

GUIDANCE NOTE

GN-001

Non-Chargeable Operating Hours

(General Distribution)

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Version 1.0

1. BACKGROUND

- 1.1. For some NAFC Services, the Contract may provide for operating time in each Service Period that is not subject to Operating Charges (referred to in this guideline as “non-chargeable hours”).
- 1.2. This guideline provides information regarding the application of non-chargeable hours in NAFC service contracts.

2. TRAINING AND DEMONSTRATION TIME (*‘the five hours’*)

- 2.1. Most contracts, following the standard conditions of the NAFC Specimen Contract, provide for **five** non-chargeable operating hours per Service, in each Service Period, to be utilised for purposes such as training and capability demonstrations.
- 2.2. Although a standard Specimen Contract provision, it is possible that conditions may have been varied in individual contracts (eg during post-tender negotiation). NAFC Members should confirm that the provision does apply to each relevant contract.
- 2.3. The “five hours” are intended to be utilised, at the discretion of the relevant Member, for purposes such as staff and volunteer training and for activities such as exercises, briefings and capability demonstrations.
- 2.4. A Contractor is obliged to deliver these non-chargeable hours during the relevant Service Period. The hours may be utilised outside the Service Period by prior agreement with the Contractor. The Contractor is not obliged to agree to provide these non-chargeable hours outside of the Service Period, except where this facility was offered in a tender and the tender accepted on that basis. Otherwise the Contractor may agree to provide the non-chargeable hours outside of the Service Period, essentially as a measure of goodwill.
- 2.5. Some contracts may prescribe a Training Period in each year of the Contract Period. Contracts will only include a specific Training Period if the Contractor offered availability for a Training Period in their original tender, the relevant Member required that Training Period and the tender was accepted on that basis.

If a Training Period is included in a Contract, it will normally require that the aircraft be made available for a specified period prior to the commencement of each Service Period. The purpose of prescribing Training Periods is mainly to ensure availability of suitable aircraft for particular training courses conducted by Members.

If a Training Period is included in a contract, can the “five hours” be used during those Training Periods? If no other stipulation is included in the particular contract, then point 2.4 above continues to apply – the contractor is only obliged to provide the hours during the Service Period, but may agree to provide them during a Training Period if applicable.

- 2.6. The training and demonstration non-chargeable hours may not be used by Members for actual response to fire or emergency incidents.
- 2.7. Where a training or currency exercise involves actual dispatch of an aircraft without prior notice, this will normally be treated as an actual emergency incident for the purposes of charging operating hours (ie the five hours is *not* utilised) unless a suitable prior arrangement has been agreed with the Contractor.

- 2.8. The five hours may not be used by the Contractor to meet other contracted obligations such as pilot currency flights or regular serviceability checks (except where these activities are incidental to the Member's requirements) or for flights that are in the private interests of the Contractor, such as maintenance flights.
- 2.9. Members must provide reasonable advance notice of any requirement to utilise the non-chargeable hours, and must provide clear notice to the Contractor that any particular activity is intended to utilise non-chargeable hours.
- 2.10. The Contractor is responsible for accounting for the five hours and advising the Liable Member regarding any remaining credit of non-chargeable hours.
- 2.11. Non-chargeable hours are provided to the same contract specifications as those applicable to chargeable hours, except where otherwise agreed between the relevant Member and the Contractor. (For example, where a contract is for Wet-A Hire, the Contractor must provide non-chargeable hours on a Wet-A basis).

3. EMERGENCY RESPONSE HOURS

- 3.1. Some NAFC Absolute Availability contracts provide for a number of non-chargeable operating hours per Service in each Service Period that may be utilised for responding to fires and other emergencies.
- 3.2. These conditions apply where a tenderer has offered these provisions as part of a tender and in turn they have been accepted and incorporated into a contract. The availability of non-chargeable hours for emergency response for any particular Service is confirmed to the relevant Liable Member in the Operating Statement for that Service.
- 3.3. These non-chargeable emergency response hours are intended for use primarily in responding to fires and other emergencies, or for enhancing readiness to respond (eg moving the aircraft to a temporary base due to actual or forecast fire risk) during the defined Service Period.
- 3.4. Unless specified otherwise in a particular contract, the emergency response hours may be utilised in other activities directly relating to emergency response such as training, fuel management or construction and maintenance of emergency response facilities. The primary test of eligibility for such activities is that the work will directly enhance future emergency response, or is rehabilitating damage caused by a previous response. Eligibility of activities, other than actual emergency response, to utilise non-chargeable hours must be agreed by the Contractor prior to dispatch.
- 3.5. Other conditions applying to the use of non-chargeable emergency response hours are specific to individual contracts and are therefore subject to commercial confidentiality. A limited distribution version of this Guidance Note (Version 2) provides additional information regarding the application of non-chargeable emergency response hours.

4. OTHER NON-CHARGEABLE OPERATING HOURS

COMPLIANCE

- 4.1. Most NAFC contracts include a requirement that the aircraft be flown, immediately prior to the Service Period and if required by the relevant Member, to demonstrate compliance with the contract.
- 4.2. Compliance demonstration flights are normally a maximum of 30 minutes. Where a non-compliance issue is identified, the Member may require further reasonable flying to demonstrate that the issue has been rectified.
- 4.3. Compliance demonstration flights are non-chargeable, except that where the contract is for Dry hire, the relevant Member will supply or meet the cost of fuel.
- 4.4. Where compliance flights do not occur immediately prior to the Service Period, the Member can still require the compliance flight to occur during the Service Period.

PERIODIC TESTING

- 4.5. Most NAFC contracts required that where the Aircraft does not fly during the preceding six days, the Aircraft must be flown to test the proper operation of the aircraft and aircraft systems.
- 4.6. Periodic testing flights need to be of sufficient flight time to properly test systems. The Member may require that the testing be undertaken according to a prescribed procedure. Unless specified otherwise in a particular contract, a periodic testing procedure should not require flight longer than 30 minutes.
- 4.7. Periodic testing flights are non-chargeable, except that where the contract is for Dry hire, the relevant Member will supply or meet the cost of fuel.

CONTRACTOR'S PRIVATE INTERESTS

- 4.8. Any flight that is carried out in the private interests of the Contractor is not chargeable.
- 4.9. Private interests include any flight conducted in connection with the servicing, maintenance or substitution of the aircraft, or any flight conducted in connection with replacement or substitution of flight crew, except as provided below.
- 4.10. Where an aircraft is required by a Member to be based away from the Nominated Operational Base (NOB) for an extended period, the Member may agree to meet certain out-of-pocket costs incurred by the Contractor as a result of the deployment. Depending on the circumstances, this may extend to the actual, marginal cost of transporting the Contractor's personnel (eg replacement flight crew) to the operating location. In such circumstances, if the contracted aircraft is required to fly to achieve, for example, a personnel changeover then it is possible that the flight could be considered chargeable. For a flight to be considered as chargeable, there must be prior agreement from the Member.

5. GENERAL

- 5.1. There is a wide range of possible circumstances for utilisation of non-chargeable hours and it is not practical to issue guidance that covers all possible combinations. The following general points apply:
- a. any allocation of non-chargeable hours “belongs” to a particular contracted NAFC Service (ie not to a particular aircraft).
 - b. All NAFC contracts contain several clauses that require all parties to act in good faith. In essence this means, in practice, that NAFC Members should not seek to unduly or unreasonably take advantage of the availability of non-chargeable hours, similarly the Contractor should not seek to unduly or unreasonably limit the application of non-chargeable hours.
 - c. If any doubt exists about the application of non-chargeable hours, the arrangement should be confirmed with the other party(s) before the relevant deployment.