5), relevant provisions of the Lease, each Specified Agreement and any rules made by DoD and notified to NAPL in accordance with clause 3.1(d), DoD will use reasonable endeavours to allow civil aviation access to the Licensed Area for Aircraft Movements.
- (b) NAPL may arrange for persons involved in civil aviation to access and use the Licensed Area for Aircraft Movements under a Conditions of Use Agreement, provided the arrangement is consistent with this Deed, relevant provisions of the Lease, each Specified Agreement and any rules made by DoD and notified to NAPL in accordance with clause 3.1(d).
- (c)   
Without limiting any of its other rights under this Deed, the Lease, any Specified Agreement, any Law or otherwise, DoD may at its absolute discretion, deny access to the Licensed Area to any Operator that does not comply with applicable Laws or applicable requirements of this Deed, relevant provisions of the Lease, each Specified Agreement or any rules made by DoD and notified to NAPL in accordance with clause 3.1(d), or if directed to do so by any Authority.
- (d) The parties acknowledge and agree that:
  - (1) except for emergency situations, Military Operations and military aircraft movements take precedence over civil operations and aircraft movements; and

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- (2) DoD at all times reserves the right to and may refuse to provide, cease providing, interrupt, close, reschedule, limit, restrict, withdraw, reduce, decrease and/or otherwise vary civil aviation access to the Licensed Area (i.e. to make a Change to Access) where, in the opinion of the Air Base Executive Officer or other DoD officer exercising a similar function, it is necessary to do so for any operational or national security reason, including:
- (A) DoD prioritisation of airfield services; or
  - (B) an operational emergency; or
  - (C) any other reason associated with a DoD or other Commonwealth operational, national security or other requirement.

The decision of the Air Base Executive Officer or other DoD officer exercising a similar function in this regard shall be final and conclusive. On request by NAPL, DoD may at its absolute discretion provide reasons to NAPL for such changes.

- (e) DoD must use reasonable endeavours to provide NAPL with as much prior notice (not exceeding 6 months) of a Material Change to Access as is reasonably practicable in the circumstances. If, having used reasonable endeavours to do so, DoD cannot or has been unable to provide NAPL with prior notice of the Material Change to Access DoD must notify NAPL of the Material Change to Access as soon as reasonably practicable after the Material Change to Access has occurred.
- (f) DoD must act reasonably and in good faith in the exercise of its Powers under clauses 3.2(d)(2) and (e).
- (g) Where a Change to Access occurs, DoD exercises any of its Powers in accordance with the requirements of this Deed or this Deed expires or is terminated for any reason including pursuant to clause 13:
  - (1) neither NAPL nor any other Airport Entity or other person will be entitled to any reduction in rent, payment or other compensation of any kind for, concerning or in connection with the Change to Access, exercise of Powers or expiry or termination. However and notwithstanding the foregoing, where NAPL has not contributed to the Change of Access requirement and the access change results in the cessation of civil aviation access to the Licensed Area and is in force for longer than 72 hours, then DoD and NAPL will negotiate in good faith a reasonable rent abatement for Rent payable under the First Head Lease and Second Head Lease for the duration of the change of access; and
  - (2) NAPL must not bring any Claim against DoD or any of its Personnel concerning or in connection with, and NAPL releases DoD and its Personnel from all Claims and Liabilities arising from or in connection with, (either directly or indirectly) the Change to Access, exercise of Powers or expiry or termination, including any direct or indirect Claim or Liability for, concerning or in the nature of:
    - (A) economic loss;
    - (B) loss of opportunity, chance or goodwill;
    - (C) loss of opportunity or chance to obtain a commercial advantage or benefit;

- (D) loss arising from business interruption;
- (E) loss of profit or revenue; or
- (F) any consequential or special losses, including loss of profit or revenue, loss of third party contractual rights or consequential or special losses arising from or in connection with (either directly or indirectly) any Change to Access or the operation of, or any activities at, Newcastle Airport changing or being interrupted or stopping or otherwise ceasing,

save for the potential rent abatement for Rent payable under the First Head Lease and Second Head Lease pursuant to clause 3.2(g)(l).

For the avoidance of doubt this clause 3.2(g)(2) does not in any way exclude or limit DOD's obligations under clause 3.2(e),(f) and (g)(l) or the release in clause 5.4(b) of the ATCS and ARFFS Deed.

- (h) NAPL acknowledges and agrees DoD does not make any statement, representation, warranty, promise or guarantee to any person concerning, or assume any responsibility for, the continued provision of civil aviation access to the Licensed Area.
- (i) Without limiting the operation of clause 3.2(g) but subject to DoD complying with its obligations for change of access under clause 3.2(e), neither DoD nor any of its Personnel are liable for any Claims by NAPL, any other Airport Entity or any other person for, concerning or in connection with (either directly or indirectly) any failure by DoD or its Personnel to provide or continue to provide civil aviation access to the Licensed Area, including for, concerning or in connection with (either directly or indirectly) any Claim, Liability or compensation of any kind (including the Cost of any settlement and/or legal Costs on a solicitor and own client basis) sustained or incurred by or awarded against NAPL, any other Airport Entity or any other person as a result of or in connection with (either directly or indirectly) any such failure.

### **3.3 Other requirements**

- (a) Except as otherwise expressly provided in a Specified Agreement or where otherwise expressly agreed by DoD in writing, NAPL is not permitted to augment the Services or the ATCS or ARFFS provided by DoD at RAAF Base Williamtown.
- (b) Subject to the Specified Agreements, DoD does not promise and makes no representation that Services provided by DoD and/or its Personnel at RAAF Base Williamtown (if any) will be provided for NAPL's requirements that exceed the staffing or other resources needed for RAAF Base Williamtown requirements.
- (c) NAPL acknowledges and agrees that DoD may at any time charge for future Services where previously no charge was made. DoD will make every effort to provide NAPL with at least 6 months, with a minimum of 3 months' notice, of any such charges. Any such charges will be at the applicable full Cost recovery rate or as otherwise agreed between DoD and NAPL.
- (d) NAPL acknowledges and agrees that:
  - (1) if DoD no longer requires RAAF Base Williamtown for Department of Defence purposes or proposes to cease aviation activities at RAAF Base Williamtown, then DoD shall provide NAPL with at least six (6) months' notice of the date on and from which it either will no longer require RAAF

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Base Williamtown for Department of Defence purposes or plans to cease aviation activities at RAAF Base Williamtown (**Withdrawal Date**);

- (2) DoD may, in its absolute discretion, cease providing all or any aviation support services it is providing at RAAF Base Williamtown as at the Withdrawal Date (if any) on or after the Withdrawal Date (for the avoidance of doubt, this clause does not impose any obligation on DoD to provide aviation support services at RAAF Base Williamtown at any time prior to the Withdrawal Date); and
  - (3) without limiting the operation of clauses 3.2(g) and 3.2(i), neither NAPL nor any other Airport Entity or other person will be entitled to any reduction in rent, payment or other compensation of any kind for, concerning or in connection with any such cessation of aviation activities at RAAF Base Williamtown, including any such cessation of aviation support services at RAAF Base Williamtown.
- (e) NAPL acknowledges and agrees that if it requires a civil aircraft to use any part of the runway, any taxiway or other area outside the Licensed Area, prior approval must first be obtained from the Air Force Delegate.
- (f) NAPL must ensure that:
  - (1) all regular users of the airfield operate under a Conditions of Use Agreement entered into by NAPL in accordance with this Deed (where regular use is deemed to be one or more scheduled Aircraft Movements per week over a contiguous two month period or as otherwise determined by DoD and notified to NAPL from time to time) - this requirement will only be waived in emergency situations such as emergency landings or for evacuation operations; and
  - (2) each Conditions of Use Agreement entered into by NAPL must require the other party or parties to that agreement to comply with all Laws and applicable requirements of this Deed, relevant provisions of the Lease, each Specified Agreement and any rules made by DoD and notified to NAPL in accordance with clause 3.1(d).
- (g) NAPL must use all reasonable endeavours, including through the terms of and by enforcing the Conditions of Use Agreements and other contractual arrangements, to ensure that each Operator complies with all Laws and applicable requirements of this Deed, relevant provisions of the Lease, each Specified Agreement and any rules made by DoD and notified to NAPL in accordance with clause 3.1(d).
- (h) NAPL must:
  - (1) provide DoD with true and complete copies of all Conditions of Use Agreements entered into by NAPL in relation to Newcastle Airport and that are on foot as at the Effective Date within 10 Business Days of the Effective Date;
  - (2) provide DoD with true and complete copies of each Conditions of Use Agreement entered into by NAPL in relation to Newcastle Airport after the Effective Date within 10 Business Days of the Conditions of Use Agreement being entered into;

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- (3) notify DoD in writing of any variation to the rights of access to and/or use of the Licensed Area granted under any Conditions of Use Agreement, including by providing a copy of the deed of variation or amended agreement to DoD, within 10 Business Days of the variation taking effect; and
  - (4) notify DoD in writing of the termination or expiry of any Conditions of Use Agreement.
  - (i) To the extent this Deed imposes obligations in relation to the terms of Conditions of Use with Operators, these obligations apply only to the extent that the existing Conditions of Use are consistent with this agreement. NAPL must ensure that:
    - (a) any new Conditions of Use Agreements comply with the requirements of this Deed; and
    - (b) when Conditions of Use Agreements expire the Operator is required to sign a new Conditions of Use that complies with the requirements of this Deed (unless the existing Conditions of Use is already compliant and is in holding over mode).
  - (j) Without limiting clause 2.5, where this Deed imposes an obligation on NAPL to use all reasonable endeavours to ensure compliance with laws or any other policy or procedure by an Operator or other third parties the following is the extent of NAPL's contractual obligations:
    - (a) subject to the 3.3(i), NAPL must ensure that Operators sign a Conditions of Use that complies with the requirements of this Deed;
    - (b) where NAPL becomes aware of a breach of the Conditions of Use its must notify the relevant Operator of the breach and issue a notice of breach and notify other applicable Authorities of the breach (where appropriate);
    - (c) NAPL must notify Operators and any other applicable third parties (by signage, web site or such other means as NAPL considers appropriate) of Airport rules and any other policies and procedures which such persons are required to comply with those rules or policies or procedures including, without limitation, the Procedures;
    - (d) where NAPL becomes aware of a breach of law or policy or procedure notify applicable Authorities (where appropriate); and
    - (e) where the particular circumstance requires and an Operator has persistently not complied with notices of breach issued by NAPL, NAPL must take steps to enforce, including considering the option to terminate the agreement or other arrangement with the Operator or other third party. For the avoidance of doubt, whilst NAPL will consider if litigation is appropriate it cannot be compelled to commence litigation.

NAPL may choose to undertake additional actions but will not be in breach of this Deed if it does not do so. This clause 3.3(j) does not create any obligation on DoD to manage or enforce agreements or arrangements entered by NAPL with Operators or other third parties which management and enforcement is the obligation of NAPL.

#### **4 Airfield promulgated hours of operation**

Subject to this Deed, each Specified Agreement and any rules made by DoD and notified to NAPL in accordance with clause 3.1(d):

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#### **4.1 Operating hours**

Regular Public Transport Operations and Charter Operations will only be permitted between 0600 and 2200 hours each day.

#### **4.2 Late arrivals**

The Air Force Delegate may, at his or her absolute discretion, grant dispensation for a late Arrival with the following conditions:

- (a) If the Operator cannot guarantee a landing before 2200 the request may be denied.
- (b) Subject to the ATCS and ARFFS Deed:
  - (1) ATCS will not remain open after 2200 hours, with late Arrivals required to use CTAF Procedures; and
  - (2) ARFFS capability will be reduced to CAT 4 at 2200 hours.

For the avoidance of doubt, nothing in the clause excludes or limits any other rights or other Powers of DoD under this Deed, the Lease, any Specified Agreement, any Law or otherwise.

### **5 Operational requirements**

- (a) Subject to clause 5(b) but otherwise notwithstanding any other provision of this Deed, NAPL must obtain approval from the Air Force Delegate for Aircraft Movements in accordance with clause 8(a). If such approval is given it may be given on specified terms and conditions. Without limiting the Air Force Delegate's discretion in relation to the giving or withholding of such approval, the Air Force Delegate may withhold his or her approval for civil aviation activities incompatible with Military Operations.
- (b) NAPL may apply to the Air Force Delegate on a 6 monthly basis to waive the requirement for approval of Aircraft Movements specified in clause 7(a). If such a waiver is given it may be given on specified terms and conditions. The Air Force Delegate may revoke any waiver given under this clause at any time at his or her absolute discretion.
- (c) NAPL must comply with the Noise Management Plan in respect of civil aviation activities including, without limitation, requiring Operators to comply with the Noise Management Plan as a condition of the Conditions of Use of Agreement. DoD reserves the right to identify and report to NAPL non-compliances with the Noise Management Plan in respect of civil aviation activities. NAPL will use all reasonable endeavours to ensure civil aircraft Operators comply with the Noise Management Plan at all times. In circumstances where an Operator fails to comply with the Noise Management Plan and without limiting the Air Force Delegate's discretion in relation to the giving or withholding of such approval, the Air Force Delegate may decline withhold his or her approval for all or any Aircraft Movements associated with the Operator in breach with the Noise Management Plan. Where specific breaches occur with the Noise Management Plan by Operators, the Air Force Delegate will inform NAPL of the event. NAPL will raise the event with the appropriate civilian regulator for investigation and resolution with the civil aviation Operator.
- (d) NAPL must use all reasonable endeavours, including through the terms of and by enforcing Conditions of Use Agreements and other contractual arrangements, to

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ensure that Pilots in Command of civil aircraft authorised to operate to or from RAAF Base Williamtown:

- (1) comply with air traffic control instructions issued by RAAF Base Williamtown air traffic control agencies, when such agencies are manned, and any rules made by DoD and notified to NAPL in accordance with clause 3.1(d);
- (2) meet the requirements outlined in ERSa and valid NOTAMs for operations at RAAF Base Williamtown.

For the avoidance of doubt, nothing in this clause excludes or limits any other rights or other Powers of DoD under this Deed, the Lease, any Specified Agreement, any Law or otherwise.

## **6 Particular operational procedures**

Subject to this Deed, each Specified Agreement and any rules made by DoD and notified to NAPL in accordance with clause 3.1(d), the parties acknowledge and agree as follows:

### **6.1 DoD use of civil areas**

- (a) NAPL waives the right to charge usage fees to Commonwealth Aircraft that utilise the civil movement areas at Newcastle Airport.
- (b) In the event of an assessed risk to DoD assets or Personnel NAPL agrees to allow the Air Force Delegate, or his or her representative, to put in place appropriate security measures. Where possible, NAPL will be informed.
- (c) If the Air Force Delegate desires to locate ADF assets on the Airport Premises for normal operations (that is, ADF exercises), the consent of NAPL shall be obtained.

### **6.2 Emergency procedures**

The RAAF Base Williamtown Aerodrome Emergency Plan (**AEP**) contains the actions to be taken in the event of an emergency affecting civil operations at RAAF Base Williamtown. NAPL, within its capabilities and legal obligations, agrees to respond to all aerodrome emergencies in accordance with the AEP. The responsibilities of NAPL will be incorporated into the AEP. The AEP is to be reviewed annually in consultation with NAPL and a full-scale exercise is to be conducted every 2 years or as dictated by operational circumstances.

### **6.3 NOTAM and ERSa entries**

DoD is responsible for promulgation of all NOTAMs, with the exception of emergency situations where either party can raise and promulgate a NOTAM. Both parties must be informed of a NOTAM as soon as reasonably practical following its promulgation. DoD is responsible for submission of entries in ERSa regarding RAAF Base Williamtown and the Airport Premises including the civil apron facilities. NAPL must advise the Air Force Delegate of any changes.

### **6.4 Limits on traffic volume and aircraft type**

The volume of civil aircraft traffic at RAAF Base Williamtown, and the types of civil aircraft that may use RAAF Base Williamtown, will be limited to that which can safely use RAAF Base Williamtown considering:

- (a) the length, PCN and other characteristics of the runway, the taxiways and other parts of the aerodrome traffic circuit;



- (b) the type and level of ATCS then being provided;
- (c) the type and level of ARFFS then being provided; and
- (d) any other factors DoD considers relevant.

The limitations on traffic volume and aircraft type may be determined by AFHQ or in accordance with any direction, recommendation or guidance by CASA.

## **6.5 Evacuation operations**

In the event a civil evacuation is required due to Severe Weather Phenomenon, NAPL is to liaise with the Air Force Delegate as soon as reasonably practicable to co-ordinate a response. Evacuation operations will take precedence over Military Operations.

## **6.6 Staff training requirements in the airside area**

All NAPL Personnel who work in the airside area of Newcastle Airport must be trained in accordance with relevant legislation and meet the requirements of safety and security legislation.

DoD reserves the right to identify and report to NAPL Personnel in the airside area that do not meet the training, safety and security requirements associated with airside operations. NAPL will use all reasonable endeavours to ensure airside personnel comply with airside training, safety and security requirements.

For the avoidance of doubt, nothing in the clause excludes or limits any other rights or other Powers of DoD under this Deed, the Lease, any Specified Agreement, any Law or otherwise.

## **6.7 Newcastle Airport RAAF Base Williamtown Operational Procedures**

NAPL must:

- (a) comply with; and
- (b) use all reasonable endeavours to ensure Operator compliance with, including through the terms of and by enforcing Conditions of Use Agreements and other contractual arrangements,

the operational procedures referred to in the Procedures.

## **7 Regular Public Transport Operations and Charter Operations**

Subject to this Deed, each Specified Agreement and any rules made by DoD and notified to NAPL in accordance with clause 3.1(d):

- (a) DoD will permit Aircraft Movements and allow Access for the purposes of Regular Public Transport Operations and Charter Operations in accordance with the following operating limitations:
  - (1) Between 0600 and 2200 hours each day, 6 aircraft Arrivals and unlimited aircraft departures are permitted each hour.
  - (2) There must be a reasonable scheduled interval between each aircraft Arrival. DoD reserves the right to review and propose amendments to aircraft Operator schedules where appropriate.
- (b) The Aircraft Movement rate specified in clause 7(a) is the basis on which an Operator's schedule is to be planned. The Aircraft Movement rates may be exceeded due to unavoidable delays. The Air Force Delegate will remain the sole arbiter as to

Aircraft Movements in accordance with clause 5, including Aircraft Movements in excess of the rate specified in clause 7(a). Commonwealth Aircraft will be afforded priority in all circumstances, except for declared aircraft emergencies.

- (c) Rotary Wing Aircraft operations in support of industry are considered to be Charter Operations for the purposes of this Deed. Excepted Rotary Wing Aircraft Movements are not subject to the limits in clause 7(a).

For the avoidance of doubt, nothing in the clause excludes or limits any other rights or other Powers of DoD under this Deed, the Lease, any Specified Agreement, any Law or otherwise.

## **8 Changes in Regular Public Transport Operations**

Without excluding or limiting any rights or other Powers of DoD under this Deed, the Lease, any Specified Agreement, any Law or otherwise:

- (a) NAPL must request and obtain approval from DoD, through the Air Force Delegate, at least 20 Business Days prior to the commencement or implementation of the service, route or change:
  - (1) for the introduction of any RPTO service to or from RAAF Base Williamtown that involves a new Operator;
  - (2) for any new route flown by any existing Operator to or from RAAF Base Williamtown;
  - (3) for the introduction of or any change to any service (including RPTO service or Charter Operation) where the nature of the service or change would require an increase in aviation support services (including ATCS and/or ARFFS) at RAAF Base Williamtown in order to be consistent with applicable Laws, civil aviation safety standards and/or CASA requirements; and
  - (4) for the introduction of or any change to any service (including RPTO service or Charter Operation) to or from RAAF Base Williamtown that involves an aircraft classified as Wake Turbulence Category "Heavy", and/or that which exceeds runway PCN.

Such requests must comply with the Aircraft Movement limitations detailed at clause 7(a).

- (b) Subject clause 8(a), NAPL must notify DoD, through the Air Force Delegate, at least 5 Business Days prior to the commencement or implementation of the change, for any permanent or seasonal change to existing RPTO services (including any change to aircraft type) to or from RAAF Base Williamtown. The notice period of 5 Business Days shall not apply where the Air Force Delegate, in his or her absolute discretion, agrees to a shorter notice period.

Requests under this clause must comply with the Aircraft Movement limitations detailed at clause 7(a).

A list of standard aircraft types that may be used for a particular service may be submitted by an RPTO Operator, via NAPL, for approval by DoD, through the Air Force Delegate. No further notice or approval will then be required for aircraft type changes by that RPTO Operator where the new aircraft type is included on the then

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current approved list for that RPTO Operator. The Air Force Delegate may revoke any approval given under this clause at any time at his or her absolute discretion.

- (c) NAPL may approve changes to existing RPTO services (including changes to aircraft type) to and from RAAF Base Williamtown, provided that:
  - (1) the schedule operates between 0600 and 2200 hours each day;
  - (2) there is a reasonable scheduled interval between each aircraft Arrival;
  - (3) the schedule otherwise complies with the Aircraft Movement limitations detailed at clause 7(a); and
  - (4) for aircraft type changes, the new aircraft type does not exceed the PCN of the runway, any taxiways or any other part of the aerodrome traffic circuit (if the aircraft type has not been pre-approved for the RPTO Operator under clause 8(b)).
- (d) Where any civil service is altered, or a flight is cancelled or late, NAPL will, as soon as practicable, advise DoD of the alteration, cancellation and/or changes in Arrival and/or departure times. NAPL will also provide flight schedules on request.

## **9 General aviation**

General aviation activity is not permitted at RAAF Base Williamtown, except:

- (a) with the prior approval of the Air Force Delegate;
- (b) if the aircraft in question is an authorised aero-medical flight;
- (c) if the aircraft in question is subject to an in-flight emergency;
- (d) if the aircraft in question is an authorised civil assistance emergency flight; or
- (e) when civil personnel evacuations due to Severe Weather Phenomena are required.

## **10 Charter Operations**

NAPL must ensure that:

- (a) Operators of aircraft engaged in Charter Operations that do not have a current Conditions of Use Agreement with NAPL provide NAPL with the following notification:
  - (1) notification as soon as practicable of the Arrival of the flight at RAAF Base Williamtown; and
  - (2) their contact details in accordance with ERSA, Williamtown Entry; and
- (b) Operators and the Crew of aircraft engaged in Charter Operations hold a current Aviation Security Identification Card.

For the avoidance of doubt, nothing in the clause excludes or limits any other rights or other Powers of DoD under this Deed, the Lease, any Specified Agreement, any Law or otherwise.

## **11 Day to day arrangements**

- (a) NAPL and DoD must:

- (1) at least once each year, consider whether any changes to this Deed are necessary and, if either party considers changes necessary, the parties must meet to review this Deed and negotiate any amendments in good faith; and
- (2) comply with any changes to this Deed agreed between NAPL and DoD in writing.

If any changes to this Deed are agreed at a meeting between NAPL and DoD, those changes must be recorded in the minutes of the meeting, and the Deed itself amended to incorporate the agreed changes. The minutes of the meeting are to be prepared by NAPL and forwarded to AFHQ for approval by DoD within 5 Business Days after the conclusion of the meeting.

- (b) The parties acknowledge and agree this clause 11 does not limit DoD's right to make and implement rules in accordance with clause 3.1(d) or NAPL's obligations to comply with, and use all reasonable endeavours to ensure that each other Airport Entity, each Operator and each other person that NAPL permits or allows to access the Licensed Area complies with, such rules in accordance with clause 3.1(d).

## 12 GST

- (a) Unless otherwise stated all amounts to be paid by one party to the other party under this Deed are exclusive of GST.
- (b) Where and to the extent that any supply made by DoD under or in connection with this Deed is a taxable supply or otherwise liable (including notionally liable) to GST, the GST exclusive consideration otherwise to be paid or provided for that supply will be increased by the amount of GST payable in respect of that supply and that amount must be paid, upon presentation of a valid tax invoice, at the same time and in the same manner as the GST exclusive consideration is otherwise to be paid or provided.
- (c) If DoD makes, or is assessed by the Australian Taxation Office as having made, a taxable supply under or in connection with this Deed or otherwise incurs a Liability, including a notional Liability, to pay GST, NAPL agrees to pay and DoD shall be entitled to recover from NAPL, on demand and on presentation of a valid tax invoice, the amount of GST paid or payable by DoD without deduction or set-off of any other amount. Any amount of GST to be paid by NAPL under this clause 12 shall be a debt recoverable by DoD.
- (d) Where the supplier incorrectly states the GST amount payable, or paid, by the recipient on an otherwise valid tax invoice, the supplier shall issue to the recipient a valid adjustment note in accordance with the GST Law.
- (e) A party's obligation to indemnify, pay or reimburse the other party for an amount paid or payable to a third party includes GST on the amount paid or payable to the third party except to the extent that the party being indemnified, paid or reimbursed may Claim an input tax credit for that GST.
- (f) For the avoidance of doubt, the parties acknowledge and agree that NAPL is not entitled to, and will not, receive any payment or non-monetary consideration, and is not entitled to, and must not, Claim GST from DoD, for or in connection with any taxable or other supplies it may make to DoD under or in connection with this Deed or in relation to the matters contemplated by it.

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- (g) For the purposes of this clause 12, the expressions "adjustment note", "taxable supply" and "tax invoice" have the meanings given to those expressions in the GST Law.

## **13 Term**

- (a) This Deed commences on the Effective Date and terminates on the earlier of:
- (1) the later of the date on which the First Head Lease ends and the date on which any permitted holding over period under the First Head Lease ends; and
  - (2) the later of the Withdrawal Date and the date on which DoD ceases providing aviation support services at RAAF Base Williamtown.
- (b) This Deed may also be terminated in writing by the mutual agreement of the parties.
- (c) Termination or expiry of this Deed does not affect any accrued rights or remedies of either party.
- (d) Clauses 3.2(g) and 3.2(i) continue to apply after termination or expiry of this Deed.

## **14 General**

### **14.1 Indemnities**

Each indemnity in this Deed is a continuing obligation, independent of any other obligations under this Deed and continues after this Deed ends. It is not necessary for a party to incur Cost or make payment before enforcing a right of indemnity under this Deed.

### **14.2 Powers cumulative**

The rights and other Powers arising under and in connection with this Deed are in addition to, and do not exclude or limit, any other right or other Power of any party.

### **14.3 Notices**

- (a) Any notice, demand, consent or other communication given or made under this Deed must be:
- (1) clearly readable;
  - (2) signed by the party giving or making it (or signed on behalf of that party by its authorised representative); and
  - (3) left at the Address or sent by pre-paid post (air mail if outside Australia) to the Address of the recipient.
- (b) A party may change its Address for the purpose of service by giving notice of that change to the other party in accordance with this clause 14.3.
- (c) Any communication will be taken to be received by the recipient in the case of a letter, on the third (seventh, if sent outside the country in which the letter is posted) Business Day after the date of posting.

### **14.4 Relationship between parties**

- (a) Nothing in this Deed:
- (1) constitutes a partnership between the parties; or

- (2) except as expressly provided, makes a party an agent of another party for any purpose.
- (b) Except as expressly provided, a party cannot in any way or for any purpose:
  - (1) bind another party; or
  - (2) contract in the name of another party.

#### **14.5 Further assurances**

Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this Deed.

#### **14.6 Variation**

A provision of this Deed can only be varied by a later written document executed by or on behalf of all parties.

#### **14.7 No assignment**

- (a) a party cannot assign or otherwise transfer all or any of its rights under this Deed without the prior consent of each other party; and
- (b) NAPL may not grant a Security Interest or allow any Security Interest to subsist over all or any of its rights under this Deed without the prior consent of DoD.

#### **14.8 Counterparts**

This Deed may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

#### **14.9 Entire agreement**

The contents of this Deed, the Lease and the Specified Agreements constitute the entire agreement between the parties regarding the subject matter of this Deed, and supersede any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this Deed.

#### **14.10 Invalidity**

- (a) A word or provision must be read down if:
  - (1) this Deed is void, voidable, or unenforceable if it is not read down;
  - (2) this Deed will not be void, voidable or unenforceable if it is read down; and
  - (3) the provision is capable of being read down.
- (b) A word or provision must be severed if:
  - (1) despite the operation of clause 14.10(a), the provision is void, voidable or unenforceable if it is not severed; and
  - (2) this Deed will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this Deed has full effect even if clause 14.10(b)(1) or (2) applies.

#### **14.11 Waiver**

A right or remedy created by this Deed cannot be waived except in writing signed by the party entitled to that right or remedy. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part)

by a party of a right or remedy operate as a subsequent waiver of the same right or remedy or of any other right or remedy of that party.

#### **14.12 Governing law and jurisdiction**

- (a) The laws applicable in New South Wales govern this Deed.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

### **15 Warranties by NAPL**

#### **15.1 Authority**

Without limiting the provisions in Part D of the Multi-party Deed, NAPL represents and warrants to DoD as at the date of this Deed and at all times after the date of this Deed that:

- (a) it enters into this Deed in each of the capacities referred to in clause 1(e);
- (b) it has the power and authority to enter into and perform its obligations under this Deed in each of the capacities referred to in clause 1(e);
- (c) it has in full force and effect the corporate authorisations necessary to enter into this Deed, perform and observe its obligations under it and allow it to be enforced, in each case in each of the capacities referred to in clause 1(e);
- (d) it has all necessary consents, licences, permits and Approvals to enter into and perform and observe its obligations under this Deed, in each case in each of the capacities referred to in clause 1(e);
- (e) its obligations under this Deed are valid and binding and are enforceable against it in accordance with the terms of this Deed; and
- (f) the execution and delivery by it of this Deed, the transactions contemplated by this Deed and the performance and observance by it of its obligations, and the exercise of its rights, under and in connection with this Deed, do not contravene its constituent documents or any Law or any of its obligations or undertakings by which it or any of its assets, including the Trust Property, are bound or cause a limitation on its powers or the powers of its directors to be exceeded.

#### **15.2 Trustee warranties**

Without limiting the provisions in Part D of the Multi-party Deed, NAPL represents and warrants to DoD as at the date of this Deed and at all times after the date of this Deed that:

- (a) it is the only trustee of the Trust;
- (b) it has the power under the Agency and Trust Deed to:
  - (1) execute and deliver this Deed; and
  - (2) perform and observe its obligations under this Deed,
 in each case in each of the capacities referred to in clause 1(e);
- (c) all action required, including under or by its constituent documents, the Partnership Deed, the Agency and Trust Deed or any Law, to authorise:
  - (1) its execution and delivery of this Deed; and
  - (2) the performance and observance of its obligations under this Deed,

in each case in each of the capacities referred to in clause 1(e), has been taken;

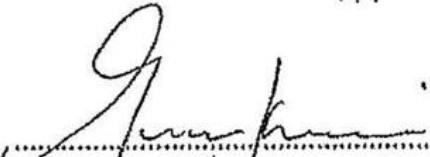
- (d) the execution and delivery by it of this Deed, the transactions contemplated by this Deed and the performance and observance by it of its obligations, and the exercise of its rights, under and in connection with this Deed, do not contravene the Partnership Deed, the Agency and Trust Deed or any Law or any of its obligations or undertakings by which it or any of its assets, including the Trust Property, are bound or cause a limitation on its powers or the powers of its directors to be exceeded;
- (e) no action is currently taking place or pending to remove it as trustee of the Trust or appoint a new or additional trustee of the Trust;
- (f) no action is currently taking place or pending to remove it as agent of the Sublessees under the agency arrangement set out in the Agency and Trust Deed or appoint a new or additional agent of the Sublessees;
- (g) the copy of the Partnership Deed and Agency and Trust Deed provided to DoD discloses all the terms of the Trust and the agency arrangement under which NAPL acts as agent of the Sublessees and those terms have not been varied or revoked;
- (h) it has a right to be fully indemnified out of, and a lien over, the Trust Property in respect of the obligations and liabilities incurred by it under and in connection with this Deed, such rights have not been limited in any way (except in relation to the indemnity in clause 2.3 of the Agency and Trust Deed, as set out in clause 2.3(c) of the Agency and Trust Deed), and the Trust Property is sufficient to satisfy all such obligations and liabilities;
- (i) it is not and has never been in breach of the Agency and Trust Deed;
- (j) it has complied with its obligations in connection with the Trust;
- (k) the Trust has not been terminated and no action is pending to terminate the Trust; and
- (l) no vesting date for the Trust Property has been determined.




## Signing page

### Executed as a Deed

Executed by The Commonwealth of )  
Australia represented by the )  
Department of Defence )  
by its Authorised Officer in the )  
presence of:

  
Signature of Witness

G M KIMMINS  
Print name of Witness

  
Signature of Authorised Officer

W G McDonald  
Print name of Authorised Officer

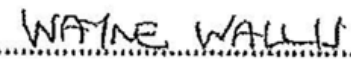
Deputy chief of Air Force  
Position of Authorised Officer

Executed by Newcastle Airport Pty )  
 Limited ACN 060 254 542, in its )  
 personal capacity, in its capacity as )  
 agent of the Sublessees in accordance )  
 with the terms of the Agency and Trust )  
 Deed and in its capacity as trustee of )  
 the trust established under the Agency )  
 and Trust Deed, in accordance with )  
 section 127 of the *Corporations Act* )  
 2001 (Cth) by: )

  
 Signature of Director

  
 Signature of Director/Secretary

  
 Print name of Director

  
 Print name of Director/Secretary

## **Appendix A   ATCS and ARFFS Deed**

## **Appendix B   Newcastle   Airport   RAAF   Base   Williamtown Operational Procedures**