



**SUPPLEMENTARY AGREEMENT**

**BETWEEN**

**THE GOVERNMENT OF CANADA**

**AND**

**THE INTERNATIONAL CIVIL AVIATION ORGANIZATION**

**REGARDING THE HEADQUARTERS OF THE INTERNATIONAL**

**CIVIL AVIATION ORGANIZATION**

**THE GOVERNMENT OF CANADA AND THE INTERNATIONAL CIVIL AVIATION ORGANIZATION** (the “Parties”),

**CONSIDERING** the Government of Canada’s obligations as Host State to the International Civil Aviation Organization (the “Organization”);

**CONSIDERING** the *Headquarters Agreement between the Government of Canada and the International Civil Aviation Organization*, done at Calgary and Montreal on 4 and 9 October 1990 (the “Headquarters Agreement”);

**CONSIDERING** that the Government of Canada has the intention to exercise on or before 1 December 2015, the option to purchase on 30 November 2016, an immovable known as “*La Maison de l’OACP*” (the “Immovable”), composed of a building located at 999 University Street, Montreal, Quebec, Canada (the “Building”) and of the lands on which the Building is erected, under the terms of the lease between the Government of Canada and the owner of the Immovable, a copy of which was published at the Land Registry Office of the registration division of Montreal, under the number 4789527;

**CONSIDERING** the necessity to replace the *Supplementary Agreement between the Government of Canada and the International Civil Aviation Organization regarding the Headquarters of the International Civil Aviation Organization*, done at Montreal on 28 May 1999 (the “1999 Supplementary Agreement”) with a new Supplementary Agreement and its annexes (the “Supplementary Agreement”) in order to reflect the relationship between the Government of Canada, as owner of the Immovable, and the Organization, as occupant of the Immovable;

**CONSIDERING** that the Immovable will continue to constitute the headquarters premises (the “Headquarters”) of the Organization;

**CONSIDERING** the contributions made by the Parties in the context of the 1999 Supplementary Agreement;

**HAVE AGREED** as follows:

## ARTICLE I

### **Ownership and Occupancy of the Immovable**

1. The Organization accepts that the Government of Canada shall be the sole owner of the Immovable and expressly renounces any right belonging to or stipulated in favour of the Organization pursuant to Article VII of the 1999 Supplementary Agreement.
2. The Government of Canada permits the Organization to occupy the Immovable, for a period of twenty (20) years, commencing on 1 December 2016 and terminating on 30 November 2036 (the "Occupancy Period"), for the sole purpose of providing reasonable and adequate space for the Headquarters of the Organization, without cost except as explicitly provided for in this Supplementary Agreement.
3. The Organization shall occupy the Immovable for the duration of the Occupancy Period for the sole purpose of its Headquarters. The Organization shall use and occupy the Immovable in accordance with its mandate and the provisions of this Supplementary Agreement.

## ARTICLE II

### **Obligations of the Government of Canada and of the Organization**

1. Subject to the relevant provisions of the Headquarters Agreement, the rights and obligations of the Government of Canada as owner of the Immovable towards the Organization, and the rights and obligations of the Organization as occupant of the Immovable towards the Government of Canada, shall be governed by this Supplementary Agreement.
2. The Government of Canada shall, for the duration of the Occupancy Period, pay the costs of a capital nature related to the Immovable.
3. The Government of Canada shall, for the duration of the Occupancy Period, make the payments in lieu of taxes related to the Immovable in accordance with the *Payments in Lieu of Taxes Act* (R.S.C. 1985, c. M-13) and pay the Maintenance and Operating Costs related to the Immovable as defined in paragraph 1 of Annex II of this Supplementary Agreement. The Maintenance and Operating Costs related to the Immovable do not include costs of a capital nature related to the Immovable.

4. The Organization shall, for the duration of the Occupancy Period, reimburse the Government of Canada, on an annual basis, a sum equal to twenty per cent (20%) of the Maintenance and Operating Costs related to the Immovable pursuant to Annex II of this Supplementary Agreement, in a manner decided by the Parties.
5. The Government of Canada and the Organization shall take all reasonable measures to ensure that the Maintenance and Operating Costs related to the Immovable are kept as low as possible, including through the use of competitive bidding where appropriate.
6. The Government of Canada shall provide the Organization with a detailed financial breakdown of the costs of the items listed in Annex II, on an annual basis, in a format decided by the Parties. The Government of Canada shall also provide the Organization with a copy of its annual external audit report when it becomes available, as well as provide access to any relevant supporting documents at the request of the Organization.
7. The Government of Canada shall self-insure and underwrite its own risks and losses as concerns the Immovable.
8. The Organization shall subscribe to and maintain in force throughout the Occupancy Period, at its expense, comprehensive all-risk property insurance for contents belonging to the Organization and civil liability insurance as specified in Annex IV.
9. No Party shall be responsible towards the other Party with respect to a risk which is the responsibility of such other Party to insure or self-insure.
10. The Organization shall pay all costs and expenses related to the modification, alteration, improvement or redevelopment of the interior space of the Immovable carried out in accordance with paragraph 4 of Annex I of this Supplementary Agreement.
11. Without prejudice to any other provision of this Supplementary Agreement, the Government of Canada shall, on a one-time basis, make available additional funds for the redevelopment of the interior space of the Building. These funds will total up to one million four hundred thousand Canadian dollars (CAD\$1,400,000) per annum for five (5) consecutive years, starting in 2017, for a total of up to seven million Canadian dollars (CAD\$7,000,000).

12. The nature of these redevelopment works shall be determined in consultation between the Parties prior to the commencement of the work and shall be undertaken in accordance with the relevant provisions of this Supplementary Agreement, except as otherwise decided by the Parties.

### **ARTICLE III**

#### **Governance**

1. The Parties shall establish a Property Management Committee (the “Committee”).
2. The Committee shall be composed of representatives of each Party. The Committee may invite other participants to join in its deliberations as appropriate.
3. The purpose of the Committee is to consult on operational matters referred to in Annexes I, II III and IV of this Supplementary Agreement, works of a capital nature, as well as on any other matter relating to the safe operation and sound management of the Immovable which the representatives of either Party may present to the Committee.

### **ARTICLE IV**

#### **Space Allocated to Representatives and Others**

1. Subject to the relevant provisions of this Supplementary Agreement, the Organization shall have the right to:
  - (a) provide office space in the Building for occupancy by Representatives of the Member States on the Council of the Organization;
  - (b) provide office space in the Building for occupancy by Representatives of such other Member States of the Organization and by Representatives of other international organizations which are accredited to the Organization, to the extent that such occupancy does not compromise the needs of the Organization for accommodation of the bodies of the Organization, its Secretariat and its personnel;

- (c) provide parking space in the Building to its personnel, to the Representatives mentioned in paragraphs 1(a) and 1(b), and to such other persons as required by the official activities of the Organization;
- (d) make available, for the purpose of holding meetings, conference facilities of the Building to:
  - (i) other United Nations (the “UN”) bodies or agencies, and intergovernmental and non-governmental organizations identified on the Organization’s *List of International Organizations That May Be Invited to Attend Suitable ICAO Meetings*, as may be amended from time to time by the Organization, and recognized for the purpose of this Article by an exchange of diplomatic notes between the Parties confirming any amendments. Any charge related to this use shall be retained by the Organization and any expenses related to this use shall be borne by the Organization. The Organization shall inform the Government of Canada in writing of its decision to make available the conference facilities in the manner provided herein, as soon as possible prior to the date scheduled for the holding of the meeting by those bodies, agencies and organizations;
  - (ii) other bodies, agencies or organizations not included in paragraph 1(d)(i), subject to obtaining, as soon as possible in advance of the date scheduled for the holding of the meeting by those bodies, agencies and organizations, the prior express written consent of the Government of Canada, which shall not be unreasonably withheld. Any charge related to this use shall be retained by the Organization and any expenses related to this use shall be borne by the Organization.

(e) collect and retain a reasonable charge for the use and occupancy of the spaces and the facilities referred to in paragraphs 1(a) to (d).

2. Notwithstanding paragraph 1(e), the Organization shall establish the charges for conference facilities provided to UN bodies or agencies at a preferential rate in comparison to the charge for conference facilities provided to other entities.

3. The Parties understand that no consular activities shall be carried out in the Building.

4. The Organization shall provide to the Government of Canada, without cost, office space in the Building as reasonably required for occupancy by Representatives of Canada to the Organization, as well as by other representatives of the Government of Canada for the purpose of operation and management of the Building. The Organization shall also provide to the Government of Canada, without cost, a total of two (2) parking spaces in the Building.

5. The Organization confirms that the Government of Canada may use the conference facilities of the Building for its official purposes, without cost, if these facilities are available and the use by the Government of Canada does not conflict with the reasonable needs of the Organization, as assessed by the Organization following consultation between the Parties as described in Article III of this Supplementary Agreement. The Government of Canada shall be responsible for any incremental administrative costs resulting from this use.

6. For the purpose of the activities referred to in paragraph 1(d), when facilities are made available to organizations or individuals who do not enjoy privileges and immunities in Canada comparable to those enjoyed by the Organization, the Organization is deemed to be involved in commercial activities and to have renounced, with respect to such activities, the immunities referred to in Articles 3 and 4 of the Headquarters Agreement. However, when the Organization makes available conference facilities to intergovernmental organizations working in the field of civil aviation as defined in paragraph 1(d)(i), to meet in the context of the Council or Assembly of the Organization, the use of conference facilities will be considered related to the work of the Organization.

7. The Organization shall provide to the Committee described in Article III of this Supplementary Agreement, on an annual basis, a detailed information report regarding the use and occupancy of the Immovable and the activities referred to in paragraph 1, including an itemized statement of any fees collected in relation to those activities.

## **ARTICLE V**

### **Security**

In consultation with the Government of Canada, the Organization shall provide in the Building internal security measures required by the nature, function and operations of the Organization. The administrative management of these internal security measures shall be the responsibility of the Organization. The cost of these internal security measures shall also be the responsibility of the Organization, except as otherwise decided by the Parties.

## **ARTICLE VI**

### **Settlement of Disputes**

Any dispute between the Government of Canada and the Organization concerning the interpretation or application of this Supplementary Agreement shall be resolved through consultations between the Parties. A dispute which remains unresolved despite consultations between the Parties can be settled in accordance with Article 32 of the Headquarters Agreement.

## **ARTICLE VII**

### **Court Actions**

1. Without prejudice to the privileges and immunities of the Organization referred to in the Headquarters Agreement, the Government of Canada reserves its right to refer any cause of action vis-à-vis a third party and related to the Immovable, to the competent courts of Canada.
2. The Organization shall, in such circumstances, facilitate the proper administration of justice and assist the Government of Canada by providing all relevant evidence.

## **ARTICLE VIII**

### **Final Clauses**

1. The Annexes attached to this Supplementary Agreement shall form an integral part of this Supplementary Agreement.
2. This Supplementary Agreement does not affect any of the provisions of the Headquarters Agreement.
3. This Supplementary Agreement may be amended in writing at the request of either the Government of Canada or the Organization, subject to mutual consultation and mutual consent concerning any amendments. The Government of Canada and the Organization may conclude additional written supplementary agreements amending the provisions of this Supplementary Agreement so far as this is deemed desirable.
4. This Supplementary Agreement shall enter into force on the date of the last diplomatic note by which the Parties have notified each other that all necessary internal procedures for its entry into force have been completed but shall not take effect until 1 December 2016. Amendments shall enter into force in the same manner.

5. This Supplementary Agreement shall remain in force for the duration of the Occupancy Period.
6. Any benefit, right or advantage provided to the Organization under this Supplementary Agreement shall be for the Organization's sole and exclusive use and enjoyment, and shall not be transferred or assigned.
7. This Supplementary Agreement shall supersede the 1999 Supplementary Agreement.


**IN WITNESS WHEREOF** the respective Representatives of the Parties, being duly authorized thereto, have signed this Supplementary Agreement.

**DONE** in duplicate at *Montreal* on the *27<sup>th</sup>* day of *May* 2013,  
in the English and French languages, both texts being equally authentic.



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**FOR THE GOVERNMENT  
OF CANADA**



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**FOR THE INTERNATIONAL CIVIL  
AVIATION ORGANIZATION**

## ANNEX I

### Terms and Conditions

1. The Organization shall accept the Immovable in its state and condition at the time this Supplementary Agreement takes effect in accordance with paragraph 4 of Article VIII.
2. The Government of Canada shall, throughout the Occupancy Period, maintain and keep the Immovable in good condition and state of repair in all respects. In addition, the Government of Canada shall, throughout the Occupancy Period, as appropriate, provide for and to the Immovable, maintain, install and keep in good repair and operating condition, the services and equipment described in Annex III of this Supplementary Agreement.
3. The Organization shall be responsible for the cost of all additional services and equipment provided by the Government of Canada at the request of the Organization and which are not included in Annex III of this Supplementary Agreement. The Organization shall pay to the Government of Canada an administrative fee equal to five per cent (5%) of the cost of these additional services and equipment, unless the Government of Canada's administrative expenses have already been directly included in the computation of the cost of the additional services and equipment.
4. The Organization shall not make any substantial alteration to the Immovable without the consent of the Government of Canada. Substantial alteration refers to any modifications that could affect the major electrical or mechanical systems, base building structures, architectural appearance, or the safety of building occupants, as assessed by the Government of Canada, following consultation between the Parties consistent with Article III of this Supplementary Agreement.
5. Any alterations, additions, improvements or redevelopment which the Organization may from time to time request be done on its behalf by the Government of Canada shall, unless otherwise decided, be paid for by the Organization together with an administrative fee of five per cent (5%) as specified in paragraph 3 of this Annex. The redevelopment works described in paragraphs 10 and 12 of Article II of this Supplementary Agreement shall not be subject to the administrative fee.

6. For greater certainty, paragraphs 3, 4 and 5 of this Annex also apply to space allocated by the Organization under Article IV of this Supplementary Agreement.
7. Subject to the normal security requirements of the Organization and reasonable prior notice by the Government of Canada, the Organization shall make suitable arrangements for entry and access to the Immovable to the Government of Canada or to any person authorized by the Government of Canada, in order to assess the state and condition of the Immovable and make repairs. With respect to the office space provided by the Organization for occupancy by Representatives of Member States or by Representatives of international organizations that enjoy privileges and immunities comparable to those enjoyed by the Organization, this obligation of the Organization is limited to providing reasonable measures of assistance, facilitation, and coordination to the extent that the Organization does not itself have access to this office space.
8. With respect to the mechanical and electrical systems of the Immovable, and spaces dedicated solely to the operation of these systems and storage of all equipment related to base functioning of the Immovable, the Organization shall permit access to the Government of Canada or its duly authorized representatives, unless the Secretary General of the Organization finds reasonable cause to limit that access.
9. For greater certainty, the Parties confirm that the provisions of Articles 4, 5, 15, 17, 21 and 30 of the Headquarters Agreement continue to apply in the Immovable.
10. The Organization shall provide the Government of Canada all reasonable measures of assistance, facilitation and coordination to ensure the safety and protection of the Immovable and its occupants.
11. The Organization shall inform the Government of Canada of any damage to the Immovable or to any constructions or works located on, under or above the Immovable or in its proximity, as soon as it occurs or the Organization becomes aware of it.
12. The Organization shall reimburse the Government of Canada for all expenses incurred and all costs relating to or arising from repairs required to the Immovable and attributable to the Organization, except for normal wear and tear, upon the request of the Government of Canada and subject to the Organization receiving a cost estimate and providing its consent before the works are undertaken, which shall not be unreasonably withheld.

13. The Organization shall, at all times, at the request of the Government of Canada, take up its defence and shall hold harmless and indemnify the Government of Canada, its servants and agents, as defined in the *Crown Liability and Proceedings Act*, R.S., 1985 c. C-50 (the “Act”), in respect of any cost and damage or from any claim, demand, judicial application, loss, legal action, or other proceeding instituted or which may be instituted by whomever, relating to any act, conduct or omission of the Organization, its servants and agents, of the sub-occupants of the Building to whom the Organization has provided space, or of any other person in the Building to whom the Organization has permitted access, not including those in public areas of the Building such as the lobby and atrium, for the purposes of these presents. This obligation shall remain in force after the termination of the Supplementary Agreement for any cause or event having arisen before its termination.

14. The Government of Canada shall, at all times, at the request of the Organization, take up its defence and shall hold harmless and indemnify the Organization and its servants and agents, in respect of any cost and damage or from any claim, demand, judicial application, loss, legal action, or other proceeding instituted or which may be instituted by whomsoever, relating to any act, conduct or omission of the Government of Canada, its servants and agents, as defined in the Act, for the purposes of these presents. This obligation shall remain in force after the termination of the Supplementary Agreement for any cause or event having arisen before its termination.

15. At the end of the Occupancy Period or upon the termination of this Supplementary Agreement prior to the end of the Occupancy Period, the Organization shall surrender the Immovable in as good a condition as reasonable wear and tear will permit. The Organization shall not be required to restore the Immovable to its shape and state prior to any change, alterations, additions or improvements that may have been executed by the Government of Canada or the Organization in accordance with this Supplementary Agreement.

16. At the end of the Occupancy Period or upon the termination of this Supplementary Agreement prior to the end of the Occupancy Period, the Organization shall remove, at its expense, all movable effects found in the Immovable which are deemed to belong to the Organization, and shall repair, at its expense, any damage which may have been caused to the Immovable or to any other property of the Government of Canada as a result of the said removal.

17. Any notice, demand or request to be given to the Government of Canada or to the Organization under the terms of this Supplementary Agreement shall be submitted in writing and delivered in person or sent by email or by registered or certified mail and shall, in the case of notice to the Government of Canada, be addressed to such person or place as the Government of Canada shall designate in writing to the Organization, and in the case of notice to the Organization, to such person or place as the Organization shall designate in writing to the Government of Canada. Any notice that is mailed shall be considered to be received on the third (3<sup>rd</sup>) day following the date of mailing.

## ANNEX II

### Maintenance and Operating Costs related to the Immovable

1. “Maintenance and Operating Costs” means the total of all amounts paid by the Government of Canada as owner of the Immovable, that are costs reasonably and equitably attributable to the Immovable and not otherwise recoverable from the Organization as occupant of the Immovable, including but not limited to costs for the following:

- (a) sewer, water and other municipal services, other than for the installation thereof, including any charge or tax relating to the provision of those services;
- (b) fuel and gas for heating and hot water;
- (c) electricity for the entire Immovable;
- (d) interior cleaning (including for the underground parking area), window cleaning of the Building, recycling and removal of garbage from the Immovable, as decided to by the Parties, including related wages, supplies and contracts;
- (e) maintenance of the exterior landscape, including related wages and contracts;
- (f) repairs, replacement, maintenance and operation of, and renovations and upgrades to, the Building and equipment including, without limitation, repair, replacement, maintenance and operation of the ventilation, heating, electricity, cooling, escalator and elevator systems that are not capital in nature according to generally accepted accounting principles;
- (g) safety systems for the Immovable, consisting of remote control cameras and traffic control mechanisms for the perimeter of the Building, fire alarms and other monitoring systems if installed by the Government of Canada in consultation with the Organization, including related contracts and the repair and maintenance of said systems;

- (h) lighting, including the replacement of light bulbs, fluorescent tubes and ballasts;
- (i) salaries, wages and any other amounts paid or payable for and in relation to all personnel, excluding off-site management (but including off-site management specifically managing the Immovable but who are not on-site because there are insufficient facilities for them) but including supervisory and administrative personnel employed to carry out the maintenance, management and operation of the Immovable, and all contributions and premiums towards fringe benefits, unemployment and worker's compensation insurance, pension plan contributions and similar premiums and contributions and all costs of any independent contractors employed in the repair, care, maintenance, management, supervision and operation of the Immovable;
- (j) the share of the costs relating to the truck dock paid by the Government of Canada pursuant to the terms of the Deed of Sale and Servitude registered at the Montreal Registry Office under number 4721907 and related cost-sharing provisions in the said deed and the share of the costs relating to the atrium and the drop-off lands (*servitude de passage pour la terrasse et le débarcadère*) referred to in the said deed;
- (k) where not already included in the computation of the actual cost, an administrative fee equal to five per cent (5%) of the above Maintenance and Operating Costs.

2. Where the Maintenance and Operating Costs for any given year of the Occupancy Period vary by more than ten per cent (10%) from the Maintenance and Operating Costs of the previous year, the representatives of the Government of Canada on the Committee described in Article III of this Supplementary Agreement, must obtain the approval of any such increase or decrease from the representatives of the Organization on the Committee, which shall not be unreasonably withheld.

## ANNEX III

### Services and Equipment

The services and equipment referred to in paragraph 2 of Annex I of this Supplementary Agreement are described as follows:

- (a) a constant supply of hot and cold water to all washbasins and sinks with mechanical recirculation to maintain the hot water temperature available to each such fixture at a constant temperature of 38 degree Celsius;
- (b) drinking water fountains on every floor of the Building, supplying water at a temperature not exceeding thirteen (13) degrees Celsius;
- (c) all heat, ventilation, air conditioning, air circulation and humidity control required in and for the Immovable in accordance with Government of Canada standards and norms;
- (d) all electrical power required on the Immovable except as herein specifically otherwise provided, and, as lamps, ballasts and fuses wear out, replacement thereof;
- (e) lighting which at desk top level in office areas and at floor level in all other areas shall not be less than the levels of illumination decided by the Parties;
- (f) an auxiliary supply of electricity and power for emergency services and systems throughout the Building, whenever a failure in the normal supply of electricity and power occurs;
- (g) interior cleaning (including for the underground parking area), window cleaning of the Building, recycling and removal of garbage from the Immovable, as decided by the Parties;
- (h) removal of ice and snow from all outside parking spaces and the roadways, walks, steps and fire escapes leading to and from the Building, all such parking spaces, roadways, walks, steps and fire escapes to be kept, at all times, free and clear of snow and ice;

- (i) all maintenance and repairs required to keep the areas which would be common areas if there were more than one occupant in the Immovable at all times clean, tidy, free and clear of any refuse, garbage, waste products and obstructing materials whatsoever, and in good condition and repair;
- (j) all elevator service required with one or more elevators in operation and available for use at all times, throughout each and every hour of each and every day of the Occupancy Period and the remainder of which shall be in operation daily at specified times as decided by the Parties;
- (k) window, wall and floor coverings as decided by the Parties;
- (l) safe and convenient access for persons with disabilities to and from the Immovable and its facilities, in accordance with Government of Canada standards and norms;
- (m) suitable locations for the Organization's exterior and interior primary identification signs, to the satisfaction of the Organization;
- (n) a complete and current list of names, telephone numbers and addresses of the Government of Canada's servants and agents who may be contacted at any time in the event of emergency or failure of any service to be provided by the Government of Canada, as herein specified, for the purpose of making repairs a may be required to restore such service;
- (o) if so requested by the Organization, a mutually acceptable location for bicycle racks provided by the Organization, having a capacity of at least thirty (30) bicycles; and
- (p) safety systems for the Immovable, consisting of remote control cameras and traffic control mechanisms for the perimeter of the Building, fire alarms and other monitoring systems, if installed by the Government of Canada in consultation with the Organization, including the repair and maintenance of said systems.

## ANNEX IV

### Insurance

1. The insurance referred to in paragraph 8 of Article II of this Supplementary Agreement is described as follows:

- (a) an “all risks” insurance policy (broad form) against fire and other risks generally covered by such a policy, for an amount corresponding to the full replacement value of the Organization’s property located in or on the Immovable and covering, among other things, the improvements made to the Immovable by the Organization and any other property for which the Organization is legally responsible.
- (b) a general civil liability insurance policy with respect to liability arising out of:
  - (i) the occupation and use of the Immovable, and the activities carried out on or in the Immovable, by the Organization;
  - (ii) the occupation and use of the Immovable by any other person or entity to whom the Organization has permitted access for the purposes of these presents, and the activities carried out on or in the Immovable by any other person or entity to whom the Organization has permitted access for the purpose of these presents;
  - (iii) the performance of work on or in the Immovable by the Organization or any other person or entity at the request of the Organization and to whom the Organization has permitted access for the purpose of these presents;

and shall include coverage for personal, bodily (including death) and material injury and property damage, the amount of which insurance coverage shall not be less than ten million dollars (CAD\$10,000,000.00) in any one occurrence, or series of occurrences arising out of one cause.

2. The insurance policy described in paragraph 1(a) of this Annex shall contain an endorsement by which the insurer waives his right to subrogate against the Government of Canada, as follows:

“The insurer shall not be entitled to subrogation or transfer of rights in respect of any claim under this policy against the Government of Canada, its representatives, servants or agents.”

3. The insurance policy described in paragraph 1(b) of this Annex shall designate the Government of Canada as additional insured at the same time as the Organization, according to their respective interests.