

Independent Contractor Agreement

**** THIS DOCUMENT HAS BEEN DRAFTED FOR THE SOLE PURPOSE OF PROVIDING A SAMPLE FOR THE HELICOPTER ASSOCIATION OF CANADA. PRIOR TO USE MEMBERS MUST OBTAIN INDEPENDENT LEGAL ADVICE REGARDING THE PROPER USE OF THIS DOCUMENT TO ENSURE ITS ENFORCEABILITY AND COMPLIANCE WITH APPLICABLE LAW. NOTHING CONTAINED HEREIN SHOULD BE INTERPRETED AS LEGAL ADVICE ****

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Version: September 26 2013

MEMBERS ARE ENCOURAGED TO ATTEND THE TRAINING ON THESE DOCUMENTS AT THE ANNUAL GENERAL MEETING IN NOVEMBER 2013.

Independent Contractor Agreement

An individual who is engaged as an Independent Contractor is not an employee and the provisions of the *Canada Labour Code* do not apply.

When to Use an Independent Contractor Agreement

Many individuals and operators prefer to characterize their relationship as that of an Independent Contractor and client as opposed to employer and employee. The benefits from an operator's perspective include: income tax deductions at source are not required, CPP and E.I. premiums are not deducted nor are they required to be paid by the operator and the *Canada Labour Code* does not apply.

However, if an operator has a paid employee and an Independent Contractor doing exactly the same work, it is likely that the Independent Contractor will be found to be an employee – see Risks below.

If an operator decides to engage an Independent Contractor, the more of the following factors are put in place the greater the likelihood that, if challenged, the Independent Contractor will be found to be an Independent Contractor, and not determined to be an employee:

- Pay the Independent Contractor on a different pay scale from employees
- Do not extend typical employee benefits to an Independent Contractor (including Group Insurance, vacation, statutory holidays etc)
- Differences in pay amongst Independent Contractors are encouraged
- Ensure the contract clearly states the intention of the parties to enter into an Independent Contractor relationship
- There should be zero expectation of renewal from year to year or season to season
- The Independent Contractor submits invoices for payment
- The Independent Contractor should be incorporated
- The Independent Contractor should have a GST number and charge GST

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- The Independent Contractor should have the ability to work for other operators outside of the contract they are engaged in
- The Independent Contractor should provide their own flight suit / helmet / seasonal clothing
- The Independent Contractor should be responsible for renewing permits and undergoing medicals
- The Independent Contractor Agreement should be for a specific purpose and/or for a short duration, not for general work
- The Independent Contractor should be allowed to turn down offers of work

Risk in Using an Independent Contractor Agreement

Operators and individuals frequently choose to enter into independent contractor/client agreement instead of an employee/employer relationship for tax and other financial reasons. Occasionally at the conclusion of the relationship, the independent contractor will decide that he or she now wishes to be considered an employee in an effort to obtain notice of termination pay, overtime pay, or Employment Insurance benefits, to name a few of the entitlements employees enjoy. If the individual is determined to be an employee and not an independent contractor the operator could be liable to pay all of the statutory deductions (for both the company and the employee) and the operator would be exposed to any claims for unpaid overtime, vacation pay, public holiday pay, notice of termination as required by the *Canada Labour Code*, in addition to common law reasonable notice of termination. In short, the cost to an operator could be significant.

Making the Offer

Once the decision has been made to engage an independent contractor, the following steps should be followed:

- Send the individual a copy of the independent contractor agreement with a covering letter or email addressing the following:
 - Ask the individual to review the agreement
 - Indicate to the individual that he/she should seek whatever advice they wish

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- Indicate to whom the individual should direct any questions
- State that if the individual finds the agreement acceptable, he/she should sign and return a copy of the agreement at least one week prior to the start date of the agreement.
- An individual must have at least one (1) week to review the agreement and the operator must have the signed agreement before any work/training is performed for the operator. Failure to have the agreement signed and returned before the work/training is commenced could render the agreement unenforceable.

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THIS AGREEMENT dated this ____ day of _____, 201__ is made

BETWEEN:

COMPANY

(hereinafter referred to as "XXX")

and

[NAME]

(hereinafter referred to as the "Contractor")

WHEREAS

- a. XXX is in the business of XXXX;
- b. The Contractor has the expertise to XXX;
- c. XXX wishes to retain the Contractor upon the terms and conditions set out herein;
- d. The parties recognize the highly specialized nature of the work to be performed by the Contractor and the unique environment in which the work will be performed and have therefore endeavored, to the extent possible in the aviation industry, to have the Contractor exercise a great deal of independence in the manner in which the work is performed

THIS AGREEMENT WITNESSES that in consideration of the covenants and agreements herein contained, the parties hereto agree as follows:

1. Term

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1.1 This Agreement shall commence on DATE and end on DATE.

2. Status

- 2.1 The Contractor in performing his/her duties hereunder is acting as an independent contractor and not as a servant or employee of XXX. It is declared and agreed that nothing herein contained shall be deemed to create the relationship of employer and employee between the parties.
- 2.2 The Contractor shall have no entitlement to employment benefits of any kind whatsoever, whether pursuant to employment-related statutes or otherwise.
- 2.3 The Contractor shall be responsible for paying any amounts required to be paid under any statute, regulation, by-law or otherwise, including any P.S.T., G.S.T., Q.S.T., or H.S.T. where applicable, as a result of receipt of fees from XXX. In addition, the Contractor shall bear all financial, tort and other consequences that result from this relationship.

3. Services and Rates

- 3.1 The Contractor agrees to use their best efforts and expertise to provide the services as described more fully in Appendix A attached hereto.
- 3.2 It is recognized by the Contractor that XXX provides no guarantee regarding the number of flight hours that may be assigned to the Contractor during the Term of this Agreement (except in accordance with Appendix B).
- 3.3 The Contractor may not delegate or assign performance of services under this Agreement to any other person without the prior written consent of XXX. The Contractor shall have no authority to bind XXX except as may be set out expressly herein.
- 3.3.1 When providing services pursuant to the terms of this Agreement, the Contractor shall have reasonable discretion as to the manner of providing services, subject to the terms of this Agreement.

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- 3.4 The Contractor shall provide all necessary tools and equipment directly or indirectly required for the performance of services pursuant to this Agreement (save for the helicopter), unless otherwise provided in this Agreement.
- 3.5 XXX may, from time to time, amend the scope of the services to be performed under this contract. In order for these changes to be effective they must be in writing and agreed to by the Contractor.
- 3.6 XXX agrees to pay the Contractor in accordance with Appendix B.

OR

XXX agrees to pay the Contractor a fee of \$XX per day for each day of the contract. In addition the Contractor will be entitled to Flight Pay per flight hour in the amount of \$XX/hour for TYPE and \$XX/hour for TYPE. These rates are not inclusive of the applicable tax. Requests for payment for services rendered as detailed in Appendix A shall be submitted monthly (last business day of each month) on detailed invoices.

- 3.7 The Contractor shall pay all expenses incurred during or with respect to the performance of services pursuant to this Agreement, unless otherwise provided in this Agreement. (INSERT ANY EXPENSES WHICH EMPLOYER MAY REIMBURSE)
- 3.8 The Contractor may, during the term of this Agreement be engaged by other organizations to perform work similar to that set out in Appendix A or entirely dissimilar work provided all the Contractor's obligations as set out herein are fulfilled. XXX retains the right to select other Contractors to perform the services described herein
- 3.9 The Contractor shall, in the performance of services pursuant to this Agreement, comply with all applicable laws and regulations of Canada and PROVINCE(s).
- 3.10 The Contractor shall be solely responsible to make arrangements to obtain WCB or WSIB insurance coverage.

4. Satisfaction of XXX

- 4.1 The services to be carried out by the Contractor pursuant to this Agreement shall be completed to the full satisfaction of XXX.

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5. Indemnification

- 5.1 The Contractor agrees to indemnify and save harmless XXX from and against all claims, demands, loss, costs, damages, actions, suits or other proceedings by whomsoever made, brought or prosecuted in any manner based upon, occasioned by or attributable to, a negligent activity or omission of the Contractor under this Agreement. **XXX agrees to name the Contractor as an additional co-insured on its insurance policy.**
- 5.2 The Contractor agrees to indemnify and save harmless XXX from all fines, charges, taxes and penalties which may be levied or imposed by the Minister of National Revenue or the Canada Revenue Agency requiring XXX to pay income tax under the Income Tax Act (Canada) in respect of income tax payable by the Contractor; and in respect to any and all fines, charges, deductions and remittances, taxes or penalties which may be made on behalf of or related to the Employment Insurance Commission, the Canada Revenue Agency, the Canada Pension Commission, with respect to any amounts which may, in the future, be found to be payable by the Contractor, subject always to the Contractor's right to appeal against such assessment or re-assessment.

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Comment [1]: Operators should ensure that this provision is consistent with the practice of their company and insurer.

6. Termination

- 6.1 This Agreement may be terminated by XXX at any time for any reason, in its sole discretion, by providing the Contractor with two (2) weeks notice in writing. During the two (2) week notice period, the Contractor shall be assigned flights in the ordinary course or, at the discretion of XXX, the Contractor shall be paid for any flights that the Contractor would otherwise have performed during the notice period. Upon the expiration of the notice period, save and except for the obligations which survive termination of this Agreement, this Agreement shall be wholly terminated and the Contractor shall have no entitlement to further fees.
- 6.2 Notwithstanding the above provision, XXX may terminate this Agreement at any time and without notice and without any payment to the Contractor whatsoever except with respect to fees earned but not yet paid to the date of such termination, for:
- (i) any material breach by the Contractor of the provisions of this Agreement;

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- (ii) conduct by the Contractor that is detrimental to the business or the financial position of XXX, in XXX's discretion; and
- (iii) any non-compliance with the requirements of Schedule A.

7. Severability

- 7.1 In the event that any provision of this Agreement is determined to be void or unenforceable in whole or in part, such determination shall not invalidate the remaining portions of the provision or this Agreement which shall remain in full force and effect.

8. Confidential Information

- 8.1 Contractor may have access to and may work closely with information that is proprietary, confidential or personal. Subject to the provisions of the *Personal Information Protection and Electronic Documents Act*, during the term of the contract with XXX, or at any time thereafter, the Contractor agrees that it, will not disclose to any person, any information so obtained except that which is required in the performance of the Agreement and further that any such information will not be used for the benefit of the Contractor or any individual.
- 8.2 The Contractor will safeguard all Confidential Information by marking it accordingly, keeping it secure, and limiting access to such information.
- 8.3 The provisions of this section shall survive the termination of this Agreement.

9. Non-Solicitation

- 9.1 Customers
During the term of this Agreement and for a period of twelve (12) months following the effective date of the termination of this Agreement, regardless of the circumstances of such termination, the Contractor will not, without the prior written consent of XXX either directly or indirectly, on his/her own behalf or in the service or on behalf of others:

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- (a) Solicit, divert or appropriate, or attempt to solicit, divert or appropriate for any purpose competitive with the interest of XXX, any customer which was, or is generating revenues for XXX during the year immediately preceding the date of termination of this Agreement.

9.2 Employees and Contractors

During the term of this Agreement and for a period of twelve (12) months following the effective date of the termination of this Agreement, regardless of the circumstances of such termination, the Contractor will not, without the prior written consent of XXX either directly or indirectly, on his/her own behalf or in the service or on behalf of others:

- (a) Solicit, divert or hire away, or attempt to solicit, divert or hire away, any person who, at any time during the ninety (90) calendar days prior to the termination of this Agreement, has been employed by XXX in any capacity or has been retained by XXX as a contractor.

10. General

- 10.1 Waiver. There shall be no waiver or breach of any term or condition of this Agreement unless the waiver is in writing signed by the party who has not committed the breach. A waiver with respect to a specific breach shall not affect any rights of the parties relating to other or future breaches.
- 10.2 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Province of XXX and the Courts of XXX shall have exclusive jurisdiction over this Agreement. This Agreement may only be amended by written agreement of both parties.
- 10.3 Entire Agreement. This Agreement embodies the entire agreement of the parties hereto relating to the engagement by XXX of the Contractor in the capacity herein stated, and expressly supersedes any and all prior understandings and agreements between the parties relating to such relationship.
- 10.4 Independent Legal Advice. The Contractor acknowledges that s/he has read and understood the terms of this Agreement and agrees that the said terms are fair and reasonable and correctly set out the parties' intentions and further, agree to abide by the terms hereof. The Contractor further acknowledges that s/he has had legal

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representation with respect to the terms of this Agreement or the opportunity to obtain same.

10.5 Arbitration. In the event of dispute arising under this Agreement the parties agree to remit the matter to final and binding arbitration in accordance with the Ontario *Arbitration Act, 1991*.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the dates set out below.

Contractor

Date

[XXX].
[individual with authority]
I have authority to bind XXX

Date

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APPENDIX A

Description of Responsibilities

NOTE THAT THE BELOW HAS BEEN INCLUDED AS A GUIDE ONLY! DEPENDING ON YOUR OPERATION AND THE ACTUAL DUTIES BEING PERFORMED THE RELATIONSHIP MAY NOT BE ONE OF INDEPENDENT CONTRACTOR

Deployed Engineer/Apprentice

- Communicate with the pilot with respect to maintenance-related problems and snags, looming inspections, etc.
- Resolve snags and carry out aircraft inspections after the day's flying is complete. Inspections may be carried out on a progressive basis or all at once. The number of hours required will depend on the assistance that is available (apprentice(s) or engineer(s)) and the nature of the snag/inspection.
- Carry out associated paperwork including Journey Log and Maintenance Log entries (Engineers-only).
- Communicate with the company base to report hours, request parts and supplies, consult on the resolution of specific problems, etc.
- May include work in the evenings and occasionally overnight when inspections are required.
- Conduct the Daily Inspection of the Aircraft at the end of each flight-day.
- May be called upon to do other tasks including but not limited to, building sling loads, coordinating cargo transportation, ground travel to receive necessary parts, fueling the aircraft during operations, etc.
- May be called upon to accompany a pilot on short maintenance test flights
- Join the pilot on a ground-run of the aircraft following maintenance and prior to a maintenance test flight
- Carry out other duties assigned

Base Engineer/Apprentice

- Communicate with the Director of Maintenance with respect to maintenance related problems and snags, looming inspections, etc.
- May be called upon to communicate with deployed pilots or base pilots calling the base

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- Occasionally may be called upon to communicate with customers to coordinate operations or to resolve problems with an aircraft
- May be called upon to accompany a pilot on short maintenance test flights
- Regularly called upon to join the pilot on a ground-run of the aircraft following maintenance and prior to a maintenance test flight
- Resolve snags and carry out aircraft inspections and maintenance as assigned.
- Carry out associated paperwork including Journey Log and Maintenance Log entries
- May be called upon to pick-up or deliver parts – sometimes involving travel on the roads over long distances
- May be called upon occasionally to assist deployed Engineers on specific maintenance activities
- Communicate with the Director of Maintenance, request parts and supplies, consult on the resolution of specific problems, etc.
- Carry out other duties assigned by the Director of Maintenance, including other work on the base during assigned shifts

Base Pilot

- May be required to carry out other duties in and around the hangar (i.e. assist with maintenance, wash aircraft, sweep the hangar, etc.)
- Pilot is required to check the suitability of weather prior to each flight and to ensure facilities are available for flight following (i.e. company flight notification, or flight plan)
- Prior to each flight the pilot must ensure that the aircraft is ready to fly and is suitably-equipped for the mission (i.e. sling gear, water bucket, nets, etc.)
- Responsible to complete the daily inspection prior to each flight assignment
- Assist others to move the aircraft into the hangar or out of the hangar as required
- Responsible to clean the aircraft and conduct a pre-flight inspection of the aircraft after each day's flight assignment and to secure the aircraft at the end of each day (i.e. tie-down, covers etc.)
- Complete paperwork after each day's flying assignment including Journey Log entries, Flight Invoices for the customer's review and signature, complete Flight Time & Duty Time tracking paperwork, communicate with Engineer or with the Base with respect to anomalous operations and running aircraft times
- Carry out other duties assigned

Deployed Pilot

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- Responsible to complete the daily inspection prior to each flight assignment
- Check suitability of the weather prior to each flight assignment. This may be carried out on-line or on the phone
- Responsible to clean the aircraft and conduct a pre-flight inspection (Daily Inspection or "DI") of the aircraft after each day's flight assignment and to secure the aircraft at the end of each day (i.e. tie-down, covers etc.).
- Meet and communicate with the customer each morning regarding the day's flight assignments and may also be required to be formal customer liaison at other times
- Prior to each flight ensure that the aircraft is ready to fly and is suitably-equipped for the mission (i.e. sling gear, water bucket, nets, etc.).
- Flight duties may include dropping crews in the field and returning to camp or remaining in the field with the crews between flights
- Complete paperwork after each day's flying assignment including Journey Log entries, Flight Invoices for the customer's review and signature, complete Flight Time & Duty Time tracking paperwork, communicate with Engineer or with the Base with respect to anomalous operations and running aircraft times
- Carry out other duties assigned

Pilot-Engineer

- The work description for this type of work would include all of the items in the Deployed Pilot AND Deployed Engineer scenarios, described above.