

# Newcastle Airport General Conditions of Use

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# Table of contents

Newcastle Airport General Conditions of Use.....	1
Table of contents.....	1
Agreed terms.....	2
1. Definitions and interpretation .....	2
2. Interpretation .....	4
3. Term .....	5
4. Use of Airport .....	5
5. Check In .....	7
6. Your Services .....	7
7. Plant and Equipment.....	7
8. NAPL Policies and Procedures .....	7
9. Provision of Information .....	7
10. Airport Charges and Payment.....	9
11. Goods and Services Tax (“GST”).....	9
12. Security .....	9
13. Moving Your Aircraft.....	10
14. Training .....	10
15. Insurance.....	10
16. Guarantor .....	11
17. Bank Guarantee and Security Deposit.....	11
18. Exclusion of Liability and Indemnity .....	11
Exclusion of Liability .....	11
19. Additional Release .....	12
20. Confidentiality.....	12
21. Termination .....	12
22. Privacy Act .....	13
23. Dispute Resolution .....	13
24. Variations to Schedule of Charges .....	14
25. Miscellaneous.....	14
Schedule One – Reference Schedule.....	17
Schedule Two – Special Conditions .....	18
Schedule Three – Procedure for Obtaining Consents .....	19
Schedule Four – Airport Charges .....	20
Schedule Five – Facilities and Services .....	21
Schedule Six – Operating Agreement.....	23
Appendix A – Joint User Check in System Licence .....	24

# Agreed terms

## 1. Definitions and interpretation

**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, liquidator or provisional liquidator in respect of you, 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 deduced 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.

**Air Services 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 Agreement).

**Aircraft** means an aircraft (and any of its parts and accessories) 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 all charges for use of the Facilities and Services calculated on the basis set out in the Schedule of Charges in **Schedules Two and Four**, 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.

**Bank Guarantee** means an unconditional undertaking by an Australian trading bank (or if we agree some other reasonable financial institution) and on terms acceptable to us acting reasonably to pay on demand the amount in item 6 of the Reference Schedule. For the avoidance of doubt a Bank Guarantee must not have an expiry date.

**Base** means the RAAF Base Williamstown.

**Commencement Date** means the date set out in item 3 of the Reference Schedule, or in the absence of such a date, such other date as may be advised in writing by NAPL.

**Conditions of Use** means the conditions of use of the Airport as set out in 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.

**CPI** means Consumer Price Index- All Groups Sydney (or any replacement statistical index).

**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.

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

**Facilities and Services** means the facilities and services provided by NAPL that are necessary for, or ancillary to, the operation of the Flight Services including but not limited to those items identified in Schedule 5.

**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 as set out in Item 2.1 of Schedule Four and amended in accordance with clause 24.3.

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

**MTOW** means the maximum take-off weight of an Aircraft as specified by the manufacturer or as shown on the Certificate of Airworthiness for that Aircraft, whichever is greater.

**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, and in accordance with these Conditions of Use.

**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 Agreement** means the agreement attached at Schedule 6, 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 in item 2 of the Reference Schedule.

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

**Reference Schedule** means the schedule set out in **Schedule One** of these Conditions of Use.

**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.

**Special Conditions** means the conditions set out in **Schedule Two** of these Conditions of Use.

**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.

**Term** means the term of this Agreement set out in item 7 of the Reference Schedule.

**Termination Date** means midnight on the date set out in item 4 of the Reference Schedule, or in the absence of such a date, such other date as notified in writing by NAPL.

**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 for Your Business.

## **2. Interpretation**

2.1 In these Conditions of Use:

- a) "you or your" means the Airport User specified in item 1 of the Reference Schedule 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**

3.1 These Conditions of Use begin on the Commencement Date and end on the Termination Date.

3.2 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 shall execute a Conditions of Use before operating to the Airport or as soon as practicably possible.

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

#### **Permitted Use**

4.1 Subject to these Conditions of Use, we will allow you to use the Facilities and Services for the Permitted Use.

4.2 You must not use the Facilities and Services for any other purpose other than the Permitted Use.

4.3 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**

4.4 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**

4.5 You must 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 Air Services Australia and Department of Defence publications such as En Route Supplement Australia, Notices to Airmen (NOTAM) and Aeronautical Information Publications.

4.6 You must not do anything which causes or materially contributes to our failure to comply with any of the matters set out in clause 4.5.

#### **Mutual Cooperation**

4.7 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**

4.8 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**

4.9 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. This clause does not limit our obligations under clause 4.3.

4.10 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.

4.11 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. This clause does not limit our obligations under clause 4.3.

#### **Noise Management Plan**

4.12 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**

4.13 Without limiting clause 6.1, you are not permitted to use the Facilities and Services for General Aviation Activity without our consent.

#### **Fire and Emergency Training**

4.14 On each anniversary of the Commencement Date, 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 Agreement from time to time.

#### **Operating Agreement**

4.15 **Schedule 6** contains the Operating Agreement (or relevant extracts from the Operating Agreement). You acknowledge that you have had the opportunity to obtain legal advice on its terms before agreeing to these Conditions of Use.

4.16 You agree that the operation of any civil aircraft at the Airport is governed by the terms of the Operating Agreement as varied by NAPL and the Commonwealth from time to time.

4.17 You agree to perform and observe the obligations in the Operating Agreement imposed on us and on persons using the Airport so far as they relate to your use of the Airport.

4.18 You must not do anything or cause anything to be done that would cause us to be in breach of the Operating Agreement.

- 4.19 Where an activity requires Department of Defence's consent under the Operating Agreement 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 Three**.

#### **Your Employees and Agents**

- 4.20 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.

#### **Special Conditions**

- 4.21 You and we agree to comply with the Special Conditions.

### **5. Check In**

- 5.1 You may use the Joint User Check in System on the terms of the Licence attached and as Appendix A.
- 5.2 On or before the Commencement Date you must complete and sign the Licence and return a signed copy to us.

### **6. Your Services**

- 6.1 You must obtain approval from NAPL and the Department of Defence for any Flight Services. Any variation to the Flight Services must be approved by Department of Defence and NAPL.
- 6.2 Any variation to the Timetable must be dealt with according to the procedure set out in Schedule Three.
- 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**

- 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**

- 8.1 The NAPL Policies and Procedures can be inspected at the following premises:  
Newcastle Airport Pty Limited,  
Airport Administration Office,  
Williamstown 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**

- 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;
- d) the names, addresses, facsimile numbers, 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); and
- e) details of the MTOW of each Aircraft.

9.3 If you do not provide us with the information set out in clause 9.2a) 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) flight number for each of your arrival or departure flights;
- b) registration number of the Aircraft used for each of the above flights;
- c) route number for each of the above flights; and
- d) passenger numbers for each of the above flights.

(the "**Statement of Services**")

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, at our option, 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. You may demand repayment of any overpaid Airport Charges and interest on those Airport Charges at the Specified Rate.

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**

- 10.1 In consideration of us providing you with the Facilities and Services you must pay us:
  - a) the Airport Charges in accordance with the Schedule of Charges; and
  - b) the charges relating to licences referred to in clause 5.1.
- 10.2 We will invoice you following the end of the month during which you used the Facilities and Services.
- 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 We may in our sole discretion offer you or any other operator, incentives in accordance with our Incentive Policy as applicable from time to time.
- 10.6 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**

- 10.7 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 as follows:
  - a) annually as and from 1 July every year (the "CPI Review Date") in direct proportion to any increase in the CPI for the 12 month period between the CPI for the quarter ending immediately before the relevant CPI Review Date and the CPI for the quarter ending immediately before the CPI Review Date in the immediately preceding year; and
  - b) at any time, on 3 months' notice by way of publication on the Airport website, having regard to any capital works carried out by us at the Airport, effective from the completion of such works.

### **Interest**

- 10.8 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**

- 10.9 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**

- 10.10 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")**

- 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**

- 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**

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**

14.1 We may require you or Your Employees and Agents, at your cost, to 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**

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 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 unless first approved in writing by us 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**

- 16.1 If item 5 of the Reference Schedule provides for a Guarantor, the Guarantor must provide a guarantee for your obligations under these Conditions of Use in a form acceptable to us.

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

- 17.1 If item 6 of the Reference Schedule provides for a Bank Guarantee you must provide us on or before the Commencement Date with an unconditional Bank Guarantee in our favour with no expiry date for the amount specified in item 6.
- 17.2 If item 6 of the Reference Schedule provides for a security deposit, you must pay us the sum specified in item 6 on or before the Commencement Date. We will deposit the security deposit in an interest bearing account in our name for the Term. The interest will be accumulated and added to the amount held by us as the security deposit.
- 17.3 We may use the security amount specified in item 6 (and any accrued interest) to pay any overdue amounts under these Conditions of Use and to recover our costs, expenses and losses (if any) due to your breach. You must immediately replace any amount used. After termination of this agreement we must refund to you any part of the above security amount not needed to recover our costs, expenses and losses (excluding interest), which may not be identifiable or finally crystallised until some time after termination.
- 17.4 We may at any time in our sole discretion, acting reasonably, require a Bank Guarantee or security deposit in accordance with the terms of Clauses 17.1 and 17.2 above.

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

### **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 Each party ("the first party") shall indemnify and keep indemnified the other party and its 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 this Agreement of the first party or its employees, agents or contractors;

- ii. some danger created by the first party or its employees, agents or contractors (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 the first party; or
- iv. any other act or thing by or on behalf of the first party which may arise from or in relation to its use or operation of the Airport.

## **19. Additional Release**

- 19.1 Further, you unconditionally release us from any action, demand, liability, injury, death, loss, damage 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, subject to our obligations under clause 4.3;
  - d) any act, instruction or activity of the Department of Defence or their employees, subcontractors or agents;
  - e) any Force Majeure Event affecting the Airport; and
  - f) us moving your Aircraft if you have not complied with clause 13.1,
- except to the extent arising from our negligence or default.

## **20. Confidentiality**

- 20.1 A party (Receiver) receiving Confidential Information from the other party (Discloser) must not, during or after the Term 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 in the public domain otherwise than as a result of a breach of these Conditions of Use;
  - c) the extent that 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 this Agreement the Receiver must return to the Discloser all of the Discloser's Confidential Information.
- 20.4 This clause survives termination of the Agreement.

## **21. Termination**

- 21.1 The following are essential terms of these Conditions of Use:
- a) Clause 4 (Use of the Airport);
  - b) Clause 12 (Security); and
  - c) Clause 15 (Insurance).

Other clauses in these Conditions of Use may also be essential terms.

- 21.2 We may terminate these Conditions of Use immediately by giving notice in writing to you if:
- a) an Act of Insolvency occurs with respect to you;

- b) you do not comply with a term 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**

- 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. Dispute Resolution**

- 23.1 If a dispute arises out of or relates to these Conditions of Use (the "Dispute") neither party is permitted to commence any court or arbitration proceedings relating to the Dispute unless it has complied with this clause except where the party seeks urgent interlocutory relief.
- 23.2 The party claiming that a Dispute has arisen under or in relation to these Conditions of Use must give written notice to the other party specifying the nature of the Dispute (the "Dispute Notice").
- 23.3 On receipt of the Dispute Notice by the other party, the parties to this Agreement must endeavour in good faith to resolve the Dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or determination or similar techniques agreed by them.
- 23.4 If the parties do not agree within 7 days of receipt of the Dispute Notice (or such further period as agreed in writing by them) as to:
  - a) the dispute resolution techniques and procedures to be adopted;
  - b) the timetable for all steps in those procedures; and
  - c) the selection and compensation of the independent person required for such technique,
  - d) the parties must mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales and the President of the Law Society of New South Wales or the President's nominee will select the mediator and determine the mediator's remuneration.
- 23.5 In the event that the Dispute is not resolved by mediation within 28 days of the Dispute Notice (or such further period agreed in writing between the parties), either party may commence legal proceedings.

## **24. Variations to Schedule of Charges**

- 24.1 We may also 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 date of this Agreement;
  - b) if there is a change in service provider of all or part of the Defence Aviation Support Services (for example Air Services 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 24.1(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 plus a reasonable administration fee. You agree that an administration fee of not greater than 10% of the relevant additional or increased Airport Charge is reasonable.

- 24.2 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.

- 24.3 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.

Any such adjustment will be applied to the charge payable after a minimum of 14 days' notice to you.

- 24.4 When setting the ARFF Charge, ATC Charge or Government Mandated Services Charge for a 6-month period, we may include a reasonable administration fee. You agree that an administration fee of not greater than 10% of the relevant charge is reasonable.
- 24.5 We must use reasonable endeavours to ensure that the Government Mandated Services are provided in an efficient and cost effective manner.

## **25. Miscellaneous**

- 25.1 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 facsimile transmission 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.

- 25.2 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.

25.3 Severability

If any provision of these Conditions of Use is invalid and not enforceable in accordance with its terms, other provisions which are self-sustaining and capable of separate enforcement with regard to the invalid provision, are and continue to be valid and enforceable in accordance with their terms.

25.4 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.

25.5 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.

25.6 Amendment

These Conditions of Use may only be varied or replaced by a document duly executed by the parties.

25.7 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.

25.8 Further assurance

Each party shall promptly execute all documents and do all things that any other party from time to time reasonably requires of it to effect, perfect or complete the provisions of this document and any transaction contemplated by it.

25.9 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.

25.10 Joint and several liability

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

25.11 Counterparts

This document may consist of a number of counterparts and if so the counterparts taken together constitute one and the same instrument.

25.12 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.

25.13 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.

25.14 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.

25.15 Survival of terms

Any provision of these Conditions of Use which is capable of operating following the expiration or sooner determination of these Conditions of Use will continue to remain in full force and effect.

# Schedule One – Reference Schedule

<b>Item 1</b>	<b>Airport User</b>
<b>Item 2</b>	<b>Permitted Use</b>
<b>Item 3</b>	<b>Commencement Date</b>
<b>Item 4</b>	<b>Termination Date</b>
<b>Item 5</b>	<b>Guarantors</b>
<b>Item 6</b>	<b>Bank Guarantee/ Security Deposit</b>
<b>Item 7</b>	<b>Term</b>

## Schedule Two – Special Conditions

1. Expiration of Agreement: At least 12 months before the expiration of these Conditions of use, the parties will meet and negotiate in good faith the terms of an extension of these Conditions of Use or a new agreement, such terms to be agreed no later than 6 months before the Termination Date.
2. If the parties fail to enter into an extension or new agreement by the Termination Date, these Conditions of Use will continue on a monthly holding over basis, terminable by either party on one months' written notice to the other. During any holding over period, all terms and conditions of the Conditions of Use will continue to apply.

# Schedule Three – Procedure for Obtaining Consents

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 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 Four – Airport Charges

## 1.1 Airport Charges

The Charges as at the Commencement Date are as follows:

No.	Type of Charge	Charge (all exclusive of GST)
1.	Apron Charge / Landing Fee	
2.	Parking Charge	
3.	Passenger Screening Charge	
4.	Marshalling	
5.	Late Arrivals (between 2200 and 0600)	
6.	Passenger Facility charge	
7.	International Passenger Terminal Fee	

## 2. Government Mandated Services and RAAF Charges

### 2.1 Government Mandated Services Charge

- a) As at the Commencement Date, the charge for Government Mandated Services (domestic baggage and passenger screening charges) is currently \$[ ] + GST per departing domestic passenger only;
- b) In the future, Government Mandated Services may include additional services mandated for international services.

### 2.2 RAAF Charges

NAPL collects RAAF Charges on behalf of the Commonwealth of Australia (RAAF Base Williamstown). As at the Commencement Date:

- a) the ARFF Charge is currently \$[ ] per tonne based on MTOW + GST per tonne MTOW.
- b) As at the Commencement Date, the ATC Charge is currently \$[ ] per tonne based on MTOW + GST.

(Subject to variation - see cl.24 of the Conditions of Use).

### Important Note:

Important Note: 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 Williamstown. For further details please see clause 24.

# Schedule Five – Facilities and Services

Facilities and Services which NAPL will provide pursuant to this Agreement.

Item No.	Services
1	<p><b>Check-in counters:</b> Subject to entering into a licence agreement under clause 5, 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 provided by Department of Defence and should be considered with reference to the Operating Agreement.</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 will 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 terminal.</p>
10	<p><b>Safety:</b> all reasonably practicable items and services to ensure the safety of users of the Facilities and Services.</p>

Item No.	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> any services or facilities in relation to which we recover Government Mandated Services Charges from you.

# Schedule Six – Operating Agreement



# Appendix A – Joint User Check in System Licence