



## Request For Quote Date: 02 Nov 2009

### Terms and Conditions – ANNEXURE IV

**NOTE : The following Terms and Conditions are for Lease of One B777-200LR aircraft. NACIL intends to Lease out Upto three B777-200LR aircraft.**

**Date:** 2 November 2009

This is strictly confidential and is provided on the understanding that this offer and the terms and conditions contained herein shall not be revealed to any person other than your directors, officers, employees and professional advisers who are responsible for analyzing, negotiating and approving the sale of the Aircraft and who are made aware of the confidential nature of this offer.

**Lessor:** National Aviation Company of India Limited, (the entity into which Air India and erstwhile Indian Airlines have been amalgamated) a company incorporated under the Companies Act, 1956 on March 30, 2007, and having its registered office at Airlines House, 113 Gurudwara Rakabganj Road, New Delhi-110001, (hereinafter referred to as "*Lessor*")

**Lessee:** [insert name of the Lessee], a company incorporated under \_\_\_\_\_ (hereinafter referred to as "*Lessee*"), and having its registered office at \_\_\_\_\_

#### Definitions:

1. "Delivery Date" shall be the date on which Lessee executes and delivers the Acceptance Certificate.
2. "Rental Month" means the month starting from the delivery date.
3. "Excluded Country" means US EXIM Bank excluded countries
4. "Restricted Country" means US EXIM Bank, UN and EU restricted countries

The general terms and conditions are as follows:



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**Aircraft:** One (1) used Boeing 777-200LR airframe, bearing Indian registration number VT-ALA/VT-ALB/VT-ALC and manufacturer's serial number 36300,/36301/36302 (Year of Manufacture 2007) and two (2) used GE 90-110 Engines, together with the auxiliary power unit located thereon, and any and all appliances, parts, accessories, instruments, navigational and communications equipment, modules, components and other items of equipment installed in or furnished with such airframe (the "Aircraft") and all related components, manuals and technical records (the "Records"). For purposes hereof, the term "Engine" refers to any of the foregoing engines.

**Lease Terms:** The Aircraft shall be the subject of a lease in form and substance mutually acceptable to Lessor and Lessee (the "Lease"). The Aircraft shall be delivered to Lessee pursuant to the terms of the section of this letter entitled "Delivery", but not before satisfaction by Lessee of the conditions precedent set forth in the section of this letter entitled "Conditions Precedent" (unless Lessor waives or defers any conditions precedent) and execution of the lease agreement.

The term of the Lease (the "Lease Term") shall commence on the Delivery Date and shall terminate on the last day of the [ TBD ] "rental month"(as defined hereinabove) of the lease.

**Anticipated Delivery Date:** 1<sup>st</sup> of May 2010 to 31 of August 2010, or as soon thereafter as is practicable, but in any case not later than the 31<sup>st</sup> of October 2010 (its "Outside Delivery Date"). Early delivery dates are negotiable.

**Delivery:** Lessee's acceptance of the Aircraft shall be evidenced by its execution and delivery of an acceptance certificate with respect to the Aircraft, the Records and the Lease (the "Acceptance Certificate"). The date of Lessee's execution and delivery of the Acceptance Certificate is referred to in this Letter as the "Delivery Date" and shall constitute "Delivery" of the Aircraft and the Records. If the Acceptance Certificate is not executed by the Lessee on or prior to the Outside Delivery Date (subject to the section hereof entitled "Delivery Delay"), then the parties shall have no further obligations with respect to the Aircraft except as expressly set forth herein. At Delivery, Lessor shall provide Lessee



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with all of the Records.

**Delivery Location:** The site at which Delivery Maintenance is conducted by Lessor (the “*Delivery Location*”); *provided* that Lessor will arrange, at its expense, to ferry the Aircraft following Delivery to Lessee’s base.

**Delivery Delay:** If Lessor is unable to deliver the Aircraft on the terms contained herein within sixty (60) days of the Outside Delivery Date (the “*Delivery Delay Date*”), then Lessee, at its election, may notify Lessor that it is terminating its obligations with respect to the Aircraft, whereupon (a) Lessee shall have no further obligations with respect to the Aircraft and (b) Lessor shall, within ten (10) business days of such notice, refund the Security Deposit relating to the Aircraft to Lessee.

**Delivery Condition:** The Aircraft will be delivered on an “AS IS WHERE IS BASIS” at the Delivery Location in India; *provided* that Lessor shall have accomplished all Delivery Maintenance with respect to the Aircraft prior to Delivery.

**Lease Rental:** The base lease rental with respect to the Aircraft (the “*Lease Rental*”) will commence on the date following the ferrying of the Aircraft to Lessee’s base and will be payable as follows: [ US\$ TBD] per month, payable monthly in advance. The first month rental will be paid by Lessee on the date of signing the Acceptance Certificate.

Lease Rentals payable to the Lessor shall be free and clear of all taxes and duties including withholding taxes, use and excise taxes and VAT. Lessee shall be responsible for all and any local and other applicable tax liabilities and stamp duties. Lessee will be fully responsible for the payment of all taxes, insurances and other costs and charges with respect to the Aircraft.

The security deposit for the Aircraft (the “*Security Deposit*”) shall be two (2) times the Monthly Lease Rental. The Security Deposit shall be paid half (1/2) in cash on the signature of this Letter Of Intent and the remaining half(1/2) in cash upon signature of the Lease.

Any interest earned on the Security Deposit will accrue for the account of Lessor.

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The Security Deposit or any portion thereof previously paid to Lessor in respect of the Aircraft shall be non-refundable unless:

- (A) Lessor shall have otherwise breached its obligations in respect of Delivery,
- (B) the Aircraft shall have sustained an event of loss

in which case, the Security Deposit or any portion thereof previously paid to Lessor shall be returned to Lessee, and Lessor shall be free to remarket the Aircraft to third parties.

Following acceptance of the Aircraft by Lessee under the Lease on the Delivery Date, the Security Deposit will secure the performance by Lessee of its obligations under the Lease; Upon full and final performance by Lessee of all of its obligations under the Lease, the Security Deposit will be returned to Lessee in accordance with and subject to the provisions of the Lease.

### **Maintenance**

#### **Reserves:**

The Lease shall contain provisions related to maintenance reserves (to be based upon Lessee's utilization and maintenance program, but which shall in any event cover airframe maintenance, engine maintenance (including overhaul and LLP) subject to a formula for changes in the hour to cycle ratio, and landing gear and APU maintenance), all based on the maintenance reserves set forth below at 8:1 Hrs to Cycle ratio:

- C check maintenance reserves rate shall be US\$27,000 per calendar month, based on a cycle of 1125 days Tasks, 18000 Flight Hours Tasks, 2500 Flight Cycles Tasks per Boeing MPD.
- HMV maintenance reserves rate shall be US\$31,000 per calendar month, based on an eight (8) year HMV cycle.
- The landing gear maintenance reserves rate shall be US\$ 9,500 per calendar month.
- Engine performance restoration maintenance reserves rate shall be US\$284 per flight hour per engine with 10% derate operation
- Engine LLP replacement maintenance reserves rate shall be US\$432

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per cycle per engine.

- APU maintenance reserves rate shall be US\$24 per Aircraft Flight Hour.

Lessee shall pay maintenance reserves starting from the Delivery Date. Maintenance reserves shall be paid on the 15th day of each calendar month during the Lease Term of each Lease for the previous month and will be subject to (i) a commercially reasonable annual escalation to be mutually agreed upon and specified in the Lease (ii) adjustment by reference to the Maintenance Program. Lessor shall reimburse Lessee (but only from the allocations of maintenance reserves set forth above but in no event more than the actual amount paid by Lessee, net of prior reimbursements received by Lessee) to pay the direct and reasonable cost of performing the maintenance described above. With the exception of Lessor contributions for the initial engine shop visits, APU shop visits and landing gear overhauls described below, Lessee will be responsible for any "C" check and for any engine or APU performance restoration in excess of net amounts paid by Lessee above in respect of the related maintenance reserve amounts. All maintenance reserves shall be the property of Lessor, with any unused maintenance reserves at the end of the applicable Lease term to be retained by Lessor.

### Insurance:

Lessee shall throughout the period of the Lease, at its own cost and expense maintain and keep in full force and effect insurance with insurers acceptable to Lessor, which shall be fully reinsured with reinsurers in the London market and /or other leading international aviation insurance of recognized responsibility and good repute, specializing in and normally participating in such insurance market, so as to cover, inter alia, hull all risks, hull war and allied risks including confiscation by the Government of Registry and third party liability (including third party and other war perils pursuant to policies evidenced by reinsurance certificate(s) including a cut through clause in customary form) and brokers letter(s) which shall be in form and substance reasonably satisfactory to Lessor.

Hull insurance shall be maintained in respect of the Aircraft with an agreed

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value of USD 175 million and a deductible of USD 750,000; liability insurance (including liability for third party war perils) shall be maintained with a combined single limit of no less than USD 1 billion. The U.S EXIM Bank or its designee shall be named as sole loss payee under the hull insurance in relation to any total loss and shall be subject to an AVN67B endorsement

**Engine Shop Visits, Landing Gear Overhauls, APU Shop Visits; Lessor Contributions** Lessee shall arrange for and pay for all engine/APU shop visits; *provided* that Lessor shall contribute on a pro rata basis toward the first engine/APU shop visit for each of the Engines/APU in an amount equal to the product of MR rate (as mentioned above) and Lessor's usage since new or Last restoration as applicable prior to Delivery.

**Agreed Loss Value:** The agreed loss value for each Aircraft for all purposes (including for insurance purposes) shall be US\$175,000,000.

**Delivery Maintenance:** Immediately preceding the Delivery, Lessor shall, at its sole cost and expense, carry out the block "C" check clearing aircraft for 1125 days, 18000 Flight Hours and 2,500 Flight Cycles and all lower level checks. . Delivery Maintenance will also include with respect to the Aircraft:

(a) causing each component or part that has a hour/cycle limit or a calendar limit to have at least 4000 hours, 1500 cycles or 12 months remaining whichever is the limiting applicable factor and all calendar life Emergency equipment shall be in half life condition but in no event less than one year's life remaining;

(b) causing the Aircraft to be in compliance with all airworthiness directives issued by the FAA on a terminating action basis and Manufacturer alert service bulletins issued by the FAA and which have a compliance date falling within six(6) months of the date of delivery;

(c) facilitating the performance by Lessee of, and providing Lessee with reasonable access to perform, a full unrestricted cold and hot section borescope inspection of the Engines and APU. At the time of Delivery and in Lessee's presence, Lessor will perform, at its expense, a 50% power assurance check on each Engine with an EGT margin of no less than 30°

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Celsius, and in accordance with the limits shown in the related manufacturer's manual. Lessor will, at Lessor's expense, correct and provide the Lessee with satisfactory evidence of correction of any discrepancies from the manufacturer's guidelines that are found during such inspection.

(d) causing all damage to the Aircraft to have been permanently repaired and certified in accordance with the requirements of the manufacturer and the Aviation Authority. External repairs will, where applicable, be flushed or otherwise permanently repaired;

(e) performing, at Lessee's request and at Lessor's sole cost and expense, with Lessee present at the time of Delivery, a test flight of no more than two (2) hours duration, with up to three(3) participants representing Lessee on board, a full systems functional ground check and operational inspection to demonstrate the satisfactory operation of the Aircraft, its equipment and systems. Lessor will, at its own cost and expense, correct any discrepancies found during such test;

(f) causing the Aircraft to be in full compliance with the manufacturer's corrosion prevention and control program (CPCP); such items shall be cleared at a minimum through the next scheduled "C" check; and

(g) back-to birth traceability for all Life Limited Parts,

(h) providing one (01) Ship Sets of the Galley equipment

Delivery Maintenance will also include, immediately following completion of the foregoing items, painting the Aircraft, at Lessor's sole cost and expense, in Lessee's livery or such other location as to which Lessor and Lessee shall mutually agree.

Lessor will provide all records in Lessor's possession relating to the Aircraft to Lessee and will provide "back to birth" traceability for all Life Limited Parts.

Operations:

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Lessee shall not operate the Aircraft or permit the operation of the Aircraft in violation of the following:

- (1) any law of any Government entity having jurisdiction over Lessor, Lessee or the Aircraft,
- (2) any U.N, E.U or U.S sanctions or restrictions,
- (3) any airworthiness certificate, license or registration relating to the aircraft or
- (4) any warranty, restriction or limitation placed on the scope of any insurance coverage required under the Documentation (and will not operate the Aircraft outside the scope of such insurance).

### Restricted Use of Aircraft:

Lessee shall not, without the prior written consent of Lessor cause the Aircraft to be:

- (1) flown to or within, or otherwise operated or used to or within an Excluded Country,
- (2) flown to or within, or otherwise operated or used to or within Restricted Country,
- (3) operated or used in contravention of the Ex-Im Bank Statutes or any United States law, regulation or stated policy of general applicability restricting the operation or use of United States-manufactured or financed aircraft and engines,
- (4) flown or otherwise operated or used for any offensive or defensive military purpose, and
- (5) operated or used for any purpose for which it is not designed or reasonably suited in accordance with the Approved Maintenance Program, Applicable Law and applicable material warranties or for any primary purpose or other than the commercial transport of passengers and cargo.



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### **Maintenance:**

During the Lease Term, the Aircraft will at all times be maintained, operated, repaired and overhauled in accordance with a maintenance program which has been approved by the Local Aviation authority and which conforms in all respects to the Boeing MPD, including inspection intervals and work cards (the "*Maintenance Program*"), all manufacturers' mandatory and alert service bulletins and all applicable requirements of law, including, without limitation, all airworthiness directives issued by the FAA (without regard to any exemption waiving or delaying compliance therewith). The Lease will require Lessor's prior written approval of any significant adverse change to the Maintenance Program for the Aircraft.

Lessee will maintain and preserve all logs, manuals and other records relating to each Aircraft in English as required by the Lease and applicable law, including, without limitation, all requirements of the United States FAA and the Local Aviation Authority, which shall be complete and have "back-to-birth" traceability for all airframe and engine life-limited parts (except for such periods for which Lessor has not provided such information to Lessee). All such logs, manuals and other records shall, notwithstanding their maintenance by Lessee, be the sole property of Lessor. To the extent Lessee uses a third party maintenance provider for any "C" Check or above or any engine shop visit, such provider shall be an FAA/EASA approved repair facility. The aircraft and documents should be maintained to a standard such that the aircraft is immediately registerable under FAA/EASA regulations. Lessor and Lessee agree to a cost sharing for any AD with a cost exceeding US\$90,000.

### **Return Conditions:**

Immediately prior to the return of the Aircraft by Lessee under and pursuant to the terms of the Lease ( a "*Return*"), Lessee at its own expense will:

- A) perform, by an FAA/EASA-approved repair station, the next scheduled HMV or "C" check in order that: (i) at a minimum, all inspections due within the next "C" check cycle (1125 Days, 18,000 Hours and 2,500 cycles), will be cleared in accordance with the Boeing Maintenance Planning Document; and (ii) all other requirements of the following return conditions are satisfied. All routine and non-routine maintenance items will be corrected during such HMV or "C" check, and no deferred or carryover items will exist upon Return;

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- B) cause each of the main landing gears to be redelivered with no less than 42 months remaining to next overhaul and not more than Life at delivery plus Lessee's utilisation of the aircraft.
- C) cause the APU to be returned in serviceable condition;
- D) cause each Engine (and each module thereof) to be returned in the same condition as originally delivered but with not more than 12 months before the next anticipated shop visit based on Manufacturer's Guidelines, EGT Removal based on Engine Trend monitoring and any other condition that warrants Engine removal including LLPs. No Engine (and no module thereof) shall (i) be "on watch" or subject to special or reduced inspection intervals or (ii) exhibit any adverse trends (computer monitored) or indicate a rate of acceleration in performance deterioration that is materially higher than normal;
- E) cause each component or part that has a hour/cycle limit or a calendar limit to have at least 4,000 hours, 1,500 cycles or 12 months remaining, whichever is the limiting applicable factor and all calendar life Emergency equipment shall be in half life condition but in no event less than one year's life remaining;
- F) cause the Aircraft to be sanded and painted in full Lessor's Livery and Lessor's paint specification.
- G) providing one (01) Ship Sets of the Galley equipment.

The Records (and all other logs, manuals and other records with respect to the Aircraft) shall be maintained in English and returned at the same time as the Aircraft.

Lessee will facilitate the performance by Lessor of, and provide Lessor with reasonable access to perform, a full unrestricted cold and hot section borescope inspection of the Engines and APU. At the time of Return and in Lessor's presence, Lessee will perform, at its expense, a 50% power assurance run on each Engine to successfully demonstrate take-off power at 30° Celsius with an EGT margin of no less than 30° Celsius, and in accordance with the limits shown in the related manufacturer's manual.



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Lessee will, at Lessee's expense, correct, and provide Lessor satisfactory evidence of correction of, any discrepancies from the manufacturer's guidelines that are found during such inspection.

Lessee shall have permanently repaired and certified all damage to each Aircraft occurring following the Delivery thereof in accordance with the requirements of the manufacturer and the FAA. External repairs made following the Delivery of the Aircraft will, where applicable, be flushed or otherwise permanently repaired, certified and properly documented in accordance with the requirements of the manufacturer and the FAA.

At Lessor's request and at Lessee's sole cost and expense, Lessee will perform, with Lessor present, a test flight of no more than two hours duration, with up to three (3) participants representing Lessor on board, a full systems functional ground check and operational inspection to demonstrate the satisfactory operation of the Aircraft, its equipment and systems. Lessee will, at its own cost and expense, correct any discrepancies found during such test.

The Aircraft will be in full compliance with the manufacturer's corrosion prevention and control program (CPCP). Such items shall be cleared, at a minimum through the next scheduled "C" check( 1125 Days, 18,000 Hrs, 2500 Cycles).

The Aircraft will be in compliance with all airworthiness directives issued by the FAA on a terminating action basis and Manufacturer alert service bulletins and which have a compliance date falling within 6 months of the date of Return.

Lessee shall have obtained an export Certificate of Airworthiness for the Aircraft.

All vendor and manufacturer's no-charge service bulletin kits ordered and received by Lessee for the Aircraft but not installed on the date of return will be delivered on board the Aircraft.

The Aircraft shall be in such condition as qualifies for (i) immediate certification of airworthiness by, and registration with, the FAA and (ii) immediate operation in the United States in full compliance with the U.S. FAR Part 121.

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Lessee will, at its sole expense, return the Aircraft to Lessor at its principal maintenance base or at such other location in India to which Lessor shall agree.

### Assignments:

(a) Lessor at its own expense may, upon prior written notice but without the necessity of Lessee's consent, transfer any of its rights or obligations under each Lease; *provided* that, in the event of any such transfer under either Lease, Lessee shall not be obligated to make any greater payment under such Lease than Lessee would, on the basis of law in effect as of the time of such transfer, have had to make had such transfer not taken place. Lessee shall cooperate in good faith with such transfer and Lessor will reimburse Lessee's reasonable legal expenses in connection with any such transfer.

(b) Lessee may not assign all or any of its obligations under the Lease without Lessor's prior written consent.

### Expenses:

Lessor and Lessee shall each be responsible for their respective out-of-pocket expenses, including but not limited to fees of outside legal counsel in connection with the negotiation and delivery of this Letter and the Transaction Documentation (as hereinafter defined).

Conditional clause:

The lease is subject to US EXIM Bank's prior written consent.

### Conditions

#### Precedent:

A. Lessor's obligation to lease the Aircraft to Lessee shall be subject to certain conditions (any of which, if not satisfied, may be waived by Lessor), including without limitation, the following:

- 1) The Lease and all other agreements, documents and instruments related thereto (collectively, the "*Transaction Documentation*") shall have been executed and delivered by the parties on or before 31 January 2010 or such later date as to which the parties shall mutually agree prior to such date.
- 2) Lessor shall have received satisfactory opinions of counsel (including Lessee's counsel) with respect to the Transaction Documentation and the

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transactions contemplated thereby.

- 3) Lessor shall have received, reviewed and approved Lessee's audited financial statements and other details as mentioned in Annexure I of RFQ.
- 4) Lessor shall have received final approval of the transaction contemplated by this Letter by the Board of Lessor.
- 5) a certificate of insurance, undertakings from insurance and reinsurance brokers to the satisfaction of the Lessor.

### **Confidentiality:**

The terms of this Letter are highly confidential. Each of the undersigned agrees that it will not disclose the terms hereof to any third party without the prior written consent of the other party, unless it is legally compelled to make such disclosure (including, without limitation, any required disclosure to the Indian Parliament).

### **Documentation:**

The Transaction Documentation will (1) contain customary terms for operating leases (including with respect to events of default, events of loss, insurance, inspection, subleasing and monthly status reports and further including a covenant of quiet enjoyment in favor of Lessee whereby Lessor will covenant that: (a) absent the occurrence and continuance of any event of default, neither Lessor nor any party claiming through Lessor will interfere with the use, possession and quiet enjoyment of the Aircraft by Lessee and (b) Lessor will use commercially reasonable good faith efforts to procure a quiet enjoyment undertaking in a form reasonably acceptable to Lessee from any mortgagee of the Aircraft from time to time, (2) be prepared by Lessor's counsel and (3) be governed by the English laws.

### **Arbitration Clause:**

If any dispute or difference arises between the Lessor and the Lessee hereto in connection with this Letter of Intent regarding the validity, interpretation, implementation or alleged breach of this Letter of Intent or anything done or omitted to be done pursuant to this Letter of Intent, the Lessor and the Lessee shall attempt in the first instance to resolve the same through negotiation. If the dispute is not resolved through negotiation within forty five(45) days after commencement of discussions or such longer period as the the Lessor and



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the Lessee agree to in writing, then either Party may refer the dispute for resolution to a sole arbitrator jointly appointed by the Lessor and the Lessee. Such arbitration shall be conducted in accordance with the procedure as laid down by the Indian Arbitration and Conciliation Act, 1996, or any statutory modification or re-enactment thereof for the time being in force. All proceedings in such Arbitration shall be conducted in English language. The Arbitration shall take place in Mumbai, India.

The laws governing the resolution of any dispute arising between the parties concerning the Lease Agreement, including the Lease proposal shall be the English Laws.

Governing Law:

This Letter of Intent shall be governed and interpreted by and construed in accordance with the provisions of English laws. Subject to the provisions of Arbitration Clause herein above, both Lessor and Lessee hereby agree to submit to the exclusive jurisdiction of the competent Courts in Mumbai in all matters arising out of this Letter of Intent.