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LONG TERM AIRCRAFT CHARTER AGREEMENT

NO. PD/C--/

BETWEEN

THE UNITED NATIONS

AND

[NAME OF OPERATOR]

THIS AGREEMENT is entered into between the United Nations, an international inter-governmental organization founded by its Member States pursuant to the Charter of the United Nations, signed in San Francisco on 26 June 1945, and having its Headquarters in New York, New York 10017, USA (the “United Nations” or the “UN”), and [name of Operator], a [type of entity] organized under the laws of [jurisdiction], and having its principal office at [address], with air operator certificate no. [number], issued by [national civil aviation authority] (the “Operator”). The United Nations and the Operator are collectively referred to herein as the “Parties,” and each individually as a “Party.”

WITNESSETH

WHEREAS, the United Nations wishes to engage the Operator to provide air transportation services, as further described in Article 4.1, utilizing the Aircraft identified in this Agreement in support of the United Nations, and in particular, the following peacekeeping or political mission(s) of the UN: [insert full name and acronym] (“Mission” or “Missions”), from the following scheduled operational date on which the Aircraft must be Operationally Ready in accordance with the requirements of the Agreement, including the Scope of Services and in accordance with the terms and conditions set forth in this Agreement: [insert date] (“Scheduled Operational Date”);

WHEREAS, the Operator represents that it possesses the requisite Aircraft, knowledge, skill, personnel, resources and experience and that it is fully qualified, ready, willing, and able to provide the required air transportation services in accordance with the terms and conditions set forth in this Agreement; and

NOW THEREFORE in consideration of the mutual promises and covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1.

CONTRACT DOCUMENTS; REPRESENTATIONS AND WARRANTIES

Contract Documents

1.1 This document, together with the Annexes attached hereto and referred to below, all of which are incorporated herein and made part hereof, constitute the entire agreement between the UN and the Operator for the provision of Services, as defined in Article 4.1 (the “Agreement” or this “Agreement”).¹

Annex A: United Nations General Conditions of Contract – Contracts for the Provision of Services (the “General Conditions”);

¹

Annex B:	Description of Services (the “Scope of Services”);
Annex C:	Price schedule (the “Price Schedule”);
Annex D:	Form of independent bank guarantee and standby letter of credit; Annex E: Aircraft configuration;
Annex F:	UN aircraft markings;
Annex G:	Aircraft medical kit requirements; and
[Annex H:]	[other Annexes].

- 1.2 The documents comprising this Agreement are complementary of one another, but in case of ambiguities, discrepancies, or inconsistencies between or among them, the following order of priority shall apply:
- (i) First, this document;
 - (ii) Second, Annex A;
 - (iii) Third, Annex B;
 - (iv) Fourth, Annex C;
 - (v) Fifth, Annex D;
 - (vi) Sixth, Annex E;
 - (vii) Seventh, Annex F;
 - (viii) Eighth, Annex G;
 - (ix) [other Annexes].
- 1.3 This Agreement embodies the entire agreement between the Parties with regard to the subject matter hereof and supersedes all prior representations, agreements, contracts and proposals, whether written or oral, by and between the Parties on this subject. No promises, understandings, obligations or agreements, oral or otherwise, relating to the subject matter hereof exist between the Parties except as herein expressly set forth.
- 1.4 Any notice, document or receipt issued in connection with this Agreement shall be consistent with the terms and conditions of this Agreement and, in case of any inconsistency, the terms and conditions of this Agreement, including any amendment to the Agreement made in accordance with the provisions of Article 19 (Modifications) of the General Conditions, shall prevail.
- 1.5 This Agreement, and all documents, notices and receipts issued or provided pursuant to or in connection with this Agreement, shall be deemed to include, and shall be interpreted and applied consistently with, the provisions of Article 16 (Settlement of Disputes) and Article 17 (Privileges and Immunities) of the General Conditions.

Representations and Warranties

- 1.6 The Operator represents and warrants that:
- (i) it is duly organized, validly existing and in good standing;
 - (ii) it has all necessary power and authority to execute and perform this Agreement;
 - (iii) the execution and performance of this Agreement will not cause it to violate or breach any provision in its charter, certificate of incorporation, by-laws, partnership agreement, trust

- agreement or other constituent agreement or instrument;
- (iv) this Agreement is a legal, valid and binding obligation, enforceable against it in accordance with its terms;
- (v) all of the information it has provided to the UN concerning the provision of the Services pursuant to this Agreement is true, correct, accurate and not misleading;
- (vi) it is financially solvent and is able to provide the Services to the UN in accordance with the terms and conditions of the Agreement;
- (vii) all mandatory modifications of the Aircraft, the Optional and Replacement Aircraft are complete and the Aircraft, the Optional and Replacement Aircraft comply with the airworthiness requirements of the relevant national civil aviation authority;
- (viii) all Aircraft, the Optional and Replacement Aircraft are fully safe and airworthy in accordance with all of the requirements of this Agreement;
- (ix) the Aircraft, the Optional and Replacement Aircraft are fit for the purposes of providing Services to the UN in accordance with the terms and conditions of this Agreement;
- (x) the Aircraft, the Optional and Replacement Aircraft are properly equipped and maintained in accordance with the Aviation Regulatory Framework;
- (xi) the condition of the Aircraft, the Optional and Replacement Aircraft comply with the Aviation Regulatory Framework.
- (xii) the Crew are qualified, competent and fully licensed in accordance with the Aviation Regulatory Framework;
- (xiii) the Crew have the necessary training, know-how, skill and experience and are qualified, competent and fully licensed to provide the Services in accordance with all of the requirements of this Agreement; and
- (xiv) the Crew have the necessary Permits and Visas to provide the Services.

ARTICLE 2.

DEFINITIONS

2.1 For the purpose of this Agreement, the words and expressions below shall have the meanings as follows:

- (i) **“Actual Flight Hours”** shall mean hours of Services performed by the Aircraft in support of the UN and in accordance with the terms and conditions of this Agreement.
- (ii) **“Actual Flight Hours Costs”** shall mean the costs payable by the UN to the Operator for Actual Flight Hours provided by the Operator up to the Total Flight Hours Cost, which is calculated as a factor of Actual Flight Hours provided against the Cost per Flight Hour and reported from the first moment that the Aircraft moves under its own power for the purpose of take-off until the Aircraft comes to rest at the end of a flight tasked by the UN.
- (iii) **“Actual Operational Date”** shall mean the date that an Aircraft (or Optional and Replacement Aircraft) is Operationally Ready in accordance with the requirements of this Agreement, including the Scope of Services, as determined by the UN.
- (iv) **“Agreement”** shall have the meaning set forth in Article 1.1.
- (v) **“Agreement Term”** shall have the meaning set forth in Article 3.2.
- (vi) **“Agreement Term Total”** shall have the meaning set forth in the Price Schedule.

- (vii) **“Aircraft”** shall have the meaning set forth in Article 4.1.
- (viii) **“Aircraft Post-contract Location”** shall mean [insert city and country where each Aircraft and Optional Aircraft shall be transported to upon termination or expiration of this Agreement].
- (ix) **“Aircraft Pre-contract Location”** shall mean [insert city and country where each Aircraft and Optional Aircraft shall be transported from on or after the Effective Date].
- (x) **“Air Operator Certificate”** shall have the meaning set forth in Article 8.3.
- (xi) **“Annual Costs”** shall mean the total of (i) Annual Operating Costs, (ii) Crew Transportation Costs (iii) Crew Accommodation Costs, and (iv) Crew Meal Costs, during a Contract Year.
- (xii) **“Annual Operating Costs”** shall mean the total of (i) Annual Operating Costs for Aircraft, and (ii) Annual Operating Costs for Crew, during a Contract Year.
- (xiii) **“Annual Operating Costs for Aircraft”** shall mean a fixed cost payable by the UN to the Operator for all costs, fees and expenses incurred by the Operator in the provision of Services, including all insurance that the Operator is required to obtain and maintain in accordance with Article 15 of this Agreement, and the costs of maintaining the Aircraft during a Contract Year.
- (xiv) **“Annual Operating Costs for Crew”** shall mean a fixed cost payable by the UN to the Operator for all costs, fees and expenses incurred by the Operator in relation to the provision of Crew to provide the Services, including the costs, fees and expenses in transporting Crew to and from the Mission Area and the Main Operations Base and within the Operations Area, and in obtaining relevant Permits and Visas for the Crew during a Contract Year.
- (xv) **“Aviation Regulatory Framework”** shall mean (i) the Chicago Convention; (ii) all applicable national laws in the Operations Area in relation to the Operator’s provision of Services to the UN hereunder; (iii) all applicable national laws of the countr(ies) where the Operator has obtained the Certificates of Registration, Certificates of Airworthiness and Air Operator Certificates; (iv) the UN Aviation Standards for Peacekeeping and Humanitarian Air Transport Operations, Rev. November 2007; (v) DFS/DPKO Aviation Manual, Rev. May 2005 (as amended from time to time); (vi) the Operations Manual; (vii) the Maintenance Manual; and (viii) the Mission’s Standard Operating Procedures.
- (xvi) **“Certificate of Airworthiness”** shall have the meaning set forth in Article 8.2.
- (xvii) **“Certificate of Registration”** shall have the meaning set forth in Article 8.1.
- (xviii) **“Contract Year”** shall mean one calendar year commencing on the Scheduled Operational Date and each complete calendar year thereafter during the Agreement Term.
- (xix) **“Chicago Convention”** shall mean the Convention on International Civil Aviation signed at Chicago on 7 December 1944.
- (xx) **“Cost per Flight Hour”** shall mean the hourly cost to the UN for the provision of Services by an Aircraft, which shall include the cost of oils and lubricants for the Aircraft and shall not include Reimbursables or the cost of aviation jet fuel to be used by the Aircraft or any Annual Charges.
- (xxi) **“Crew”** shall have the meaning set forth in Article 6.1.
- (xxii) **“Crew Accommodation Costs”** shall mean a fixed cost payable by the UN for all costs, fees and expenses incurred by the Operator in providing accommodation for all Crew at each of the Main Operations Base(s) during a Contract Year.²

² [To be included in the event the UN pays fixed transportation costs to the Operator. If included, then Article 4.4(g) will need to be deleted.]

- (xxiii) [**“Crew Meal Costs”** shall mean a fixed cost payable by the UN for all costs, fees and expenses incurred by the Operator in providing meals for all Crew at each of the Main Operations Base(s) during a Contract Year.]³
- (xxiv) [**“Crew Transportation Costs”** shall mean a fixed cost payable by the UN for all costs, fees and expenses incurred by the Operator in providing local transportation for all Crew at each of the Main Operations Base(s) during a Contract Year.]⁴
- (xxv) **“Cumulative Sum”** shall have the meaning set forth in Article 13.3.
- (xxvi) **“Daily Subsistence Allowance”** shall have the meaning set forth in Article 4.11.
- (xxvii) **“Day”** means a calendar day unless otherwise specified in the Agreement.
- (xxviii) **“Depositioning Costs”** shall mean a fixed cost payable by the UN to the Operator, which shall be prorated in accordance with Article 14.2, for costs, fees and expenses incurred by the Operator for:
 - (a) transporting the Aircraft from the Main Operations Base to the Aircraft Post-contract Location;
 - (b) using relevant airports in transporting the Aircraft from the Main Operations Base to the Aircraft Post-contract Location;
 - (c) obtaining all Permits and Visas;
 - (d) removing relevant Aircraft markings; and
 - (e) leaving the Mission Area in accordance with the terms and conditions of this Agreement.
- (xxix) **“Effective Date”** shall have the meaning set forth in Article 3.1.
- (xxx) **“Estimated Flight Hours”** shall have the meaning set forth in Article 14.4.
- (xxxi) **“Extended Term”** shall have the meaning set forth in Article 3.2.
- (xxxii) **“Fleet Concept”** shall mean that the UN may (i) direct the Operator to provide Services to the UN during the Agreement Term (or Extended Term) using either one or all of the Aircraft, which are of the same or similar type and are all located at the same Main Operations Base, up to the cumulative sum of all Estimated Flight Hours for such Aircraft during the Agreement Term (or the cumulative sum of all Estimated Flight Hours for such Aircraft for the particular Extended Term, if providing Services during an Extended Term), in accordance with Article 14.4 of the Agreement, including any Services provided by Optional Aircraft, in the event that the UN directs the Operator to provide an Optional Aircraft in accordance with Article 4.2, and (ii) combine the number of NA Days that may be used by Aircraft that are of the same or similar type and are all located at the same Main Operations Base during any given Contract Year in accordance with Article 11.2 of the Agreement.
- (xxxiii) **“General Conditions”** shall mean the document defined in Article 1.1 and annexed hereto as Annex A.
- (xxxiv) **“Governmental Body”** means any nation or government, any state or other political subdivision thereof and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.
- (xxxv) **“Hague Protocol”** shall mean the Protocol to amend the Convention for the Unification of

³ [To be included in the event the UN pays fixed transportation costs to the Operator. If included, then Article 4.4(g) will need to be deleted.]

⁴ [To be included in the event the UN pays fixed transportation costs to the Operator. If included, then Article 4.4(g) will need to be deleted.]

Certain Rules Relating to International Carriage by Air signed at Warsaw on 12 October 1929 done at The Hague on 28 September 1955.

- (xxxvi) “**Issuer**” shall have the meaning set forth in Article 16.6.
- (xxxvii) “**Liquidated Damages**” shall have the meaning set forth in Article 13.3.
- (xxxviii) “**Maintenance Manual**” shall have the meaning set forth in Article 8.6.
- (xxxix) “**Main Operations Base**” shall mean [insert location(s) where each Aircraft, Optional and Replacement Aircraft shall be permanently located].
- (xl) “**Mission**” or “**Missions**” shall have the meaning set forth in the Recitals.
- (xli) “**Mission Area**” shall mean the following countries of operation of the Mission, where the UN shall require the Operator to provide Services in accordance with the terms and conditions of this Agreement: [insert countrie(s) where the Mission operates and Operator is required to provide Services].
- (xlii) “**Mission’s Standard Operating Procedures**” shall mean the standard operating procedures developed by the Mission and which relate to the provision of Services by the Operator.
- (xliii) “**Montreal Convention**” shall mean the Convention for the Unification of Certain Rules for International Carriage by Air signed at Montreal on 28 May 1999.
- (xliv) “**Non-available Days**” or “**NA Days**” shall have the meaning set forth in Article 11.1.
- (xlv) “**Operationally Ready**” shall mean that the Operator has completed all actions that are necessary for the Aircraft (or Optional and Replacement Aircraft) to provide a full Day of Services in support of the UN from the Main Operations Base in accordance with the terms and conditions of this Agreement and in particular the Scope of Services, which includes obtaining all Permits and Visas, as is determined by the Mission.
- (xlvi) “**Operations Area**” shall mean the following additional countries, where the UN may require the Operator to provide Services in accordance with Article 4.1: [insert additional countrie(s) where Aircraft, Optional and Replacement Aircraft may be required to provide Services].
- (xlvii) “**Operations Manual**” shall have the meaning set forth in Article 8.5.
- (xlviii) “**Operator**” shall mean the entity identified in the Recitals.
- (xlix) “**Optional Aircraft**” shall have the meaning set forth in Article 4.2.
- (l) “**Painting Costs**” shall mean a fixed cost payable by the UN to the Operator for all costs, fees and expenses incurred by the Operator in painting the Aircraft to comply with Annex F.
- (li) “**Party**” or “**Parties**” shall have the meaning set forth in the Recitals.
- (lii) “**Performance Security**” shall have the meaning set forth in Article 16.1.
- (liii) “**Permits and Visas**” shall have the meaning set forth in Article 9.1.
- (liv) “**Positioning Costs**” shall mean a fixed cost payable by the UN to the Operator, which shall be prorated in accordance with Article 14.2, for costs, fees and expenses incurred by the Operator, excluding any Painting Costs, for:
 - (a) transporting the Aircraft from the Aircraft Pre-contract Location to the Main Operations Base;
 - (b) using relevant airports in transporting the Aircraft from the Aircraft Pre-contract Location to the Main Operations Base;
 - (c) obtaining all Permits and Visas; and

(d) ensuring that the Aircraft is Operationally Ready, can enter and operate in the Mission Area and provide Services in support of the Mission in accordance with the terms and conditions of this Agreement.

- (lv) **“Price Schedule”** shall mean the document defined in Article 1.1 and annexed hereto as Annex C.
- (lvi) **“Reimbursables”** shall have the meaning set forth in Article 14.5.
- (lvii) **“Replacement Aircraft”** shall have the meaning set forth in Article 12.1.
- (lviii) **“Revised Scheduled Operational Date”** shall have the meaning set forth in Article 9.5(v).
- (lix) **“Scheduled Operational Date”** shall have the meaning set forth in the Recitals.
- (lx) **“Scope of Services”** shall mean the document defined in Article 1.1 and annexed hereto as Annex B.
- (lxi) **“Services”** shall have the meaning set forth in Article 4.1.
- (lxii) **“Special Drawing Rights”** shall mean the supplementary foreign exchange reserve assets defined and maintained by the International Monetary Fund.
- (lxiii) **“Term”** shall have the meaning set forth in Article 3.2.
- (lxiv) **“Term Total”** shall have the meaning set forth in the Price Schedule.
- (lxv) **“Total Flight Hours Cost”** shall mean the maximum cost payable by the UN to the Operator for Actual Flight Hours provided by each Aircraft during a Contract Year.
- (lxvi) **“UN” or “United Nations”** shall mean the entity identified in the Recitals.
- (lxvii) **“Warsaw Convention”** shall mean the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw on 12 October 1929.

ARTICLE 3. **EFFECTIVE DATE; TERM OF AGREEMENT**

- 3.1 This Agreement shall take effect on [date] / [the date both Parties have signed this Agreement, or if the Parties have signed it on different dates, the date of the latest signature]⁵(the “Effective Date”).
- 3.2 This Agreement shall remain in effect for a period of [time period] from the Scheduled Operational Date, unless earlier terminated in accordance with the terms of this Agreement (the “Agreement Term”), in addition to being effective from the Effective Date. The United Nations may, at its sole option, extend the Agreement Term of this Agreement, under the same terms and conditions as set forth in this Agreement, for a maximum of [number] additional period[s] of up to [time period] each (the “Extended Term”). The Parties agree that the Agreement Term and the Extended Term shall collectively be referred to as the “Term”. The UN shall endeavor to provide a written notice to the Operator of its intention to do so at least fourteen (14) Days prior to the expiration of the Agreement Term or Extended Term, as applicable.
- 3.3 Unless agreed otherwise in writing, the Parties agree that the Term shall remain unchanged in the event that the UN directs the Operator to provide any Optional Aircraft in accordance with Article 4.2 or any Replacement Aircraft in accordance with Article 12.1.

⁵ [Amend according to whether the Agreement becomes effective on date certain or the date both Parties have signed the Agreement.]

ARTICLE 4.
OPERATOR'S PROVISION OF AIRCRAFT AND SERVICES

Aircraft

- 4.1 During the Term, the Operator shall provide air transportation services in the Mission Area in support of the UN and the Mission, in accordance with the Scope of Services and the terms and conditions set forth herein, utilizing the following type of aircraft with the following registration, which shall not include any Optional Aircraft: [insert first aircraft type here, insert first aircraft registration here] and [insert second aircraft type here, insert second aircraft registration here]⁶ ("Aircraft") (collectively the "Services"). Upon reasonable written notice from the UN, the Operator may be required to provide Services in the Operations Area, whereupon the Operator shall be required to obtain relevant Permits and Visas in accordance with Article 9 in order to provide Services in the Operations Area and which may require a permanent change in the Main Operations Base, as determined by the UN.
- 4.2 The UN may at its sole option, and upon thirty (30) Day's prior written notice provided to the Operator in accordance with Article 22, or as otherwise agreed in writing, require the Operator to provide Services in the Mission Area or Operations Area in support of the UN and the Mission during the Term, in accordance with the terms and conditions herein, utilizing the following optional aircraft: [insert first optional aircraft type here, insert first optional aircraft registration here] and [insert second optional aircraft type here, insert second optional aircraft registration here]⁷ ("Optional Aircraft"). The Operator shall ensure that the Optional Aircraft is Operationally Ready on such date as the Parties shall agree in writing or, in the absence of such agreement, as soon as possible after the date of the written notice given by the UN, but no later than thirty (30) Days after the date of the written notice. All terms and conditions stated in this Agreement shall apply to the Optional Aircraft, unless agreed otherwise. In the event that the Operator is required to provide a Replacement Aircraft in accordance with Article 12.1, the Operator shall not provide the Optional Aircraft as a Replacement Aircraft, unless agreed otherwise in writing by the UN.
- 4.3 The UN may at its sole option, and upon thirty (30) Day's prior written notice provided to the Operator in accordance with Article 22, or as otherwise agreed in writing, require the Operator to reduce the number of Aircraft, Optional or Replacement Aircraft providing Services in the Mission Area or Operations Area in support of the UN and the Mission during the Term, in accordance with the terms and conditions herein, based upon the UN's requirements, as reasonably determined by the UN. The Operator shall effect the reduction on such date as the Parties shall agree in writing, which shall be reflected in an amendment to the Agreement in accordance with the provisions of Article 19 (Modifications) of the General Conditions. In the event the numbers of Aircraft, Optional or Replacement Aircraft are reduced in accordance with this Article 4.3, the UN shall be entitled to a proportionate reduction in the Annual Charges, which is calculated based on the actual number of Days that the Operator provided Services during the Term.

Services

- 4.4 During the Term, and in accordance with the terms and conditions of this Agreement, the Operator is required to:
- (i) provide Services in the Mission Area;
 - (ii) provide Services in the Operations Area upon prior written notice from the UN in accordance with Article 4.1;

⁶ [Amend according to the number of Aircraft under the Agreement and exclude Optional Aircraft.]

⁷ [Amend according to the number of Optional Aircraft under the Agreement.]

- (iii) ensure that the Crew, Aircraft, Optional and Replacement Aircraft are stationed at the Main Operations Base, unless directed otherwise in accordance with Articles 4.1 or 4.11;
- (iv) ensure that there are sufficient Crew stationed at the Main Operations Base to achieve the Estimated Flight Hours;
- (v) have the relevant UN aircraft markings placed on the Aircraft, Optional and Replacement Aircraft in accordance with Annex F, unless directed otherwise in writing by the UN, at its sole discretion;
- (vi) have the Aircraft, Operationally Ready by the Scheduled Operational Date; and
- (vii) [provide all transportation, accommodation and meals for its Crew at each of the Main Operations Base(s), at the Operator's cost, unless stated otherwise in the Price Schedule and subject to Article 4.11.]⁸

4.5 The Operator shall perform the Services under this Agreement in good faith and in compliance with the terms and conditions of the Agreement, and shall abide by all reasonable instructions of the UN. The Operator shall ensure that the Services under this Agreement do not violate the terms and conditions of any lease agreement, mortgage or other relevant agreement.

4.6 The Operator recognizes that the UN requires the Services to be performed in connection with a United Nations peacekeeping or political mission mandated by the UN Security Council. These Services may include cargo re-supply, troop movements, VIP transport, medical transport and reconnaissance flights. The Operator acknowledges due to the nature of UN peacekeeping or political missions, such Services may involve operation in hostile areas or fields where there is no ground support or where airfield security cannot be guaranteed by the UN.

4.7 The Operator shall retain operational responsibility for the Services under the Agreement and shall ensure that the Services shall be performed strictly in accordance with the Aviation Regulatory Framework. In particular, the Operator shall:

- (i) maintain the Aircraft, Optional and Replacement Aircraft in a fully safe and airworthy condition, and ensure that the Aircraft, Optional and Replacement Aircraft are completely safe and airworthy for the Term of this Agreement, in accordance with the Aviation Regulatory Framework and in particular, Annex 8 to the Chicago Convention; and
- (ii) safely operate the Aircraft, Optional and Replacement Aircraft at all times in compliance with the Aviation Regulatory Framework and in particular, Annex 6 to the Chicago Convention.

4.8 The flights to be provided by the Operator shall be outlined in a flight schedule, which is to be agreed by the Parties. The flight schedule shall specify the dates and times of departure and arrival, originating and destination airports, routes to be used, number of passengers and/or total weight of cargo, and the Aircraft, Optional and Replacement Aircraft to provide these Services. In the event that the Parties agree to a flight schedule and one of the flights has to be cancelled due to the direct failure by the Operator to maintain the Aircraft, Optional and Replacement Aircraft in accordance with the terms and conditions of this Agreement, then the UN shall be entitled to recover from the Operator the costs of engaging a third party to provide alternate transportation, including the costs of alternate air transportation.

4.9 The Operator shall notify the UN of any delay in the performance of flights and the reasons for such delay. If a flight is delayed, the Operator shall use its best endeavors to provide alternate air transportation and

⁸ [To be included in the event the UN pays fixed transportation costs to the Operator. If included, then Article 4.4(vii) will need to be deleted.]

shall bear any additional costs incurred by the Operator or the UN from such alternate air transportation.

- 4.10 During the Term, the Operator shall not utilize any excess space, including passenger space or cargo space, in the Aircraft or Optional and Replacement Aircraft, which is not utilized by the UN.

Temporary stationing outside of Main Operations Base

- 4.11 Upon reasonable notice, the UN may direct the Operator to provide Services that would require the Aircraft, Optional or Replacement Aircraft and its Crew to be stationed away from the Main Operations Base for a temporary period. In the event that the UN directs the Operator and the Aircraft, Optional or Replacement Aircraft to stay overnight away from its Main Operations Base, the UN shall provide local transportation, accommodation and meals at the temporary location for the Crew at no cost to the Operator, unless stated otherwise in this Agreement, in which event Articles 4.11 to 4.13 shall not apply. In the event that the UN is unable to provide accommodation for the Crew staying overnight at the temporary location, then the Operator shall obtain the lowest cost accommodation available for the Crew in, or close to, the temporary location, with such accommodation being of reasonable quality and standard. In the event that the UN is unable to provide transportation, accommodation and meals for the Crew staying overnight at the temporary location, the Operator shall be entitled to reimbursement, for each Crew member, of actual costs for their transportation, accommodation and meals up to a maximum amount equivalent to the daily subsistence allowance provided by the UN to its staff members depending on location of stay and the date that the expense was incurred (“Daily Subsistence Allowance”).
- 4.12 In the event the UN provides accommodation and meals to Crew that stay overnight away from their Main Operations Base, the UN shall provide the Crew with three (3) meals per Day and accommodation that shall be in hotels, guest houses or UN accommodation, which could initially consist of soft wall accommodation, but shall be changed to hard wall accommodation, as soon as possible. The UN shall endeavor, to the extent practical, to provide single occupancy accommodation for Crew of the rank of captain and dual occupancy accommodation for Crew of other ranks.
- 4.13 In the event the UN directs the Operator to provide Services that would require the Aircraft, Optional or Replacement Aircraft and its Crew to be stationed away from the Main Operations Base for a permanent period, the Parties shall only negotiate reasonable amendments to the Crew Transportation Costs, Crew Accommodation Costs and Crew Meal Costs, if any, based on the location of stay, which shall be reflected in an amendment to the Agreement in accordance with the provisions of Article 19 (Modifications) of the General Conditions.

ARTICLE 5.
ROLES OF THE PARTIES

- 5.1 The Operator shall remain in control of the Aircraft, Optional and Replacement Aircraft and shall be responsible for navigation, operation and maintenance of the Aircraft, Optional and Replacement Aircraft and shall remain responsible for its Crew and any other personnel provided for the purposes of this Agreement. The UN shall have the right to provide reasonable instructions to the Operator in relation to the Operator’s performance of the Services in accordance with the terms and conditions of the Agreement. The Operator’s pilot in command shall retain the right to decide whether to undertake a flight, in the light of weather and other conditions, in consideration of the safety of the passengers, the Aircraft, Optional and Replacement Aircraft, and any third parties. The Operator may cancel, delay or abort a scheduled flight should the pilot in command determine that undertaking the flight would endanger the safety of the passengers, the Aircraft, Optional and Replacement Aircraft, or any third parties.
- 5.2 In respect of the carriage of passengers under this Agreement, the Operator agrees that the UN acts only as

an agent of the passengers, who shall be regarded as having a direct contractual relationship with the Operator, as principal, for purposes of all liability hereunder.

- 5.3 The Operator shall remain the owner or lessee of the Aircraft, Optional and Replacement Aircraft, during the Term and retains the risks and rewards of being the owner or lessee of the Aircraft, Optional and Replacement Aircraft.
- 5.4 Without prejudice to and in addition to any other responsibilities and liabilities of the Operator, the Operator shall bear the responsibilities and liabilities applicable to carriers or operators under the Aviation Regulatory Framework. The Parties agree that the United Nations shall not be regarded as the carrier or operator.

ARTICLE 6. **CREW AND PERSONNEL**

- 6.1 The Operator shall be responsible for providing all necessary pilots, co-pilots, cabin-crew and site managers and maintenance crew in the Mission Area to support the provision of Services (“Crew”) and other personnel, employees, officials, agents, servants, representatives and sub-contractors (or any of those sub-contractors’ personnel, employees, officials, agents, servants and representatives) to ensure the satisfactory performance of its obligations under this Agreement.
- 6.2 The number and qualifications of the assigned Crew must be sufficient to provide the Services required by the UN in accordance with this Agreement.
- 6.3 Without limiting and further to Articles 2.1 and 2.2 of the General Conditions, the Operator shall supervise and be fully responsible and liable for all Services performed by its Crew and for their compliance with the terms and conditions of this Agreement. The Operator shall ensure that all Crew shall conform to the highest standards of moral and ethical conduct.
- 6.4 Without limiting and further to the General Conditions, the Operator shall be fully responsible and liable for, and the UN shall not be liable for (i) any action, omission, negligence or misconduct of the Operator or its Crew, (ii) any insurance coverage which may be necessary or desirable for the purpose of this Agreement, except for any surcharge and/or additional premium for war risk insurance coverage specified in Article 15.8(iv), or (iii) any costs, expenses, or claims associated with any illness, injury, death or disability of the Operator’s Crew. The obligations under this Article 6.4 do not lapse upon expiration or termination of this Agreement.
- 6.5 Without limiting and in addition to Article 2.6 of the General Conditions, the Operator shall ensure that its Crew abide by all security regulations, policies and procedures of the United Nations.
- 6.6 Without limiting and further to Article 15 and the foregoing provisions of this Article 6, the Operator shall ensure that all of its Crew used to perform Services in connection with this Agreement are (i) medically fit to perform such Services, (ii) appropriately inoculated, and (iii) adequately covered by insurance for any service-related illness, injury, death or disability. The Operator shall submit proof of such medical fitness and such insurance satisfactory to the UN before commencing any Services under this Agreement.
- 6.7 The Operator shall ensure that all pilots, co-pilots and cabin-crew have obtained ICAO “level 4: operational” fluency in English. The Operator shall submit proof of such language proficiency satisfactory to the UN before commencing any Services under this Agreement.
- 6.8 The Operator shall ensure that all pilots, co-pilots and cabin-crew are wearing appropriate uniforms during

the provision of Services.

ARTICLE 7. EQUIPMENT, SUPPLIES AND FUEL

Operator-purchased equipment and supplies

- 7.1 Title to equipment and supplies purchased by the Operator for which the Operator is entitled to be reimbursed under the terms of this Agreement shall pass to and vest in the UN upon acceptance by the UN of such equipment or supplies following the UN's receipt of the equipment and supplies and the Operator's compliance with the UN's inspection procedures. In the event that the Operator is requested in writing by the UN to purchase other equipment or supplies on the UN's account, such equipment or supplies shall be purchased by the Operator on a cost reimbursable basis *provided that* (i) prior to purchasing such equipment or supplies the Operator notifies the UN of the cost thereof, and provides to the UN information concerning such equipment or supplies as the UN may request, and (ii) the UN authorizes the Operator, in writing, to purchase the equipment or supplies. Title to such equipment or supplies shall pass to and vest in the UN following the UN's receipt of the equipment and supplies and the Operator's compliance with the UN's inspection procedures. Authorization by the UN to the Operator to purchase such equipment or supplies shall not increase the prices, costs and charges payable by the UN to the Operator set forth in the Price Schedule. The Operator purchases such equipment and supplies for its own convenience and gives rise to no liability on the part of the UN.

UN-furnished equipment and supplies

- 7.2 In addition to the UN's rights under Article 8 (Equipment Furnished by the United Nations to the Contractor) of the General Conditions, the Operator shall be responsible and accountable to the UN for UN-furnished equipment and supplies as defined in Article 7.1, above. The Operator shall take reasonable measures necessary to preserve such UN-furnished equipment and supplies from loss or damage until returned to the UN.
- 7.3 The UN and its authorized agents or representatives shall have access at all reasonable times to the premises in which any UN-furnished equipment and supplies are located for the purpose of inspecting such equipment or supplies.
- 7.4 Within [number in words and figures] Days of the Effective Date, the UN shall provide a list of the UN equipment and supplies which the UN intends to make available for use by the Operator in performing this Agreement. At such time, the Operator's duly authorized representative and the UN's representative or agent shall conduct a joint inspection of such equipment and supplies to determine the quantity, working order and condition of the equipment and supplies. Items missing or not in working order shall be recorded. The UN may, in its sole discretion, replace missing items or repair items not in working order. The Operator's site manager, or duly authorized representative, and the UN's representative or agent shall sign this list, indicating their agreement as to the quantity, working order and condition of the UN-furnished equipment and supplies. If the Operator does not participate in the inspection of the UN-furnished equipment and supplies mentioned above, the Operator shall accept the listing provided by the UN. No later than [number] Days prior to the expiration or termination of this Agreement, or when such equipment and supplies are no longer needed by the Operator, the Operator and the UN's representative or agent shall conduct a joint inspection of the UN-furnished equipment and supplies to determine the quantity, working order and condition of the equipment and supplies. The Operator shall replace missing items and repair or maintain items not in working order, subject to normal wear and tear, before returning them to the UN and prior to the expiration or termination of the Agreement. [The Operator's duly authorized representative shall complete UN check-in/check-out formalities in accordance with instructions provided by the UN.]

- 7.5 Subsequent issues of equipment or supplies by the UN to the Operator shall only be effected by the Operator's site manager, or duly authorized representative, who shall acknowledge receipt in writing of such equipment or supplies, recording the quantity, working order and condition of the equipment or supplies in accordance with Article 7.4, above.
- 7.6 The Operator shall promptly report to the UN any accidents, theft, loss of or damage to equipment or other property of the Operator or the UN, or UN-furnished equipment or supplies, or other incidents of a similar nature. In addition, the Operator shall cooperate with all investigations into such accidents, theft, loss of or damage to such equipment, supplies or other property, or other incidents, which may be instituted by the UN, governmental and/or other authorities.
- 7.7 The UN-furnished equipment and supplies in accordance with Articles 7.2 to 7.6 are provided for the convenience of the Operator and give rise to no liability on the part of the UN.

Aviation fuel, oils and lubricants

- 7.8 The UN shall provide, at no cost, to the Operator aviation fuel for the provision of Services, excluding routine maintenance flights of the Aircraft, Optional and Replacement Aircraft to and from the Mission Area and the initial flight into Mission Area and the Main Operations Base and the final flight out of the Mission Area. Such fuel is provided for the convenience of the Operator and gives rise to no liability on the part of the UN. The Operator shall be responsible, at its own cost, for providing all oils and lubricants necessary for the provision of Services during the Term.

ARTICLE 8.
CERTIFICATIONS, LICENSES AND MANUALS

- 8.1 During the Term, the Aircraft, and the Optional and Replacement Aircraft, where necessary, provided by the Operator shall hold and maintain valid certificates of registration issued by the appropriate national civil aviation authority, which include, among other things, the nationality or common mark and registration mark, the manufacturer's name, the serial number and the owner of the Aircraft, Optional and Replacement Aircraft ("Certificate of Registration"). The Certificates of Registration shall be issued in accordance with the Aviation Regulatory Framework and in particular, Annex 7 to the Chicago Convention.
- 8.2 During the Term, the Aircraft, and the Optional and Replacement Aircraft, where necessary, provided by the Operator shall hold and maintain valid certificates of airworthiness issued by or rendered valid by the appropriate national civil aviation authority which state that the Aircraft, Optional and Replacement Aircraft complies with all appropriate airworthiness requirements ("Certificate of Airworthiness"). The Certificates of Airworthiness shall be issued or rendered valid in accordance with the Aviation Regulatory Framework and in particular, Annex 8 to the Chicago Convention.
- 8.3 During the Term, the Operator shall possess and maintain a valid air operator certificate or equivalent document issued by the appropriate Governmental Body authorizing the Operator to conduct Services in both the Operator's country of registration and in the Mission Area and endorsing the Aircraft and the Optional and Replacement Aircraft, where necessary, for the provision of the Services ("Air Operator Certificate"). The Air Operator Certificate or equivalent document shall be issued in accordance with the Aviation Regulatory Framework and in particular, Annex 6 to the Chicago Convention.
- 8.4 All Crew and maintenance personnel for the Aircraft and the Optional and Replacement Aircraft, where necessary, shall possess valid certificates of competency and licenses issued or rendered valid by relevant national civil aviation authorities in accordance with the Aviation Regulatory Framework and in particular, Annex 1 to the Chicago Convention.

- 8.5 The Operator shall possess a manual for the operation of the Aircraft, and the Optional and Replacement Aircraft, where necessary, which shall be used by the Operator's operations personnel, containing, among other things, instructions, checklists and other information relating to the operations of the Aircraft, Optional and Replacement Aircraft, in accordance with the Aviation Regulatory Framework and in particular, Annex 6 to the Chicago Convention ("Operations Manual").
- 8.6 The Operator shall also possess a manual for the maintenance of the Aircraft, and the Optional and Replacement Aircraft, where necessary, which shall be used by the Operator's maintenance personnel, containing, among other things, procedures, frequency and methods for servicing and maintaining the Aircraft, Optional and Replacement Aircraft, in accordance with the Aviation Regulatory Framework and in particular, Annex 6 to the Chicago Convention ("Maintenance Manual").
- 8.7 Prior to the Effective Date, the Operator shall submit to the UN copies of the Certificate of Registration, the Certificate of Airworthiness and the Air Operator Certificate. Upon written notice, the UN shall have the right to inspect, at any time, the Operations Manual and Maintenance Manual.
- 8.8 The Operator shall immediately inform the UN, in writing, in the event that relevant authorities withdraw, remove, suspend or place significant conditions on the following: (i) Certificate of Registration, (ii) Certificate of Airworthiness, (iii) Air Operator Certificate, or (iv) certificates of competency and licenses of the Crew.

ARTICLE 9. **PERMITS AND VISAS**

- 9.1 During the Term, the Operator shall be responsible for obtaining and maintaining, and shall not undertake any actions which may lead to the withdrawal, removal, suspension, placement of significant conditions on or cancellation of:
- (i) all necessary licenses, certifications, authorizations or permits from relevant Governmental Bodies for the Aircraft (including Optional and Replacement Aircraft, where necessary) to enter and operate in the Missions Area, the Operations Area (when directed by the UN in accordance with Article 4.1) and additional areas (when directed by the UN in accordance with Article 4.11); and
 - (ii) all necessary visas from Governmental Bodies for Crew to enter and operate in the Missions Area, Operations Area (when directed by the UN in accordance with Article 4.1) and additional areas (when directed by the UN in accordance with Article 4.11),
- (collectively "Permits and Visas").
- 9.2 The UN shall endeavor to provide reasonable support to the Operator in its application for Permits and Visa, if expressly required by Governmental Bodies. Notwithstanding the foregoing, UN support or assistance shall not derogate from the Operator's obligations under Article 9.1 to obtain and maintain such Permits and Visas during the Term. The Parties agree and acknowledge that the UN shall under no circumstances bear any liability whatsoever for the Operator's failure to obtain and maintain Permits and Visas in accordance with this Agreement.
- 9.3 The Parties agree the non-issuance of relevant Permits and Visas by the Governmental Bodies shall be construed as an event of *force majeure* under this Agreement, *provided that* such non-issuance is not attributable to a failure of the Operator to diligently pursue its application for the Permits and Visas or is due to any other failure, fault, act or omission of the Operator or its personnel. The Parties agree that such non-issuance of relevant Permits and Visas includes (i) non-issuance of Permits and Visas for Aircraft (including Optional and Replacement Aircraft, where necessary) to enter and operate in the Mission Area,

the Operations Area (when directed by the UN in accordance with Article 4.1), and additional areas (when directed by the UN in accordance with Article 4.11), (ii) the withdrawal, removal, suspension, placement of significant conditions prohibiting the Operator's ability to provide Services on or cancellation of the above existing Permits and Visas, (iii) the denial to renewal the above existing Permits and Visas, and (iv) the failure to issue newly required Permits and Visas.

- 9.4 In the event the relevant Permits and Visas have not been issued at least fourteen (14) Days prior to the Scheduled Operational Date, as applicable, then the Operator shall promptly notify the UN in writing of such non-issuance, and the Operator shall continue to diligently pursue to obtain the relevant Permits and Visas. Such notification by the Operator shall include substantiating documentation specifying all efforts undertaken by the Operator to obtain the Permits and Visas and all actions undertaken by the relevant Governmental Bodies, in order for the UN to determine, in its sole discretion, whether there has been an event of *force majeure* in accordance with Article 9.3.
- 9.5 In the event the UN determines that the non-issuance of relevant Permits and Visas by the Governmental Bodies is an event of *force majeure* in accordance with Article 9.3, then the following shall apply for such event:
- (i) the Operator shall continue to diligently pursue to obtain the relevant Permits and Visas;
 - (ii) the UN shall not be entitled to Liquidated Damages in accordance with Articles 13.3(i) or 13.3(ii);
 - (iii) the period during which the Operator is diligently pursuing the Permits and Visas shall not be counted as NA Days under the Agreement nor shall the Operator accrue NA Days during this period;
 - (iv) the UN may, in its sole discretion, authorize the Operator to use the Aircraft (including Optional and Replacement Aircraft, where applicable) for non-UN operations, during which period the Operator shall ensure, at Operator's cost, that there are no UN markings on the Aircraft, Optional or Replacement Aircraft;
 - (v) in the event that the non-issuance has prevented the Operator from having the Aircraft (or Optional or Replacement Aircraft, where applicable) Operationally Ready by the Scheduled Operational Date and the Operator subsequently obtains the relevant Permits and Visas, then the Parties shall agree upon a revised scheduled operational date to have the Aircraft (or Optional or Replacement Aircraft, where applicable) Operationally Ready at the Main Operations Base, in accordance with the requirements of this Agreement, including the Scope of Services, which shall be no later than thirty (30) Days from the date that the Operator received all relevant Permits and Visas ("Revised Scheduled Operational Date");
 - (vi) the Operator shall only be entitled to payments under the Agreement from the Revised Scheduled Operational Date, whereupon payments shall be due and payable from the Revised Scheduled Operational Date and shall not include any Annual Charges incurred prior to the Revised Scheduled Operational Date;
 - (vii) in the event that there is a non-issuance of Permits and Visas by the Governmental Bodies after the Scheduled Operational Date or Revised Scheduled Operational Date and the Operator is unable to provide the Services, then the Operator shall be entitled to receive reimbursement of actual costs incurred with regard to the relevant Aircraft (or Optional or Replacement Aircraft, where applicable) and Crew being on stand-by in the Mission Area to provide Services during the period that the Operator is pursuing the relevant Permits and Visas up to a maximum amount of the Annual Charges for the relevant Aircraft, *provided that* the Aircraft (or Optional or Replacement Aircraft, where applicable) and/or Crew are not providing services for non-UN

- operations and the Operator is diligently pursuing the relevant Permits and Visas; and
- (viii) the Agreement Term shall continue to run from the Scheduled Operational Date and not from the Revised Scheduled Operational Date, unless the UN determines otherwise in its sole discretion upon prior written notice to the Operator, to extend the Agreement Term or Extended Term by the period of time between the Scheduled Operational Date and the Revised Scheduled Operational Date.

ARTICLE 10.

UN INSPECTION OF AIRCRAFT

- 10.1 The UN shall have the right, but not the obligation, to inspect the Aircraft, Optional or Replacement Aircraft, and any document pertaining thereto, at any time, including upon arrival of the Aircraft, Optional or Replacement Aircraft in the Mission Area and at the Main Operations Base or at any time during the Term to ensure compliance with the terms and conditions of this Agreement. Should there be, in the opinion of the UN, any deficiency in the compliance of the Aircraft, Optional and Replacement Aircraft with the terms and conditions of this Agreement, the UN shall notify the Operator in writing of the deficiency, and the Operator, at its sole cost and expense, shall remedy such deficiency without undue delay to the satisfaction of the UN, before providing Services to the UN, unless directed otherwise in writing by the UN. In the event the Operator is unable to remedy such deficiency to the satisfaction of the UN, the Operator shall, upon request from the UN, provide a Replacement Aircraft in accordance with Article 12.1. Any failure on the part of the UN to conduct such inspections or to observe any deficiencies shall not relieve the Operator of any of its obligations under this Agreement.

ARTICLE 11.

UNAVAILABILITY OF AIRCRAFT

- 11.1 “Non-available Days” or “NA Days” shall mean Days or a significant part of a Day on or after the Actual Operational Date when any Aircraft required by this Agreement (including Optional and Replacement Aircraft, where applicable) is unavailable for UN operations for any reason not attributed exclusively to the negligence of the UN or to *force majeure* in accordance with Article 12 (*Force Majeure*, Other Changes in Conditions) of the General Conditions, and shall include, but not be limited to, maintenance (planned or unplanned), aircrew sickness, inadequacy of Crew qualifications, unserviceability of Aircraft, Optional or Replacement Aircraft, expired and/or invalid documents of the Crew or the Aircraft, Optional and Replacement Aircraft (excluding Permits and Visas), as well as Days when the Aircraft, Optional and Replacement Aircraft, having been tasked with a UN flight, fails to undertake the assigned flight, or is unable to provide Services due to damage to the Aircraft, Optional and Replacement Aircraft directly caused by a third-party or heavy inclement weather.
- 11.2 Subject to Article 11.5, the Operator shall be allowed up to forty (40) NA Days for rotary wing aircraft, and thirty (30) NA Days for fixed wing aircraft, for each Aircraft (including Optional and Replacement Aircraft, where applicable) for each Contract Year. Where the Operator provides multiple similar Aircraft under this Agreement at the same Main Operations Base for the same Mission, the NA Days allowances shall be shared between such Aircraft as part of the Fleet Concept during a Contract Year and shall not be carried forward beyond such Contract Year.
- 11.3 If the Operator is required to provide only one Aircraft under this Agreement, then the NA Days in respect of the one Aircraft shall not exceed ten (10) NA Days in any thirty (30) Day period. If the Operator is required to provide multiple Aircraft stationed at the same Main Operations Base for the same Mission under this Agreement, then the NA Days in respect of either of the Aircraft shall not exceed fifteen (15) NA Days in any thirty (30) Day period.

- 11.4 The Operator shall minimize disruption to UN operations arising from NA Days. Where possible, the Operator shall coordinate upcoming NA Days with the Mission.
- 11.5 The number of NA Days for each Aircraft, Optional and Replacement Aircraft for each Contract Year shall be pro-rated, in accordance with the below calculation, in the event that (i) the Scheduled Operational Date and the Actual Operational Date do not coincide, or (ii) the Term contains periods which are less than one calendar year. Should the pro-rating result in an incomplete NA Day allowance, then the resulting figure shall be rounded to the nearest full Day.

NA Days = (A x B)/C

A = 30 Days (for fixed wing aircraft) or 40 Days (rotary wing aircraft)

B = The number of Days that an Aircraft, Optional or Replacement Aircraft is Operationally Ready.

C = For a non-leap year, it shall mean 365 Days. For a leap year, it shall mean 366 Days, *provided that* the Contract Year includes 29 February.

- 11.6 The UN shall be entitled to a proportionate reduction in an Aircraft's Annual Operating Costs, in respect of the relevant Contract Year concerned, in the event that the Operator exceeds its NA Day allowance specified in Article 11.2 and 11.3, as prorated in accordance with Article 11.5, for each and every Day that the NA Day allowance is exceeded until the Aircraft, Optional or Replacement Aircraft is Operationally Ready.

ARTICLE 12. **REPLACEMENT AIRCRAFT**

- 12.1 Regardless of whether or not an Aircraft or Optional Aircraft has exceeded its NA Day allowance provided in Articles 11.2, 11.3 and 11.5, if the (i) NA Days in respect of any Aircraft or Optional Aircraft extend for fifteen (15) or more consecutive Days, or (ii) the Operator is required to provide a Replacement Aircraft in accordance with Article 10.1, then the Operator shall, at its sole cost and expense, replace such Aircraft or Optional Aircraft by the sixteenth (16th) Day with an aircraft that is comparable or superior, conforms with the specifications, terms and conditions of this Agreement and is satisfactory to the UN ("Replacement Aircraft"). The NA Day allowance for a Replacement Aircraft shall carry over from the NA Day allowance for the Aircraft or Optional Aircraft it replaces. Regardless of whether or not an Aircraft or Optional Aircraft has exceeded its NA Day allowance provided in Articles 11.2, 11.3 and 11.5, the UN shall be entitled to (i) a proportionate reduction in the Annual Operating Costs in respect of the relevant Contract Year concerned, and (ii) claim Liquidated Damages in accordance with Article 13, for each and every Day that a Replacement Aircraft is not Operationally Ready, from the above sixteenth (16th) Day until such date that the Replacement Aircraft is Operationally Ready. In the event that the Operator is required to provide a Replacement Aircraft, (i) the Operator shall not be entitled to any Positioning Costs for the Replacement Aircraft in the event the UN has previously paid Positioning Costs for the Aircraft or Optional Aircraft which requires replacement, and (ii) the UN shall only pay Depositioning Costs for the Replacement Aircraft and not for the Aircraft or Optional Aircraft which requires replacement.
- 12.2 Should the Operator fail to provide a Replacement Aircraft in accordance with Article 12.1 and the UN obtains alternate transportation during the period of unavailability, then the Operator shall reimburse the UN reasonable additional costs above the prices and costs listed in the Price Schedule for obtaining appropriate and suitable alternate transportation services due to the Operator's failure to provide the Replacement Aircraft, which are in addition to the UN's right to claim Liquidated Damages for such failure, as further specified in Article 13.2. The Parties agree that the UN's rights and remedies under this Article 12 are

without prejudice to the UN's rights to claim Liquidated Damages in accordance with Article 13 or any other rights and remedies under the Agreement.

ARTICLE 13. **LIQUIDATED DAMAGES**

- 13.1 The Operator recognizes that, given the critical time constraints encountered by the UN in performing its Mission operations, the dates and times specified in this Agreement are of the essence and the UN has a need for continuous and uninterrupted Services in support of the Mission.
- 13.2 The Operator acknowledges and agrees that the unavailability of any Aircraft, Optional Aircraft and Replacement Aircraft would result in losses and damages to the UN that would be difficult or impossible to ascertain or prove, and that the UN would not be compensated by the other remedies provided for in the Agreement. The Parties agree that such losses and damages include, by way of example, internal administrative UN costs for obtaining appropriate and suitable replacement transportation services (as opposed to reasonable additional costs above the prices and costs listed in the Price Schedule incurred by the UN for obtaining appropriate and suitable alternate transportation services in accordance with Article 12.2), disruption of the Mission's operations, an inability of the UN to properly or effectively carry out or administer its Mission or successfully accomplish the Mission's mandate in a timely manner.
- 13.3 Without derogating from any other rights or remedies under this Agreement, the Operator shall pay the UN as liquidated damages the sum equivalent to one tenth of a percent (0.1%) of the cumulative sum of the Positioning Costs, Depositioning Costs, Painting Costs, Annual Charges and Total Flight Hours Cost for the Aircraft and Optional Aircraft ("Cumulative Sum") up to a maximum amount of ten percent (10%) of the Cumulative Sum divided by the number of Aircraft and Optional Aircraft under the Agreement, for each and every Day:
 - (i) the Operator fails to have the Aircraft or Optional Aircraft, where applicable, Operationally Ready on or before the Scheduled Operational Date(s), *provided that* the UN has not determined the Operator is unable to meet the Scheduled Operational Date due to an event of *force majeure* in accordance with Article 9.3; or
 - (ii) the Operator fails to provide a Replacement Aircraft that is Operationally Ready in the event the UN requires a Replacement Aircraft in accordance with Article 12.1, *provided that* the UN has not determined the Operator is unable to meet the Scheduled Operational Date due to an event of *force majeure* in accordance with Article 9.3,(collectively "Liquidated Damages").
- 13.4 The Parties agree that any rights to suspend or terminate this Agreement shall have no effect on the UN's right to claim Liquidated Damages pursuant to this Article 13.
- 13.5 The United Nations shall have the right to deduct any Liquidated Damages to which it is entitled under the terms of this Agreement from any monies due from the United Nations to the Operator under this Agreement or any other agreements between the UN and the Operator for the provision of similar services in support of the UN, or to recover the same as a debt due from the Operator.
- 13.6 Liquidated Damages shall be payable by virtue of the sole fact of the Operator's failure to have the Aircraft, Optional or Replacement Aircraft Operationally Ready without the need for any previous notice or any legal or arbitral proceedings, or proof of damage, which shall in all cases be considered as ascertained.
- 13.7 The Parties agree and acknowledge that the Liquidated Damages specified in Article 13.3 are a fair and

reasonable pre-estimate of the damages and losses that the UN would suffer in the event of the Operator's delay and do not constitute a penalty against the Operator. The Parties agree and acknowledge that the Liquidated Damages are not intended to limit the UN's recovery of actual damages or losses resulting from the Operator's failure to perform in accordance with the terms and conditions of this Agreement.

ARTICLE 14. **PRICE AND PAYMENT**

- 14.1 In full consideration for the complete, satisfactory and timely performance by the Operator of all its obligations under this Agreement, the UN shall pay the Operator the prices, costs and charges outlined in the Price Schedule. Without prejudice to or limiting the provisions of Article 18 (Tax exemption) of the General Conditions, the prices, costs and charges in the Price Schedule and any revisions thereto, are inclusive of all costs, expenses, charges or fees that the Operator may incur in connection with the performance of its obligations under the Agreement, including, all taxes, duties, levies, fees and other charges of any nature imposed by any authority or entity, except for (i) the Reimbursables which the UN is required to pay to the Operator in accordance with Article 14.5, and (ii) any surcharge and/or additional premium for war risk insurance coverage specified in Article 15.8(iv).
- 14.2 The Parties agree that the Positioning Costs specified in the Price Schedule are a fixed cost, among other, for transporting the Aircraft or Optional Aircraft from the Aircraft Pre-contract Location to the Main Operations Base prior to the Scheduled Operational Date. In the event that the Aircraft or Optional Aircraft is transported to the Main Operations Base from a location other than the Aircraft Pre-contract Location and such location is closer to the Main Operations Base than the Aircraft Pre-contract Location, then the Positioning Costs payable by the UN to the Operator shall be decreased by a proportionate amount. The Parties agree that the Depositioning Costs specified in the Price Schedule are a fixed cost, among other, for transporting the Aircraft or Optional Aircraft from the Main Operations Base to the Aircraft Post-contract Location upon expiration or termination of this Agreement. In the event that the Aircraft or Optional Aircraft is transported from the Main Operations Base to a location other than the Aircraft Post-contract Location and such location is closer to the Main Operations Base than the Aircraft Post-contract Location, then the Depositioning Costs payable by the UN to the Operator shall be decreased by a proportionate amount. The Parties agree in the event that the Aircraft or Optional Aircraft is transported from the Main Operations Base to a location other than the Aircraft Post-contract Location and such location is further than the Aircraft Post-Contract Location, then the Depositioning Costs payable by the UN to the Operator shall not be increased. The Parties agree that Depositioning Costs shall not be payable by the UN to the Operator for an Aircraft or Optional Aircraft, in the event that the UN enters into a new agreement with the Operator for the provision of services in the same Mission Area with the same Aircraft or Optional Aircraft as stipulated herein.
- 14.3 The Parties agree that the Painting Costs, Annual Charges, and Cost per Flight Hour shall remain fixed and firm during the Term.
- 14.4 The Parties agree that the Estimated Flight Hours specified in the Price Schedule are an estimate of the Actual Flight Hours that the Operator is required to provide each Contract Year by either one or all of the Aircraft, including Optional Aircraft, where applicable, located at the same Main Operations Base as part of the Fleet Concept ("Estimated Flight Hours"). The Parties agree there is no guarantee that the UN shall require the Operator to provide all or any of the Estimated Flight Hours and that the UN shall only pay the Operator up to the Total Flight Hours Cost for Actual Flight Hours provided to the UN. In the event that the UN requires the Operator to provide less than the Estimated Flight Hours specified in the Price Schedule by either one or all of the Aircraft, including Optional Aircraft, where applicable, located at the same Main Operations Base in a Contract Year, then the UN may task the Operator to provide Services by any of the Aircraft, including the Optional Aircraft, where applicable, during subsequent Contract Years up to the

cumulative sum of all Estimated Flight Hours for such Aircraft and Optional Aircraft, where applicable, during the Term.

14.5 The Parties agree that the prices, costs and charges in the Price Schedule do not include the following reimbursements to be provided by the UN to the Operator in accordance with this Agreement:

- (i) the following actual direct costs incurred by the Operator in providing Services to the UN, which are not included in the Annual Charges, Positioning and Depositioning Costs and Painting Costs: landing and parking fees, aircraft handling and towing costs, provision of aircraft steps and baggage handling costs, air navigation fees such as Eurocontrol or ASECNA, and satellite telephone phone usage charges;
- (ii) actual costs of fuel consumed by the Aircraft, Optional and Replacement Aircraft for Services that require the Aircraft and its Crew to be stationed away from the Main Operations Base for a temporary period, Optional or Replacement Aircraft as directed by the UN in accordance with Article 4.1 or 4.11, and in the event that the UN does not provide fuel for such Services;
- (iii) actual costs for transportation, accommodation and meals for Crew stationed away from the Main Operations Base for a temporary period, as directed by the UN in accordance with Article 4.1 or 4.11, up to an amount equivalent to the Daily Subsistence Allowance, in the event that the UN is unable to provide transportation, accommodation and meals for the Crew at the temporary location and the Operator is not otherwise herein required to provide such at its own cost; and
- (iv) other costs, fees and expenses which the Operator may incur and request reimbursement from the UN in accordance with the Mission's Standard Operating Procedures or written directives given by the Mission.

(collectively "Reimbursables").

14.6 The Operator shall submit its invoices for review and payment by the UN as follows:

- (i) For Positioning Costs, on or after the Actual Operational Date for the particular Aircraft or Optional Aircraft.
- (ii) For Depositioning Costs, at the end of the Term, *provided that* the relevant Aircraft or Optional Aircraft is providing Services up to the end of the Term. In the event that an Aircraft or Optional Aircraft ceases to provide Services prior to the end of the Term, the Operator shall submit its invoice for Depositioning Costs for that Aircraft or Optional Aircraft within thirty (30) Days of the cessation of Services by the particular Aircraft or Optional Aircraft.
- (iii) For Painting Costs, on or after the Actual Operational Date for the particular Aircraft or Optional Aircraft, *provided that* the UN has determined, in its sole discretion, that the Operator was required to place the UN aircraft marking specified in Annex F onto the Aircraft or Optional Aircraft and has placed such markings onto the Aircraft or Optional Aircraft to the satisfaction of the UN.
- (iv) For Annual Charges, the Operator shall only submit monthly invoices on or after the twenty-fifth (25th) Day of each month for the provision of Services during the current calendar month by the particular Aircraft or Optional Aircraft, *provided that* such date is on or after the Actual Operational Date for such Aircraft or Optional Aircraft. Each monthly invoice for Annual Operating Cost and Charges shall be calculated according to the number of Days of Services provided in the calendar month.
- (v) For Actual Flight Hours Costs, the Operator shall only submit monthly invoices on or after the

first (1st) Day of each month for the provision of Services in the prior calendar month.

- (vi) For Reimbursables, the Operator shall submit an invoice within thirty (30) Days of the Operator's payment of the costs incurred.

- 14.7 The Operator shall submit to the UN either (i) an original invoice plus one (1) copy of the invoice, or (ii) one (1) copy of the invoice from the following designated Operator facsimile number or e-mail address: [insert Operator facsimile], [insert e-mail address], for all Services provided to the UN and associated costs specified in the Price Schedule in accordance with this Agreement, together with such supporting documentation as the UN may require, all of which shall be in English. The Operator shall submit supporting documentation to the UN evidencing actual movement of the Aircraft, Optional and Replacement Aircraft in support of invoices for Positioning and Depositioning Costs. The Operator shall only submit these invoices and supporting documentation, either by personal delivery, post, certified mail, facsimile or e-mail to the addressee listed below. The Parties acknowledge that no other UN office or department is authorized to receive invoices or supporting documentation from the Operator.

Chief, Vendor Claims Unit
 Division of Administration
 United Nations
 304 East 45th Street, 3rd Floor
 New York, NY 10017
 USA
 Facsimile: [insert designated VCU facsimile]
 E-mail: [insert designated VCU e-mail address]

- 14.8 The Operator shall submit to the Aviation Section of the Mission, or as otherwise directed by the UN in writing, an original invoice plus one (1) copy of the invoice for Reimbursables incurred in accordance with this Agreement, together with a third party invoice evidencing that the Operator has incurred the expense and proof that the Operator has paid the Reimbursables, all of which shall be in English or shall include an English translation. Upon prior written agreement of the UN, the Operator may submit to the UN, the original third party invoice plus one (1) copy of the invoice of the Reimbursables incurred in accordance with this Agreement without evidence that the Operator has paid the Reimbursable, to provide for direct payment of such Reimbursable by the UN.
- 14.9 The Operator's invoices shall, at a minimum, (i) include a description of the Services performed, (ii) identify Positioning Costs, Depositioning Costs, Painting Costs, each Annual Charges and Actual Flight Hours Costs separately in accordance with the Price Schedule, and (iii) list any Reimbursables incurred in accordance with Article 14.5 above, if applicable. The Operator shall submit separate invoices for each Aircraft, Optional and Replacement Aircraft that provided Services under this Agreement. The Operator may submit separate invoices for Positioning Costs, Depositioning Costs, Painting Costs and monthly Annual Charges and Actual Flight Hours Costs incurred. Any Operator invoices for Actual Flight Hours Costs shall include Actual Flight Hours provided by the Operator as a decimal of flight hours flown. In the event that the Operator provides Services across multiple Contract Years, the Operator shall submit separate invoices for Services provided during each Contract Year.
- 14.10 Payments under this Agreement for Services provided shall be made to the Operator thirty (30) Days from receipt of the Operator's invoice and supporting documentation and certification by the UN that the Services represented by the invoice have been provided and that the Operator has otherwise performed in conformity with the terms and conditions of this Agreement, unless the UN disputes the invoice or a portion thereof. Payments under this Agreement for Reimbursables incurred by the Operator shall be made to the Operator thirty (30) Days from receipt of the Operator's invoice and supporting documentation, unless the UN disputes the invoice or a portion thereof. All payments due to the Operator under this Agreement shall be

made by electronic funds transfer to the Operator's bank account, the details of which have been notified by the Operator, as follows:

Name of Bank :
 Bank Address :
 Bank ID :
 (SWIFT/BIC for non-US bank and ABA number for US bank)

Account No.
 Or IBAN :
 (IBAN if the bank is within EU/EEA)

BSB :
 Bank account

Title/name :

Currency of
 Payment :

Currency of
 Bank Account :

Type of
 Account :
 (indicate if Checking or Savings)

Routing
 Instructions :
 (if necessary)

- 14.11 The Operator acknowledges and agrees that the United Nations may withhold payment in respect of any invoice in the event that, in the opinion of the United Nations, the Operator has not performed in accordance with the terms and conditions of this Agreement, or if the Operator has not provided sufficient documentation in support of the invoice. The Parties agree the UN shall be entitled, at its sole discretion, to withhold payment in the event that, in the opinion of the United Nations, the Operator has not performed in accordance with the terms and conditions of this Agreement, or if the Operator has not provided sufficient documentation in support of any invoice under this Agreement, from any payments due under other agreements between the UN and the Operator for the provision of similar Services in support of the UN.
- 14.12 If the United Nations disputes any invoice or a portion thereof, the United Nations shall notify the Operator accordingly, including a brief explanation of why the United Nations disputes the invoice or portion thereof. With respect to disputes regarding only a portion of the invoice, the United Nations shall pay the Operator the amount of the undisputed portion in accordance with Article 14.10 above. The United Nations and the Operator shall consult in good faith to promptly resolve outstanding issues with respect to any disputed invoice. Once a dispute regarding an invoice or a portion thereof has been resolved, the United Nations shall pay the Operator the relevant amount within thirty (30) Days after the final resolution of such dispute.
- 14.13 In addition to any rights and remedies available to it, and without prejudice to any other rights or remedies that the UN may have under this Agreement, the UN shall have the right, without prior notice to the

Operator, any such notice being waived by the Operator, upon any amounts becoming due and payable hereunder to the Operator, to set off, against any amount payable by the UN under this Agreement, any payment, indebtedness or other claim (including, without limitation, any overpayment made by the UN to the Operator) owing by the Operator to the UN hereunder or under any other contract or agreement between the Parties. The UN shall promptly notify the Operator of such set-off and the reasons therefore, provided, however, that the failure to give such notice shall not affect the validity of such set-off.

- 14.14 Payments made in accordance with this Article 14.14 shall constitute a complete discharge of the UN's obligations with respect to the relevant invoices or portions thereof.
- 14.15 Payments effected by the UN to the Operator shall not relieve the Operator of its obligations under this Agreement and shall not be deemed to be acceptance by the UN of the Operator's performance.
- 14.16 The Operator shall not be entitled to interest on any late payment or any sums payable under this Agreement nor any accrued interest on payments withheld by the UN in connection with a dispute.

ARTICLE 15. **INSURANCE**

- 15.1 The Parties agree that Articles 6.2 to 6.8 of the General Conditions (Insurance and Liability) are hereby deleted and replaced with Articles 15.2 to 15.10 below.
- 15.2 Prior to the commencement of any Services by the Operator under this Agreement, the Operator shall obtain, and shall provide and maintain, for the Term, from an insurance carrier acceptable to the UN, comprehensive insurance coverage to cover all of the Operator's liabilities under this Agreement, including but not limited to insurance required by, or covering its liabilities under the Aviation Regulatory Framework. All insurance policies of the Operator shall be obtained on competitive basis, proof of which shall be provided to the UN upon request. Except as otherwise expressly provided herein, such insurance shall, at a minimum, consist of:
 - (i) comprehensive third-party general aviation liability insurance, including passenger legal liability, sufficient to cover all persons and all cargo authorized by the UN to be transported on the Aircraft, Optional and Replacement Aircraft and protecting the UN and the Operator against claims for bodily injury or death and property damage up to a minimum combined single limit of fifty million United States Dollars (US\$50,000,000) per occurrence. Notwithstanding the generality of the foregoing, such insurance shall be at a minimum (i) sufficient to cover liability insurance requirements required in jurisdictions where the Aircraft, Optional and Replacement Aircraft is operating; and (ii) sufficient to meet the limits of liability as established by the Montreal Convention.
 - (ii) war risk liability insurance, including third party liability, for a minimum amount of fifty million United States Dollars (US\$50,000,000), based on endorsement number "AVN 52D or AVN52E", as appropriate, as of 1 January 2002, or its current equivalent in the insurance marketplace;
 - (iii) all risk hull insurance, including flight and not in flight;
 - (iv) hull war risks and allied perils insurance on form LSW555D or its current equivalent, covering all perils excluded by war, hijacking and other perils exclusion clause AVN48B, other than as required under Article 15.2(ii), including hijacking and confiscation for the Operations Area; and
 - (v) worker's compensation insurance or the applicable equivalent.

15.3 The insurance policies required in accordance with this Agreement shall:

- (i) name the UN as an additional insured and contain a cross-liability clause for any liability policies;
- (ii) provide territorial limits as “worldwide” except that in respect of hull war risk and war risk liability, the Operator shall be obliged to maintain coverage for the Operations Area;
- (iii) under “conditions” shall provide “All and every use incidental to the UN’s operations”;

- (iv)
- (v) include a waiver of subrogation of the insurer's rights against the UN;
- (vi) include an agreement by the insurer(s) that such insurance policies shall be primary, including in respect of any re-insurance, and without any right or obligation of contribution by any insurance policies that may be carried by the UN;
- (vii) provide the UN with thirty (30) Day's written notice from the insurers prior to any cancellation or change of coverage and assurance that any act or omission of the Operator affecting a denial of insurance coverage shall not apply as against the UN, as an additional insured, under such insurance policies; and
- (viii) specify the registration number of each Aircraft, Optional and Replacement Aircraft, where applicable, covered and the amount of third party liability coverage.

15.4 The Operator shall ensure that the provision of Services under this Agreement do not violate the terms and conditions of any insurance policy which is, or may be, obtained and maintained by the Operator hereunder, and that it shall take all measures necessary to avoid any actions which may lead to cancellation or voidance of such insurance policies. The coverage afforded the UN shall not be invalidated by any act or omission (including misrepresentation and non-disclosure) of any insured which results in a breach of any term, condition or warranty of the policies.

15.5 Prior to proving any Services under this Agreement, the Operator shall deliver to the UN certificates of insurance specifying coverage per all requirements in Article 15.2 and 15.3 above. The certificates of insurance required to be delivered to the UN in accordance with this Article 15.5 shall include an endorsement which indicates that the Operator has received the benefit of "AVN2001" and "AVN 52D or AVN52E", as appropriate, coverage, or its current equivalent. Within thirty (30) Days of the Effective Date, the Operator shall deliver to the UN a slip, binder and/or endorsement in respect of the insurance policies that the Operator is required to obtain and maintain in accordance with this Agreement. The UN may, at its sole election, require the Operator to provide any certificates of insurance, slips, binders or insurance policies in accordance with the requirements of this Agreement, before, during or after applicable periods of coverage.

15.6 The obligation of the Operator to obtain and maintain the required insurance policies is an essential term of this Agreement and the UN relies on the Operator to perform such obligations. Failure of the UN to require strict compliance with all the terms and conditions regarding insurance, as set forth in this Agreement, and as evidenced by any certificates of insurance, slips and/or binders, copies of insurance policies, or otherwise, shall not constitute a waiver or amendment of any of the terms, conditions and requirements of this Agreement regarding the provision of insurance coverage by the Operator.

15.7 The Operator shall be responsible to pay any deductibles or retentions.

15.8 The Parties agreed that:

- (i) The Operator shall be responsible for all premiums for war risk coverage per the requirements in Article 15.2 and 15.3.
- (ii) In the event the insurer imposes a surcharge and/or additional premium for war risk insurance coverage for the Operations Area or other areas outside of the Operations Area during the Term, the Operator shall immediately, but in no event later than thirty (30) Days after notice of the imposition of such surcharges and/or additional premium, inform the UN in writing as to the amount of such surcharge and/or additional premium.

- (iii) The UN shall not reimburse any costs of war risk coverage in excess of the required minimum amount set forth in Article 15.2 above.
- (iv) It is further agreed that for any such surcharge and/or additional premium for war risk insurance coverage, the UN shall reimburse to the Operator the actual cost of the insurance paid by the Operator provided that such cost is deemed reasonable by the UN, has been obtained on the best terms available from the insurer, and the Operator has made all diligent efforts to obtain all possible rebates or refunds to which the Operator is entitled in accordance with the insurance coverage, proof of which shall be provided to the UN.
- (v) For purposes of reimbursement under Article 15.8(iv), the Operator shall submit to the UN, in addition to its invoices submitted in accordance with Article 14, the following documents:
 - (a) a copy of the original invoice(s) of the insurance underwriter(s) setting out a detailed breakdown of coverage and rates of costs or surcharges, risk surcharges for each flight, if available, and the number of such flights and the location covered;
 - (b) commission(s), together with a letter from the Operator's broker setting out in full the details of the invoice and the payments required, and the amended slip and/or binder confirming the insurance coverage and the war risk surcharges;
 - (c) proof of payment by the Operator to the insurance company, such as official receipts from the insurance company, proof of payment by check or wire transfer, setting out the details of the surcharges and of the relevant insurance policy;
 - (d) a statement in writing by the Operator confirming that the Operator has made all diligent efforts to obtain all possible rebates or refunds, discounts or any lower price adjustments, including but not limited to any applicable no-claim bonuses, to which the Operator is entitled in accordance with the insurance coverage and stating the amounts of such rebates, refunds, discounts or price adjustments, if any; and
 - (e) a letter from the insurance underwriter(s) stating the costs of the war risk liability coverage for the amount that is within the required minimum amount set forth in Article 15.2 above.

15.9 Any rebates, refunds, discounts or any lower price adjustments during the Term associated with the war risk premium shall be extended to the UN and shall be deducted from the Operator's invoices. The Operator shall promptly notify the UN when such rebates, refunds, discounts or lower price adjustments become available. If the Operator has not deducted such rebates, refunds, discounts or lower price adjustments from its invoices at the time that the Operator submits such invoices to the UN for reimbursement of the war risk surcharges, the UN reserves the right to deduct the amount of the rebates, refunds, discounts or lower price adjustments from the amounts reimbursed to the Operator or from any other payments due to the Operator. The UN reserves the right to seek confirmation from independent sources that the war risk insurance has been obtained on the best terms available from the insurer and that all rebates, refunds, discounts or any lower price adjustments associated with the hull war risk insurance have been extended to the UN.

15.10 This Agreement shall be governed by the Warsaw Convention, as amended by the Hague Protocol. Notwithstanding this Agreement being governed by the Warsaw Convention, the Operator agrees to increase the limits of its liability for death or bodily injury to one hundred thousand (100,000) Special Drawing Rights per passenger. The Operator agrees and acknowledges that, during the Term, it shall, in accordance with Article 15, arrange and maintain, at its own cost, comprehensive insurance sufficient to cover its liability under this Article 15.10. The Operator shall take all measures required to enable it to invoke the limitation of liability provided for under the Warsaw Convention and in particular this Article 15.10. In particular, the Operator shall not permit any passenger to be carried unless such passenger has been issued a passenger ticket in accordance with Article 3 of the Warsaw Convention.

ARTICLE 16.

PERFORMANCE SECURITY

- 16.1 No later than [number] Days following the Effective Date of the Agreement, the Operator shall provide to the United Nations, at the Operator's sole cost and expense, a performance security in the form of an independent bank guarantee or standby letter of credit in accordance with the form set forth in Annex D hereto, or a similar instrument acceptable to the UN in its sole discretion, in the amount of US\$/Euro [amount] (the "Performance Security"). In the event that the relevant agreement amount is materially increased, the UN shall have the right, at its sole option, to require a corresponding increase in the amount of the Performance Security, which the Operator shall provide within [number] Days following such request.
- 16.2 The Performance Security shall serve to secure the performance by the Operator of its obligations in accordance with the terms and conditions of this Agreement, and to provide a source of compensation for the United Nations for any failure by the Operator to perform such obligations. If the Operator fails to deliver the Performance Security to the UN within the time limit specified herein, the UN shall, without prejudice to any other rights or remedies, be entitled to withhold payment from any one or more invoices submitted by the Operator up to the required amount of the Performance Security.
- 16.3 The Performance Security shall require the Issuer (as defined below) to deliver the money required by the United Nations immediately upon first written demand by the United Nations for independent bank guarantees and upon presentment to the Issuer of a draft, for letters of credit, in accordance with the requirements of the Performance Security, without having to prove the liability of the Operator. The Performance Security shall be enforceable without the need to have recourse to any judicial or arbitral proceedings, without any objection, opposition or recourse by the Issuer and without it being necessary to provide evidence to the Issuer of any shortcoming of or any default by the Operator.
- 16.4 The Performance Security shall remain valid and in force until [insert date that is between 60 and 180 days after the end of the Agreement Term of the Agreement], subject to extension if so provided in this Agreement or the Performance Security. The Performance Security shall not be subject to any form of suspension by interim relief, whether by arbitral order or otherwise.
- 16.5 In the event the Agreement Term of this Agreement is extended in accordance with the term and conditions of Article 3.2, the Operator shall obtain, at its sole cost and expense, an extension of the Performance Security. The Operator shall obtain such extension within thirty (30) Days after the date of such request, or, if the Performance Security would expire sooner than thirty (30) Days after such date, prior to such expiration. If the Operator fails or refuses to obtain such extension, the UN shall be entitled, at its option, and without prejudice to any other rights or remedies, to enforce the Performance Security and/or immediately terminate this Agreement. In the event that the Performance Security contains a provision for automatic extension, the Operator shall notify the UN in writing of each such automatic extension not later than thirty (30) Days prior to the date on which the Performance Security would otherwise expire. In the absence of such notice, or if the Operator notifies the UN that the Performance Security will not be extended, the UN shall be entitled, at its option, and without prejudice to any other rights or remedies, to enforce the Performance Security and/or immediately terminate this Agreement.
- 16.6 The Performance Security shall be issued by a prime commercial and accredited financial institution acceptable to the United Nations in its sole discretion (the "Issuer"). If the Issuer of the Performance Security files for bankruptcy or is declared bankrupt, becomes insolvent or is liquidated or its right to do business is suspended or terminated, the Operator shall within five (5) Days thereafter provide another Performance Security, which shall be issued by an Issuer and in a form acceptable to the United Nations. The Operator shall have an obligation to promptly notify the United Nations in writing in the event that any of the foregoing has occurred or is likely to occur. If the Operator fails or refuses to comply with the

foregoing obligations, the UN shall be entitled, at its option, and without prejudice to any other rights or remedies, to enforce the Performance Security and/or immediately terminate this Agreement.

ARTICLE 17. **SECURITY**

- 17.1 The Operator shall take reasonable measures to safeguard its Personnel, protect property and safeguard against sabotage, damage, loss and theft of all material, supplies, and equipment, including, without limitation, UN- furnished equipment and supplies. As used in this Agreement, the term “UN-furnished equipment and supplies” shall include, but not be limited to, equipment and supplies provided by the UN to the Operator and equipment and supplies purchased by the Operator with funds provided or to be reimbursed by the UN pursuant to Articles 7.1 and 7.2, above.
- 17.2 The Operator shall develop a security plan in consultation with the UN, including detailed procedures to cover evacuation, personnel, equipment, safeguarding of UN-furnished equipment and supplies, unlawful interference, baggage screening for carriage of weapons, explosives, narcotics and contraband, and prevention of sabotage. The Operator shall submit such security plan to the UN within fourteen (14) days of the Effective Date. The UN reserves the right to examine procedures, methods and facilities used by the Operator to provide security. The Operator shall give due consideration to adjustments to such procedures or facilities as may be recommended by the UN. Nothing in the foregoing provisions, including inter alia the UN’s examination of the Operator’s security plan or its making of recommendations regarding such security plan, shall limit or abrogate the obligations and responsibilities of the Operator under this Agreement to safeguard the safety and security of its Personnel, the Operator’s equipment and other property, UN-furnished equipment and supplies and Personnel’s personal effects and other property.
- 17.3 The UN may, when feasible and appropriate in the sole opinion of the UN:
- (i) inform and, to the extent necessary, update the Operator of its security regulations, policies and procedures;
 - (ii) provide the Operator’s Personnel with the necessary security passes and access to areas necessary for performance of this Agreement; and
 - (iii) include the Operator’s Personnel in the UN security plan on the same terms that are offered to implementing partners of UN agencies, funds and programmes, provided, however, the level of security to be provided to the Operator shall be consistent with the assessment of local conditions by the UN, but shall in no event exceed the level of security provided to UN staff in the mission area or relevant portion thereof.
- 17.4 Neither the United Nations nor any of its officials, agents, and employees shall be liable for any loss, damage, injury or death that may be sustained by the Operator, its Personnel, the Operator’s equipment or other property or the Personnel’s personal effects or other property during, in connection with or as a result of, the UN’s or the Operator’s taking or failure to take any security measures provided for in this Article. Further (i) the Operator shall make no demand or claim, whether in its own right or on behalf of such Personnel or any other third party, against the United Nations, its officials, agents, and employees, in respect of, based on or in any way relating to the UN’s or the Operator’s taking or failure to take such security measures; and (ii) without prejudice to and in addition to any other indemnities under this Agreement, the Operator shall indemnify, defend and hold and save harmless the UN, its officials, agents and employees, from and against all suits, proceedings, claims, demands, losses and liability of any kind or nature brought by Personnel or any other third party against the United Nations, including, but not limited to, all litigation costs and expenses, attorney’s fees, settlement payments and damages, based on, arising from or relating to the UN’s or the Operator’s taking or failure to take any such security measures.

ARTICLE 18.
UN PROVIDED TRANSPORTATION AND SERVICES

- 18.1 The UN agrees to allow, to the extent practicable as determined solely by the UN, the Operator's Crew and their personal effects to travel, at no cost, on UN-provided transportation within the Mission Area. In consideration of the Operator's Crew being permitted to travel on UN-provided transport (including medical evacuation), each such person shall sign a release from liability in a form approved by the UN, prior to such travel. The Operator undertakes to obtain the signed release from each such person and to deliver the signed original to the UN prior to such person's initial use of any UN-provided transportation.
- 18.2 The UN agrees to allow the Operator's Crew, to the extent practicable, as determined solely by the UN, on a cost reimbursable basis plus a UN administrative fee, access to the Mission's medical and hospital facilities in the event of an emergency or when their medical condition so requires. The UN also agrees, to the extent practicable, as determined solely by the UN, and subject to the same standards provided by the UN to UN personnel, on a cost reimbursable basis plus a UN administrative fee, to assist with the medical evacuation of the Operator's Crew when, in the UN's sole discretion, their condition so requires. In consideration of the Operator's Crew being permitted to utilize such facilities, or to receive such medical evacuation assistance, each such person shall complete and sign the release from liability in a form approved by the UN. The Operator undertakes to obtain the signed release from each such person and to deliver the signed original to the UN prior to such person's initial use of any such facilities or receipt of medical evacuation assistance. Without limiting Articles 1.6 and Article 6 above, or Article 18.3 or 18.4 below, the UN does not warrant opinions given by medical personnel on the medical condition of the Operator's Crew, and the UN shall not be held liable therefor.
- 18.3 In the event the Operator fails to deliver to the UN, signed release forms in accordance with Articles 18.1 and 18.2 above, without prejudice to and in addition to any other indemnities under this Agreement, the Operator shall indemnify, defend and hold and save harmless the UN and its officials, employees and agents from and against all suits, proceedings, claims, demands, losses and liability of any kind or nature brought by Crew or any other third party against the United Nations, including, but not limited to, all litigation costs and expenses, attorney's fees, settlement payments and damages, based on, arising from or related to any services, facilities or medical evacuation assistance allowed or provided by the UN to Crew pursuant to Articles 18.1 and 18.2.
- 18.4 The Operator acknowledges and agrees that any services, facilities or medical evacuation assistance allowed or provided by the UN to the Operator's Crew pursuant to Articles 18.1 and 18.2, above, are solely for the convenience and benefit of the Operator and its Crew, and that, in consideration of the UN's allowing or providing such services, facilities or medical evacuation assistance, the Operator:
- (i) recognizes that neither the United Nations nor any of its officials, agents, servants and employees shall be liable for any loss, damage, injury or death that may be sustained by the Operator's Crew during or as a result of the allowance, disallowance or provision of such services, facilities or medical evacuation assistance; and
 - (ii) shall make no demand or claim, whether in its own right or on behalf of such Crew or any other third party, against the United Nations, its officials, agents, servants and employees, in respect of, based on or in any way relating to the allowance, disallowance or provision of such services, facilities or medical evacuation assistance.

ARTICLE 19.
REPORTING AND ACCIDENTS

- 19.1 In the event of any accidents or incidents involving the Aircraft, the Optional or Replacement Aircraft, the Operator shall immediately report such accidents or incidents to the UN, including the Mission, and all appropriate Governmental Bodies, and shall protect and preserve all evidence in connection with the accidents or incidents. The Operator shall cooperate with all investigations into the accidents or incidents which may be instituted by the UN and/or Governmental Bodies, including the preparation of relevant reports.

ARTICLE 20. **SUSPENSION OF SERVICES**

- 20.1 In the event (i) any of the Aircraft, the Optional or the Replacement Aircraft, are involved in an accident during the Term, (ii) the UN, in its sole judgement, has reasonable concerns regarding the Operator's ability to perform Services in accordance with the Aviation Regulatory Framework, or (iii) the UN, in its sole judgement, has reasonable concerns regarding the Operator's ability to substantially meet its obligations under this Agreement, then the following shall apply:

- (i) The UN may issue a written notice suspending the Operator's Services in whole or in part, under this Agreement and/or any other agreement between the UN and the Operator for the provision of similar services. The suspension shall remain in effect for sixty (60) Days. After sixty (60) Days, the UN may issue a further written notice extending the suspension, *provided that* the UN provides the Operator with a reasonable explanation for the need to continue the suspension. The written notices of suspension may specify whether the Aircraft, Optional or Replacement Aircraft and its Crew are required to remain in the Mission Area or Operations Area during the period of suspension, or a shorter period thereof, in order to be available and immediately ready to resume Services pursuant to this Agreement.
- (ii) During the period of suspension, the UN may conduct an investigation of any aspect of the Agreement or the award thereof, the obligations performed under the Agreement, and the operations of the Operator generally relating to performance of the Agreement.
- (iii) During the period of suspension, the Operator shall not be entitled to payments of any amounts specified in the Price Schedule or otherwise, unless such costs accrued prior to the suspension period.
- (iv) The Operator shall not accrue NA Days during periods of suspension and periods of suspension shall not be counted as NA Days.
- (v) Should the Operator utilize the Aircraft, Optional and Replacement Aircraft for non-UN operations during the period of suspension, then the Operator shall ensure that there are no UN markings on the Aircraft, Optional and Replacement Aircraft.
- (vi) The UN, in its sole judgement, may revoke the suspension at any time and shall give the Operator written notice of revocation of the suspension. The UN may direct the Operator to undertake appropriate corrective action which shall be undertaken by the Operator to the UN's satisfaction.
- (vii) The rights and remedies of the UN herein are without prejudice to any other rights and remedies of the UN.
- (viii) Should the UN determine, in its sole judgement, that (i) the Operator has not failed to perform the Services in accordance with the Aviation Regulatory Framework, or (ii) the Operator has not failed to substantially meet its obligations under this Agreement, then the Operator shall be entitled to payment of Annual Operating Costs in respect of the entire period of suspension, with reduction in payment of such Annual Operating Costs in the event that the Operator utilized the

Aircraft, Optional or Replacement Aircraft for non-UN operations during the period of suspension in amount of compensation received by the Operator for such use. In no event shall the Operator be entitled to any other compensation or payment from the UN for any costs or loss incurred by the Operator arising from or relating to such suspension or revocation of the suspension, including costs of appropriate corrective action undertaken or to be undertaken by the Operator.

- (ix) Should the UN determine, in its sole judgement, that (i) the Operator has failed to perform the Services in accordance with the Aviation Regulatory Framework, or (ii) the Operator has failed to substantially meet its obligations under this Agreement, then the Operator shall not be entitled to any Annual Operating Costs in respect of the entire period of suspension. The Operator shall reimburse the UN the following costs incurred due to the Operator's breach:
 - (a) any additional costs above the prices and costs listed the Price Schedule for obtaining a suitable Replacement Aircraft during the period of suspension up to a period of three (3) months or to the end of the Agreement Term or Extended Term, if any, whichever is shorter; and
 - (b) any other direct damages suffered by the UN.

- 20.2 Should the UN suspend the Agreement in accordance with Article 20.1, then the UN shall have the option to extend the Agreement Term and the Extended Term by the period of the suspension upon prior written notice to the Operator. The UN shall endeavor to provide a written notice to the Operator of its intention to do so at least fourteen (14) Days prior to the expiration of the Agreement Term or Extended Term, as applicable.

ARTICLE 21. **TERMINATION**

- 21.1 Either Party may terminate the Agreement for cause, in whole or in part, upon seven (7) Day's notice, in writing, to the other Party. The Parties agree that in the event that the UN terminates this Agreement for cause in accordance with this Article 21.1, then the UN shall be entitled, at its sole discretion, to terminate other agreements between the UN and the Operator for the provision of similar Services in support of the UN. The Parties agree that Depositioning Costs shall not be payable by the UN to the Operator for an Aircraft, including Optional Aircraft, in the event that the UN terminates the Agreement for cause in accordance with Article 21.1.
- 21.2 Upon thirty (30) Day's advance written notice to the Operator, the UN may terminate the Agreement without having to provide any justification therefor.

ARTICLE 22. **NOTICES**

- 22.1 Except as otherwise specified in this Agreement, all notices and other communications between the Parties required or contemplated under this Agreement shall be in writing and shall be delivered either by: (i) personal delivery; (ii) recognized overnight delivery service; (iii) postage prepaid, return receipt requested, certified mail; (iv) confirmed facsimile; or (v) email, transmitted to the Party for whom such notice or communication is intended, at the address, facsimile number or email address shown below, or such other address or number as the intended recipient previously shall have designated by written notice given pursuant to this Agreement:

If to the Operator:

[Name and address of Operator] Attn: [name/title]
Fax: [number] Email: [insert]

If to the UN:

Procurement Division United Nations
405 East 42nd Street New York, NY 10017 U.S.A.
Attn: Chief, Transportation & Life Support Service
Fax: [number] Email: [insert]

AND

Logistics Division
United Nations
405 East 42nd Street, 14th Floor
New York, NY 10017
U.S.A.
Attn: Chief, Air Transport Service
Fax: [number]
Email: [insert]

- 22.2 Notices and other communications required or contemplated by this Agreement delivered by mail or recognized overnight delivery service shall be effective on the date they are officially recorded by the postal or delivery service as delivered to (or refused by) the intended recipient by return receipt or equivalent. Such notices and other communications delivered by facsimile or email shall be deemed to have been delivered to and received by the addressee, and shall be effective at 11:59 p.m. at the Main Operations Base, the Day after the notice has been transmitted. Such notices and other communications delivered in person shall be effective at the time and date of actual receipt.

ARTICLE 23. **MISCELLANEOUS**

- 23.1 Without limiting the provisions of Article 19 (Modifications) of the General Conditions, no terms or provisions of this Agreement shall be deemed waived and no breach excused, unless such waiver or excuse shall be in writing and signed by the Party giving the waiver or excuse. No consent to, or excuse or waiver of, a breach of this Agreement shall constitute a consent to, or excuse or waiver of, any other subsequent breach.
- 23.2 If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.
- 23.3 Headings and titles used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement for any purpose whatsoever.
- 23.4 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which taken together shall be deemed to constitute one and the same instrument.
- 23.5 Unless the context otherwise clearly indicates, all references to the singular herein shall include the plural and vice versa.

23.6 This Agreement and everything herein contained shall inure to the benefit of, and be binding upon, the Parties and their respective successors and permitted assigns. No other person shall be a third party beneficiary hereof or have or be entitled to assert rights or benefits hereunder.

IN WITNESS WHEREOF, the Parties have, through their authorized representatives, executed this Agreement on the date herein below written.

FOR [NAME OF OPERATOR]

FOR THE UNITED NATIONS

Name:

Name:

Title:

Title:

Date:

Date:



**Annex A – GENERAL CONDITIONS OF CONTRACT
CONTRACTS FOR THE PROVISION OF SERVICES**

1. **LEGAL STATUS OF THE PARTIES:** The United Nations and the Contractor shall also each be referred to as a “Party” hereunder, and:
 - 1.1 Pursuant, *inter alia*, to the Charter of the United Nations and the Convention on the Privileges and Immunities of the United Nations, the United Nations, including its subsidiary organs, has full juridical personality and enjoys such privileges and immunities as are necessary for the independent fulfillment of its purposes.
 - 1.2 The Contractor shall have the legal status of an independent contractor *vis-à-vis* the United Nations, and nothing contained in or relating to the Contract shall be construed as establishing or creating between the Parties the relationship of employer and employee or of principal and agent. The officials, representatives, employees, or subcontractors of each of the Parties shall not be considered in any respect as being the employees or agents of the other Party, and each Party shall be solely responsible for all claims arising out of or relating to its engagement of such persons or entities.
2. **RESPONSIBILITY FOR EMPLOYEES:** To the extent that the Contract involves the provision of any services to the United Nations by the Contractor’s officials, employees, agents, servants, subcontractors and other representatives (collectively, the Contractor’s “personnel”), the following provisions shall apply:
 - 2.1 The Contractor shall be responsible for the professional and technical competence of the personnel it assigns to perform work under the Contract and will select reliable and competent individuals who will be able to effectively perform the obligations under the Contract and who, while doing so, will respect the local laws and customs and conform to a high standard of moral and ethical conduct.
 - 2.2 Such Contractor personnel shall be professionally qualified and, if required to work with officials or staff of the United Nations, shall be able to do so effectively. The qualifications of any personnel whom the Contractor may assign or may propose to assign to perform any obligations under the Contract shall be substantially the same, or better, as the qualifications of any personnel originally proposed by the Contractor.
 - 2.3 At the option of and in the sole discretion of the United Nations:
 - 2.3.1 the qualifications of personnel proposed by the Contractor (*e.g.*, a curriculum vitae) may be reviewed by the United Nations prior to such personnel’s performing any obligations under the Contract;
 - 2.3.2 any personnel proposed by the Contractor to perform obligations under the Contract may be interviewed by qualified staff or officials of the United Nations prior to such personnel’s performing any obligations under the Contract; and,
 - 2.3.3 in cases in which, pursuant to Article 2.3.1 or 2.3.2, above, the United Nations has reviewed the qualifications of such Contractor’s personnel, the United Nations may reasonably refuse to accept any such personnel.
 - 2.4 Requirements specified in the Contract regarding the number or qualifications of the Contractor’s personnel may change during the course of performance of the Contract. Any such change shall be made only following written notice of such proposed change and upon written agreement between the Parties regarding such change, subject to the following:
 - 2.4.1 The United Nations may, at any time, request, in writing, the withdrawal or replacement of any of the Contractor’s personnel, and such request shall not be unreasonably refused by the Contractor.
 - 2.4.2 Any of the Contractor’s personnel assigned to perform obligations under the Contract shall not be withdrawn or replaced without the prior written consent of the United Nations, which shall not be unreasonably withheld.
 - 2.4.3 The withdrawal or replacement of the Contractor’s personnel shall be carried out as quickly as possible and in a manner that will not adversely affect the performance of obligations under the Contract.
 - 2.4.4 All expenses related to the withdrawal or replacement of the Contractor’s personnel shall, in all cases, be borne exclusively by the Contractor.
 - 2.4.5 Any request by the United Nations for the withdrawal or replacement of the Contractor’s personnel shall



not be considered to be a termination, in whole or in part, of the Contract, and the United Nations shall not bear any liability in respect of such withdrawn or replaced personnel.

2.4.6 If a request for the withdrawal or replacement of the Contractor's personnel is *not* based upon a default by or failure on the part of the Contractor to perform its obligations in accordance with the Contract, the misconduct of the personnel, or the inability of such personnel to reasonably work together with United Nations officials and staff, then the Contractor shall not be liable by reason of any such request for the withdrawal or replacement of the Contractor's personnel for any delay in the performance by the Contractor of its obligations under the Contract that is substantially the result of such personnel's being withdrawn or replaced.

2.5 Nothing in Articles 2.2, 2.3 and 2.4, above, shall be construed to create any obligations on the part of the United Nations with respect to the Contractor's personnel assigned to perform work under the Contract, and such personnel shall remain the sole responsibility of the Contractor.

2.6 The Contractor shall be responsible for requiring that all personnel assigned by it to perform any obligations under the Contract and who may have access to any premises or other property of the United Nations shall:

2.6.1 undergo or comply with security screening requirements made known to the Contractor by the United Nations, including but not limited to, a review of any criminal history;

2.6.2 when within United Nations premises or on United Nations property, display such identification as may be approved and furnished by the United Nations security officials, and that upon the withdrawal or replacement of any such personnel or upon termination or completion of the Contract, such personnel shall immediately return any such identification to the United Nations for cancellation.

2.7 Within one working day after learning that any of Contractor's personnel who have access to any United Nations premises have been charged by law enforcement authorities with an offense other than a minor traffic offense, the Contractor shall provide written notice to inform the United Nations about the particulars of the charges then known and shall continue to inform the United Nations concerning all substantial developments regarding the disposition of such charges.

2.8 All operations of the Contractor, including without limitation, storage of equipment, materials, supplies and parts, within United Nations premises or on United Nations property shall be confined to areas authorized or approved by the United Nations. The Contractor's personnel shall not enter or pass through and shall not store or dispose of any of its equipment or materials in any areas within United Nations premises or on United Nations property without appropriate authorization from the United Nations.

3. ASSIGNMENT:

3.1 Except as provided in Article 3.2, below, the Contractor may not assign, transfer, pledge or make any other disposition of the Contract, of any part of the Contract, or of any of the rights, claims or obligations under the Contract except with the prior written authorization of the UN. Any such unauthorized assignment, transfer, pledge or other disposition, or any attempt to do so, shall not be binding on the United Nations. Except as permitted with respect to any approved subcontractors, the Contractor shall not delegate any of its obligations under this Contract, except with the prior written consent of the UN. Any such unauthorized delegation, or attempt to do so, shall not be binding on the United Nations.

3.2 The Contractor may assign or otherwise transfer the Contract to the surviving entity resulting from a reorganization of the Contractor's operations, *provided that*:

3.2.1 such reorganization is not the result of any bankruptcy, receivership or other similar proceedings; *and*,

3.2.2 such reorganization arises from a sale, merger, or acquisition of all or substantially all of the Contractor's assets or ownership interests; *and*,

3.2.3 the Contractor promptly notifies the United Nations about such assignment or transfer at the earliest opportunity; *and*,

3.2.4 the assignee or transferee agrees in writing to be bound by all of the terms and conditions of the Contract, and such writing is promptly provided to the United Nations following the assignment or transfer.

4. SUBCONTRACTING: In the event that the Contractor requires the services of subcontractors to perform any



obligations under the Contract, the Contractor shall obtain the prior written approval of the United Nations. The United Nations shall be entitled, in its sole discretion, to review the qualifications of any subcontractors and to reject any proposed subcontractor that the United Nations reasonably considers is not qualified to perform obligations under the Contract. The United Nations shall have the right to require any subcontractor's removal from United Nations premises without having to give any justification therefor. Any such rejection or request for removal shall not, in and of itself, entitle the Contractor to claim any delays in the performance, or to assert any excuses for the non-performance, of any of its obligations under the Contract, and the Contractor shall be solely responsible for all services and obligations performed by its subcontractors. The terms of any subcontract shall be subject to, and shall be construed in a manner that is fully in accordance with, all of the terms and conditions of the Contract.

5. INDEMNIFICATION:

- 5.1 The Contractor shall indemnify, defend, and hold and save harmless, the United Nations, and its officials, agents and employees, from and against all suits, proceedings, claims, demands, losses and liability of any kind or nature brought by any third party against the United Nations, including, but not limited to, all litigation costs and expenses, attorney's fees, settlement payments and damages, based on, arising from, or relating to:
 - 5.1.1 allegations or claims that the possession of or use by the United Nations of any patented device, any copyrighted material, or any other goods, property or services provided or licensed to the United Nations under the terms of the Contract, in whole or in part, separately or in a combination contemplated by the Contractor's published specifications therefor, or otherwise specifically approved by the Contractor, constitutes an infringement of any patent, copyright, trademark, or other intellectual property right of any third party; or,
 - 5.1.2 any acts or omissions of the Contractor, or of any subcontractor or anyone directly or indirectly employed by them in the performance of the Contract, which give rise to legal liability to anyone not a party to the Contract, including, without limitation, claims and liability in the nature of a claim for workers' compensation.
- 5.2 The indemnity set forth in Article 5.1.1, above, shall not apply to:
 - 5.2.1 A claim of infringement resulting from the Contractor's compliance with specific written instructions by the United Nations directing a change in the specifications for the goods, property, materials, equipment or supplies to be or used, or directing a manner of performance of the Contract or requiring the use of specifications not normally used by the Contractor; or
 - 5.2.2 A claim of infringement resulting from additions to or changes in any goods, property, materials, equipment, supplies or any components thereof furnished under the Contract if the United Nations or another party acting under the direction of the United Nations made such changes.
- 5.3 In addition to the indemnity obligations set forth in this Article 5, the Contractor shall be obligated, at its sole expense, to defend the United Nations and its officials, agents and employees, pursuant to this Article 5, regardless of whether the suits, proceedings, claims and demands in question actually give rise to or otherwise result in any loss or liability.
- 5.4 The United Nations shall advise the Contractor about any such suits, proceedings, claims, demands, losses or liability within a reasonable period of time after having received actual notice thereof. The Contractor shall have sole control of the defense of any such suit, proceeding, claim or demand and of all negotiations in connection with the settlement or compromise thereof, except with respect to the assertion or defense of the privileges and immunities of the United Nations or any matter relating thereto, for which only the United Nations itself is authorized to assert and maintain. The United Nations shall have the right, at its own expense, to be represented in any such suit, proceeding, claim or demand by independent counsel of its own choosing.
- 5.5 In the event the use by the United Nations of any goods, property or services provided or licensed to the United Nations by the Contractor, in whole or in part, in any suit or proceeding, is for any reason enjoined, temporarily or permanently, or is found to infringe any patent, copyright, trademark or other intellectual property right, or in the event of a settlement, is enjoined, limited or otherwise interfered with, then the Contractor, at its sole cost and expense, shall, promptly, either:
 - 5.5.1 procure for the United Nations the unrestricted right to continue using such goods or services provided to the United Nations;



- 5.5.2 replace or modify the goods or services provided to the United Nations, or part thereof, with the equivalent or better goods or services, or part thereof, that is non-infringing; or,
- 5.5.3 refund to the United Nations the full price paid by the United Nations for the right to have or use such goods, property or services, or part thereof.

6. INSURANCE AND LIABILITY:

- 6.1 The Contractor shall pay the United Nations promptly for all loss, destruction, or damage to the property of the United Nations caused by the Contractor's personnel or by any of its subcontractors or anyone else directly or indirectly employed by the Contractor or any of its subcontractors in the performance of the Contract.
- 6.2 Unless otherwise provided in the Contract, prior to commencement of performance of any other obligations under the Contract, and subject to any limits set forth in the Contract, the Contractor shall take out and shall maintain for the entire term of the Contract, for any extension thereof, and for a period following any termination of the Contract reasonably adequate to deal with losses:
 - 6.2.1 insurance against all risks in respect of its property and any equipment used for the performance of the Contract;
 - 6.2.2 workers' compensation insurance, or its equivalent, or employer's liability insurance, or its equivalent, with respect to the Contractor's personnel sufficient to cover all claims for injury, death and disability, or any other benefits required to be paid by law, in connection with the performance of the Contract;
 - 6.2.3 liability insurance in an adequate amount to cover all claims, including, but not limited to, claims for death and bodily injury, products and completed operations liability, loss of or damage to property, and personal and advertising injury, arising from or in connection with the Contractor's performance under the Contract, including, but not limited to, liability arising out of or in connection with the acts or omissions of the Contractor, its personnel, agents, or invitees, or the use, during the performance of the Contract, of any vehicles, boats, airplanes or other transportation vehicles and equipment, whether or not owned by the Contractor; *and*,
 - 6.2.4 such other insurance as may be agreed upon in writing between the United Nations and the Contractor.
- 6.3 The Contractor's liability policies shall also cover subcontractors and all defense costs and shall contain a standard "cross liability" clause.
- 6.4 The Contractor acknowledges and agrees that the United Nations accepts no responsibility for providing life, health, accident, travel or any other insurance coverage which may be necessary or desirable in respect of any personnel performing services for the Contractor in connection with the Contract.
- 6.5 Except for the workers' compensation insurance or any self-insurance program maintained by the Contractor and approved by the United Nations, in its sole discretion, for purposes of fulfilling the Contractor's requirements for providing insurance under the Contract, the insurance policies required under the Contract shall:
 - 6.5.1 name the United Nations as an additional insured under the liability policies, including, if required, as a separate endorsement under the policy;
 - 6.5.2 include a waiver of subrogation of the Contractor's insurance carrier's rights against the United Nations;
 - 6.5.3 provide that the United Nations shall receive written notice from the Contractor's insurance carrier not less than thirty (30) days prior to any cancellation or material change of coverage; and,
 - 6.5.4 include a provision for response on a primary and non-contributing basis with respect to any other insurance that may be available to the United Nations.
- 6.6 The Contractor shall be responsible to fund all amounts within any policy deductible or retention.
- 6.7 Except for any self-insurance program maintained by the Contractor and approved by the United Nations for purposes of fulfilling the Contractor's requirements for maintaining insurance under the Contract, the Contractor shall maintain the insurance taken out under the Contract with reputable insurers that are in good financial standing and that are acceptable to the United Nations. Prior to the commencement of any obligations under the Contract, the Contractor shall provide the United Nations with evidence, in the form of certificate of insurance or such other form as the United Nations may reasonably require, that demonstrates that the Contractor has taken out insurance



in accordance with the requirements of the Contract. The United Nations reserves the right, upon written notice to the Contractor, to obtain copies of any insurance policies or insurance program descriptions required to be maintained by the Contractor under the Contract. Notwithstanding the provisions of Article 6.5.3, above, the Contractor shall promptly notify the United Nations concerning any cancellation or material change of insurance coverage required under the Contract.

- 6.8 The Contractor acknowledges and agrees that neither the requirement for taking out and maintaining insurance as set forth in the Contract nor the amount of any such insurance, including, but not limited to, any deductible or retention relating thereto, shall in any way be construed as limiting the Contractor's liability arising under or relating to the Contract.
7. **ENCUMBRANCES AND LIENS:** The Contractor shall not cause or permit any lien, attachment or other encumbrance by any person to be placed on file or to remain on file in any public office or on file with the United Nations against any monies due to the Contractor or that may become due for any work done or against any goods supplied or materials furnished under the Contract, or by reason of any other claim or demand against the Contractor or the United Nations.
8. **EQUIPMENT FURNISHED BY THE UNITED NATIONS TO THE CONTRACTOR:** Title to any equipment and supplies that may be furnished by the United Nations to the Contractor for the performance of any obligations under the Contract shall rest with the United Nations, and any such equipment shall be returned to the United Nations at the conclusion of the Contract or when no longer needed by the Contractor. Such equipment, when returned to the United Nations, shall be in the same condition as when delivered to the Contractor, subject to normal wear and tear, and the Contractor shall be liable to compensate the United Nations for the actual costs of any loss of, damage to, or degradation of the equipment that is beyond normal wear and tear.
9. **COPYRIGHT, PATENTS AND OTHER PROPRIETARY RIGHTS:**
- 9.1 Except as is otherwise expressly provided in writing in the Contract, the United Nations shall be entitled to all intellectual property and other proprietary rights including, but not limited to, patents, copyrights, and trademarks, with regard to products, processes, inventions, ideas, know-how, or documents and other materials which the Contractor has developed for the United Nations under the Contract and which bear a direct relation to or are produced or prepared or collected in consequence of, or during the course of, the performance of the Contract. The Contractor acknowledges and agrees that such products, documents and other materials constitute works made for hire for the United Nations.
- 9.2 To the extent that any such intellectual property or other proprietary rights consist of any intellectual property or other proprietary rights of the Contractor: (i) that pre-existed the performance by the Contractor of its obligations under the Contract, or (ii) that the Contractor may develop or acquire, or may have developed or acquired, independently of the performance of its obligations under the Contract, the United Nations does not and shall not claim any ownership interest thereto, and the Contractor grants to the United Nations a perpetual license to use such intellectual property or other proprietary right solely for the purposes of and in accordance with the requirements of the Contract.
- 9.3 At the request of the United Nations, the Contractor shall take all necessary steps, execute all necessary documents and generally assist in securing such proprietary rights and transferring or licensing them to the United Nations in compliance with the requirements of the applicable law and of the Contract.
- 9.4 Subject to the foregoing provisions, all maps, drawings, photographs, mosaics, plans, reports, estimates, recommendations, documents, and all other data compiled by or received by the Contractor under the Contract shall be the property of the United Nations, shall be made available for use or inspection by the United Nations at reasonable times and in reasonable places, shall be treated as confidential, and shall be delivered only to United Nations authorized officials on completion of work under the Contract.
10. **PUBLICITY, AND USE OF THE NAME, EMBLEM OR OFFICIAL SEAL OF THE UNITED NATIONS:** The Contractor shall not advertise or otherwise make public for purposes of commercial advantage or goodwill that it has a contractual relationship with the United Nations, nor shall the Contractor, in any manner whatsoever use the name, emblem or official seal of the United Nations, or any abbreviation of the name of the United Nations in connection with its business or otherwise without the written permission the United Nations.
11. **CONFIDENTIAL NATURE OF DOCUMENTS AND INFORMATION:** Information and data that is considered proprietary by either Party or that is delivered or disclosed by one Party ("Discloser") to the other Party ("Recipient") during the course of performance of the Contract, and that is designated as confidential ("Information"), shall be held in



confidence by that Party and shall be handled as follows:

11.1 The Recipient shall:

11.1.1 use the same care and discretion to avoid disclosure, publication or dissemination of the Discloser's Information as it uses with its own similar Information that it does not wish to disclose, publish or disseminate; and,

11.1.2 use the Discloser's Information solely for the purpose for which it was disclosed.

11.2 Provided that the Recipient has a written agreement with the following persons or entities requiring them to treat the Information confidential in accordance with the Contract and this Article 11, the Recipient may disclose Information to:

11.2.1 any other party with the Discloser's prior written consent; and,

11.2.2 the Recipient's employees, officials, representatives and agents who have a need to know such Information for purposes of performing obligations under the Contract, and employees officials, representatives and agents of any legal entity that it controls, controls it, or with which it is under common control, who have a need to know such Information for purposes of performing obligations under the Contract, provided that, for these purposes a controlled legal entity means:

11.2.2.1 a corporate entity in which the Party owns or otherwise controls, whether directly or indirectly, over fifty percent (50%) of voting shares thereof; or,

11.2.2.2 any entity over which the Party exercises effective managerial control; or,

11.2.2.3 for the United Nations, a principal or subsidiary organ of the United Nations established in accordance with the Charter of the United Nations.

11.3 The Contractor may disclose Information to the extent required by law, provided that, subject to and without any waiver of the privileges and immunities of the United Nations, the Contractor will give the United Nations sufficient prior notice of a request for the disclosure of Information in order to allow the United Nations to have a reasonable opportunity to take protective measures or such other action as may be appropriate before any such disclosure is made.

11.4 The United Nations may disclose Information to the extent as required pursuant to the Charter of the United Nations, or pursuant to resolutions or regulations of the General Assembly or rules promulgated thereunder.

11.5 The Recipient shall not be precluded from disclosing Information that is obtained by the Recipient from a third party without restriction, is disclosed by the Discloser to a third party without any obligation of confidentiality, is previously known by the Recipient, or at any time is developed by the Recipient completely independently of any disclosures hereunder.

11.6 These obligations and restrictions of confidentiality shall be effective during the term of the Contract, including any extension thereof, and, unless otherwise provided in the Contract, shall remain effective following any termination of the Contract.

12. FORCE MAJEURE; OTHER CHANGES IN CONDITIONS:

12.1 In the event of and as soon as possible after the occurrence of any cause constituting *force majeure*, the affected Party shall give notice and full particulars in writing to the other Party, of such occurrence or cause if the affected Party is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under the Contract. The affected Party shall also notify the other Party of any other changes in condition or the occurrence of any event which interferes or threatens to interfere with its performance of the Contract. Not more than fifteen (15) days following the provision of such notice of *force majeure* or other changes in condition or occurrence, the affected Party shall also submit a statement to the other Party of estimated expenditures that will likely be incurred for the duration of the change in condition or the event of *force majeure*. On receipt of the notice or notices required hereunder, the Party not affected by the occurrence of a cause constituting *force majeure* shall take such action as it reasonably considers to be appropriate or necessary in the circumstances, including the granting to the affected Party of a reasonable extension of time in which to perform any obligations under the Contract.

12.2 If the Contractor is rendered unable, wholly or in part, by reason of *force majeure* to perform its obligations and



meet its responsibilities under the Contract, the United Nations shall have the right to suspend or terminate the Contract on the same terms and conditions as are provided for in Article 13, "Termination," except that the period of notice shall be seven (7) days instead of thirty (30) days. In any case, the United Nations shall be entitled to consider the Contractor permanently unable to perform its obligations under the Contract in case the Contractor is unable to perform its obligations, wholly or in part, by reason of *force majeure* for any period in excess of ninety (90) days.

- 12.3 *Force majeure* as used herein means any unforeseeable and irresistible act of nature, any act of war (whether declared or not), invasion, revolution, insurrection, terrorism, or any other acts of a similar nature or force, *provided that* such acts arise from causes beyond the control and without the fault or negligence of the Contractor. The Contractor acknowledges and agrees that, with respect to any obligations under the Contract that the Contractor must perform in areas in which the United Nations is engaged in, preparing to engage in, or disengaging from any peacekeeping, humanitarian or similar operations, any delays or failure to perform such obligations arising from or relating to harsh conditions within such areas, or to any incidents of civil unrest occurring in such areas, shall not, in and of itself, constitute *force majeure* under the Contract.

13. TERMINATION:

- 13.1 Either Party may terminate the Contract for cause, in whole or in part, upon thirty (30) day's notice, in writing, to the other Party. The initiation of conciliation or arbitral proceedings in accordance with Article 16 "Settlement of Disputes," below, shall not be deemed to be a "cause" for or otherwise to be in itself a termination of the Contract.
- 13.2 The United Nations may terminate the Contract at any time by providing written notice to the Contractor in any case in which the mandate of the United Nations applicable to the performance of the Contract or the funding of the United Nations applicable to the Contract is curtailed or terminated, whether in whole or in part. In addition, unless otherwise provided by the Contract, upon sixty (60) day's advance written notice to the Contractor, the United Nations may terminate the Contract without having to provide any justification therefor.
- 13.3 In the event of any termination of the Contract, upon receipt of notice of termination that has been issued by the United Nations, the Contractor shall, except as may be directed by the United Nations in the notice of termination or otherwise in writing:
- 13.3.1 take immediate steps to bring the performance of any obligations under the Contract to a close in a prompt and orderly manner, and in doing so, reduce expenses to a minimum;
 - 13.3.2 refrain from undertaking any further or additional commitments under the Contract as of and following the date of receipt of such notice;
 - 13.3.3 place no further subcontracts or orders for materials, services, or facilities, except as the United Nations and the Contractor agree in writing are necessary to complete any portion of the Contract that is not terminated;
 - 13.3.4 terminate all subcontracts or orders to the extent they relate to the portion of the Contract terminated;
 - 13.3.5 transfer title and deliver to the United Nations the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the portion of the Contract terminated;
 - 13.3.6 deliver all completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to the United Nations thereunder;
 - 13.3.7 complete performance of the work not terminated; and,
 - 13.3.8 take any other action that may be necessary, or that the United Nations may direct in writing, for the minimization of losses and for the protection and preservation of any property, whether tangible or intangible, related to the Contract that is in the possession of the Contractor and in which the United Nations has or may be reasonably expected to acquire an interest.
- 13.4 In the event of any termination of the Contract, the United Nations shall be entitled to obtain reasonable written accountings from the Contractor concerning all obligations performed or pending in accordance with the Contract. In addition, the United Nations shall not be liable to pay the Contractor except for those goods delivered and services provided to the United Nations in accordance with the requirements of the Contract, but only if such goods or services were ordered, requested or otherwise provided prior to the Contractor's receipt of notice of



termination from the United Nations or prior to the Contractor's tendering of notice of termination to the United Nations.

13.5 The United Nations may, without prejudice to any other right or remedy available to it, terminate the Contract forthwith in the event that:

13.5.1 the Contractor is adjudged bankrupt, or is liquidated, or becomes insolvent, or applies for a moratorium or stay on any payment or repayment obligations, or applies to be declared insolvent;

13.5.2 the Contractor is granted a moratorium or a stay, or is declared insolvent;

13.5.3 the Contractor makes an assignment for the benefit of one or more of its creditors;

13.5.4 a Receiver is appointed on account of the insolvency of the Contractor;

13.5.5 the Contractor offers a settlement in lieu of bankruptcy or receivership; *or*,

13.5.6 the United Nations reasonably determines that the Contractor has become subject to a materially adverse change in its financial condition that threatens to substantially affect the ability of the Contractor to perform any of its obligations under the Contract.

13.6 Except as prohibited by law, the Contractor shall be bound to compensate the United Nations for all damages and costs, including, but not limited to, all costs incurred by the United Nations in any legal or non-legal proceedings, as a result of any of the events specified in Article 13.5, above, and resulting from or relating to a termination of the Contract, even if the Contractor is adjudged bankrupt, or is granted a moratorium or stay or is declared insolvent. The Contractor shall immediately inform the United Nations of the occurrence of any of the events specified in Article 13.5, above, and shall provide the United Nations with any information pertinent thereto.

13.7 The provisions of this Article 13 are without prejudice to any other rights or remedies of the United Nations under the Contract or otherwise.

14. **NON-WAIVER OF RIGHTS:** The failure by either Party to exercise any rights available to it, whether under the Contract or otherwise, shall not be deemed for any purposes to constitute a waiver by the other Party of any such right or any remedy associated therewith, and shall not relieve the Parties of any of their obligations under the Contract.

15. **NON-EXCLUSIVITY:** Unless otherwise specified in the Contract, the United Nations shall have no obligation to purchase any minimum quantities of goods or services from the Contractor, and the United Nations shall have no limitation on its right to obtain goods or services of the same kind, quality and quantity described in the Contract, from any other source at any time.

16. **SETTLEMENT OF DISPUTES:**

16.1 **AMICABLE SETTLEMENT:** The Parties shall use their best efforts to amicably settle any dispute, controversy, or claim arising out of the Contract or the breach, termination, or invalidity thereof. Where the Parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the Conciliation Rules then obtaining of the United Nations Commission on International Trade Law ("UNCITRAL"), or according to such other procedure as may be agreed between the Parties in writing.

16.2 **ARBITRATION:** Any dispute, controversy, or claim between the Parties arising out of the Contract or the breach, termination, or invalidity thereof, unless settled amicably under Article 16.1, above, within sixty (60) days after receipt by one Party of the other Party's written request for such amicable settlement, shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining. The decisions of the arbitral tribunal shall be based on general principles of international commercial law. The arbitral tribunal shall be empowered to order the return or destruction of goods or any property, whether tangible or intangible, or of any confidential information provided under the Contract, order the termination of the Contract, or order that any other protective measures be taken with respect to the goods, services or any other property, whether tangible or intangible, or of any confidential information provided under the Contract, as appropriate, all in accordance with the authority of the arbitral tribunal pursuant to Article 26 ("Interim measures") and Article 34 ("Form and effect of the award") of the UNCITRAL Arbitration Rules. The arbitral tribunal shall have no authority to award punitive damages. In addition, unless otherwise expressly provided in the Contract, the arbitral tribunal shall have no authority to award interest in excess of the London Inter-Bank Offered Rate ("LIBOR") then prevailing, and any such interest shall be simple interest only. The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy, or claim.



17. **PRIVILEGES AND IMMUNITIES:** Nothing in or relating to the Contract shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs.

18. **TAX EXEMPTION:**

18.1 Article II, Section 7, of the Convention on the Privileges and Immunities of the United Nations provides, *inter alia*, that the United Nations, including its subsidiary organs, is exempt from all direct taxes, except charges for public utility services, and is exempt from customs restrictions, duties, and charges of a similar nature in respect of articles imported or exported for its official use. In the event any governmental authority refuses to recognize the exemptions of the United Nations from such taxes, restrictions, duties, or charges, the Contractor shall immediately consult with the United Nations to determine a mutually acceptable procedure.

18.2 The Contractor authorizes the United Nations to deduct from the Contractor's invoices any amount representing such taxes, duties or charges, unless the Contractor has consulted with the United Nations before the payment thereof and the United Nations has, in each instance, specifically authorized the Contractor to pay such taxes, duties, or charges under written protest. In that event, the Contractor shall provide the United Nations with written evidence that payment of such taxes, duties or charges has been made and appropriately authorized, and the United Nations shall reimburse the Contractor for any such taxes, duties, or charges so authorized by the United Nations and paid by the Contractor under written protest.

19. **MODIFICATIONS:**

19.1 Pursuant to the Financial Regulations and Rules of the United Nations, only the Chief of the United Nations Procurement Division, or such other Contracting authority as the United Nations has made known to the Contractor in writing, possesses the authority to agree on behalf of the United Nations to any modification or change in the Contract, to a waiver of any of its provisions or to any additional contractual relationship of any kind with the Contractor. Accordingly, no modification or change in the Contract shall be valid and enforceable against the United Nations unless provided by a valid written amendment to the Contract signed by the Contractor and the Chief of the United Nations Procurement Division or such other contracting authority.

19.2 If the Contract shall be extended for additional periods in accordance with the terms and conditions of the Contract, the terms and conditions applicable to any such extended term of the Contract shall be the same terms and conditions as set forth in the Contract, unless the Parties shall have agreed otherwise pursuant to a valid amendment concluded in accordance with Article 19.1, above.

19.3 The terms or conditions of any supplemental undertakings, licenses, or other forms of agreement concerning any goods or services provided under the Contract shall not be valid and enforceable against the United Nations nor in any way shall constitute an agreement by the United Nations thereto unless any such undertakings, licenses or other forms are the subject of a valid amendment concluded in accordance with Article 19.1, above.

20. **AUDITS AND INVESTIGATIONS:**

20.1 Each invoice paid by the United Nations shall be subject to a post-payment audit by auditors, whether internal or external, of the United Nations or by other authorized and qualified agents of the United Nations at any time during the term of the Contract and for a period of three (3) years following the expiration or prior termination of the Contract. The United Nations shall be entitled to a refund from the Contractor for any amounts shown by such audits to have been paid by the United Nations other than in accordance with the terms and conditions of the Contract.

20.2 The United Nations may conduct investigations relating to any aspect of the Contract or the award thereof, the obligations performed under the Contract, and the operations of the Contractor generally relating to performance of the Contract at any time during the term of the Contract and for a period of three (3) years following the expiration or prior termination of the Contract.

20.3 The Contractor shall provide its full and timely cooperation with any such inspections, post-payment audits or investigations. Such cooperation shall include, but shall not be limited to, the Contractor's obligation to make available its personnel and any relevant documentation for such purposes at reasonable times and on reasonable conditions and to grant to the United Nations access to the Contractor's premises at reasonable times and on reasonable conditions in connection with such access to the Contractor's personnel and relevant documentation. The Contractor shall require its agents, including, but not limited to, the Contractor's attorneys, accountants or other advisers, to reasonably cooperate with any inspections, post-payment audits or investigations carried out by



the United Nations hereunder.

21. **LIMITATION ON ACTIONS:**

- 21.1 Except with respect to any indemnification obligations in Article 5, above, or as are otherwise set forth in the Contract, any arbitral proceedings in accordance with Article 16.2, above, arising out of the Contract must be commenced within three years after the cause of action has accrued.
- 21.2 The Parties further acknowledge and agree that, for these purposes, a cause of action shall accrue when the breach actually occurs, or, in the case of latent defects, when the injured Party knew or should have known all of the essential elements of the cause of action, or in the case of a breach of warranty, when tender of delivery is made, except that, if a warranty extends to future performance of the goods or any process or system and the discovery of the breach consequently must await the time when such goods or other process or system is ready to perform in accordance with the requirements of the Contract, the cause of action accrues when such time of future performance actually begins.

22. **ESSENTIAL TERMS:** The Contractor acknowledges and agrees that each of the provisions in Articles 23 to 28 hereof constitutes an essential term of the Contract and that any breach of any of these provisions shall entitle the United Nations to terminate the Contract or any other contract with the United Nations immediately upon notice to the Contractor, without any liability for termination charges or any other liability of any kind.

23. **SOURCE OF INSTRUCTIONS:** The Contractor shall neither seek nor accept instructions from any authority external to the United Nations in connection with the performance of its obligations under the Contract. Should any authority external to the United Nations seek to impose any instructions concerning or restrictions on the Contractor's performance under the Contract, the Contractor shall promptly notify the United Nations and provide all reasonable assistance required by the United Nations. The Contractor shall not take any action in respect of the performance of its obligations under the Contract that may adversely affect the interests of the United Nations, and the Contractor shall perform its obligations under the Contract with the fullest regard to the interests of the United Nations.

24. **OFFICIALS NOT TO BENEFIT:** The Contractor warrants that it has not and shall not offer to any representative, official, employee, or other agent of the United Nations any direct or indirect benefit arising from or related to the performance of the Contract or of any other contract with the United Nations or the award thereof or for any other purpose intended to gain an advantage for the Contractor.

25. **OBSERVANCE OF THE LAW:** The Contractor shall comply with all laws, ordinances, rules, and regulations bearing upon the performance of its obligations under the Contract. In addition, the Contractor shall maintain compliance with all obligations relating to its registration as a qualified vendor of goods or services to the United Nations, as such obligations are set forth in the United Nations vendor registration procedures.

26. **CHILD LABOR:** The Contractor represents and warrants that neither it, its parent entities (if any), nor any of the Contractor's subsidiary or affiliated entities (if any) is engaged in any practice inconsistent with the rights set forth in the Convention on the Rights of the Child, including Article 32 thereof, which, *inter alia*, requires that a child shall be protected from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development.

27. **MINES:** The Contractor represents and warrants that neither it, its parent entities (if any), nor any of the Contractor's subsidiaries or affiliated entities (if any) is engaged in the sale or manufacture of anti-personnel mines or components utilized in the manufacture of anti-personnel mines.

28. **SEXUAL EXPLOITATION:**

- 28.1 The Contractor shall take all appropriate measures to prevent sexual exploitation or abuse of anyone by its employees or any other persons engaged and controlled by the Contractor to perform any services under the Contract. For these purposes, sexual activity with any person less than eighteen years of age, regardless of any laws relating to consent, shall constitute the sexual exploitation and abuse of such person. In addition, the Contractor shall refrain from, and shall take all reasonable and appropriate measures to prohibit its employees or other persons engaged and controlled by it from exchanging any money, goods, services, or other things of value, for sexual favors or activities, or from engaging any sexual activities that are exploitive or degrading to any person.
- 28.2 The United Nations shall not apply the foregoing standard relating to age in any case in which the Contractor's personnel or any other person who may be engaged by the Contractor to perform any services under the Contract is married to the person less than the age of eighteen years with whom sexual activity has occurred and in which

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such marriage is recognized as valid under the laws of the country of citizenship of such Contractor's personnel or such other person who may be engaged by the Contractor to perform any services under the Contract.

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ANNEX B

**DESCRIPTION OF
SERVICES (THE “SCOPE
OF SERVICES”)**

ANNEX C**PRICE SCHEDULE**

ITEM	COST	PERIOD	[Insert first Aircraft registration]	[Insert Optional Aircraft registration]
			[Insert Main Operations Base of first Aircraft]	[Insert Main Operations Base of Optional Aircraft]
A	ONE TIME COSTS			
A1	Positioning Costs		[]	[]
A2	Depositioning Costs		[]	[]
A3	Painting Costs		[]	[]
	Total A = A-1 + A-2 + A-3		[]	[]
B	ANNUAL COSTS			
	Annual Operating Costs for Aircraft	1 st year 2 nd year [3 rd year]	Annual [] [] []	Daily [] [] []
	Annual Operating Costs for Crew	1 st year 2 nd year [3 rd year]	Annual [] [] []	Daily [] [] []
	Crew Transportation Costs	1 st year 2 nd year [3 rd year]	Annual [] [] []	Daily [] [] []
	Crew Accommodation Costs	1 st year 2 nd year [3 rd year]	Annual [] [] []	Daily [] [] []
	Crew Meal Costs	1 st year 2 nd year [3 rd year]	Annual [] [] []	Daily [] [] []
	Total	1 st year 2 nd year [3 rd year]	Annual [] [] []	Annual [] [] []
C	FLIGHT HOURS COST			
C1	Estimated Flight Hours	1 st year 2 nd year [3 rd year]	[] [] []	[] [] []
C2	Cost per Flight Hour	1 st year	[]	[]

		2 nd year 3 rd year		
	Total Flight Hours Cost $C = C1 * C2$	1 st year 2 nd year 3 rd year		
D	<i>SUBTOTAL</i> $D = A + B + C$	1 st year 2 nd year 3 rd year		
E	<i>AGREEMENT TERM TOTAL</i>	1 st year 2 nd year		
F	<i>TERM TOTAL</i>	1 st year 2 nd year 3 rd year		

ANNEX D
FORM OF INDEPENDENT BANK GUARANTEE

[Bank Stationery]

[Date]

Procurement Division
United Nations
405 East 42nd Street
U.S.A.
Attn: Director, Procurement Division
“Beneficiary”

[Name of Operator]
[Address of Operator]
“Principal”

Reference: Our Guarantee No.
For

Dear Sirs and Madams:

1. At the request of [name of the Operator], we, as Guarantor, hereby undertake to pay to you, the Beneficiary, or your accredited representative on first written demand the sum of [currency][amount in words and figures] or such lesser sum of money as you may by such written demand require to be paid accompanied by your written statement that the Principal identified above is in breach of its obligations under the contract identified in paragraph 2, without the need to specify the respect in which the Principal is in breach. Such statement shall be conclusive evidence of your entitlement to payment in the amount demanded, up to the amount of this Guarantee. The amount of this guarantee is [currency][amount in words and figures].
2. The Beneficiary and the Principal have entered into a contract [insert contract number], dated [date], for the provision of air transportation services by the Principal in support of the following UN peacekeeping or political mission: [insert](the “Contract”).
3. This Guarantee shall remain valid until [[insert date that is between 60 and 180 days after the end of the Agreement Term of the Contract] or [insert date that is between 60 and 180 days after the end of the Extended Term of the Contract, if any]]. It is understood that written demand for payment under this Guarantee must be received by the Issuer not later than the expiration of this Guarantee.
4. Subject to paragraph 5, below, this Guarantee is governed by the Uniform Rules for Demand Guarantees, ICC Publication No. 758. The supporting statement under Article 15(a) thereof is excluded.
5. Nothing herein or related hereto: (i) shall be deemed a waiver or any agreement to waive any of the privileges and immunities of the United Nations, or (ii) shall be interpreted or applied in a manner inconsistent with such privileges and immunities.

Yours faithfully,

For and on behalf of [name of issuer bank]

..... {Bank’s Official Seal}

Name:

Title:

FORM OF STANDBY LETTER OF CREDIT

DATE: [_____]

BENEFICIARY: UNITED NATIONS,
UNITED NATIONS HEADQUARTERS
NEW YORK, NY

IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER: [.....]

1. AT THE REQUEST AND FOR THE ACCOUNT OF [NAME OF OPERATOR] ("APPLICANT"), WE HEREBY ISSUE OUR IRREVOCABLE DOCUMENTARY CREDIT IN YOUR FAVOR IN THE AGGREGATE AMOUNT OF [CURRENCY][NUMBER IN WORDS AND FIGURES], EFFECTIVE IMMEDIATELY, WHICH SHALL BE AVAILABLE BY SIGHT DRAFT OR DRAFTS PRESENTED AT OUR OFFICE AT [ADDRESS IN NEW YORK], NEW YORK, NEW YORK, WHEN ACCOMPANIED BY YOUR SIGNED AND DATED STATEMENT WORDED SUBSTANTIALLY AS FOLLOWS:

"THE UNDERSIGNED REPRESENTATIVE OF THE UNITED NATIONS ("BENEFICIARY") REPRESENTS THAT THE BENEFICIARY IS ENTITLED TO DRAW UPON THE REFERENCED LETTER OF CREDIT IN THE AGGREGATE AMOUNT OF [CURRENCY][NUMBER IN WORDS AND FIGURES]."
2. WE HEREBY ENGAGE TO HONOR YOUR DRAFTS WHEN PRESENTED IN ACCORDANCE WITH THE TERMS OF THIS CREDIT.
3. PARTIAL DRAWINGS ARE PERMITTED. THIS LETTER OF CREDIT MAY BE DRAWN DOWN IN MULTIPLE DRAFTS.
4. THIS LETTER OF CREDIT IS GOVERNED BY THE INTERNATIONAL STANDBY PRACTICES (ISP98), ICC DOCUMENT NO. 590.
5. THIS LETTER OF CREDIT EXPIRES WITH OUR CLOSE OF BUSINESS ON [INSERT DATE THAT IS BETWEEN 60 AND 180 DAYS AFTER THE END OF THE AGREEMENT TERM OF THE CONTRACT]./[IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT SHALL BE AUTOMATICALLY EXTENDED, WITHOUT AMENDMENT EXCEPT AS TO THE EXTENDED EXPIRATION DATE, FOR SUCCESSIVE [TWELVE MONTH] PERIODS (AND A FINAL EXTENSION PERIOD THAT MAY BE LESS THAN TWELVE MONTHS) UP TO AND INCLUDING [INSERT DATE THAT IS BETWEEN 60 AND 180 DAYS AFTER THE END OF THE EXTENDED TERM OF THE CONTRACT, IF ANY]. WE HEREBY AGREE TO GIVE YOU WRITTEN NOTICE OF SUCH EXTENSIONS IN WRITING NOT LATER THAN THE (30TH) THIRTIETH DAY PRECEDING ANY DATE ON WHICH THIS LETTER OF CREDIT WOULD OTHERWISE EXPIRE, AND ON OR BEFORE THE SAME DATE OF EACH YEAR THEREAFTER DURING THE TERM HEREOF. IF FOR ANY REASON WE DETERMINE THAT THIS LETTER OF CREDIT SHALL NOT BE EXTENDED, WE HEREBY AGREE TO SEND YOU WRITTEN NOTICE THEREOF IN WRITING BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AT LEAST THIRTY (30) DAYS PRIOR TO THE EXPIRATION DATE. IN THE EVENT THIS CREDIT IS NOT EXTENDED FOR AN ADDITIONAL PERIOD AS PROVIDED ABOVE, YOU MAY DRAW UP TO THE FULL BALANCE HEREUNDER.]
6. SUCH DRAWING IS TO BE MADE BY MEANS OF A DRAFT ON US AT SIGHT, WHICH MUST BE PRESENTED TO US BEFORE THE THEN EXPIRATION DATE OF THIS LETTER OF CREDIT.
7. THIS LETTER OF CREDIT CANNOT BE MODIFIED OR REVOKED WITHOUT YOUR WRITTEN CONSENT.
8. YOUR RIGHTS UNDER THIS LETTER OF CREDIT SHALL BE PERFORMED STRICTLY IN ACCORDANCE WITH THE TERMS OF THIS CREDIT, IRRESPECTIVE OF ANY LACK OF VALIDITY OR UNENFORCEABILITY OF THE CONTRACT OR THE EXISTANCE OF ANY CLAIM, SET-OFF, DEFENSE OR ANY OTHER RIGHTS WHICH THE APPLICANT MAY HAVE AGAINST YOURSELVES. YOUR RIGHTS UNDER THIS CREDIT SHALL BE ENFORCEABLE WITHOUT THE NEED TO HAVE RECOURSE TO ANY JUDICIAL OR ARBITRAL PROCEEDINGS. ANY OBLIGATIONS HEREUNDER SHALL BE FULFILLED BY US WITHOUT ANY OBJECTION, OPPOSITION OR RECOURSE

9. THIS CREDIT IS NOT TRANSFERABLE OR ASSIGNABLE IN ANY RESPECT OR BY ANY MEANS WHATSOEVER.
10. NOTHING HEREIN OR RELATED HERETO: (I) SHALL BE DEEMED A WAIVER OR AN AGREEMENT TO WAIVE ANY OF THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS, OR (II) SHALL BE INTERPRETED OR APPLIED IN A MANNER INCONSISTENT WITH SUCH PRIVILEGES AND IMMUNITIES.

Yours faithfully,

For and on behalf of [name of issuer bank]

.....

{Bank's Official Seal}

Name:

Title:

ANNEX E

AIRCRAFT CONFIGURATION

ANNEX F

UN AIRCRAFT MARKINGS

ANNEX G

AIRCRAFT MEDICAL KIT REQUIREMENTS