

## AGREEMENT

This agreement is between United Nations World Food Programme (hereafter referred to as “WFP”) and

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(hereafter referred to as the “Agency”). This agreement limited to humanitarian agencies working in South Sudan defines a modality hereinafter referred to as “Targeted Aircraft Funding” (TAF). This agreement is administered by WFP aviation section hereafter referred to as UN Humanitarian Air Service (UNHAS)

### 1. Objective

1.1 The humanitarian Agencies in South Sudan have expressed their continued need of air support for which the Agencies’ donors or Agencies themselves have resources. WFP through UNHAS provides this support as regular passenger services, air-drops of bulk cargo, delivery by air of specialised cargo and chartering aircraft for fly into, out from and within southern Sudan.

1.2 WFP has developed substantial air transport capacity to move passengers and cargo, perform air-drops and air-lifts of relief/humanitarian items as well as airstrip maintenance (special operations), agency personnel movement control and air operations related support services. WFP has expressed interest to support other implementing Agencies in transporting passengers, relief items and equipment by air and providing cargo handling, booking and scheduling services.

1.3 The purpose of this document is to outline and define the policy and conditions upon which WFP will provide air transport and related support to the Agency. These include provision of passenger transport with accompanied and unaccompanied baggage, aircraft cargo space, handling and preparation of cargo, arrangements cost recovery, rates and terms of payment, ground support services, handling of prepayments, booking, scheduling, routing and consolidation of passenger movements and chartered flights. This agreement does not include rates, these are subject to change and will be circulated to all humanitarian Agencies regularly as well as they will be available to Agencies representatives in Juba/Rumbek/Lokichogio.

1.4 This Agreement is valid for 12 months from the date of signature by WFP and the Agency. With the mutual consent of both parties, WFP and the Agency may extend this Agreement for a further period acceptable for both and may be terminated by mutual exchange of letters. The parties, for the mutual consideration herein set forth, agree as follows:

### 2. Obligations of the Agency

2.1 Passenger and Cargo plans: The Agency will submit projections of their movement needs as a three months’ projection to enable cost effective planning and contracting of aircraft for TAF. Lack of will give UNHAS sole responsibility in determination of fleet size and composition.

The Agency will submit a statement of its projected movement and transportation needs to UNHAS Air Operations Office in Juba/Loki by the second Wednesday of each month prior to the month of planned movement. The Agency will support this statement of intent by advance payment or deposit. The information requested from the Agency must include:

- \* by location;
- \* number of passengers
- \* amount of cargo for small aircraft
- \* amount and type of cargo to be airlifted
- \* amount of and type of cargo to be airdropped

2.2 Hire of aircraft: The aircraft are contracted for a minimum block hours per month. If the requested movements are not effected, there is a possibility, that more aircraft are hired than required. The Agency is responsible for covering any such costs resulting of their over-projection; this will be in proportion of the type of aircraft they requested but did not utilise as stated.

2.3 Prepayment: The agency will pay in advance all flights and services rendered by UNHAS. The Agency will solicit funding from its donor(s) or other resources and arrange transfer of funds to WFP accounts either in Khartoum, Juba, Rumbek, Lokichogio, Nairobi or alternatively WFP Rome. The Agency will advise UNHAS Air Operations office in Juba of the quantity, nature - and the possible conditions limiting the use of – these prepayments.

The prepayment may be received as:

- \* lump-sum payment for several months planned movements (especially passenger movements)
- \* deposit for month's movements (when Agency has large quantities of regular cargo of large passenger movements)
- \* prepayment for specified charter flight or flights

In each case, the prepayment is an estimate of expected movements; final costing is based on actual flights and services rendered.

2.4 Scheduling of passengers and cargo on flights: After the planning and preparatory measures mentioned above are taken, the Agency "focal point" will approach UNHAS Office in Juba, Lokichogio to schedule the movement of their passengers and cargo. The following activities will take place in Lokichogio:

2.5 Pre-flight activities: The Agency "focal point" will ensure that the passengers are present and cargo available and in such condition, that the flights can commence without hindrance or delay. The Agency will contact WFP Flight office in Juba/Lokichogio and inform about the status of passengers and cargo to be flown.

For passenger movements: The Agency will ensure, that its passengers have appropriate visas, documentation and clearance. Accompanying baggage as well as all cargo on small aircraft is subject to weighing and measuring either during departure from or upon arrival to Juba/Lokichogio. The Agency "focal point" is liable to giving 72 hours notice in amending flights and, if flights are cancelled 24 hours prior to flight, the Agency may be charged for no-show.

For cargo: The Agency will deliver the goods to a store or handling area as designated by WFP Flight Office in Lokichogio at least 72 hours prior to Estimated Time of Departure (ETD) to allow for preparation of cargo, consolidation and application of flight clearances. Only cargo, which properly customs declared, cleared and documented, will be accepted on board a UNHAS aircraft.

2.6. Handling and Packaging: The agency "focal point" will provide the cargo for airlift in appropriate packaging with markings/labels identifying consignment, agency, destination, and consignee. For rebagging airdrop cargo, the agency may be requested to provide – at their own cost - outer bags with appropriate markings.

2.7 Cargo and documentation: The Agency "focal point" will provide an Agency specific Waybill (release note) for its cargo. These documents must specify the Agency, consignor (payee) of the consignment as well as define the cargo, related to the transport including manifests and airway-bills. Lack of may lead to non-acceptance of cargo.

The Agency is responsible for customs/immigration clearance of passengers and parcels they book as well as customs clearance of the cargo. The Agency will provide UNHAS with the customs documents of the cargo upon delivery to WFP custody (usually form C-64) at the designated WFP warehouse or at least 72 hours prior to Estimated Time of Departure (ETD) for cargo transported from Kenya. The Agency undertakes full and sole responsibility for the payment of all taxes and duties including any other charges of a public nature which are or may be assessed by concerned government authorities against the cargo and other parts of the Agency's property wherever it is located.

2.8 Movement of passengers and cargo: The Agency or their designated recipient will receive, certify, off-load and handle the passengers, their baggage and all cargo at the destination. For air-dropped cargo, the Agency will provide two of its staff members to work under the guidance of the WFP Airdrop Team and ensure crowd control in the drop zones. The Agency representative in Lokichogio may be requested to certify the results of the air-drop after it has been effected. The Agency may be requested to train and equip personnel from its own ranks to conduct or support air-drops or reception of passengers and cargo.

2.9 Other considerations: The Agency, where applicable, may be required to provide general weather condition reports to Lokichogio two hours before the particular flight is scheduled to depart and advise of any significant changes thereafter. The Agency may be held liable to cover costs of an aborted or re-routed flight resulting of wrong or inaccurate weather report.

### **3. Obligations of WFP**

3.1 Passenger and Cargo plans: UNHAS Flight Office will compile all submissions from Agencies for a TAF Projection meeting which usually convenes – as invited by WFP – on the second Friday of each Month in Nairobi, or as required. The TAF Projection meeting consists of WFP, UNICEF and Humanitarian NGO Consortium members and will approve the planned passenger and cargo movements, prioritise or cancel cargo at its discretion and provide advise and instruction to the Lokichogio weekly TAF Prioritisation meetings.

An Air Transport Group will be constituted chaired by the DRHC, and attended by UNHAS, UNJLC, WFP, two major UN users, three major NGO users. The group can co-opt more members as deem necessary. It may meet not less than once a month.

3.2 Hire of Aircraft: WFP/UNHAS will hire different types of aircraft based on confirmed and paid for movement requests submitted by the Agencies.

3.3 Prepayment: WFP/UNHAS will issue and revise price lists indicating the costing of flights and services, these include:

- \* aircraft block hour rates for both passenger and cargo aircraft full charters
- \* passenger and baggage rates by Nautical Miles to locations in South Sudan
- \* cargo handling and material costs related to airlift and airdrop operations
- \* other costs pertaining to Targeted Aircraft Funding

WFP/UNHAS will advise the Agency in estimating their expenditure and budgeting their flights. UNHAS Flight Office in Juba/Nairobi will provide estimates on pro-forma invoices for aircraft charters.

UNHAS Flight Office in Juba/Nairobi will receive information of all prepayments issued by the Agency and maintain them on account ledger.

UNHAS Flight Office in Juba/Nairobi will forward the monthly statements of the Agencies planned movements, as well as information of the Agency's prepayments to UNHAS Flight office in Juba/Lokichogio, which maintains subsidiary ledgers for the Agency on their account balance and flight scheduling.

3.4 Scheduling of passengers and cargo on flights: UNHAS Flight Office on Lokichogio will schedule the Agency's flights and consolidate passengers and cargo to ensure a high rate of aircraft utilisation. A regular/fixed schedule for passengers service may be developed to improve service provision.

WFP will host a weekly TAF Prioritisation meeting in Lokichogio. This meeting consists of WFP, UNICEF and OLS Agencies and decides on issues pertaining to prioritisation of passenger routes and cargo movements. This meeting will endorse the planned movements for the coming month and disseminate information of planned flights, Agencies' payment status and operational information pertaining to TAF.

### 3.5 Pre-flight activities:

UNHAS Flight Office on Lokichogio prepares flight plans and manifests and applies for necessary flight clearances. UNHAS will consolidate the aircraft for passengers, accompanied and other baggage as well as cargo. Where possible, partial loads of different agencies will be combined to ensure full aircraft loads, good logistics practice and adherence to delivery schedules. Where cargo of different agencies is consolidated and possibly re-routed, UNHAS will cost the agencies' movements proportionately to the cargo carried and distances covered to ensure fair costing. This costing will take into consideration both bulk and weight of the cargo. UNHAS will also advise Agency of timing of flights and matter pertaining to handling of cargo.

UNHAS Flight Office in Lokichogio will issue flight tickets to passengers and baggage prior to the flights.

3.6 Handling and packaging: UNHAS Flight Office in Lokichogio will receive the Agency's cargo. UNHAS will provide apron services, handling and loading facilities, equipment and staff to receive, re-bag, handle, palletise and load aircraft. The service costs per metric ton of cargo handled of by materials used are invoiced to the Agency. UNHAS may, with the consent of the Agency, make or ask for alterations to the cargo package size for efficient use of available space.

For landable cargo, UNHAS may perform handling services, or the Agency may opt for delivery of the cargo to the aircraft.

For airdrop cargo, WFP will offer rebagging, strapping and palletising service, which is costed by quantities handled, and materials used. WFP/UNHAS or the pilot of the aircraft may reject inappropriately packaged or marked cargo

3.7 Cargo and documentation: WFP/UNHAS will load the Agency's cargo on to the aircraft only when presented with verified customs documentation. WFP/UNHAS will not perform bonded warehouse services nor other customs services on behalf of the Agency. UNHAS will prepare the manifest and all flight related documentation. The charges of these services per metric ton are invoiced to the Agency at cost.

UNHAS reserves the right to reject any cargo that does not satisfy aviation safety requirements in terms of content and packing as stipulated in ICAO/IATA regulations for safe carriage of unsafe/dangerous cargo. UNHAS may also reject cargo or items of clandestine or dubious nature, especially if their transportation may jeopardise or compromise humanitarian operations. All cargo and passengers are flown on the aircraft's pilot's discretion

3.8 Movement of passengers and cargo: UNHAS will transport the Agency's passengers and cargo as manifested – subject to weather, security and other operational conditions.

For airdrop of cargo, WFP will provide an airdrop team or support staff or alternately train Agency's staff to receive airdrops on cost-recovery basis.

A prepayment and request for cargo or passenger movement will not constitute an obligation to WFP/UNHAS to fly if the scheduling and routing of this cargo or passengers is not operationally or logistically feasible.

## 4. **Costing and Payments**

4.1 Costing: The costing of flights and handling is based on  
\* established passenger / kilogram rates from Lokichogio to locations or by Nautical Miles  
\* Aircraft Block Hour rates, and  
\* operational and material costs of handling

These rates include fuel, operational and administrative costs and factored marginals.

4.1. Management of costing:

WFP/UNHAS Flight Office in Juba/Lokichogio maintains subsidiary ledgers for each Agency on their prepayment and flight status. By maintaining subsidiary ledgers, they ensure, that in general Agencies prepayments will cover the costs of movements and services rendered. This information is available to the Agency in Juba/Lokichogio as well as transmitted to WFP Liaison Office in Nairobi for the compilation of a monthly Balance Statement (function may be moved to Juba at some stage). This statement includes information of:

- \* Prepayment carried over from previous month or set as deposit
- \* Payments received during the month
- \* Passenger movements during the month and their costing
- \* Costs incurred from cargo handling during the month (per flight, and metric tonne handled)
- \* Costs incurred from cargo flights during the month (per flight, metric tonne and Block Hour)
- \* Balance of prepayment and/or deposit carried over to next month

This statement is in a form of a Credit Note, which can be used for accounting purposes.

4.2 Invoicing: In the exceptional case, that the cost of a flight or service rendered exceeds prepayment WFP Liaison Office in Nairobi will be advised to raise an invoice to the Agency in lieu with the normal balance statements. In this situation, the Agency will pay any residual cost incurred from transportation of cargo within 15 days of invoice.

4.3 Invoicing, deposit customers: the Agency may opt to maintain a fixed deposit on account with WFP instead of prepayments. In this case, WFP will issue an invoice for the monthly costs incurred in lieu with the monthly Balance Statement. This is only possible if a positive balance still remains.

4.4 Air aborts and extended flights: The Agency will be required to pay for aircraft block hours and cargo handling costs if and when there are air-aborts or extended flights. For example, such situations may occur due to unexpected changes in weather or security situation at destination; weather situation en-route or unlandable airstrip condition.

**5. Indemnity, Insurance, Arbitration, Immunity and other Clauses**

5.1 Indemnity: the Agency shall hold WFP/UNHAS harmless against any claims, losses, expenses, costs, charges, loss, damage whatsoever caused or arising in connection with, directly or indirectly the operation of the aircraft (including air drop or similar activities) or the carriage of any person; loss of or damage to property of any kind whatsoever, whether on board the Aircraft or otherwise. Passengers flying on UNHAS aircraft are required to sign a "Letter of Indemnity" prior to boarding aircraft.

5.2 Insurance: the Agency is responsible for insuring the cargo, passengers and their baggage. The Agency shall provide and maintain at its own cost insurance against liability to third parties. Save for the negligence on the part of WFP/UNHAS, the WFP/UNHAS shall not be responsible for any loss of or damage to the cargo caused by fire, civil disturbances, riot, vandalism, aircraft and other aerial devices, war floods, earthquake or force majeure. The Agency may self-insure or authorise the WFP/UNHAS to insure the buildings, fixtures, furnishings and equipment owned by the Agency against any of the risks aforesaid.

5.3 Damages: WFP/UNHAS shall not be liable to the Agency for death, bodily injury, sickness or damage related to handling or transporting cargo or to any other real, tangible, or intangible property of the cargo, arising from fire, save for the negligence of the WFP/UNHAS, natural disaster or any other similar cause whatsoever.

5.4 Claims: Before making any claim against the WFP/UNHAS, the Agency shall look first to any insurance in its favour. The Agency shall obtain, for each policy of insurance, provisions permitting waiver of any claim against the WFP for death, bodily injury, sickness or damage to property within the scope of the insurance, and the Agency for itself and its insurers hereby waives all such insured claims against the WFP.

5.5 Negligence: In the event of the Agency's negligence, the Agency undertakes full responsibility for and shall, at its own expense, indemnify, defend and hold harmless the WFP/UNHAS, its officials, agents, servants and employees, from and against any demand, claim, suit, proceeding or liability, of whatever nature, by a third party for death, bodily injury, sickness or damage to real, tangible or intangible property, arising from or connected with the Cargo, or any part thereof.

5.6 Termination: In the event the Agency fails to fulfil any of the conditions of this Agreement, and without prejudice to any other remedy which the WFP/UNHAS may have for such failure, the WFP/UNHAS shall have the right either to terminate this Agreement without previous notice and/or, at its option, to take any other measures which it may deem necessary to establish the conditions contemplated by this Agreement and at the entire cost and expense of the Agency. The Agency shall have similar and corresponding rights.

5.7 It is further understood and agreed that in case the WFP/UNHAS decides to close down its office in the Country, or to remove it from Nairobi, Kenya, or to change the level of the WFP/UNHAS Representation in the Country, it shall have the right to terminate this Agreement by giving 90 days prior written notice to the Agency.

5.8 Arbitration: Any dispute, controversy or claim arising out of or relating to the present Agreement, or the breach, termination or invalidity thereof shall, unless it is settled amicably by negotiation or other agreed mode of settlement, be settled by arbitration, at the request of either party, in accordance with the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules then obtaining. Such arbitration shall be conducted under the auspices of the International Chamber of Commerce (ICC) which shall also serve as the Appointing Authority under the Rules. The Parties hereto agree to be bound by any arbitration award rendered under this clause as the final adjudication of such dispute, controversy or claim.

5.9 Immunity: Nothing in or relating to this Agreement shall be deemed a waiver, expression or implied, of any of the privileges and immunities of the WFP/UNHAS or the United Nations enjoyed by the WFP, whether pursuant to the Convention on the Privileges and Immunities of the United Nations or other Convention, law or decree of an international or national character of otherwise, including, but not limited to, immunity from any of legal process.

5.10 Modifications: No modification of or changes in this Agreement or waiver of any of its provisions shall be valid or enforceable unless previously approved in writing by the Parties hereto or their duly authorised representative in the form of an amendment to this Agreement duly signed by the Parties hereto.

5.11 Should any event or a series of events occur which hinder, restrict, delay or prevent the performance of obligations hereunder by either WFP/UNHAS or the Agency, each of them shall take all reasonable steps as may be appropriate to overcome any such circumstances, but otherwise shall not be in default of their obligations hereunder. The provisions shall apply whether or not the circumstances constitute Force Majeure.

5.12 Addresses: All notices shall be sent to WFP by hand delivery addressed to the WFP Representative/Coordinator at the WFP riverside office, at Juba, South Sudan.

All notices to the Agency shall be sent to:

[address of agency]\_\_\_\_\_

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IN WITNESS WHEREOF, the Parties hereto have subscribed their names as of the date first above written

Signed in Juba, on ...../..... 2007

Signed in Juba, on ...../..... 2007

For.....

For World Food Programme

Name.....

Title:.....

Title: Co-ordinator Southern Sudan

Witnessing:

Witnessing:

Signature:.....

Signature:.....

Date:.....

Date:.....

(v 10.12.98 / JR)  
(revised 07.02.07 / KO)