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# Aircraft FMC Solutions

## Standard Terms and Conditions of Sale

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Initial Revision

Date: October 24, 2016

### **1. PRODUCT DESCRIPTION; ACCEPTANCE**

The acceptance by Aircraft FMC Solutions LLC (“Seller”) of any order placed by Buyer (an “Order”) of goods and services, including, but not limited to Spare Parts, Repair and Overhaul Services, Ground Support Equipment, Publications, Training Courses, Technical Field Support, Component Exchanges (“Products”), is expressly made conditional upon Buyer’s agreement to the terms and conditions contained herein. Any other terms and conditions, including those set forth in Buyer’s purchase order or other ordering documentation are hereby rejected and deemed null and void.

### **2. INTERNATIONAL TRAFFIC IN ARMS REGULATIONS (ITAR)**

All proposals submitted by Supplier will follow the guidelines set forth by the United States Department of State for marketing, contracting and exporting of goods that are identified as ITAR controlled articles or services. If a contracted item between the buyer and seller is rejected by the Department of State for export at any time, the Seller will notify the Buyer and remove the non-compliant article(s) or service(s). The Seller will not be held accountable by the Buyer for the removed contracted deliverable(s) to remain compliant with ITAR regulations.

### **3. PAYMENT**

**A. Payment** Terms are net 30 days from date of invoice unless otherwise specified on the face of invoice. All items quoted are in United States dollars and all amounts shall be paid in cash or in negotiable paper collectable at its face value in United States Funds. Seller is not required to proceed with performance of Buyer’s Order while Buyer is in default of this or any other contract with Seller or upon the suspension of business, insolvency or liquidation of Buyer or the commencement of any proceeding under any bankruptcy law by or against the Buyer. In the event that any amounts due Seller hereunder become delinquent, the entire balance shall become immediately due and bear interest at the rate of 1.5 percent of the balance for each additional month.

**B. Letter of Credit** – If requested by Seller in writing, Buyer shall establish for the benefit of Seller an irrevocable Letter of Credit in form and substance acceptable to the Seller, and opened by or confirmed by a U.S. Bank located in the U.S.A., which is acceptable to Seller, in the amount requested by Seller, for payment in accordance with this paragraph. Such Letter of Credit shall be established within thirty (30) days of Buyer’s execution of this Order and shall expire no earlier than six (6) months after the termination of this Order. All costs associated with opening and/or confirming such Letter of Credit are the responsibility of Buyer.

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### **4. DELIVERY AND INSPECTION PROCEEDURE**

**A. Products** - All products shall be delivered FCA (INCOTERMS 2010) Seller's U.S.A. facility, unless otherwise indicated by Seller. Products delivered hereunder will be packed for shipment in accordance with Seller's standard packing procedures for such Products. If, upon receipt of the Products by Buyer at destination, the same shall appear not to conform to this Order, Buyer shall, within thirty (30) calendar days after receipt thereof, notify Seller of such condition and afford Seller a reasonable opportunity to inspect the Products and make any appropriate adjustment or replacement. The same remedies afforded Buyer under "Warranties" shall be exclusive for defective Products discovered upon inspection. Buyer shall not delay payment for the Products pending their inspection. Buyer will furnish written shipping instructions for all Products as promptly as possible. In the absence of such instructions Seller may, at any time beginning ten (10) days after forwarding notice to Buyer by mail, facsimile or otherwise that the Products are ready for shipment, do either of the following for the account of and at the expense and risk of Buyer: (i) arrange for shipment of the Products by a carrier of its own selection to Buyer's place of business or other destination reasonably believed to be suitable or (ii) warehouse the Products.

**B. Accelerated Delivery/Partial Shipment** - Seller is authorized to advance the delivery date, or complete performance of any order, prior to the time set forth in such order, and Seller shall have the right to deliver the Products in partial shipments and invoice Buyer for that portion which was shipped.

**C. Returns/Cancellations** - Buyer shall not, for reasons other than Seller's adjudicated default, terminate or cancel its Order for Products. Should Buyer nonetheless terminate or cancel its Order for Products for reasons other than Seller's adjudicated default, Seller shall be entitled to recover from Buyer as a termination/cancellation and/or restocking fee, and not as a penalty, an amount equivalent to Seller's termination costs and expenses and a reasonable allowance for profit for such cancelled Product. In the event Buyer cancels or terminates its Order for Products categorized as "hazardous" or as containing "hazardous material" by the appropriate governmental authorities, in addition to the termination/cancellation and/or restocking fee, Buyer shall reimburse Seller for any and all costs or expenses associated with the disposal, storage, or other disposition of the Products. The rights and remedies afforded to Seller herein are non-exclusive and Seller shall have the right to pursue any other right or remedy available to it at law or in equity.

### **5. WARRANTIES**

**A. Spare Parts, Ground Support Equipment (GSE), Tooling**- Seller warrants to Buyer that, at the time of delivery, the spare parts, ground support equipment and tooling sold hereunder (the "Parts") will be free from defects in material and manufacture. Seller's sole liability and Buyer's

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exclusive remedy under this warranty are limited to the repair or replacement, at Seller's election, of Parts or components thereof which are shown to Seller's reasonable satisfaction to have been defective; provided that written notice of the defect is given by Buyer to Seller no later than thirty (30) days after Buyer's discovery of the defect within the warranty period.

**Factory New:** The warranty period shall extend for the period of time identified by the manufacturer.

**Overhauled:** Three (3) months or two hundred and fifty (250) operating hours, whichever occurs first.

**New Surplus, Serviceable and "As Removed" Condition:** Parts are sold "as is" and are non-returnable.

Transportation charges for the return of such defective Parts to Seller and its reshipment to Buyer and the risk of loss thereof will be borne by Seller only if returned in accordance with written shipping instructions from Seller. Replacement (newly manufactured or repaired) Parts are warranted for the remainder of the applicable original warranty period, if any. This warranty shall not apply to any Part which in Seller's judgment (1) shall have been repaired or altered outside the facilities of Seller in any way so as to affect the safety, function, or reliability of the aircraft or Part, or (2) has been subject to misuse, negligence, accident, or other abuse.

**B. Overhaul/Repair Services** - Seller warrants to Buyer that overhaul or repair services performed by Seller ("Repair Services") will have been performed in a workmanlike manner. Seller's sole liability and Buyer's exclusive remedy under this warranty are limited to the correction of such Repair Services, at the factory of manufacturer and/or on site at the Buyer's facility, as are shown to Seller's reasonable satisfaction to have been defective; provided that written notice of the defect shall have been given by Buyer to Seller within the (3) month or two hundred and fifty (250) operating hours, whichever occurs first, for overhaul services. Transportation charges (excluding related import and export charges) for the return of Products to Seller in connection with defective Repair Services and their reshipment to Buyer and the risk of loss thereof will be borne by Seller only if returned in accordance with Seller's written shipping instructions. Any parts provided in the performance of Repair Services hereunder and sold hereunder shall be subject to the warranty set forth in paragraph A above.

**C. Publications** - Seller warrants to Buyer that any publications sold hereunder ("Publications") will have been prepared in good workmanlike manner. Seller's liability and Buyer's remedy under this warranty are limited to the correction of such Publications as shown to Seller's reasonable satisfaction not to have complied with this warranty; provided that written notice of

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such noncompliance shall have been given by Buyer to Seller within thirty (30) days after the delivery of such Publications by Seller.

**D. Training Courses** - Seller warrants to Buyer that instruction given in the course(s) shall be given by personnel experienced and knowledgeable in the subject matter of the course. Seller will not incur any responsibility or liability of any nature, for anything done or not done by the instructor, or for the results of the instruction furnished by said instructor. Buyer's remedy hereunder is limited solely to the correction of such instruction by Seller as is shown to Seller's reasonable satisfaction not to have complied with this warranty; provided that written notice that such instruction has not complied with this warranty shall have been given by Buyer to Seller within thirty (30) days after the performance of such instruction by Seller.

**E. Technical Field Support Services (Technical Representative)** - Seller warrants to Buyer that it will select and furnish personnel experienced and skilled in the type of work they are to perform hereunder. Seller will not incur any responsibility or liability of any nature, for anything done or not done by any Technical Representative or for the results of the services furnished hereunder. Seller's liability and Buyer's remedy under this warranty are limited to the correction of such services as are shown to Seller's reasonable satisfaction not to have complied with this warranty, provided that written notice of such noncompliance shall have been given by Buyer to Seller within thirty (30) days after the furnishing of such services.

**F. Component Exchange Parts** - Seller warrants to Buyer that, at the time of delivery, Products sold pursuant to an Exchange Agreement Program will be free from defects in material and manufacture. Seller's liability and Buyer's remedy under this warranty are limited to the repair or replacement of such defective Products, at Seller's election, as are shown to Seller's reasonable satisfaction to have been defective; provided that written notice of such defect shall have been given by Buyer to Seller within the warranty period, but in no event later than thirty (30) days after Buyer's discovery of the defect, and provided further that the Buyer may be charged for such repair or replacement.

**G. Title** - Seller warrants to Buyer that it will convey good title to the Products sold hereunder. Seller's liability and Buyer's remedy under this warranty are limited to the removal of any title defect or at the election of Seller to the replacement of the Products which are defective in title.

**H. Exclusive Warranties and Remedies** - THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE GIVEN AND ACCEPTED IN LIEU OF (i) ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WHICH ARE HEREBY DISCLAIMED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE; AND (ii) ANY OBLIGATION, LIABILITY, RIGHT, CLAIM, OR REMEDY IN CONTRACT OR TORT, WHETHER ARISING

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FROM SELLER'S NEGLIGENCE, ACTUAL OR IMPUTED, STRICT TORT LIABILITY OR BREACH OF WARRANTY. THE REMEDIES OF BUYER SHALL BE LIMITED TO THOSE PROVIDED HEREIN TO THE EXCLUSION OF ANY OTHER REMEDIES INCLUDING, WITHOUT LIMITATION, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, STATUTORY OR INDIRECT DAMAGES, LOSS OF PROFITS OR LOSS OF REVENUES, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. NO AGREEMENT VARYING OR EXTENDING THE FOREGOING WARRANTIES, REMEDIES, OR THIS LIMITATION WILL BE BINDING UPON SELLER UNLESS IN WRITING, SIGNED BY A DULY AUTHORIZED OFFICER OF SELLER.

### **6. STANDARD CONTRACT TERMS AND CONDITIONS**

**A. Title** - Title to and risk of loss of all Products shall pass to Buyer upon delivery.

**B. Excusable Delays** - Buyer acknowledges that the delivery dates are based on the assumption that there will be no delay due to causes beyond the reasonable control of Seller. Seller shall not be charged with any liability for delay or non-delivery when due to delays of common carriers, vendors, acts of God, terrorism or the public enemy, compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it proves to be invalid, fires, riots, labor disputes, unusually severe weather, or any other cause beyond the reasonable control of Seller. The provisions of this clause shall also apply in the event that Buyer is not in 'good credit standing' with Seller as measured by outstanding unpaid invoices and other items that may constitute breach of contract by Buyer. Therefore, Seller's excusable delay shall be interpreted to include outstanding unpaid invoices by Buyer. To the extent that such causes actually retard deliveries on the part of Seller, the time for the performance shall be extended for as many days beyond the date therefore as is required to obtain removal of such causes. This provision shall not, however, relieve Seller from using reasonable efforts to avoid or remove such causes and continue performance with reasonable dispatch whenever such causes are removed.

**C. Indemnification** - Buyer shall indemnify and hold Seller harmless against any and all losses, liabilities, damages, costs, or expenses arising from (i) any and all claims which may be made against Seller by reason of injury or death which were caused by or alleged to have been caused by the use, sale, transfer or alteration of the Products furnished hereunder, and not resulting from Seller's gross negligence or intentional misconduct, and (ii) any and all damages to Seller's property which are caused by any act or omission, negligence or otherwise, of Buyer or any subcontractor of Buyer or of any of Buyer's employees, workmen, servants or agents.

**D. Liability Limitation** - With respect to any Product purchased under this Order and alleged to be the direct or indirect cause of any loss or damage to Buyer, the sum equal to the invoiced

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price of such Product (or if not separately priced, Seller's established selling price for such item) shall be the ceiling limit on Seller's or any of Seller's affiliate's liability, whether founded in contract or tort (including negligence, strict tort liability or breach of warranty), arising out of or resulting from (i) this Order or the performance or breach thereof or (ii) the design, manufacture, delivery, sale, repair, replacement, use or furnishing of any such Product. In no event shall Seller or any of its affiliates have any liability for any indirect, incidental, consequential or special damages.

**E. Inability or Refusal to Pay** - If Buyer is unable or refuses to make payment to Seller in accordance with any of its obligations to Seller, Seller may, at its option, terminate this Order by giving to Buyer a written notice of its intention to terminate. In addition, for Buyers other than foreign governments, if a receiver or trustee is appointed to any of Buyer's property, or Buyer is adjudicated bankrupt, or application for reorganization under the Bankruptcy Act is filed by or against Buyer which shall not be dismissed within thirty (30) days, or if Buyer becomes insolvent or makes an assignment for the benefit of creditors, or takes, or attempts to take, the benefit of any insolvency acts, or an execution be issued pursuant to a judgment rendered against Buyer, Seller may also, at its option, terminate this Order by giving to Buyer a written notice of its intention to terminate. Upon any such termination, Seller shall be relieved of any further obligations to Buyer and Buyer shall reimburse Seller for its termination costs and expenses and a reasonable allowance for profit. All sums paid to Seller from whatever sources may be retained by Seller and applied toward any amount owed to Seller. In addition, Seller shall have the right to reduce and set-off against any amounts payable by Seller to Buyer or against Buyer's property in Seller's possession any indebtedness or other claim which Seller may have against Buyer. The excess, if any, of such sums over the total termination amount shall be returned to Buyer by Seller.

**F. Export Licenses** - Buyer will, on Seller's request, assist Seller in Seller's efforts to obtain any United States Government export license or similar authorization which may be required now or hereafter for export of the Products. Seller and Buyer specifically acknowledge that this Order is conditioned upon the ability of Seller and Buyer to conform to the laws and regulations of the U. S. Government and its various cognizant departments regarding the sale of the Products to Buyer. Buyer also agrees that this Order is conditioned on Buyer's agreement to not re-transfer, re-export or divert any Products if such re-transfer, re-export or diversion would be a violation of any U.S. export or sanctions laws. Any technical data or defense service exported from the United States in furtherance of this Order, and any defense article which may be produced or manufactured from such technical data or defense service, may not be transferred to a person in a third country or to a national of a third country except as specifically authorized

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in this Order unless the prior written approval of the U.S. Department of State has been obtained. This obligation will remain binding on the Buyer after the termination of this Order.

**G. Import Licenses** - With respect to any import laws and other regulations of the country of destination and its various cognizant departments regarding the import of the Products hereunder, Buyer shall be solely responsible for obtaining and complying with any and all import licenses or other authorizations which may be required for importing the Products.

**H. Modifications Prior to Delivery** - Seller shall have the right to incorporate, at any time and without Buyer's consent, changes in any Product to be furnished to Buyer hereunder where such changes are meant to improve the manufacturing or maintenance conditions of the Product; provided such changes do not materially prejudice the performance of the Product or the delivery schedule therefore. Seller shall also have the right, at any time and without Buyer's consent, to incorporate such changes in any Product as are specified by the U. S. Government for this type of Product.

**I. Taxes and Other Charges** - In addition to the Product price, Buyer shall pay to Seller any and all taxes (not including any income taxes), fees or duties which may be imposed by any taxing authority arising from the sale, delivery, or use of any Product (including, without limitation, excise and value added taxes, and any import or export duties), and for which Seller may be held responsible for collection or payment, either on its own behalf or that of Buyer, upon receipt by Buyer of Seller's invoice therefore. Buyer shall minimize, to the greatest extent possible, any taxes that may be imposed on Seller. In the event that Buyer pays income tax on behalf of Seller, or there are withholding taxes imposed on Seller, Buyer shall provide Seller with appropriate documentation to evidence the taxes or the payment thereof. Buyer's obligations under this paragraph I shall survive delivery of the Product(s) sold hereunder.

**J. Notices** - All notices or communications of any kind under and with respect to this Order and the Products shall be in the English language. The effective date of each such notice shall be the date upon which it is received.

**K. Construction/Jurisdiction/Disputes** – This Order shall be interpreted in accordance with the plain English meaning of its terms, and the construction thereof shall be governed by the laws of the State of Michigan, U.S.A., without regard to its conflict of laws principles. *For all domestic sales:* The exclusive forum for any disputes, claims, differences, actions or lawsuits arising out of or under this Order will be the state (Oakland County Circuit Court) or federal court of Michigan. The parties agree to submit to the jurisdiction of the state and federal courts of Michigan with respect to any such dispute, claim, difference, action or lawsuit. *For international sales:* All disputes, claims and differences between the parties arising out of or under this Order shall be settled and finally determined by arbitration in accordance with the applicable rules of

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the International Chamber of Commerce (“ICC”). All decisions shall be in accordance with the substantive laws of the State of Michigan, without regard to its conflict of laws principles, and the arbitration shall be conducted in the State of Michigan. The arbitration court shall be composed of three (3) arbitrators, one of whom will be named by each party. The third arbitrator, who shall act as chairman, shall be determined in accordance with the rules of the ICC. The arbitrators shall meet and decide at a place determined by them by majority vote. The arbitrators shall decide each issue presented to them by a majority vote, and their decisions shall be in writing and shall be final and conclusive. The amount of the costs of any such arbitration and by whom they shall be paid will be determined as part of the arbitration. This Order shall be enforceable and judgment upon any award rendered by the arbitrators may be entered in any court having jurisdiction.

**L. Assignment/Merger** - This Order shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto, but it may not be voluntarily assigned, wholly or in part, by either party hereto. However, Seller may assign this Order to an affiliate of Seller without Buyer’s prior consent.

**M. Entire Agreement** - The terms and conditions herein contained constitute the entire agreement between the parties hereto and shall supersede all previous communications, representations, or agreements, either oral or written, between the parties hereto with respect to the subject matter hereof, and no agreement or understanding varying or extending the same will be binding upon either party hereto unless in writing, signed by a duly authorized officer or representative thereof. If any term of this Order is determined to be invalid or unenforceable under applicable law, such term shall not apply; but the remaining terms of this Order shall remain in full force and effect.

**N. Waiver** – Any failure by either party to exercise any right granted by the terms and conditions of this Order shall not be construed as a waiver of such right or any other rights under this Order, and shall in no way affect the subsequent exercise of such right or of any other rights under this Order by such party.

### **7. ADDITIONAL PROVISIONS RELATED TO OVERHAUL AND/OR REPAIR SERVICES**

**A. Scrap Materials** - Goods and parts thereof received from Buyer which, in the opinion of Seller, have no value other than as scrap will be disposed of by Seller and no accounting or liability therefore will be imposed on Seller by Buyer. However, Seller agrees to comply with instructions set forth on the face of Buyer’s Order providing for immediate disposition of any such scrap at Buyer’s expense.

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**B. Shipment** - Buyer shall ship such item to be overhauled or repaired to Seller's designated facility within sixty (60) days of Seller's receipt of Buyer's Order, if not already in the possession of Seller. When shipping an item to Seller from a location outside the United States, Buyer shall (i) provide Seller a pre-alert of such shipment, via an email sent to saaron@aircraftfmc.com, which shall include the end user and end use of the item; (ii) utilize Seller's recommended freight forwarders and carriers; (iii) make reasonable efforts to utilize Detroit, Michigan, USA as the airport of destination for import clearance; (iv) utilize only Seller-designated import brokers and turn over all necessary paperwork to such brokers for clearance; and (v) include a commercial invoice that contains all required elements for United States Customs clearance (including, but not limited to, part number, country of origin, and foreign shipper's declaration).

### **8. ADDITIONAL PROVISIONS RELATED TO PUBLICATIONS**

**A. Proprietary Rights** - Buyer recognizes that the publications, training courses, support and other information delivered hereunder constitute or incorporate information which is proprietary to Seller, its affiliates, suppliers or licensors (collectively, "Seller Proprietary Information"). Buyer shall (i) use Seller Proprietary Information solely for its own benefit to support its aircraft concerning which the Seller Proprietary Information is provided, and not to support the aircraft or provide services to any third party unless expressly authorized by Seller in writing in Seller's sole discretion, or for any other purpose whatsoever, including, without limitation, to design, manufacture, reverse engineer, or obtain FAA Parts Manufacturer Approval or any other government approval relating to goods, services, parts or components, and (ii) not disclose Seller Proprietary Information to any third party without Seller's express written authorization in Seller's sole discretion. The provisions of this paragraph shall not restrict or affect Buyer's rights to use or disclose any information that Buyer can document (i) was or becomes generally available to the public through no action or inaction of Buyer or any individual or entity that receives Seller Proprietary Information by or through Buyer, (ii) was known to the Buyer on a non-confidential basis prior to the disclosure by Seller, or (iii) was independently developed by the Buyer without reference to or use of Seller Proprietary Information. All rights not expressly granted by Seller hereunder are reserved, including without limitation all rights in U.S. or foreign patents. Buyer shall not remove or obstruct any copyright notices or other proprietary notices present on any Seller Proprietary Information.

**B. Buyer-Furnished Data** - In connection with any data or other information furnished by Buyer for use in any publication delivered hereunder, Buyer warrants and represents that no trade secrets or confidential information of any other person, firm, corporation, or government has been or will be wrongfully disclosed by Buyer to Seller and that all information disclosed by Buyer to Seller may be used or disclosed by Seller without restriction.

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### **9. ADDITIONAL PROVISIONS RELATED TO TRAINING COURSES**

**A. English Language** - Training courses will be conducted in the English language and all written material will be in English. Buyer is solely responsible for arranging for the services of an interpreter, if required, and is solely responsible for the expenses of such interpreter services.

**B. Buyer's Responsibility** - All pilot and maintenance training shall be conducted on Buyer's aircraft. Buyer shall have sole responsibility and liability for all arrangements and expenses for travel, lodging and meals for Buyer's personnel enrolled in any training course at any of the Sellers U.S. Locations.

**C. Indemnification** - In consideration of Seller making the training services available to Buyer hereunder, Buyer, as the aircraft owner whose employees or designees will be the recipient of such training, shall secure and protect itself and indemnify Seller, its affiliates, and any of its directors, officers, employees, service representatives, and agents from any liability, claim of liability, expense, cause of action, loss or damage whatsoever, whether arising in tort or otherwise for any injury, including death, to any person or property whatsoever (including Buyer's aircraft), arising out of or in conjunction with the performance of such training services. Seller assumes no liability for any expense of Buyer, including those of Buyer's personnel, directly or indirectly connected with the furnishing of training services provided hereunder nor for any expenses for the operation or maintenance of Buyer's aircraft. The parties expressly understand and agree that the responsibility of Seller in the furnishing of the training services is limited to the furnishing of such training services and shall not extend to the results thereof.

### **10. ADDITIONAL PROVISIONS RELATED TO TECHNICAL FIELD SUPPORT (TECHNICAL REPRESENTATIVE)**

**A. Technical Representative Functions** - The Technical Representative will function as an advisor in the operation and maintenance of the designated aircraft only and will not be utilized by Buyer in lieu of Buyer's normal supervision. The Technical Representative shall remain an employee of Seller, and the decision as to whether the working conditions are sufficiently safe to allow the Technical Representative to perform services hereunder shall remain entirely within the discretion of the Technical Representative. The Technical Representative will be available during normal working hours for consultation and technical support related to the Blackhawk helicopter. In emergency cases related to safety, flight conditions or aircraft ground conditions, Seller will endeavor to make the services of the Technical Representative available outside of normal working hours. The normal work week is understood to be eight (8) hours per day, five (5) days per week. The Technical Representative shall observe those holidays observed by Buyer and by Seller.

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**B. On-Site Labor and Equipment** - Buyer will furnish proper working facilities such as buildings, communication equipment (for local communication only), desks, internet connection, etc. as well as any additional on-site labor, labor supervision, equipment, material, tools and instrumentation found necessary to accomplish the desired task(s).