



**TONGA**  
*MINISTRY OF CIVIL AVIATION*



**CIVIL AVIATION AUTHORITY**  
**OF NEW ZEALAND**

DATED THE 04<sup>th</sup> DAY OF SEPTEMBER 2009

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**THE MINISTRY OF TRANSPORT (CIVIL AVIATION DIVISION) OF THE KINGDOM OF TONGA**

**- AND -**

**THE CIVIL AVIATION AUTHORITY OF NEW ZEALAND**

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**AGREEMENT FOR THE PROVISION  
OF ADVICE AND TECHNICAL ASSISTANCE ON MATTERS  
RELATED TO CIVIL AVIATION SAFETY AND SECURITY IN THE  
KINGDOM OF TONGA**

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**AGREEMENT** for the provision of advice and technical assistance on matters related to civil aviation safety and security in the Kingdom of Tonga.

**BETWEEN:**

THE MINISTRY OF TRANSPORT (CIVIL AVIATION DIVISION) OF THE KINGDOM OF TONGA

**AND:**

THE CIVIL AVIATION AUTHORITY OF NEW ZEALAND

established by the New Zealand Civil Aviation Act 1990

The Ministry of Civil Aviation in the Kingdom of Tonga has requested the Civil Aviation Authority of New Zealand to provide advice and technical assistance on civil aviation safety and security matters. The Civil Aviation Authority agrees to provide the advice and technical assistance on the terms and conditions set out in this Agreement. This Agreement sets out the process for the provision of advice and technical assistance and the obligations of each party to the Agreement.

**THE PARTIES AGREE**

**1. INTERPRETATION**

**1.1** In this Agreement unless the context otherwise requires:

“Act” means the Civil Aviation Act 1990 of the Kingdom of Tonga.

“advice and technical assistance” means advice and technical assistance on civil aviation safety and security regulatory services.

“Authority” means the Civil Aviation Authority of New Zealand established in New Zealand by the Civil Aviation Act 1990.

“Ministry” means the Ministry of Civil Aviation in the Kingdom of Tonga.

“Director” means the Director of Civil Aviation in the Ministry of Transport and includes any person authorised by the Ministry for the relevant purposes under this agreement.

“term” means the term of this Agreement set out in clause 2.

“Day” means a day of the week other than a Saturday or Sunday.

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## **2. TERM OF AGREEMENT**

This Agreement comes into force on the date it is signed by the parties and remains in effect until terminated in accordance with clause 11.

## **3. PROCEDURE FOR ADVICE AND TECHNICAL ASSISTANCE**

**3.1** The Director may, on behalf of the Ministry issue a request for the Authority to provide advice and technical assistance to the Ministry (“a request”).

**3.2** A request must be made on or before 31 May for the period of the next financial year commencing 1 July and must specify:

- details of the current air service operations in Tonga and any changes likely to occur in the financial year; and
- a programme of the advice and technical assistance the Ministry seeks from the Authority for the financial year (“the programme”).

**3.3** Upon receipt of the request the Authority will consider the programme and advise the Director in writing of its agreement or otherwise to undertake the work and the fee for that work together with the names of the persons who are to be the Authority’s designated representatives for the purposes of this Agreement.

**3.4** The Authority will commence work in accordance with the programme on receipt of written advice from the Director of the Ministry’s agreement to pay the fees together with any actual and reasonable travel, accommodation, meal and other necessary disbursements that may be incurred by the Authority to provide the agreed services.

**3.5** The Authority agrees to consider any further request for advice and technical assistance from the Director at any time during the term of this Agreement but is under no obligation to provide such advice and technical assistance.

**3.6** The Authority will maintain a record of advice, technical assistance or information provided under this agreement. The Authority must provide the Director with copies of any such records, and where requested by the Director supporting documentation for any work carried out under this Agreement.

## **4. RESPONSIBILITIES OF THE MINISTRY**

**4.1** The Ministry agrees to pay all fees charged by the Authority for the advice and technical assistance and any disbursements incurred by the Authority in accordance with the provisions of this Agreement.

## **5. RESPONSIBILITIES OF THE AUTHORITY**

**5.1** During the term of this Agreement, the Authority will provide advice and technical assistance:

- (a) which is in accordance with the New Zealand Civil Aviation Rules, and accepted New Zealand practice; and
- (b) in a timely manner, subject to the availability of appropriate technical resources.

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## **6 REVIEW PROCESSES**

**6.1** On a date to be agreed between the parties, the parties will review the terms of this agreement (“the review”).

**6.2** The periods between reviews shall not exceed 24 months.

**6.3** The provisions of clauses **6.1** and **6.2** may not be varied by the parties.

## **7 CHARGES**

**7.1** The rate to be charged by the Authority for advice and technical assistance under this Agreement is NZ\$235.00 per hour.

## **8. PAYMENT OF FEES AND DISBURSEMENTS**

**8.1** The Authority must submit to the Ministry invoices for the payment of fees and disbursements for work done within one month of the fees and disbursements being incurred. In situations where the work to be done is on-going beyond a month, fees and disbursements may be partially invoiced, or invoicing delayed until the completion of the work concerned.

**8.2** The Director on behalf of the Ministry must pay the accounts of fees and relevant disbursements submitted by the Authority within 60 days of receipt of the account.

**8.3** If the Ministry is in default of its obligations under clauses **4.1** and **8.2** the Authority may immediately stop all agreed work under this Agreement until payment under clause **8.2** is received by the Authority. This does not affect the ability of either party to terminate the Agreement under clause **11**.

## **9. CONFLICT OF INTEREST**

The Authority must advise the Ministry immediately on becoming aware of a conflict of interest or potential conflict of interest that may affect the services provided under this Agreement.

## **10. Breach**

**10.1** If either party to this Agreement considers that the other party has breached a term of this Agreement, then the party alleging the breach shall:

- a) provide the other party with particulars of the breach; and
- b) allow the other party not less than 20 working days to remedy the breach.

## **11 TERMINATION**

**11.1** This Agreement shall terminate:

- (a) if either party gives the other party not less than 90 days notice in writing of that party’s intention to terminate the Agreement.
- (b) upon one party alleging that the other party is in breach of this Agreement, providing that the party alleging the breach has complied with the provisions of clause 10.1 above;

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- (c) if either party gives the other party not less than 20 working days notice in writing of that party's intention to terminate this Agreement due to a force majeure situation having arisen in terms of clause 14.

**11.2** Where intended termination relates to a dispute between the parties, the notice of termination will not take effect until it has become apparent to either party that the processes of clause 17 cannot resolve the dispute..

**11.3** Termination of this Agreement does not discharge either party from performance of any obligation incurred until the date of termination and is without prejudice to any claim for moneys payable as at that date.

## **12. VARIATION AND WAIVER**

**12.1** No modification, variation or waiver of this Agreement shall be effective or binding on either of the parties unless in writing and signed by the parties.

**12.2** The parties agree that they may not modify, vary or waive the provisions of clauses 6.1 and 6.2 of this Agreement

## **13. INDEMNITY**

The Ministry shall indemnify and hold harmless the Authority from and against all loss, damage or liability (including actions claims and demands and legal fees and costs associated with defending or settling those actions, claims and demands) howsoever suffered or incurred by the Authority, or by a third party, in the course of providing the advice and technical assistance under this Agreement where this arises from:

- (a) any breach of this Agreement by the Ministry; or
- (b) any act, neglect or default of the Ministry, the Ministry's agents (other than the Authority), employees or customers.

## **14. SECURITY AND DISCLOSURE**

**14.1** Subject to any legal requirements in either country neither party will disclose or discuss with any third party the terms of this Agreement (other than its existence) or any business arrangement made pursuant to this Agreement without the prior written consent of the other party.

**14.2** The Authority will take all reasonable steps to ensure that all information in its custody or control in the course of providing the services under this Agreement will be protected against theft, accidental or intentional disclosure to unauthorised persons, loss, or unauthorised modification or destruction.

## **15. FORCE MAJEURE**

**15.1** Neither party to this Agreement will be liable for any delay in performance of or failure to perform an obligation under this Agreement, where that obligation cannot reasonably be performed by the party as a result of circumstances beyond the control of that party.

## **16. NOTICES**

Each notice and request for services in respect of this Agreement:



- (a) must be in writing and marked for the attention of the recipient party or their notified designated representative (if any);
- (b) must be signed either by the sending party or their notified designated representative;
- (c) may be transmitted or delivered to either party by facsimile or post;
- (d) is not effective until received by the other party, with such notice (or other communication) being deemed to have been received by that other party:
  - (i) on the date it is left at the notified designated address of the recipient party or 20 Days after being put in the post (postage prepaid) and addressed to that address; or
  - (ii) on the date depicted in a facsimile transmission report showing the date and time that the notice (or other communication) was sent in its entirety to the notified designated facsimile number of the recipient party; and
- (e) communications not involving a notice or request for services may be made by e-mail, voice, or other form of communication.

Provided that any notice (or other communication) received or deemed received after 5.00 p.m. on a day in the place to which it is sent, or on a day which is not a day in that place, will be deemed not to have been received until the next day.

#### **17. DISPUTE RESOLUTION**

The parties must endeavour to resolve any dispute as to the interpretation or implementation of this Agreement by direct negotiation between the parties. Any unresolved dispute must be referred to an independent arbitrator jointly agreed by both parties. In the event that an independent arbitrator cannot be agreed by both parties, the President of the Wellington District Law Society (or a nominee) must appoint an arbiter whose decision shall be final and binding.

#### **18. SEVERANCE**

If any one or more of the terms of this Agreement is or becomes invalid, unlawful or unenforceable for any reason, then the validity, effect and enforceability of this Agreement is not to be affected, save for the severance of that term.

#### **19. CHOICE OF LAW**

This Agreement is made in New Zealand and its construction, validity and performance must be determined under New Zealand law. Any dispute, which is to be litigated, must be submitted to a New Zealand court.



IN WITNESS whereof this Agreement has been executed this 4<sup>th</sup> day of September 2009.

SIGNED by

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Director of Civil Aviation  
of the Kingdom of Tonga in the presence of:

Blancefuna

Witness name: Emeline Tameifuna  
Address: 1<sup>st</sup> Floor Dupencia's Lodge, Na'itanga.  
this 4<sup>th</sup> day of September 2009

SIGNED by STEVE DOUGLAS :

S Douglas  
Director of Civil Aviation

in the presence of :

Margaret Ninness

Witness name: Margaret Ninness  
Address: 10 Hutt Road, Petone  
this 21<sup>st</sup> day of August 2009