

DATED THE

DAY OF

2006

THE GOVERNMENT OF NIUE

- AND -

THE CIVIL AVIATION AUTHORITY OF NEW ZEALAND

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

AGREEMENT for the provision of advice and technical assistance on matters related to civil aviation safety and security in Niue

BETWEEN:

THE GOVERNMENT OF NIUE

AND:

THE CIVIL AVIATION AUTHORITY OF NEW ZEALAND

established by the New Zealand Civil Aviation Act 1990

The Government of Niue, 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.

1. INTERPRETATION

1.1 In this Agreement unless the context otherwise requires:

“Act” means the Civil Aviation Act 1999 of Niue.

“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.

“Director” means the Niue Director of Civil Aviation appointed under the Civil Aviation Act 1999.

“Government” means the Government of Niue.

“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

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 **10**.

3. PROCEDURE FOR ADVICE AND TECHNICAL ASSISTANCE

3.1 In May of each year the Authority agrees to write to the Director asking:

- if any advice and technical assistance is required for that year from the Government; and if so
- details of the current air service operations in Niue including any foreseeable changes; and
- a programme of the advice and technical assistance the Government seeks from the Authority.

Upon receipt of this information the Authority will consider the programme, if any, and advise the Director in writing of its agreement or otherwise to undertake the work and the anticipated costings.

The Authority will commence work in accordance with the programme on receipt of written advice from the Director of the Government's agreement to pay the fees and disbursements for the agreed work on the basis of the anticipated costings.

3.2 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.

3.4 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 GOVERNMENT

4.1 The Government agrees to pay all fees charged by the Authority for the agreed work and any disbursements incurred by the Authority for the provision of advice or technical assistance in accordance with the financial arrangements set out in this Agreement.

5. RESPONSIBILITIES OF 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.

6 REVIEW PROCESSES

On an agreed date at intervals not exceeding 24 months the Parties will review the terms of this agreement. If the Parties agree to vary this Agreement it will not affect the term.

7. CHARGES

The fees charged by the Authority for work done under this Agreement must be at the current standard charging rate used by the Authority in New Zealand.

8. PAYMENT OF FEES AND DISBURSEMENTS

8.1 The Authority must submit to the Government invoices for the payment of accounts, fees and relevant 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 Government 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 Government 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 **10**.

8.3 Where any Niuean aerodrome operator, or aircraft operator, or other provider, or prospective provider of aviation services seeks work or advice directly from the Authority, the accounts of fees and other relevant disbursements is a matter between the Authority and any such aerodrome operator, or aircraft operator, or other provider, or prospective provider of aviation services.

9. CONFLICT OF INTEREST

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

10. TERMINATION

10.1 This Agreement terminates on the earlier of:

- (a) The occurrence of any failure by either party to comply with the terms of any default notice from the other party within the time stipulated. Where notice is given in respect of any default by a party, the notice must give particulars of the default, and give at least 20 Days in which the default is to be remedied by;
- (b) Either party giving the other party not less than 20 Days notice in writing of their intention to terminate the Agreement due to a force majeure situation having arisen in terms of clause **14**;
- (c) Either party giving the other party not less than 180 Days notice in writing of their intention to terminate the Agreement.

10.2 Where intended termination relates to a dispute between the parties, the notice of termination will not take effect until after it has become apparent to either party that the processes of clause **16** can not resolve the dispute to the satisfaction of either of the parties.

10.3 Termination 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.

11. VARIATION AND WAIVER

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. INDEMNITY

The Government shall indemnify and hold harmless the Authority from and against all loss, damage or liability (including legal fees and costs) whatsoever suffered or incurred by the Authority, or by a third party, in the course of providing the services under this Agreement where this arises from:

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

13. SECURITY AND DISCLOSURE

13.1 Subject to the Official Information Act 1982, 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.

13.2 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.

14. FORCE MAJEURE

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.

15. 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 working 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:
- (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.

16. 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 arbiter jointly agreed by both parties. In the event that an independent arbiter can not be agreed by both parties, the President of the Wellington District Law Society (or his nominee) must appoint an arbiter whose decision shall be final and binding.

17. 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.

18. 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 3rd day of MAY 2006.7

SIGNED by LAGA LAVINI :

Director of Civil Aviation, Niue

in the presence of :

[Signature]

Witness name: _____

Address: _____

this 3rd day of MAY 2006.7

SIGNED by RUSSELL PAUL KILVINGTON:

[Signature]

Director of Civil Aviation, New Zealand

in the presence of :

[Signature]

Witness name: Lani Ranata

Address: Wellington

this 8 day of December 2006