MEMORANDUM OF UNDERSTANDING (MOU)

FOR THE PROVISION OF AIR SERVICES
WITHIN THE FRAME OF CONGO DR RELIEF OPERATIONS

Between:

The United Nations World Food Programme as Leading Agency for the United Nations Humanitarian Air Service (UNHAS)

(hereafter referred to as "WFP/UNHAS")

And

_____,

(hereafter referred to as "The Agency").

(each hereinafter also referred to as a "**Party**" and, jointly, the "**Parties**").

1. Preamble

WFP/UNHAS has the mandate to procure, on behalf of accredited users of the Humanitarian Community ("the Agencies" and/or "The Users") safe, reliable, economical and efficient air services for passengers and cargo inside the Democratic Republic of Congo ("The Services").

The Services are provided in an area of possibly hazardous conditions, including hostilities. They are operated by independent operators for the official business and purposes of the United Nations, and are not offered as commercial services or as services for the general public.

When procuring the Services, WFP/UNHAS is not acting as Carrier but as agent for the Agencies/Users who will express their requirements through the Users group Committee.

The Parties, for the mutual consideration herein set forth, agree as follows:

2. Obligations of the Agency

2.1 Passenger and Cargo Projections: The Agency shall submit projection of its movement requirements three months in advance so as to allow cost effective planning and contracting by WFP/UNHAS.

2.2 Booking: The Agency shall submit to WFP/UNHAS Kinshasa office a booking form of its movement. Such form shall be signed by a designated /authorized officer and shall state the transportation needs. The booking form shall be sent by fax or electronic mail to WFP/UNHAS not later than 24 working hours in advance of travel date and shall specify:

- The destination;
- The Passenger's Name, Nationality, Passport Number.
- The type, volume, number and weight of cargo to be airlifted

Booking confirmations or cancellations for cargo and passengers shall be notified by phone to WFP/UNHAS before **10.00** AM EAT one working day prior to the flight date. Late cancellation will be charged at full booking fee.

2.3 Late cancellation, No Shows, & Non-utilised Special Flights:
Aircrafts are contracted for a minimum block hours per month. Late cancellations and "No Shows" shall be charged to the Agency at full fee. When special flights have been requested but not utilized, demurrage at a minimum **guaranteed hour rate of applicable 2 block hours per day will be charged to the Agency unless cancellation is made in writing at least 24 hours prior to the flight date.**

2.4 Security
2.4.1 The Agency shall be responsible for ensuring that only authorized personnel with valid employment contract and security clearance are provided access to the Services.

2.4.2 The Agency shall provide WFP/UNHAS with lists of authorised personnel duly endorsed by an authorised representative on a quarterly basis.

2.4.3 The Services may be extended, on the express request of the Agency, to non-staff passengers whose travel is relevant to DR Congo Relief Operations. Acceptance of these passengers by WFP/UNHAS will be subject to seat's availability and to the provision of a letter of indemnity signed by the passenger's employer in accordance with the form attached hereto as Annex 1. The Agency shall be responsible for such passengers and for the cost of their transportation.

2.5. Payments Terms:
Unless otherwise agreed, the Agency will be invoiced at the end of every month.
Settlement of bills should be done not later than 60 calendar days upon receipt of the invoices.
Agency will be denied access to the UNHAS service in case of failure to process the payment within 60 calendar days.

3. Passenger and cargo Documentation

3.1 The Agency shall be responsible for ensuring that its passengers have appropriate travel documentation including Agency clearance for travel and security clearance.

3.2 The Agency shall be responsible for processing all customs documentation in accordance with the applicable regulations. Only cargo properly declared, cleared and documented will be accepted on board.

3.3 The Agency shall be responsible for and shall indemnify WFP/UNHAS against any fines, taxes, duties including any other charges of a public nature which may be assessed by the competent authorities in connection with its passengers and/or cargo.

3.4 The Agency shall submit a Waybill (Release Note) for each consignment The Agency shall appear as Shipper on the document which shall identify the Consignee provide particulars of the consignment in marks, kind and number, and indicate the destination.

3.5 The Agency shall be responsible for ensuring that no cargo transported in execution of the services compromise the WFP/UNHAS operation either by nature or contents. WFP/UNHAS shall have the right to reject any cargo that does not satisfy ICAO/IATA safety requirements for the transportation of unsafe/dangerous cargo (content and packing) or which may compromise or jeopardise flight safety. All cargo and passengers are flown at the aircraft's pilot's discretion.

3.7 The Agency shall be responsible for providing consignments and pouches in appropriate packaging for airlifts, with markings identifying the consignment, the shipper (the Agency), the consignee and the destination.

4. Check in Passengers and Cargo

4.1 The Agency will send the passenger and/or cargo booking form to WFP/UNHAS not later than 24 working hours in advance of travel date. Confirmation and cancellation of (cargo /passenger), shall be made by phone before **10.00 AM** EAT one working day prior to the flight date. Late cancellation will be charged at full booking fee / cost

4.2. Confirmed passengers shall, under the Agency's responsibility, check-in at **Ndjili Airport MONUC Terminal** no later than two (2) hours prior to the manifested departure time for departures from Kinshasa, and two (2) hours at airstrips for field airstrips. "No Show" passengers will be charged to the Agency at full booking fee in the conditions set forth in Paragraph 2.3

4.3. All confirmed **cargo** shall be delivered at Airports on the day of the flight, not later that **one and a half hour** before the manifested departure time.

4.4. Baggage allowance shall be limited to **20kg** per passenger. Excess baggage shall be booked as cargo and acceptance confirmation received from WFP/UNHAS one working day before the flight date. **Excess baggage shall be booked in advanced and will be charged at applicable rate.**

4.5. Arrival and departures times are subject to change without notice.
4.6. WFP/UNHAS shall have the right to honour or reject any /all booking requests.
4.7 Baggage and cargo shall be subject to weighing, screening and search at points of departure.
4.8 Diplomatic pouches should be manifested. Pouch should be booked as Cargo.

5. Obligations of WFP/UNHAS

5.1. Flight Scheduling: WFP/UNHAS flight Office for DR Congo in Kinshasa will establish the flight schedule on the basis of requirements set by the Users' group/Schedule Task Force to which it will be submitted for approval. Ad hoc flights will be planned and executed by the WFP/UNHAS operations office in Kinshasa on a case by case basis in consultation with the requesting Agency.

5.2. Dispatch and meeting passengers and cargo: WFP/UNHAS coordinators will receive, certify, off-load and handle passengers, their baggage and all cargo at the destination, ensuring crowd control at the airfields. In locations where WFP/UNHAS has no representation, Agencies may be requested to train and equip their own personnel to conduct or support air operations for reception and dispatch of aircraft, passengers and cargo.

5.3. Movement of passengers and cargo: WFP/UNHAS will transport the Agency's passengers and cargo as manifested – subject to weather, security and other operational conditions.
Agencies where applicable, may be required to provide general weather condition reports in the airfields two hours before a particular flight is scheduled to arrive or depart and to advise of any significant changes thereafter.

5.4. Safety and Operations Meetings: WFP/UNHAS will host monthly safety and operations meeting in Kinshasa or where aircrafts are based. The safety meeting will comprise WFP/UNHAS Operations staff, Aircraft providers Managers and their Operating Crew. The operations meeting will comprise WFP/UNHAS staff and Users' group representatives.

5.5. Pre-flight activities: WFP/UNHAS will prepare flight plans and manifests and apply for necessary flight clearances. Except for special agency flights, partial loads of several agencies will be combined to ensure full aircraft loads, good logistics practice and adherence to delivery schedules. When special flights are arranged for several Agencies, movements shall be charged proportionally to each Agency based on distance covered and cargo's volume and weight. The Agency shall be responsible for availing cargo for dispatch at the airport and for receiving it at destination airports.

6. Costing and Payments

6.1. The passengers' Agency is charged a flat booking fee for passengers. Costing of cargo is based on established kilogram flat rates. Special flight is charged per hour flown all inclusive. These costs include operational fees, handling costs, fuel, management and administrative costs and safety oversight costs.

6.2. Invoicing: The Agency will be invoiced on a monthly basis and not later than the 15th of every new month and shall arrange payment to WFP/UNHAS not later than 60 (sixty) days from receipt of invoice.

6.3. Any failure by the Agency to honour its payment obligations under paragraph 6.2.. within 60 (sixty) days from receipt of invoice may result in passengers and/or cargo being denied boarding until full settlement of any outstanding amounts.

6.4 Prepayment/ deposits: the Agency may opt to maintain a fixed deposit on account with WFP/UNHAS instead of payments. In this case, WFP/UNHAS will issue an invoice for the monthly costs incurred in lieu with the monthly Balance Statement subject to the balance being positive.

6.5 Air aborts and extended flights for Special Flights Block hours shall be due by the Agency in all cases of air-aborts or extended flights, including when they are due to unexpected changes in weather, air-safety or security conditions, at the point of departure, en route or at destination. Such changes shall not be considered as force majeure situations.

6.6. Procedures for Medical Evacuations – Should the Agency's medical services determine the need for medical evacuation, the Agency shall contact WFP/UNHAS and request for the medical evacuation, by telephone but followed up with a written confirmation as soon as possible either by e mail or fax. WFP/UNHAS shall procure the flight(s) for medical evacuation using most appropriate air asset available at the time of request. The Agency shall bear all costs of such flight(s).

7. Liability

7.1. When providing the Services under the MOU, WFP/UNHAS shall be acting as agent for the Agency and shall not act as Carrier.

7.2 WFP/UNHAS shall not assume responsibility for the transportation and shall not accept responsibility for any casualty including but not limited to death, personal injury, disability, loss or damage to baggage or cargo arising out of the execution this MOU.

7.3 WFP/UNHAS shall ensure that any Charter Agreement entered with the Carrier:
(1) provides, in line with the provisions of the Montreal Convention 1999, that the Carrier shall not be able to exclude or limit its liability for damages not exceeding SDR 100,000 arising from the death or bodily injury of a passenger caused on board the aircraft.
(2) provides, that the Carrier shall hold comprehensive third-party liability insurance including war risks.

7.4. The Agency shall be responsible for making adequate arrangements for the insurance of any passenger or cargo transported at the Agency's request. The Agency shall be responsible for obtaining from the insurer an express waiver of their rights of action against WFP/UNHAS for any claim of whatever nature which may be brought in connection with the operation of the aircraft or the carriage of any person or cargo.

7.5. The Agency shall indemnify and hold harmless WFP/UNHAS and/or its officials against any claim of whatever nature which may be brought in connection with any death, personal injury, disability or any loss or damage arising out of the operation of the aircraft (including airdrop or similar activities) or the carriage of any person or cargo.

7.6. WFP/UNHAS shall not accept responsibility for the unavailability, suspension or disruption of the Services for any reason.

8. Duration, Extension & Termination

8.1 The MOU shall be valid for 12 months from the date of its signature and may be extended by exchange of letter, for a mutually agreed period of time

8.2. The Parties shall have the right to terminate the MOU at any time subject to 60 days written notice of termination. Such termination will not affect any activities or liabilities undertaken prior to termination.

8.3. Should the Agency fail to fulfil any of its obligations under the present MOU, then WFP/UNHAS shall be entitled to terminate the MOU without prior notice.

9. Force Majeure

The term *Force Majeure* as employed herein, shall mean any event of an unpredictable, inevitable and irresistible character that hinders, either temporarily or definitely, the performance of obligations under the MOU, and justifies the postponement, interruption or termination of such MOU. If at any time during the course of this MOU it shall become impossible for any party to perform any of its obligations for reason of *Force Majeure*, that party shall notify the other party of the existence of such *Force Majeure* within 14 days of its appearance, whereupon both parties will be relieved from such obligations and reciprocal obligations. The party to which notice is given shall have the possibility to dispute the existence and/or applicability of *Force Majeure* in the conditions set forth in Article 10 of the present MOU.

10. Dispute Resolution

10.1 This MOU and any dispute arising there-from, shall be governed by the general principles of international commercial law, to the exclusion of any single national system of law.

10.2 If the Agency is a UN entity, any dispute, controversy or claim arising out of the interpretation or execution of this MOU shall be settled by direct negotiations between the Parties. Failing resolution in this manner, the matter will be referred to the Executive Director of WFP and the Executive Head of the Agency, for decision.

10.3 If the Agency is not a UN entity, any dispute controversy or claim arising out of or relating to this contract or the breach, termination or invalidity thereof that cannot be resolved by mutual agreement shall, at the request of either party, be settled by arbitration in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), as at present in force. The place of arbitration shall be Rome and the language to be used in the arbitral proceedings shall be English. Any arbitration award rendered in accordance with the provisions of this article shall be final and binding to the Parties.

11. Notice

All correspondence regarding the implementation of this MOU shall be addressed to:

For WFP/UNHAS: For the Agency:

11. Modifications

This MOU may be modified or amended only by written agreement between the Parties.

12. Privileges and Immunities

Nothing in this MOU shall imply a waiver by the United Nations World Food Programme, UNHAS, the United Nations or any of its Agencies or Organizations, of any privileges or immunity enjoyed by them or their acceptance of the jurisdiction of the courts of any country over disputes arising out of the said MOU.

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

Signed in Kinshasa, on ...../..... 200.....	Signed in Kinshasa, on ...../..... 200.....
For.....	For World Food Programme/UNHAS
Name.....	Abdou Dieng
Title:..... Title:	Country Director WFP/UNHAS Congo DR
Witnessing:	Witnessing:
Signature:.....	Signature:.....
Date:.....	Date:.....

ANNEX 1

LETTER OF INDEMNITY

To: [The Agency]
The United Nations World Food Programme (WFP)
The United Nations Humanitarian Air Service (UNHAS)

L E T T E R O F I N D E M N I T Y

We, the undersigned, _____, in our capacity as employer of the person(s) mentioned below, hereby request you to facilitate the travel of:

First Name	Family Name	Occupation

On the following flight:

Number	:	Point of departure	:
Date	:	Point of destination	:
Time	:		

We acknowledge that this flight is operated by an independent operator for the official business and purpose of the United Nations, and is not offered as commercial service or as service for the general public.

We recognize that this travel is solely for our own convenience and benefit and that of the above-mentioned person(s), and may take place in areas or under conditions of special risks, including hostilities.

In consideration of your facilitating the travel of any of the above-mentioned persons, we hereby undertake to:

1. Make all necessary insurance arrangements for them.

2. Obtain from the insurers an express waiver of subrogation rights against the United Nations, [The Agency], The World Food Programme and the United Nations Humanitarian Air Service, their officials and employees for any claim of whatever nature which may be brought in connection with any death, personal injury, disability or any other accident, loss or damage they may sustain.

3. Indemnify and hold harmless the United Nations, [The Agency], The World Food Programme and the United Nations Humanitarian Air Service, their officials and employees against any claim of whatever nature which may be brought in connection with any death, personal injury, disability or any other accident, loss or damage they may sustain.

The Signatory warrants that he has full power and authority to sign the present Letter of Indemnity in these terms.

Signed for and on behalf of _____

Signature: _____

Name: _____

Position: _____

Date: _____