

**REGISTER OF
CONTRACT AGREEMENTS**

CONTRACT AGREEMENT NO: CA10/4

**TITLE: Australian Air Express - Transport Workers Union and
Contract Carriers Agreement 2010**

I.R.C. NO: IRC10/1257

DATE APPROVED/COMMENCEMENT: 2 December 2010 / 2 December 2010

TERM: 36

**NEW AGREEMENT OR
VARIATION:** New.

GAZETTAL REFERENCE: 31 December 2010

DATE TERMINATED:

NUMBER OF PAGES: 31

COVERAGE/DESCRIPTION OF

EMPLOYEES: This contract agreement applies to contract carriers employed by Australian Air Express Pty Ltd, who fall with the coverage of the Transport Industry - General Carriers Contract Determination.

PARTIES: Australian Air Express Pty Limited -&- the Transport Workers' Union of New South Wales

Australian air Express -
Transport Workers Union and Contract Carriers
Agreement
2010

Australian air Express

A Partnership of

QANTAS **POST**



**T
W
U** **Carrying
Australia**

THIS AGREEMENT dated 1st April 2010

BETWEEN:

AUSTRALIAN AIR EXPRESS PTY LTD (ACN 054 307 336) of 7th Floor, 440 Elizabeth Street, Melbourne ("AaE")

TRANSPORT WORKERS UNION NSW BRANCH of 31 Cowper Street Parramatta, Sydney ("TWU")

And

«Company_Name» PTY LTD ABN «ABN» of «Address_Line_1»«Address_Line_2» ("Contract Carrier")

Name.....

Trading

as.....Address.....

.....

.....

.....

RECITALS

- A. AaE wishes to enter into an agreement with the Contract Carrier for the provision of transportation Services in New South Wales and its metropolitan areas.
- B. The Contract Carrier shall provide transportation Services to AaE in accordance with the terms of this Agreement.

1. OPERATIVE PART

1.1 Definitions

In this Agreement unless the context otherwise requires:

"**AaE's Transport Security Program**" means the Transport Security Program prepared by AaE as required by the Transport Security Legislation and approved by DOITRD LG.

"**Act**" or "**NSWIR Act**" means the New South Wales Industrial Relation Act, 1996

"**Agreement**" means this individual agreement and includes any schedules and annexures.

"**Alternate Driver**" means a driver nominated and employed by the Sub-Contractor and approved by AaE in writing.

"**Appendix**" means an appendix to this Agreement.

"**Approved Driver**" the regular driver approved by AaE in writing that the Sub-Contractor uses to provide the Services.

"**ASIC**" means the Aviation Security Identification Card issued by DOITRD LG.

"**Carriage Documents**" shall mean documents as AaE may reasonably require to evidence the proper and safe delivery of Goods the subject of a contract of carriage.

"**Carrying Capacity**" means the mass of the maximum load that the Vehicle may legally carry in the State.

"**Clause**" means a clause in this Agreement.

"**Chain of Responsibility**" means any State, Territory or Commonwealth legislation or regulations based on or adapted from the provisions of the *National Transport Commission (Road Transport Legislation - Compliance and Enforcement Bill) Regulations 2006* or *National Transport Commission (Road Transport Legislation - Compliance and Enforcement Regulations) Regulations 2006* as approved by each State and Territory Government.

"**Commencement Date**" means 1 April 2010.

"Confidential Information" means any accounts, statements, marketing plans, research, product concepts, design concepts, customer details, supplier details, contracts, agreements, briefing documents, drawings, reports, technical information and without limiting the foregoing all other knowledge or information at any time disclosed (whether in writing, electronic or orally) by one party to the other unless it was:

- (a) acquired from a third party having the right to disclose (in writing) it to the relevant person; or
- (b) in the public domain other than through a breach of the terms of this Agreement.

"Contract Carrier" means the party named and its lawful successors and approved assignees.

"Transport Industry - General Carriers Contract Determination" is the underpinning Industrial instrument for contract carriers covered under this agreement.

"Dangerous Goods" means those goods which meet the criteria of one or more of the nine United Nations hazard classes as prescribed in the current technical instructions of the Civil Aviation Organisation as reflect in the Dangerous Goods regulations of the International Air Transport Association.

"Depot" means the normal place of engagement where the Sub-Contractor commences each day.

"DOITRD LG" means the Department of Infrastructure, Transport, Regional Development and Local Government.

"GST" means the Australian Goods and Services Tax.

"Goods" means all Goods, items, materials or substances of all descriptions and includes pallets, shipping and other containers, whether packed or empty which the Sub-Contractor has collected on behalf of AaE for delivery on behalf of AaE.

"Information Privacy Principles" or **"IPPs"** means the Information Privacy Principles set out at section 14 of the *Privacy Act 1988*.

"Intellectual Property" means all intellectual and industrial property rights of whatsoever nature world-wide including without limitation copyright, trade and service marks (whether registered or unregistered) and any applications therefore, patents and patent applications, and any rights to inventions, utility rights, database rights, registered and unregistered design rights, trade secrets, business processes, trade and business names, logos and devices and know-how and Confidential Information.

"Job Time" means the time taken to effect sorting, loading / unloading and the delivery of Goods and return times are to be used in the calculation of required payments to Sub-Contractor.

"Personal Information" means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

"NSWIRC" means the New South Wales Industrial Relation Commission (or any Tribunal that may replace it).

"OHS Laws" means the:

- (a) *Occupational Health & Safety Act 1991 (Commonwealth)*;
- (b) *Occupational Health & Safety Act 2000 (NSW) (as amended)*;
- (c) *the Occupational Health, Safety and Welfare Act 1986 (SA)*;
- (d) *the Occupational Health and Safety Act 1989 (ACT)*; and
- (e) associated regulations, guidelines or policies;

and any other legislation of the Commonwealth of Australia, or any of the States, Territories or Municipalities of Australia including regulations or guidelines codes of conduct or policies made pursuant to the OHS Laws.

"Policies" means the policies of AaE as contained in Schedule * and the Standard Operating Procedures as amended from time to time.

"Run" means designated area or route for pickup and/or deliveries however defined by AaE and as advised to the Sub-Contractor from time to time in accordance with AaE's operational requirements.

"Schedule" means any schedule to this Agreement.

"Services" means the services to be provided by the Sub-Contractor pursuant to this Agreement including:

- (a) Delivery and collection of Goods as directed;
- (b) Scope of service shall mean within the metropolitan area in the State unless otherwise agreed;
- (c) To operate the two-way radio and bar-coding equipment;
- (d) To carry out reasonable requirements of AaE customers in connection with loading, unloading and carriage of Goods; and
- (e) Such other requirements as set out in this Agreement.

"Standard Operating Procedures" means the standard operating procedures of AaE as relevant to the Services copies of which shall be provided by AaE to the Contract Carrier as amended from time to time.

"State" means New South Wales.

"Transport Security Legislation" means:

- (a) *the Aviation Transport Security Act 2004 (Commonwealth)*; and
- (b) *the Maritime Transport and Offshore Facilities Security Act 2003 (Commonwealth)*.

"TWU" or "Union" means the Transport Workers Union NSW Branch

"Vehicle" means an enclosed Goods carrying commercial Vehicle being predominately white in colour of such type, and agreed specification approved by AaE.

1.2 Interpretation

In this Agreement unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing any gender include the other genders;
- (c) references to persons include corporations and bodies politic;
- (d) references to a person include the legal personal representatives, successors and assigns of that person;
- (e) an obligation incurred by two or more parties shall be enforceable against them jointly and severally;
- (f) the clause headings or sub-headings shall not be deemed to be part of this Agreement and shall not be used in its interpretation or construction; and
- (g) unless otherwise stated, all prices in this Agreement are in Australian dollars.

2. TERM OF THE AGREEMENT

- 2.1 The term of this Agreement shall be for a period of three years from the Commencement Date and shall continue until replaced or terminated by either party in accordance with the provisions of the Act and this agreement. .
- 2.2 The parties agree that provided that there are no unremedied defaults under this Agreement at the expiration hereof, the parties shall meet and negotiate in good faith for the renewal of this Agreement for a further term of up to two (2) years on mutually agreed terms.
- 2.3 The parties agree that they are committed to the principles of this Agreement and will enter into negotiations for a new agreement 3 months prior to the nominal expiry date of this agreement.

3 WORK AVAILABILITY

- 3.1 The Contract Carrier agrees to provide an Approved Driver and approved Vehicle available to perform the Services on behalf of AaE pursuant to this Agreement provided that:
- (a) with prior notification in writing to AaE the Contract Carrier is entitled not to provide Services for any period or part thereof for periods of up to 20 days (Monday – Friday) per annum pursuant to this Agreement provided further that:
 - (i) the carrier may provide Alternate Driver/s to service AaE during any such period exceeding 60 days (Monday – Friday) and the Contract Carrier may provide an Alternate Driver to service AaE during any such period provided that the carrier Alternate Driver must wear AaE approved uniforms and drive vehicles displaying AaE decals at all times;
 - (ii) the notice required by the Contract Carrier to AaE shall be given at least four (4) weeks before the date; and
 - (iii) as a fundamental condition the Contract Carrier must ensure the availability of the Approved Driver or an Alternate Driver from the period from 1 November to 24 December in each year, which the parties acknowledge is the busiest period of the year for AaE;
 - (b) the Contract Carrier agrees that no payments are required by AaE for any period when the Contract Carrier, its Approved Driver or alternative driver is not available for work;
 - (c) any Alternate Driver must be approved by AaE in writing prior to the alternative driver undertaking any Services; and
 - (d) public holidays are additional days and are not considered as part of the clause 3.1(a) entitlement.
- 3.2 At AaE's discretion it may choose not to require the Contract Carrier and/or the Contract Carrier may choose not to provide Services on weekends or gazetted public holidays.
- 3.3 Periods where the Contract Carrier cannot provide Services as a result of genuine Vehicle breakdown shall not be counted for the purposes of clause 3.1(a) provided that the Contract Carrier must immediately notify AaE and use best endeavours to minimize the occurrence and length of any such period.
- 3.4 In consideration of the investment required by the Contract Carrier, AaE agrees to allocate work to the Contract Carrier in a equitable and fair manner towards all sub-contractors. The allocation of work in accordance with this clause 3.4 is subject to the Contract Carrier making the approved Vehicle and Approved Driver or Alternate Driver available and compliance with the Agreement. Under no circumstances does AaE guarantee a minimum volume of work. Payment is based on a minimum payment for hours actually worked by the Contract Carrier (as per clause 3 in Appendix A).

4. CONTRACT CARRIER CHARGES AND RATE CHARGE INCREASES

- 4.1 AaE shall pay the Contract Carrier for all Services provided in accordance with this Agreement.
- 4.2 Unless agreed otherwise in writing, payments are to be made within 10 days of the close of business each week upon receipt by AaE of properly completed carriage documents and invoices in accordance with the Standard Operating Procedures.
- 4.3 AaE shall not deduct or withhold any payment due to the Contract Carrier except for statutory obligations, any deductions permitted by this Agreement or in accordance with the written approval of the Contract Carrier.
- 4.4 The Contract Carrier covenants and agrees that:
- (a) it shall as soon as practicable at completion of the carriage of Goods at the end of each weekly invoice period, provide an account relating to the Contract Carrier's performance under this Agreement;
 - (b) it shall render an invoice to AaE every business week for the period with such detail so as to allow AaE to verify the claim; and
 - (c) any payment discrepancies not reported by the Contract Carrier to AaE in writing within 28 days of the payment shall be deemed to be waived by the Contract Carrier.
- 4.5 AaE and the Contract Carrier agree that the following provisions apply in relation to the review of Charges and rate charge increase :
- (a) It is agreed that Fixed and Variable components, with the exception of fuel costs, will be reviewed upon the anniversary date (1 April 2011, 2012 and 2013. These components will be review only by mutual consent.
 - (b) If the Fuel costs increase by 5% or more (for a sustained period of 3 or more months commencing 1 October 2010 the Fuel Costs as contained within Variable Rate Component – Appendix B, will be reviewed in accordance with the increase in the fuel Costs, but only for the period that such increase is incurred. Any such increase will be implemented with seven days of any review.
 - (c) The Labour Costs are fixed until 31 March 2011, and thereafter be automatically reviewed on 1 April 2011 (to apply until 31 March 2012). For the purposes of the review :
 - i. AaE undertakes to pay the greater of, an increase of 3.1% or the identified labour component percentage of the National Consumer Price Index for the last 4 quarters. (Source : as published by the Australian Beauru of Statistics
 - ii. For the purpose of clarity subsequent reviews will occur on 1 APRIL 2012 and 1 April 2013. AaE undertakes to pay the greater of an increase of 3.1% or the identified labour component percentage of the National Consumer Price Index for the last 4 quarters.
 - iii. For the purposes of clarity any increases arising from 4.5.c.(i) and or 4.5.c . (ii) apply only to the identified labour component of the overall hourly rate as contained with in Appendix B – Labour rate Component.

- (d) There will be no decreases to the hourly rates, as reflected within Appendix B, for the duration of the Agreement.

5. CONTRACT TIME AND TRAVEL

- 5.1 The Carrier shall report to the nominated Depot in order to receive Goods at a time as agreed between the parties from time to time. If there is no requirement for a Carrier to report to a Depot the job shall commence from the time of pick-up.
- 5.2 Each job will be paid to the Carrier at the rate for its Vehicle, regardless of whether the job could have been performed by a smaller Vehicle.
- 5.3 Job time will not include the time of a delay (other than a delay for which the Carrier is not reasonably responsible). All delays greater than 15 minutes must be immediately notified by telephone or radio to AaE.
- 5.4 Contract distance will mean the distance necessarily travelled from the pick-up point to the place of delivery, provided that where any agreed distances or fees are set out in any schedule or appendix to this Agreement those distances and fees will apply where relevant.
- 5.5 The Contract Carrier shall ensure that:
- (a) drivers of vehicles of greater than 12 tonne and above will have meal breaks and other required breaks which are no less than 60 minutes in duration;
 - (b) drivers of vehicles other than those described in clause 5.5(a) will have meal breaks and other required breaks which are no less than 30 minutes in duration; and
 - (c) all drivers will be provided with any additional or different breaks as required by the Chain of Responsibility and all other applicable laws.
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6 CONTRACT CARRIERS' RESPONSIBILITIES

- 6.1 The Contract Carrier's obligations in providing Services include and shall:
- (a) provide and supply of an approved Vehicle with Approved Driver to provide the Services defined under this Agreement;
 - (b) keep the Vehicle mechanically sound, properly painted, and clean condition which complies with all relevant Acts, Ordinances, Regulations or By-Laws relating to that Vehicle including:
 - (i) a fitted with a working central locking system and security alarm;
 - (ii) a digital mobile phone to receive calls;
 - (iii) a current Street Directory and trolley; and
 - (iv) cargo barrier (van type Vehicles only);
 - (c) comply with such Acts, Ordinances, Regulations or By-Laws relating to the registration of the Vehicle, third party insurance and the operation of the Vehicle including permits or other instruments relating to the carriage of Goods;
 - (d) produce of a current registration certificate endorsed with Carrying Capacity to AaE upon request.
 - (e) provide information to AaE on a regular basis, including information relating to matters involving occupational health and safety and AaE's Standard Operating Procedures and operations; and
 - (f) ensure that all employees and agents wear an identification tag in a position above the waist, which tag remains visible and legible at all times.
- 6.2 The Contract Carrier shall take out and keep current a Comprehensive Motor Vehicle Insurance Policy on the Vehicle with a recognised insurer for its current market value. In addition the Carrier shall:
- (a) ensure that the policy must include third party property damage cover for a sum of not less than \$10 million dollars;
 - (b) provide a copy of the certificate of insurance annually upon request by AaE; and
 - (c) comply with AaE's "Service Conditions" as printed on the back of the AaE consignment note. Any changes to these conditions will be notified to the Contract Carrier to the extent that they effect either this Agreement or the obligations of the Contract Carrier.
- 6.3 The Contract Carrier shall take out and keep current a separate stand alone Public Risk Insurance Policy with a recognised insurer. This policy shall provide an indemnity amount of not less than \$5 million dollars in respect of liability as a result of any act or default of the Contract Carrier, its employees or agents and a copy of the certificate of currency must be provided annually to AaE or upon request by AaE.

- 6.4 In accordance with clause 8 of this Agreement, AaE may require the Contract Carrier to cart Dangerous Goods. AaE shall fully train the Contract Carrier and its Approved Driver prior to the Contract Carrier being requested to carry Dangerous Goods. Such training shall be consistent with relevant Acts, Ordinances, Regulations or By-Laws relating to Dangerous Goods and with AaE policies and guidelines. In the event that this clause is activated the parties will reach prior agreement in writing on appropriate costs and charges which shall be in addition to those included at the execution of this Agreement.
- 6.5 The Contract Carrier shall be liable for and will keep AaE indemnified against any claim made against AaE for loss of, or damage to Goods in transit on the Contract Carrier's Vehicle as a result of any negligent act, omission or default by the Contract Carrier or its drivers, including any Approved Driver or Alternate Driver providing always the Carrier's liability will not exceed \$1,500 for each individual claim (based on wholesale value of the Goods). The parties will ensure the matter is properly investigated.
- 6.6 The Contract Carrier shall pay for loss of or damage (taking into account fair wear and tear) that may be caused by its negligence, whether by the Contract Carrier or that of its drivers, to AaE's equipment utilised by the Contract Carrier or its employees or agents.
- 6.7 The Contract Carrier may carry such Goods as AaE may from time to time specify at such times and between such places as AaE may reasonably require in accordance with the provisions of this Agreement; provided always that the Contract Carrier has the right to refuse to carry any Goods which in its reasonable opinion are unsuited for carriage in or on the Vehicle, or the carriage of which may make it liable to commit a breach of any Act, Ordinance, Regulation or By-Law.
- 6.8 The Contract Carrier authorises AaE, where necessary, to install a two-way radio and/or barcode scanning device and such other equipment as necessary in its Vehicle at the expense of AaE, and it is agree that:
- (a) where, within 12 months of this installation, the Contract Carrier ends this Agreement of its own accord, or the Agreement is terminated by AaE by reason of breach or default by the Contract Carrier, these installation costs will be refunded to AaE;
 - (b) where, AaE terminates the Contract Carrier and this individual Agreement for any reason other than in Clause 6.8(a) it shall remove all devices and other equipment and fully rectify all damage whatsoever to the Contract Carrier's Vehicle; and
 - (c) the Contract Carrier shall be responsible for the two-way radio and/or barcode scanning device and all other equipment provided by AaE whilst in its care and shall cover the cost of repair or replacement of all such equipment when repair or replacement is necessary due to its negligence or that of its drivers.
- 6.9 The Contract Carrier authorises AaE to affix such signs and equipment including requirements for Dangerous Goods, and other matters as agreed, and:
- (a) where, AaE terminates the Contract Carrier and this individual Agreement for any reason it shall remove all signs and other equipment and fully rectify any damage whatsoever to the Contract Carrier's Vehicle; and

- (b) the Contract Carrier is responsible for cost of repair to the signs and other equipment if the Vehicle is damaged due to a road accident.
- 6.10 The Contract Carrier shall not replace its Vehicle without the prior written approval of AaE.
- 6.11 Where required by law, the Contract Carrier must comply with the provisions of all motor vehicle accident legislation and all relevant workers compensation legislation with respect to its drivers, including Approved Drivers, Alternate Drivers and replacement drivers, as they relate to registration of the Contract Carrier as an employer under the relevant Acts. A certificate of the workers compensation insurance coverage is to be made available to AaE annually on renewal. The Contract Carrier shall provide proof of compliance to AaE upon request by AaE, it being acknowledged by the Carrier, that AaE has no obligation to the Contract Carrier or any of its drivers under the Safety Rehabilitation & Compensation Act 1988, the Workplace Relations Act or any other state workers compensation legislation. The Contract Carrier's statement in the form at Appendix D, shall be made available upon request from AaE.
- 6.12 Where required by law, the Contract Carrier must comply with the provisions of the Superannuation Guarantee Act and other relevant employee entitlements with respect to its drivers, including Approved Drivers, Alternate Drivers and replacement drivers.
- 6.13 The Contract Carrier shall indemnify AaE in respect of the Carrier's obligations for income tax, superannuation, payroll tax, workers compensation premiums and obligations, and all other taxes that relate to their Approved Drivers, Alternate Drivers and replacement drivers in the provision of Services to AaE.
- 6.14 The Contract Carrier shall:
 - (a) not engage or use the Services of drivers without the prior approval of AaE. This approval will not be unreasonably withheld by AaE, however such approval may be withdrawn by AaE if the driver commits serious misconduct whilst providing Services in accordance with this Agreement; and
 - (b) ensure that the Approved Driver (and any Alternate Driver) holds a current driver's licence and other relevant certificates whilst providing the required Services under this Agreement. A copy is to be made available upon request from AaE.

- 6.15 The Contract Carrier shall perform the Services in a proper, conscientious and professional manner and:
- (a) promptly advise AaE of an anticipated inability to perform or unreasonably delay in the performance of its obligations;
 - (b) not cease performing work on any day without notifying AaE's radio operator or duty person by two way radio or by other means;
 - (c) ensure all freight notes, Freightmaster labels, consignment notes, manifests, worksheets, carriage documents and any other document reasonably required by AaE are correctly completed and scanned with legible entries made including the printed names of the sender and the receiver (including signatures) obtained on all documentation, and ensuring that all times and dates on documentation are accurate and that any loss or damage to Goods is accurately recorded on the appropriate documentation;
 - (d) supply necessary equipment, by prior agreement between the parties, such as but not limited to, trolley, pallet-jack, to fulfil the Services required;
 - (e) carry out reasonable requirements of the customers of AaE in connection with the loading, unloading and carriage of Goods;
 - (f) promptly advise AaE if the Vehicle or the Goods being loaded, carried and unloaded are involved in any accident or suffer any damage or becomes unserviceable; and
 - (g) ensure that the Vehicle when unattended is always properly secured and locked.
- 6.16 The Contract Carrier shall remain responsible for all working expenses and penalties including fines, road tolls (except road tolls incurred by the Contract Carrier as a result of AaE authorising the Contract Carrier to take a particular route) and other amounts that it may be required to pay in the ordinary course of its business.
- 6.17 The Contract Carrier's drivers shall wear their uniform in a tidy manner if supplied by AaE, at no cost, whilst performing Services which will be replaced on fair wear & tear basis. The Contract Carriers responsible for the uniforms maintenance and replacement cost where required for reasons beyond reasonable fair wear and tear.
- 6.18 The Contract Carrier shall ensure it complies with Standard Operational Procedures and all codes of conduct that AaE issues from time to time.

- 6.19 The Contract Carrier shall ensure that its employees and agents act in accordance with their responsibilities as required by:
- (a) all relevant OH&S Laws (including the AaE contractor OH&S requirements) and whatever is agreed between the parties;
 - (b) all Chain of Responsibility laws;
 - (c) the human rights and sexual discrimination legislation;
 - (d) AaE Policies as advised to the Carrier from time to time
- and without limiting the generality of the foregoing the Contract Carriers agrees to:
- (e) provide to AaE a certificate in a form reasonably required by AaE certifying that it will observe all laws including, without limitation, policies relating to fatigue management and Chain of Responsibility laws;
 - (f) as at the Commencement Date (and as subsequently reasonably requested by AaE), the Contract Carrier will provide a copy of its OH&S policies including, without limitation, policies relating to fatigue management and Chain of Responsibility laws; and
 - (g) ensure that the Contract Carrier's drivers will submit to random drug and alcohol testing in accordance with the Policies.
- 6.20 The Contract Carrier's driver shall where the Contract Carrier is supplied with barcode wandling devices, and other equipment, complete all necessary functions as directed by AaE from time to time with respect to the pickup and delivery of Goods. Failure to comply with scanning/signature and documentation completion procedures except in circumstances of equipment failure reported to the Radio Operator or Fleet Supervisor will result in non-payment or deduction of the charges otherwise payable to the Contract Carrier in respect of the consignment involved. Failure to comply may also lead to termination of this Agreement by AaE without notice.
- 6.21 If the contract carrier/s and this individual Agreement are terminated, the Contract Carrier will within seven (7) days:
- (a) remove from its Vehicle (or obliterate) all AaE identification (company colours), decorations, devices or equipment and return all such signs, devices or equipment to AaE; and
 - (b) where AaE has made available to the Contract Carrier any signal device, radio receiver and/or barcode-scanning device, other items of equipment, uniforms or other accessories (which will remain the property of the AaE) the Contract Carrier will return all such items to AaE.
- 6.22 Subject to clause 6.5, the Contract Carrier shall indemnify AaE against any claim, damage or liability incurred resulting from the negligence by the Contract Carrier or its drivers of its obligations under this Agreement.

- 6.23 The Contract Carrier in no circumstances has any lien, charge or other right to retain any property or Goods of AaE or its customers and shall yield and deliver the same to AaE on demand.

7 AaE'S OBLIGATIONS

- 7.1 AaE shall pay the charges to the Contract Carrier for Services performed as determined by the Appendices that are attached to this Agreement. Payments will be accompanied by a statement setting out the calculation of the payment and any statutory and authorised deductions.
- 7.2 AaE will maintain appropriate insurance to cover all its responsibilities under this Agreement.
- 7.3 AaE will not unreasonably withhold or delay consent to the Contract Carrier:
- (a) substituting a Vehicle to replace an existing Vehicle provided that it complies with AaE's reasonable requirements; or
 - (b) substituting a driver.
- 7.4 Where no ABN Number is supplied by the Contract Carrier AaE is entitled to deduct the amount required by law for payment to the Australian Taxation Office.
- 7.5 Upon termination of this Agreement AaE may withhold from the Contract Carrier final payment until the Contract Carrier has returned all equipment and other accessories provided by AaE undamaged and operational, fair wear and tear excepted and complied with all provisions of this agreement.
- 7.6 Where, AaE terminates this Agreement for any reason other than the gross misconduct or the Sub-Contractor or its driver/s, AaE shall remove all devices, signage and other equipment and fully rectify all damage to the Carrier's Vehicle.
- 7.7 AaE commits to achieving the highest possible standards of occupational health and safety including adherence to consultation and issue resolution processes regardless of whether employee or Contract Carrier. AaE recognizes its overall obligations and responsibilities irrespective of whether the work is carried out by its employees or the Contract Carrier.
- 7.8 AaE will provide suitable training in all areas of its operations including, but not limited to:
- (a) The human rights and sexual discrimination legislation;
 - (b) Dangerous Goods (where relevant); and
 - (c) air transportation and security procedures (where relevant).
 - (d) Industrial rights and Agreement Disputes Resolution
 - (e) OH & S Laws - NSW legislation
- 7.9 AaE shall treat all Contract Carriers in a fair and reasonable manner.

8 MUTUAL COVENANTS

- 8.1 Where necessary, AaE will notify and train the Contract Carrier in the handling, transportation and storage of Dangerous Goods.
- 8.2 If the Contract Carrier is delayed en-route due to a breakdown or other problem AaE reserves the right to transfer the Goods from the Contract Carrier's Vehicle and complete the delivery.
- 8.3 The Contract Carrier may be entitled to some payment of the charges payable for such consignments/Goods that are so transferred and will be on a case by case basis for out of pocket issues for the Contract Carrier.
- 8.4 The Contract Carrier is an independent operator and shall not during the term of this Agreement or after its expiration hold itself out as an employee of AaE for any purpose, nor shall it at any time bind AaE to any agreement or transaction in any manner whatsoever, nor shall it permit the creation of any lien or charge over any property of AaE which may be in its possession or under its control.
- 8.5 AaE reserves the right not to allocate jobs to the Contract Carrier where:
- (a) an inspection by an enforcement officer from relevant roads and/or Vehicle authority deems the Contract Carrier's Vehicle to be un-roadworthy;
 - (b) the condition of the Vehicle is not of a safe or functional condition; or
 - (c) the Contract Carrier's Vehicle is not meeting AaE requirements of appearance, provided that 2 weeks' notice shall be given to the Contract Carrier by AaE before implementing this Clause 8.5.
- 8.6 Nothing in this Agreement shall prohibit the Contract Carrier or any employee of the Contract Carrier (including an Approved Driver or Alternate Driver) from becoming financial members of a relevant union or business association.
- 8.7 The Contract Carrier agrees that it will at no time either during the continuance of the Agreement or after termination, divulge any confidential information concerning AaE and/or its customers to any person, firm or company. The Contract Carrier shall be responsible to ensure that all its employees, Approved Drivers and Alternate Drivers also observe the provisions of this clause.
- 8.9 This Agreement is made between AaE and the Contract Carrier and shall not be capable of assignment by the Contract Carrier. Any transfer of shares or change in the beneficial ownership of the Contract Carrier shall be deemed to be an assignment of this Agreement requiring the consent of AaE.

8.10 AaE has the right to

- (a) manage its business effectively, and may change the Run, runs or re-allocate work to ensure that operational and/or customer requirements and contractual obligations are met; and
- (b) retain the right to amend current or existing arrangements as a result of significant business or technological changes provided AaE consults with the Contract Carrier on a reasonable basis.

8.11 The Contract Carrier will comply with AaE's "Service Conditions" as printed on the back of the AaE consignment note with such amendments as advised by AaE from time to time.

9 TERMINATION OF AGREEMENT

- 9.1 AaE may terminate a contract carriers individual agreement where:
- (a) it has given the Contract Carrier four (4) weeks notice of its intention to cease trading;
 - (b) the Contract Carrier or any of its employees or drivers has failed to carry out a reasonable requirement of AaE;
 - (c) the Contract Carrier or any of its employees or drivers has failed to fulfil a condition of the Agreement;
 - (d) there is evidence of falsification of documents to AaE by the Contract Carrier or any of its employees or drivers;
 - (e) the Sub-Contractor or any of its employees or drivers has unsatisfactorily performed its obligations under this Agreement;
 - (f) the Contract Carrier or any of its employees or drivers has acted contrary to the interests of AaE or the customers of AaE;
 - (g) the Contract Carrier or any of its employees or drivers has disclosed confidential information.
 - (h) the Contract Carrier or any of its employees or drivers has acted dishonestly or negligently;
 - (i) there is evidence of an employee or driver, Approved Driver or Alternate Driver of the Sub-Contractor having consumed or being affected by intoxicating liquor and/or non-prescribed drugs or in possession of non-prescribed drugs whilst performing duties under this Agreement;
 - (j) AaE has significant changes to its business or operations which result in it not requiring a sub-contractor fleet it shall negotiate in good faith with the Contract Carrier and the Union and drivers' representative/s which negotiations shall explore the alternatives available to the Contract Carrier within AaE, some other entity or other alternatives;
 - (k) any Approved Driver or Alternate Driver of the Contract Carriers unreasonably objectionable or abusive during the course of performing the obligations of this Agreement (Note: An investigation shall take place prior to any action by AaE).;
 - (l) the Contract Carrier purports to assign this Agreement;
 - (m) the Contract Carrier goes into liquidation, is placed into official management, voluntary administration, has a receiver or receiver and manager appointed, or a resolution is passed to wind-up the Sub-Contractor; or

- (n) any Vehicle carrying any freight on behalf of AaE has not been secured at all times. A breach will be viewed as gross neglect of duty and serious misconduct, which following a thorough investigation, if the Contract Carriers shown to be at fault, AaE may immediately terminate the Contract Carrier by notice in writing

and it is agreed that where Contract Carrier has failed to carry out a reasonable requirement of AaE (paragraph (c) above), has failed to fulfil a condition of this Agreement (paragraph (d) above), or has unsatisfactorily performed its obligations under this Agreement (paragraph (f) above), AaE shall give the Contract Carrier two (2) weeks notice in writing requiring rectification failing which AaE may terminate this Agreement by notice in writing to the Contract Carrier.

- 9.2 Where any of the matters referred to in paragraphs (e),(g),(h),(i),(j), (l), (m), and (n) of clause 9.1 occur, AaE may terminate this Agreement by 24 hours notice in writing to the Contract Carrier.
- 9.3. The Contract Carrier may terminate this individual Agreement without cause and without penalty on (4) four weeks notice in writing to AaE.
- 9.4 Any termination of this individual Agreement shall be without prejudice to any rights of the parties prior to the termination.
- 9.5 AaE will not be liable to pay to the Contract Carrier any amount by way of compensation or damages or otherwise in consequence of termination. of this agreement.
- 9.6 The Contract Carrier acknowledges that AaE shall not in any circumstances be liable to the Contract Carrier or any other person for any loss of goodwill or profits or other loss, damage or injury arising from the termination of this individual Agreement.

10 CONFIDENTIALITY AND PRIVACY

10.1 Confidential Information

All Confidential Information of a party ("**Disclosing Party**") which comes into the possession of the other party its employees, directors, officers, agents or contractors ("**Receiving Party**") pursuant to this Agreement or otherwise must be treated as confidential and will not be used or disclosed by the Receiving Party except as is absolutely necessary for the purposes of performing its obligations under this Agreement or except as expressly authorised in writing by the Disclosing Party. The Receiving Party must:

- (a) protect and maintain the confidentiality of the Confidential Information;
- (b) implement all reasonable procedures and safeguards to ensure that the Confidential Information is identified and protected; and
- (c) ensure that all of its employees, directors, officers, agents and subcontractors are under obligations of confidentiality in relation to the Confidential Information no less stringent than the obligations set out in this Agreement.

10.2 Exclusions to the Obligation of Confidentiality

These obligations of confidentiality imposed on the Receiving Party under clause do not apply to information:

- (a) already in the possession of the Receiving Party at the time of disclosure and which is evidenced by written record;
- (b) disclosed to the Receiving Party by a third party having a right to disclose the Confidential Information without any obligation of confidentiality attached;
- (c) independently developed by the Receiving Party as evidenced by written record;
- (d) in the public domain otherwise than as a result of a breach by the Receiving Party of this clause 10.

10.3 Injunctive Relief

The Parties acknowledge that damages are an insufficient remedy and that a Party will be entitled to injunctive relief in the event of a breach of this clause 10.

10.4 Disclosure Required by Law

The Receiving Party will not be in breach of its obligations of confidentiality in accordance with this clause 10 where it is required to disclose Confidential Information by law or by the order of a court or other judicial body having the authority of law provided that the Receiving Party

immediately notifies the Disclosing Party and takes all the reasonable commercial steps to minimise the required disclosure, at the cost of the Disclosing Party.

10.5 Subcontractors and Agents

The Receiving Party must notify the Disclosing Party where it proposes to disclose Confidential Information to a third party, contractor or agent and, if requested to do so by the Disclosing Party, undertakes to procure (prior to disclosing Confidential Information to that third party, contractor or agent) that the third party, contractor or agent executes a confidentiality agreement containing substantially the same provisions as contained in this clause 10.

10.6 Press Releases/Publicity

The obligations of confidentiality contained in this clause 10 continue to bind each party after termination of this Agreement.

10.7 Press Releases/Publicity

No press release or other public statement may be made by either party without the consent in writing of the other Party which may be given or withheld in a Party's absolute discretion except for disclosure required by law or Australian Stock Exchange Limited in which case approval will not be unreasonably withheld or delayed.

10.8 Privacy

Each Party must:

- (a) only process, use or disclose Personal Information collected in the course of this Agreement as required for the purpose of fulfilling its specific functions, activities and obligations under this Agreement;
- (b) in the course of fulfilling its obligations under this Agreement, comply with the Information Privacy Principles and the Privacy Act 1988 (Cwth);
- (c) except as required by law, not disclose without the written permission of the other Party any Personal Information obtained in connection with this Agreement;
- (d) take all reasonable steps to prevent the misuse or loss of and unauthorised use, modification, access and disclosure of Personal Information;
- (e) ensure that only employees or agents who are authorised to fulfil the obligations of this Agreement and who need to have access to any Personal Information have access to the particular Personal Information;
- (f) upon completion of its obligations under this Agreement, return to the Disclosing Party, all copies of the Personal Information or any record of the Personal Information or in accordance with the Disclosing Party's directions in writing, destroy the Personal Information (and any copies thereof) and any record of the Personal Information; and
- (g) notify the Disclosing Party as soon as practicable if at any time the Receiving Party has breached, believes it may have breached, or is aware that it is alleged to have breached,

its privacy and security obligations under this Agreement and at law, or becomes aware that a disclosure of Personal Information may be required by law.

11 COSTS

Each party shall bear its own legal costs and expenses of incidental negotiation, preparation, execution and completion of this Agreement and a counterpart thereof.

12 DISPUTE RESOLUTION

- 12.1 In the event of a question, dispute or difficulty arising at a depot, or otherwise the matter shall be a first be raised with the duty Supervisor/Manager and agreement sought.
- 12.2 If not resolved at this level the matter shall be discussed between the driver/s and the TWU delegate/s and the AaE Sydney/ or State fleet manager.
- 12.3 If not resolved at this level the matter may be referred to AaE senior management and the TWU NSW State Secretary or their TWU official for further discussions.
- 12.4 If not resolved at this level the matter may be referred to the NSW IR Commission (or its successor) to conciliate and if necessary arbitrate the matter with all powers under the Act, with all parties having the right of appeal, to the full bench, within 21 days after any decision .
- 12.5 Until the issue is determined work shall continue as per normal practice.
- 12.6 Reasonable time limits will be allowed for discussions at each level of authority during the disputes procedure.
- 12.7 Any representative of its choice including any body or organisation of which either party is a member may represent each party in any such arbitration.

13 GOODS AND SERVICES TAX

- (a) In this clause 13, terms are defined in the *A New Tax System (Goods and Service Tax) Act 1999* have the same meaning as those terms have in that Act.
- (b) The Contract Carrier acknowledges that it is registered for GST and will notify AaE immediately if it ceases to be registered for GST.
- (c) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided for a taxable supply under this agreement are, or will be calculated to be, exclusive of any GST. AaE's obligation to pay the GST component of the consideration is subject to it receiving a valid tax invoice in respect of the supply at or before the time of payment.
- (d) If this agreement requires AaE to reimburse any expense incurred by the Contract Carrier, the amount reimbursed will be the amount of the expense net of any input tax credits to which the Contract Carrier is entitled in respect of the expense.
- (e) AaE must withhold from any payment it is to make the Contract Carrier such amount required by section 12-190 of Schedule 1 to the *Taxation Administration Act 1953* ("TAA") unless the Contract Carrier has, or on before the time payment is due, provided AaE with an invoice or other document quoting the Contract Carrier's correct ABN.
- (f) The Contract Carrier acknowledges that the current rate of withholding under section 12-190 of schedule 1 to the TAA is 48.5%.
- (g) The Contract Carrier acknowledges that it is obliged to promptly notify AaE in the event that it has incorrect quoted an ABN or its ABN is cancelled and the Contract Carrier indemnifies AaE in respect of any liability or penalty that may arise from any failure to so notify.

13.1 Recipient Created Tax Invoice

AaE will consult with the Contract Carrier before any Recipient Created Tax Invoice ("RCTI") arrangement is altered or withdrawn. Subject to the Contract Carrier having provided AaE with the Contract Carrier's ABN and the Contract Carrier remaining registered:

- (a) AaE may, at its option, issue a Recipient Created Tax Invoice in respect of the Services;
- (b) If AaE exercises its option to issue a RCTI in respect of the Services, the Contract Carrier will not issue tax invoices in respect of the Services;
- (c) If AaE does not exercise its option to issue an RCTI in respect of the Services, the Contract Carrier will submit to AaE a valid tax invoice dated the date of the provision of the Services;
- (d) AaE is a registered entity with the Commissioner for Taxation at the date of execution of this agreement and will promptly inform the Contract Carrier if it ceases to be registered; and

- (e) AaE will not issue a RCTI on or after the date when the Contract Carrier advises AaE that the Contract Carrier is no longer registered.

14 AMENDMENT

The parties must approve all modifications, deletions or additions to this Agreement in writing.

15 BLUE CARD TRAINING

- a) AaE agrees that Contract Carriers should participate in Blue Card training to ensure consistency of approach within the transport industry in New South Wales.
- b) Any Contract Carrier covered by this Agreement may apply to obtain Blue Card training for the principal driver and AaE will meet the reasonable costs associated with that training.
- c) These costs shall not exceed the equivalent of two (2) days average earnings less running costs.
- d) Where any approved alternative driver is engaged then Blue Card training costs for that approved alternative driver will be met by the Contract Carrier.

16 NOTICES

Any demand notice or document under this Agreement may be made or given by an officer of a party or an authorised representative of a party and shall be sufficiently served or delivered if served or delivered personally or if posted by prepaid post addressed to the party to be served at his address as shown in this Agreement and in the case of service by post shall be deemed served on the second business day after posting and in the case of service by facsimile transmission shall be deemed served on the dated received by the addressee.

17 SEVERANCE

To the extent that a provision of this Agreement is void or voidable, unenforceable or illegal, any such provision shall be firstly read down to the extent that it is capable of being read down and if such provision is still void or voidable, unenforceable or illegal any such provision shall be severed from this Agreement and the remainder of this Agreement shall have full force and effect.

18 SAFETY, THE ENVIRONMENT AND QUALITY

18.1 The Contract Carrier agrees to adhere strictly to the Policies.

- 18.2 All Policies will be provided in writing to the Contract Carrier prior to the commencement of this Agreement or as such Policies change.

19 INTELLECTUAL PROPERTY RIGHTS

- 19.1 The Contract Carrier acknowledges AaE's exclusive ownership of all Intellectual Property associated with the Services.
- 19.2 The Contract Carrier will not, either during or following the termination of the Contract Carrier and this Agreement, contest or challenge in any legal proceedings or otherwise the ownership by AaE of any such Intellectual Property.

20 Documentation Compliance.

- 20.1 The Contract Carrier agrees to keep all necessary documentation to ensure compliance to its obligations under this individual Agreement and to AaE's standard operating procedures and policies. It is agreed that AaE may request documentation from the Contract Carrier. AaE agrees that it shall:
- (a) exercise its rights under this clause in a reasonable manner;
 - (b) maintain the confidentiality of the Contract Carrier's documentation ; and
 - (c) restrict its requests to matters relevant to the Services and this Agreement.
- 20.2 For avoidance of doubt the parties agree that any documentation requests are restricted to documents relating to the Services and charges and invoices made under this Agreement and AaE's standard operating procedures and policies. AaE has no right to query the contract Carrier or it's Approved Driver's personal and/or business affairs, records or taxation arrangements.

21 LEGAL RELATIONSHIP

The Parties agree that the legal relationship between AaE and the Contract Carrier is not that of employee and employer and no term of this Agreement shall be construed as creating the relationship of employer and employee between AaE and the Contract Carrier.

22 GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of New South Wales, and the parties hereby agree that the courts of that State shall have exclusive jurisdiction to hear any action in respect of or arising out of this Agreement.

23 FORCE MAJEURE

- 23.1 A party shall not be liable for a failure to fulfil an obligation under this Agreement, other than an obligation to pay money, if and to the extent to which fulfilment has been delayed, interfered with, curtailed or prevented by force majeure.
- 23.2 Force majeure means any circumstances whatsoever which is beyond the reasonable control of the party affected; including a strike, lockout or any other kind of labour dispute.

24 SUPERANUATION AND WORKERS COMPENSATION

The Contract Carrier acknowledges that it is responsible for compliance with superannuation and workers compensation legislation, including the making of superannuation contributions and the payment of Workers Compensation policy cover or equivalent premiums for the employees of the Contract Carrier, and that any obligations arising from this Agreement under such legislation are the responsibility of the Contract Carrier not AAE.

25 SECURITY

- 25.1 The Contract Carrier will handle and store all Goods and Dangerous Goods in compliance with Transport Security Legislation and AaE security policies as advised to the Contract Carrier from time to time including AaE's Transport Security Program.
- 25.2 Where necessary, the Contract Carrier shall ensure that the Contract Carrier's drivers are able to meet the requirements for obtaining an ASIC Card.
- 25.3 The Contract Carrier and the Contract Carrier's drivers will immediately notify AaE if they fail to obtain or lose any ASIC Card, or any requirement or security or identification card as issued by any regulatory authority.
- 25.4 If reasonably required by AaE, the Contract Carrier will attend AaE's training and retraining sessions as required by AaE.
- 25.5 The Carrier must observe AaE's Transport Security Program including:
- (a) requiring all the Contract Carrier's drivers to complete and maintain regulated security training; and
 - (b) being subject to audit by third parties or a Related Body Corporate including the AaE national security office, Qantas security and DOITRD LG. Without limiting the generality of this, the Carrier also agrees:
 - (i) to being subject to audit by the AaE National Security Office as required by AaE; and
 - (ii) that the Contract Carrier and the Contract Carrier's drivers will be required to undertake a Criminal History Check in accordance with the Policies.

26 INDEPENDENT ADVICE

The Sub-Contractor warrants that it has had a reasonable opportunity to obtain independent legal and financial advice in respect of this agreement prior to entering into it.

EXECUTED by the parties as an Agreement

PRINT NAME *Guy Hopkins*

SIGNED for and on behalf of AaE

[Signature]date *21-10-10*

PRINT NAME

In the presence of *[Signature]*

PRINT NAME

SIGNED for and on behalf of Contract Carrier «Company_Name» Pty Ltd

.....date

PRINT NAME

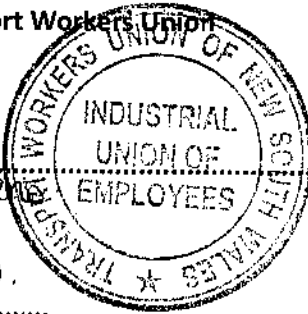
In the presence of:

SIGNED for and on behalf of The Transport Workers Union
NSW Branch

[Signature]date *8 November 2010*

PRINT NAME

In the presence of *[Signature]*



*Rosemary Elaine Pace
Justice of the Peace
in and for the state of
New South Wales
Registration No. 141357*

Schedule 1 – Calculation of Fees

The Fees payable by AaE to the Contractor for the provision of the Services in the first year of the Term are to comprise of the listed categories one (1) to (6) calculated as the total of the following.

1. **Fixed Charges – Component A**
2. **Fixed Charges – Component B**
3. **Labour Costs**
4. **Variable Charges**
5. **Fuel Costs**
6. **Other Charges**

*Charge categories One (1) to (6) are outlined in Appedix A & B

These Fees will be subject to review in accordance with **clause 4.5**.

Schedule 2 – Contractor Vehicles and Contractor Equipment

Enter the Contractor Equipment and Contractor Vehicle that the Contractor has at the time of signing the Agreement. Include whether the vehicles will have an AaE decal on them.

"Contractor Equipment" means []

"Contractor Vehicle" means [include specific specifications required for the vehicle].

For the purposes of **Schedule 3**, the Contractor Vehicle must be predominantly white in colour.

Schedule 3 - Services

[Details to be provided]

1. Pick up and Delivery (PuD)

Contractor agrees to provide pickup and delivery services across a range of AaE products and services in conformance with advertised AaE specifications and in compliance with Regulatory requirements and AaE procedures or as otherwise determined and agreed from time to time.

2. Customer Service

Contractor agrees to provide local area Customer Service and meet the current AaE standards for the provision of Customer Service.

3. Finance and Administration

Contractor will perform Finance and Administration duties on a daily, weekly, monthly and annual basis as per the current requirements of the AaE Finance and Administration Policy and Procedures Manual.

Schedule 4 – Performance Targets

1. Ensure all Daily Worksheets, freight notes, Freightmaster labels, consignment notes, manifests, worksheets, carriage documents and any other document reasonably required by AaE are correctly completed and scanned with legible entries made including the printed names of the sender and the receiver including signatures obtained on all documentation including ensuring that all times and dates on documentation are accurate and that any loss or damage to goods is accurately recorded on the appropriate documentation; and all above documents must have all relevant fields completed.
2. The Contractor is supplied with a barcode wand device to perform necessary functions with respect to the pickup and delivery of goods in relation to scanning of consignments and associated articles. In circumstances of equipment failure it must be reported to the radio operator and/or fleet supervisor.
3. Key Performance Indicator Benchmark is a preferred average of 85 stops per contractor. Operational impacts, Seasonal Variations and run specifics will be taken into consideration and will be mutually agreed between both parties. Deliver consignments in line with AaE Service Standards & notify AaE where service standards cannot be met.
4. Perform all pickups in the contractors designated area with the core business hours of the pickup run and contractor must stay in his/her area until cleared by the radio room. Core business hours will be mutually agreed by both parties.
5. Time In/Out of Depot
 - (AM) anticipated time is one and half hours subject to run & season variations & operational impacts. Any variance will be agreed between both parties
 - (PM) once unloading process has been completed it is anticipated a maximum of twenty minutes to completion of day incorporating paperwork completion

Schedule 5 – AaE Policies

- Security Policy
- Occupational Health & Safety Policy
- Equal Opportunity Policy (Anti- Discrimination) (Non Employee)
- Harassment Free Workplace Policy
- Drug & Alcohol Workplace (Non Employee)
- Total Smoke Free Workplace Policy (Non Employee)
- Privacy Policy
- Environment Policy
- Dangerous Goods Policy
- Criminal History Check (Non Employee)

