



AIR CHARTER SERVICES OFFER & AGREEMENT

INVITATION TO TENDER

November 25, 2013

The Government of Nunavut ("GN") is inviting tenders ("**Tenders**") from qualified bidders ("**Bidder**") for the provision of air charter services ("**Charter Services**") from *various communities to Arviat and return* in accordance with the Instructions to Bidders, Air Charter Requirements, Contractor Offer and Aircraft Charter Services Terms and Conditions described and set out in Sections I, II, III and IV, respectively, of this Invitation to Tender and all Appendices attached hereto (collectively, "**Tender & Contract Documents**").

Tenders shall be submitted **NO LATER THAN 3:00pm (15:00 hours) EST, on November 27, 2013** ("**Tender Closing Date and Time**"), at the following address:

Department of Community, Government & Services
Government of Nunavut
Purchasing, Logistics & Contract Support
3rd Floor – Station 1600, W. G. Brown Building, Iqaluit, NU
Attention: John Paton, Manager Logistics
Fax Number: (867)-975-5450

FAX TRANSMITTED TENDERS WILL BE ACCEPTED UNDER THE CONDITIONS set out in clause 5 of Section I – Instructions to Bidders.

OR SEALED TENDERS ARE REQUIRED

OR ELECTRONIC BIDS AS PER PROVISION 7

Bidders are hereby cautioned to examine the Tender & Contract Documents carefully and submit any questions or enquiries exclusively to the Manager Logistics by Telephone: (867) 975-5437, or E-Mail: JPaton@gov.nu.ca , no later than twenty-four (24) hours prior to the stated Tender Closing Date and Time. Failure to comply with any requirement may render your bid non-responsive in accordance with the instructions contained herein.

Sincerely,

John Paton, Manager Logistics



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SECTION I – INSTRUCTIONS TO BIDDERS

1. In order to be considered, all Tenders must be on the form(s) provided herein and signed by a duly authorized representative of the Bidder.
2. No security (such as a bid bond, consent of surety or otherwise) is required for this Tender.
3. The GN will not be held responsible or liable for any Tender which is not properly identified as a tender in the following required manner: **TENDER REFERENCE NUMBER, TENDER CLOSING DATE AND TIME AND BIDDER'S NAME** on the outside of the sealed envelope or package. Any bidder submitting a Tender lacking this information on the outside of the delivery envelope or package does so at his/her peril, and the GN has no obligation to accept, open, review or consider such Tender.
4. **BIDDERS MAY FAX TENDERS** in accordance with the following conditions:
 - a) Transmissions must be sent only to the fax number identified in the To: Department address section of the Bidder's Tender/Contractor's Offer Form (Section III).
 - b) Transmissions must be received in their entirety on or before the exact time and date fixed for the receipt of quotes. For greater clarity, 'received in its entirety' means that all pages of the tender submission, including single page bids, must be fully printed by the receiving fax machine on or before the stated closing date and time, and such tender submissions will not be considered received until all pages of the fax transmission are completely printed.
 - c) It is the Bidder's sole responsibility to confirm with the Traffic Manager that the transmission has been received in its entirety on or before the closing time.
 - d) While the GN will undertake to handle fax submissions in a secure and confidential manner, it is impossible to guarantee the confidentiality of information contained therein; therefore, by faxing their bid, the Bidder waives any legal claim of confidentiality against the GN.
 - e) The GN shall not be held liable for any claim, demand or other actions for any reason should a facsimile transmission be illegible, garbled, incomplete, interrupted, not received in its entirety, received after stated closing time and date, received by any fax machine other than the one stated herein, or for any other reasons or risks associated with faxing tenders.
5. Tenders received after the exact Tender Closing Date and Time fixed in this Invitation to Tender will be deemed late and rejected. Late Tenders will be returned to the Bidder unopened.
6. Due to limited bandwidth, file size restrictions and connectivity interruptions, Bids submitted by e-mail will not be accepted under any circumstances, and will be rejected as misdirected Tenders.
7. **NEW NUNAVUT TENDERS BID BOX: The GN is offering vendors the option of submitting bids electronically for some, but not all, tenders and requests for proposals, using the Nunavut Tenders website (<http://www.nunavuttenders.ca>). If this RFT is eligible for the Nunavut Tenders Bid Box, a "Submit" button will appear on the webpage. By using the Bid Box, Bidders are agreeing to the Terms of Use, which are linked to the Nunavut Tenders webpage.**
8. AMENDMENTS to a Tender may be submitted by fax provided the same are received no later than the Tender Closing Date and Time set out in the Invitation to Tender. Such amendments must clearly indicate **only the applicable changes and in such a manner that the total bid is not revealed**, and must comply with the instructions for faxing Tenders set out herein. **If bidding via the Nunavut Tenders Bid Box is permitted, Bidders may upload a revised Bid.**



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9. The *Nunavummi Nangminiaqtunik Ikajuuti* ("NNI Policy") applies to this Invitation to Tender. Additional bid incentives are available to qualifying Bidders located in the subject community or communities identified in the Air Charter Requirements section of this Invitation to Tender. "Subject Community" is defined in the NNI Policy and is used to determine application of the Local Adjustment permitted under s. 11.1 (e) of that NNI Policy. The GN reserves the right to make adjustments to a Bid following bid closing in accordance with the NNI Policy by taking into account any information that will assist it in doing so, including by taking into account information obtained from the NNI Business Directory maintained by the NNI Secretariat and the Inuit Firm Registry maintained by the NTI. For greater certainty, if the GN determines that a Bid should, or should not, receive a bid adjustment pursuant to the NNI Policy, it can adjust the evaluation and scoring of a Bid accordingly." **For the purposes of ensuring the correct bid adjustments are applied, Bidders should indicate their NNI and NTI Registration Numbers on the RFT Bid Form.** For the purposes of NNI local adjustments the following communities will be considered as the "Subject" communities": **Clyde River, Pond Inlet, Arctic Bay, Igloolik, Repulse Bay and Arviat.**
10. Verbal responses to any inquiry concerning the Tender & Contract Documents are for information purposes only and are not to be construed as an implied term of this Tender or any resultant contract. Verbal responses to any enquiry cannot be relied upon and are not binding on any party, and the GN shall have no obligation or liability in connection therewith, unless the verbal response is confirmed by written addenda.
11. Addenda issued prior to the Tender Closing Date and Time shall be incorporated into the Tender and shall become part of the Invitation to Tender package. The Bidder shall acknowledge receipt of addenda on the Bidder's Tender/Contractor's Offer form (Section III).
12. The Bidder shall submit a schedule of prices, as requested in Section III. Such schedule of prices shall include all costs associated with performing the Charter Services and be set out in the manner so stipulated and shall include all statutory charges, overhead profit and Contractor's allowance for contingency.
13. The GN will pay the applicable Goods & Services Tax ("GST") on the Charter Services described in this Invitation to Tender. However, Bidders should not include the GST in the Tender or Contractor's Offer pricing.
14. **Failure to provide complete pricing information as required in the Bidder's Tender/ Contractor's Offer section forming part of these Tender & Contract Documents shall result in the Tender being deemed non-responsive and rejected accordingly.**
15. Tenders shall be opened as soon as practicable after the Tender Closing Date and Time. Tenders may be opened publicly, however, only the Bidder's name, address and total Tender amount will be announced.
16. All submitted Tenders are valid and open for acceptance by the GN for a period of thirty (30) business days from the Tender Closing Date and Time.
17. The lowest Tender or any Tender will not necessarily be accepted. The GN reserves the right to cancel this Invitation to Tender, in whole or in part, at any time and to reissue the same thereafter,



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for any reason whatsoever, without incurring any liability or obligation whatsoever and no Bidder will have any claim against the GN as a consequence thereof or in connection therewith.

18. The GN reserves the exclusive right to accept Tenders in whole or in part and award contracts based on unit pricing.
19. Where the total Tender price is determined by unit pricing and estimated quantities, the Tender will be evaluated on the unit prices and estimated quantities rather than the total Tender price. The total Tender price will be verified will be verified by the GN to confirm there are no mathematical errors in the Bidder's calculations. In the event of an error or discrepancy, the unit prices shall govern and the total Tender price shall be based upon the corrected mathematical calculation. The nature of the error will be considered in evaluating whether the Tender is compliant.
20. The GN reserves the right to accept or waive any minor informality or minor non-compliance with these instructions to Bidders or other requirements; however a substantial or material non-compliance shall not be waived.
21. The GN reserves the option of requesting complete details of the Bidder's aircraft and crew particulars and service capabilities. Failure to provide information sufficient to satisfy the requirements of this RFT may result in the Bidder being deemed 'Not Responsible' and disqualified from further consideration.
22. A Bidder found to be lacking the responsibility or capability to assure proper performance of the Contract, or delivery of the services may be deemed 'Not Responsible' by the Contracting Authority for the purposes of this RFT. A Bidder who has defaulted on a Charter Service of a similar nature within the last twelve (12) months may also be deemed 'Not Responsible' by the Contracting Authority. A Tender submitted by a Bidder who is "not responsible" will be rejected.
23. If a Contract is awarded as a result of this Invitation to Tender, it will be awarded to the Bidder who is responsive and responsible and who has submitted a Tender that, after the application of any tender adjustment permitted under the NNI Policy, is lower than that submitted by any other responsive and responsible Bidder.
24. The GN is not liable for any costs of preparation or presentation of any Tenders. All Bids and accompanying documentation received by the GN in response to this RFT shall become the property of the GN and will not be returned.
25. Notwithstanding any other provision, a Bidder who submits a Bid in response to this RFT agrees that the GN's liability for any claim for damages or compensation of any kind related directly or indirectly to a breach of contract or other cause of action arising from this RFT process, shall be limited to the Bidder's actual Bid preparation cost. Bid preparation cost is the actual cost borne by a Bidder to prepare and submit its response to this RFT. By submitting a Bid to this RFT a Bidder acknowledges and accepts this limitation.
26. The GN reserves the exclusive right to cancel any Contract awarded as a result of this Invitation to Tender, in whole or in part, no later than twenty-four (24) hours prior to the scheduled departure time of any flight forming part of the Charter Services, without incurring any liability or obligation whatsoever and the Contractor shall have no claim against the GN as a consequence thereof or in connection therewith.
27. The *Access to Information and Protection of Privacy Act (Nunavut)*, S.N.W.T. 1994, c. 20 (the "Act") will define the GN's responsibilities with respect to any information received by it pursuant



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to this Invitation to Tender. Subject to the Act and any other applicable law, proposals and all related information shall be treated as confidential and shall not be disclosed to any person without the consent of the Bidder, and such disclosure, where permitted, will only be to the extent required to satisfy the GN's obligations under this Invitation to Tender, or pursuant to any applicable law. Notwithstanding the foregoing, the GN will:

- a) take all reasonable steps to ensure that confidential information is secured;
- b) subsequent to the Tender Closing Date and Time, disclose only the names, addresses and Total Estimated Contract Price of those who submitted a bid; and
- c) in the case of any Contract resulting from this Invitation to Tender, publish the Contractor's name, the contract title, location, award method and value in a public procurement accountability report for the fiscal year in which the Contract is awarded.
- d) Notwithstanding the foregoing, the GN reserves the right to publish the NNI evaluation results along with award information on the Nunavut Tenders website.



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SECTION II - AIR CHARTER REQUIREMENTS

1.1 SCOPE OF THE REQUIREMENT:

The GN requires air Charter Services for the purposes to transport passengers from *various communities to Arviat and return.*

At the discretion of the GN, the amount of work contemplated by the Charter Services may be increased or decreased to meet actual needs and the purpose of the Charter Services. In the event of changes to the Charter Services outlined below, the Contractor may be requested to submit a cost impact statement and the Contract pricing will be amended accordingly.

1.2 PROPOSED DATES OF CHARTER:

December 02 and December 06, 2013

NOTE: The air Charter Services will be required on the date(s) provided herein, subject only to (a) changes in the GN's actual needs and purpose (as set out in Section 1.1 above); or (ii) changes or delays due to weather conditions or other events listed in Section 2(j) of the Aircraft Charter Services Terms and Conditions set out in Section IV hereof.

1.3 ESTIMATED NUMBER OF DAYS REQUIRED AND FLYING HOURS:

To be determined

1.4 INTINERY/PURPOSE (as follows):

December 02, 2013

Depart Clyde River for Pond Inlet at 09:00 local.

Depart Pond Inlet for Arctic Bay.

Depart Arctic Bay for Igloolik.

Depart Igloolik for Repulse Bay.

Depart Repulse Bay for Arviat.

December 06, 2013

Depart Arviat at 09:00am local and drop off the nine (9) passengers to originating communities.

Pond Inlet 2 passengers and baggage

Clyde River 1 passenger and baggage

Igloolik 4 passengers and baggage

Arctic Bay 1 passenger and baggage

Repulse Bay 1 passenger and baggage

1.5 AIRCRAFT REQUIREMENTS (as follows):

Aircraft must accommodate nine (9) passengers baggage.



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1.6 AIRCREW REQUIREMENTS (as follows):

No Special requirements.

1.7 SPECIAL OPERATIONAL REQUIREMENTS

No Special requirements.

1.8 EXCLUSIONS

Accommodation and meal expenses for the flight crew must be provided by the Contractor and invoiced to the GN upon completion of this contract.

1.9 Terms of Payment

The following terms apply in calculating/determining what the GN will and will not pay for as part of the Charter Services:

The GN will pay for the services according to the pricing set out in Section III.

Total flight charges shall not exceed the total number of flying hours accumulated or miles logged, whichever is greater. Hourly Rates will apply where flight distances are not measurable or when specifically requested by the GN. Mileage rates will apply for all point to point flights where distances are measurable.

The total amount payable for Detention and Flight Time under the Contract shall not exceed the minimum tendered Detention Rate multiplied by the total number of flying hours (Flight Time) actually performed multiplied by the Flight Time Rate (A), plus the actual number of days or hours the Aircraft is required to complete the work (B).

ACKNOWLEDGEMENTS

By affixing its signature to this Tender and Section III – Bidder's Tender/Contractor's Offer, and submitting a Tender to the GN, the Bidder hereby acknowledges and agrees that should its Tender/Contractor's Offer be accepted by the Owner, the Bidder will become the Contractor bound to deliver the Charter Services contemplated herein, at the prices set out in the Tender/Contractor's Offer, in accordance with these Charter Services Tender & Contract Documents; and the prices indicated above shall form the basis of the Contract price. The Bidder further agrees that the Contract price may change should the scope of the Charter Services change based on the GN's actual needs and purpose.



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SECTION III – BIDDER’S TENDER/CONTRACTOR'S OFFER

<p>To: Department of Community, Government & Services Government of Nunavut Purchasing, Logistics & Contract Support 3rd Floor, W. G. Brown Building P. O. Box 1000 – Station 1600 Iqaluit, NU X0A 0H0 FAX TO: (867) 975 – 5450 ATTENTION: John Paton, Manager Logistics</p>	<p>From: (Bidder’s Legal Name & Address)</p>
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The undersigned Bidder (“**Contractor**”) hereby offers to the Government of Nunavut (“**Owner**” or “**GN**”) as represented by the Department of Community & Government Services, to furnish all necessary aircraft, crew, materials, equipment and labor to execute and complete in a careful and workmanlike manner, the Charter Services set out in these Tender & Contract Documents for the prices set out below:

A) Flight Time: \$ _____ /Hour x _____ Hours	= \$ _____
B) Detention Rate (Daily): For Crew & Aircraft \$ _____ /Day x _____ Day(s)	= \$ _____
OR Detention Rate (Hourly): For Crew & Aircraft \$ _____ /Hour x _____ Hour(s)	= \$ _____
C) Crew Expense Rate: \$ _____ /Crew Member x _____ Day(s) x _____ Crew	= \$ _____
D) Commissary: \$ _____ /Passenger x _____ Passenger(s)	= \$ _____
E) Please indicate Type of Aircraft: _____	
Passenger Capacity (PAX): _____ Maximum Baggage Allowance per Passenger: _____ lbs (pounds)	
F) Positioning:	\$ _____
De-Positioning:	\$ _____
G) Any Other Pricing that is needed depending on the charter scope (i.e., airport call-out fees, ground equipment, etc.,)	
The Bidder/Contractor hereby acknowledges receipt of Addenda No. _____ to _____.	
TOTAL ESTIMATED CONTRACT PRICE:	= \$ _____

The Bidder hereby submits this Tender/Offer in its full legal capacity under which it may lawfully conduct business in Nunavut. On Owner’s acceptance and signature of this Tender/Contractor’s Offer, the resulting Contract will be issued by the Owner to the successful Bidder (“**Contractor**”) by way of facsimile or electronic transmission, and the Contract will automatically take effect and become legally binding upon the date of issue.

<p>Contractor’s Signature, Name and Title</p>	<p>Contract Authority, Name and Title</p>
<p>Date: _____</p>	<p>Date: _____</p>



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SECTION IV AIRCRAFT CHARTER SERVICES TERMS AND CONDITIONS

1. DEFINITIONS

- a. **"Aircraft"** means that Aircraft described in Section III – Bidder's Tender/Contractor's Offer of this Air Charter Contract for the purposes of satisfying the requirements set out in Section II – Air Charter Requirements.
- b. **"Charter Services"** means the charter of the Aircraft and the performance of the services required in connection therewith which Contractor is to perform and complete for the GN pursuant to the terms of this Contract.
- c. **"Contract"** means the invitation to tender from the GN, the Tender submitted by Contractor as a Bidder and accepted by the GN, and all the Tender & Contract Documents and other documents, terms and conditions forming part of the said invitation to tender or tender, including but not limited to the Section I Instructions, the Section II Air Charter Requirements, the Section III Bidder's Tender/Contractor's Offer, these Aircraft Charter Services Contract Terms and Conditions, and any addenda and subsequent amendments issued by the GN.
- d. **"Contractor"** means the sole proprietorship, partnership, joint venture or limited company that possesses an Operating Certificate issued by Transport Canada and a license issued by the National Transportation Agency for the Aircraft contracted for by the GN.
- e. **"GN" or "Owner"** means the Government of Nunavut.
- f. **"Unavailable" or "Unavailability"** means the circumstances of and the time when the required Aircraft, pilot or engineer for the Aircraft, is unserviceable, not in a condition to perform, fails to perform or is unavailable to perform as required by the Contract. Unavailability status will continue to apply each day until the failure and unavailability is corrected and the Charter Services can begin or re-commence.

2. GENERAL

- a. Time is of the essence of this Contract.
- b. This Contract will be interpreted and governed in accordance with the laws of Nunavut and the laws of Canada as they apply in Nunavut.
- c. The Contractor waives and expressly disclaims all rights of recourse against the GN for damages to the Contractor's property or property of others for which the Contractor is responsible and the Contractor's insurers of such property shall have no right of subrogation against the Owner, and the Contractor hereby waives all rights in that regard.

- d. The Contract comprises the entire agreement between the parties and supersedes all communications, negotiations and agreements; either written or oral, relating to the work that was made prior to the date of the Contract.
- e. No implied terms or obligations, representations, warranties or guarantees of any kind by or on behalf of the GN are made or arise from anything in the Contract. Only the express covenants and agreements contained in the Contract and made by the GN may be relied upon by the Contractor and are the only covenants and agreements upon which any rights against the GN are to be founded.
- f. This Contract shall enure to the benefit of and be binding on the respective administrators, successors and permitted assigns of each of the parties hereto.
- g. Notwithstanding any other term or condition of the Contract, according to Section 46 of the *Financial Administration Act (Nunavut)* as amended or re-enacted in successor legislation during the term of this Contract: "It is a condition of every Contract made by or on behalf of the government requiring an expenditure, that an expenditure pursuant to the Contract will be incurred only if there is a sufficient uncommitted balance in the appropriated item for the fiscal year in which the expenditure is required under the Contract", and the Contractor agrees to such provision and to be bound thereby.
- h. It is intended that all provisions of this Contract shall be fully binding on and effective against the parties, but in the event that any particular provision or provisions or a part of one is found to be void, voidable, or unenforceable for any reason whatever, then the particular provision or provisions shall be deemed severed from the remainder of this Contract and all other provisions remain in full force and effect.
- i. The Contractor is an independent contractor with the Owner and nothing in this Contract shall be construed or deemed to create the relationship of employee and employer or of principal and agent between the Owner and the Contractor.
- j. If there is any delay either before the Charter Services commence or at any time during the provision of the Charter Services for reasons due to weather, Unavailability not caused by the Contractor or to conditions beyond the Contractor's control, then the Contractor and the GN shall share those reasonable costs actually incurred during this delay period, subject to the Contractor's obligation to mitigate, eliminate and reduce any such costs, by efforts including but not limited to redeployment of aircraft, crew and other personnel; maintaining aircraft, crew and other personnel at their home base to eliminate transportation, meals, accommodation and like costs, and other measures.



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3. CONTRACTOR'S OBLIGATIONS

The Contractor shall, at its cost:

- a. not sub-contract, assign or delegate performance of the work to be done under the Contract or any part thereof without the GN's prior written consent. In the case of a proposed assignment of monies owing to the Contractor under the Contract, the Contractor is aware that (i) the assignment must be consented to in writing by the Comptroller General of the GN pursuant to S.69 (4) of the *Financial Administration Act (Nunavut)*, as amended or re-enacted in successor legislation; and (ii) payment to the Contractor under the Contract is subject to Section 2(g);
- b. bind all its subcontractors to the terms of this Contract and ensure compliance herewith;
- c. be familiar with the Contract and make allowance in its tender for all existing conditions that may affect the work or the Charter Services;
- d. provide and equip all Aircraft to be used in the Charter Services with serviceable radio equipment capable of transmitting and receiving as required, and with a serviceable Emergency Locator Transmitter (ELT);
- e. maintain exclusive operational control over the Aircraft, contents and crew and not allow the Aircraft to be flown except by trained and certified pilots and maintained by anyone other than authorized technicians and only in accordance with the terms of all certificates, licences and permissions granted to the Contractor by the applicable aviation authorities. The Contractor may temporarily delay, suspend or interrupt the Charter Services, return to base or to the last point of landing, or divert or land at an intermediate point when such action is deemed by the Contractor (acting commercially reasonably) to be necessary due to unserviceability, weather, or conditions beyond the Contractor's control; and costs of any such delay, suspension or interruption, after and subject to the Contractor's mitigation efforts, shall be shared by the parties in accordance with Section 2(j);
- f. when the Aircraft is Unavailable to complete the assignment or Charter Services due to mechanical failure of the Aircraft or required equipment, assume responsibility for crew expenses and other recoverable charges and the GN will not be held responsible for daily minimum hours or other costs or expenses in connection therewith;
- g. when the Aircraft is Unavailable at the agreed upon time for the Charter Services to commence, provide a substitute aircraft acceptable to the GN at a rate not to exceed the rate specified in the Contract. If the substitute aircraft accepted by the GN has a lower payload than the original Aircraft, the charges for such aircraft will be that applicable to the lesser /lower cost aircraft;
- h. provide a safety briefing for all passengers before the commencement of any flight;
- i. provide a pilot, aircrew and personnel required for each of its aircraft types as specified in the Contractor's Transport Canada approved Flight Operations Manual;
- j. provide, for Aircraft positioned at work sites not routinely serviced by scheduled commercial air services, an aircraft engineer with the appropriate licenses and endorsements;
- k. provide sleeping bags for all its personnel where the work site is a remote field camp;
- l. contract for incidental traffic in accordance with Sections 4(i) – (l) only with the GN's prior written approval;
- m. arrange, incur and be responsible for all direct operating costs associated with the operation of the Aircraft during the Charter Services and for timely settlement of all relevant costs, including accommodation costs and meals for pilots, cabin crew and personnel (unless otherwise specified in Sections 1.8 or 1.9 of Section II – Air Charter Requirements); provide or pay for accommodation and meals, and in addition, ground transportation between Aircraft and living quarters at the operating site when carrier's personnel are away from the main base, to the same standards as are applicable to GN personnel;
- n. be responsible for the cost of transportation of spare parts and special equipment required to service the Aircraft, unless prior written approval is received from the GN;
- o. pay and be solely responsible for payments of all statutory deductions or contributions including, but not limited to, pension plans, unemployment insurance, income tax, workers compensation and the Nunavut payroll tax;
- p. provide for each flight fuelling facilities and all fuel, oil and lubricants and pay for all landing fees and associated charges (unless otherwise specified in Sections 1.8 or 1.9 of Section II – Air Charter Requirements);
- q. provide for each flight all food, drink and other consumable on board commissary as set out in Section III – Contractor's Offer, unless otherwise excluded pursuant to Sections 1.8 or 1.9 of Section II – Air Charter Requirements;
- r. provide all passenger baggage and aircraft crew handling including administrative duties regarding misdirected or lost baggage and pay for all associated cost;
- s. obtain all necessary formalities and clearances required by any customs or other governmental authorities required in connection with the Aircraft or the Charter Services as well as the personnel, pilot and flight crew;

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- t. obtain all arrival and departure slots at the relevant airports in order to conduct all the required flights under the Charter Services on a timely basis;
- u. clean the interior of the Aircraft after every landing; and promptly inform the GN by telephone of any circumstance or event of which the Contractor has knowledge which could lead to the cancellation or delay of any flight which forms part of the Charter Services;
- v. maintain, service, repair, modify, overhaul and test the Aircraft so as to keep the Aircraft in good operating condition in accordance with all applicable laws, rules and regulations during the provision of the Charter Services; and
- w. comply with all applicable requirements of the International Air Transport Association, Transport Canada and other applicable governmental authorities.

4. GOVERNMENT OF NUNAVUT'S RIGHTS AND OBLIGATIONS

- a. Any time during the work and the performance of the Charter Services, the GN may, upon written notice to the Contractor, deem the Contractor's personnel unacceptable for reasons of incompetence, unsuitability and/or inexperience in operating and maintaining the Aircraft under Class 4 operations. Upon receipt of such written notice, the Contractor shall withdraw the identified personnel and the Aircraft will be considered Unavailable until personnel satisfactory to the GN are provided.
 - b. The GN may terminate the Contract at any time, without penalty or damages, upon giving written notice to this effect to the Contractor, if, in the opinion of the GN, in its sole discretion:
 - the Contractor is not able to deliver the Charter Services as required;
 - the Contractor's performance of the work or Charter Services is faulty or negligent;
 - the Contractor defaults or fails to observe the terms and conditions of the Contract in any material respect;
 - any actual or potential labour dispute delays or threatens to delay timely performance of the Contract or the Charter Services;
 - the Contractor becomes insolvent, commits an act of bankruptcy, declares bankruptcy, is petitioned into bankruptcy or takes advantage of any reorganization or restructuring intended to settle or compromise any debts; or
 - the event or events driving the purpose of the Charter Services is postponed or cancelled by the funding department and performance of the Contract is no longer required as a result;
- c. The GN may, at any time in its sole discretion, cancel this Contract, in whole or in part, upon not less than twenty-four (24) hours notice before any scheduled departure time of any flight forming part of the Charter Services, without incurring any liability or obligation whatsoever and the Contractor will have no claim against the GN as a result thereof or in connection therewith.
 - d. If the Contractor is, in the GN's opinion, in default in respect of any obligation hereunder, the GN may do any act as it deems necessary to rectify such default and the GN may deduct, hold back or reduce from or set-off the cost of such rectification against any payment due by the GN to the Contractor under this Contract.
 - e. The GN may set-off any payment due to the Contractor pursuant to this Contract against any monies owed by the Contractor to the GN.
 - f. The GN, after having given written notice of a breach, may withhold or hold back in whole or in part any payment due to the Contractor without notice, penalty, expense or liability, if in GN's opinion, the Contractor has failed to comply with or has in any way breached any of its obligations hereunder. Any such hold back shall continue until the breach has been rectified to the GN's satisfaction.
 - g. A Contractor who has defaulted on Charter Services of a similar nature within the last twelve (12) months may be deemed 'Not Responsible' by the Contracting Authority and prohibited from submitting Tenders on future Charter Services until such time as the Contractor can satisfy the GN that it has corrected all documented deficiencies and grievances against it.
 - h. The GN may give the Contractor advice in respect of the scheduling and operational use of the Contractor's Aircraft subject to the serviceability of the Aircraft and weather conditions to assist the Contractor in mitigating costs, however, such advice shall not be taken or construed as instructions or directives from the GN.
 - i. The GN will pay the Contractor within thirty (30) days after its receipt of the Contractor's invoices, except that the GN shall pay Nunavut Businesses (as defined in the GN's NNI Policy) within twenty (20) days of receipt of invoices.
 - j. Incidental passengers may travel on the GN chartered Aircraft when convenient to the GN. Incidental passengers are allowed to travel on GN chartered Aircraft under rules governing incidental traffic in the selected carrier's tariff and subject to the final approval of the Deputy Minister of the requisitioning department.



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- k. The GN shall not be liable in any way for incidental traffic and/or passengers. In accordance with the carrier's tariff, the Contractor as carrier assumes all responsibility for incidental passengers and/or freight and directly bills the incidental party for their share of the associated costs.
- l. The GN may arrange for the sharing of charters and Charter Services with departments or incidental passengers in an effort to ensure cost-effectiveness in accordance with the GN's Aircraft Charter Policy.
- m. Where the GN adds passengers or cargo or changes flight plans for the benefit of an incidental party, the cost to GN for the Charter Services shall be reduced by the proportion of costs attributable to that party's use of the Aircraft unless it is in the public interest for the GN to pay those costs.

5. TAXES

- a. The Contractor shall pay to the relevant governmental authorities on a timely basis, and shall indemnify and hold the GN harmless on an after tax basis, from all present and future taxes and interest or penalties with respect to or resulting from any delay or omission to pay such taxes, however or wherever imposed, whether imposed upon the GN, the Contractor or on all or part of the Aircraft or the Aircraft Services, by any governmental authority.
- b. The Contractor shall and does hereby indemnify the GN on an after tax basis for the full amount of any and all such taxes and all liabilities (including penalties, interest and expenses) of the GN arising in respect of such taxes, whether or not such taxes or liabilities were correctly or legally asserted.

6. LIABILITY AND INDEMNITIES

- a. The Contractor assumes all risk and liability inherent to the performance of its obligations hereunder and the Charter Services. The GN shall not be liable to the Contractor for any liability, claim, loss, damage or expense of any kind or nature whatsoever ("**Liability**") caused by any delay in providing or failure to provide any service the Contractor is required to provide hereunder or for any interruption or loss of service or use of the Aircraft. In no event shall the GN be liable for any direct, indirect (including without limitation loss of profit, business, income or revenues, loss or lack of use) or other indirect, consequential, economic, incidental, exemplary, special or punitive loss or damage or any loss or damage whatsoever and howsoever caused. Without prejudice to the generality of the foregoing, the GN shall not be liable to supply any aircraft in lieu of the Aircraft, if the Aircraft or any part thereof is lost, damaged, rendered unfit for use, confiscated, seized, requisitioned, restrained or appropriated.
- b. The Contractor will indemnify and save harmless the GN, its employees and agents from and against all

claims, demands, losses, damages, causes of action, costs and expenses made against or incurred, suffered or sustained by the GN at any time either before or after the expiration or termination of this agreement, where the same or any of them are based upon, arise out of or occur, directly or indirectly, by reason of any act or omission of the Contractor or of any agent, employee, officer, director or subcontractor of the Contractor pursuant to this agreement (collectively "**Losses**") excepting always liability arising out of the independent negligent acts of the GN in connection with any of the following:

- (i) any damage, destruction or maintenance failure caused to the Aircraft during the Charter Services;
 - (ii) the Contractor's performance of its obligations and the Charter Services under this Contract including without limitation: (A) those Losses arising out of claims or demands made by, or in relation to, passengers, baggage, cargo and mail; (B) those Losses arising out of the breach of any term of the Contract or the negligence and/or willful misconduct of the Contractor, its officers, directors, agents, pilots, crew, personnel or employees; and (C) those Losses for which Contractor has otherwise assumed liability under the terms and conditions of this Contract;
 - (iii) all Losses asserted, brought or claimed against the GN for any death of or personal or bodily injury to any officer, director, agent, employee, pilot, crew or personnel of the Contractor or the GN, any passenger on a flight that is part of the Charter Services and/or any other person, provided that such death or injury does not arise out of or involve any gross negligence and/or willful misconduct of the GN, its officers, directors, agents or employees; and
 - (iv) the loss of, or damage to personal property, including without limitation, property on board the Aircraft, including baggage, cargo and mail.
- c. The provisions of this Article 6 survive the end of the Contract and continue in full force and effect notwithstanding any breach by a party under the terms of this Contract, the termination of this Contract or repudiation by a party of this Contract.

7. INSURANCE

- a. The Contractor accepts the risk of loss to the Aircraft.
- b. The Contractor will maintain in effect during the term of this Agreement the following:
 - (i) Aircraft Public Liability Insurance, including third party bodily injury, death and property damage or loss, with limits of no less than ten million (\$10,000,000.00) Canadian dollars per occurrence and, in addition, Passenger legal liability coverage with limits of no less than one



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- million (\$1,000,000.00) Canadian dollars per Passenger seat including crew seats installed on the aircraft.
- (ii) Workers' Safety and Compensation coverage as required by statute and Contingent Employers' Liability coverage with a limit of no less than five million (\$5,000,000) Canadian dollars per occurrence. For Contractor's employees not covered by Workers' Safety and Compensation, Employers' Liability Insurance coverage shall be obtained with limits of no less than two million (\$2,000,000) Canadian dollars per occurrence.
 - (iii) Airport Premises Liability Insurance including Contractual Liability covering bodily injury, death and property damage or loss with a combined single limit of no less than five million (\$5,000,000) Canadian dollars per occurrence.
 - (iv) All Risks Hull Insurance covering the aircraft (including all flight and ground risks and ingestion, and each engine coverage) with limits of no less than its full replacement value.
 - (v) Passenger Baggage Liability Insurance with limits of no less than their full replacement value.
 - (vi) Property Insurance covering equipment, cargo and freight transported by the Contractor with limits of no less than their full replacement value.
 - (vii) War Risks and Allied Perils Insurance covering war, invasion, acts of foreign enemies, hostilities, rebellion, revolution, martial law, military power, strikes, riots, civil commotions, malicious act of sabotage, confiscation, nationalization, seizure, detention, restraint, hijacking or unlawful seizure, with limits of no less than fifty million (\$50,000,000) Canadian dollars, or the limits of liability herein; whichever is lesser.
- c. The above policies will also extend to include the GN, its affiliates and their respective directors, officers, employees, agents and contractors as Additional Insureds with a cross liability and severability of interests clauses. Such insurance shall be primary without right of contribution from other insurances available to the GN.
 - d. With respect to the Workers' Safety and Compensation and Employers Liability coverage, the Contractor agrees to hold the GN, its affiliates and their respective directors, officers, employees, agents and contractors harmless from and against any liability, loss or costs relating to, including death, of any of the Contractor's, and subcontractors, respective employees, agents, consultants, and representatives.
 - e. All insurance policies shall include a provision whereby the insurers agree to provide not less than thirty (30) Days written notice to the GN prior to any insurance policies being materially altered, cancelled, or terminated by the insurers EXCEPTING, HOWEVER, as regards coverage in respect of War Risks and Allied Perils which are subject to automatic and/or 7 Days notice of cancellation provisions, in which case the GN is to be notified immediately.
 - f. The Contractor must provide the GN evidence of the foregoing insurance coverages by way of a certificate of insurance upon execution of this Agreement, and also deliver to the GN a copy of the certificate of insurance coverage on each insurance renewal during the term of this agreement and upon the GN's requests from time to time.
 - g. The Contractor must have an account in good standing with their respective Worker's Compensation Board and provide evidence of same to the GN upon request from time to time.