



PARTICIPATION AGREEMENT

This Participation Agreement (this “Agreement”) is entered into by and between OpenAirplane, Inc., a Delaware corporation, (“OpenAirplane”) and the person signing this Agreement as a “Pilot” or as an “Operator,” whether signed with a manual signature in hardcopy form, whether signed with an electronic signature, or otherwise. Each Pilot, Operator, and OpenAirplane is a “Party” and any two or more of them are “Parties.” Each Pilot and each Operator is a “Participant.”

1. **Definitions.** Without limiting any other definition in this Agreement, the following words and expressions will have the following meanings.
 - (a) “Airworthy” with respect to an Aircraft means that:
 - (i) In the case of an Aircraft other than a Light Sport Aircraft:
 - (A) The aircraft conforms to the applicable type certificate configuration and that all components installed on or in the aircraft are consistent with the drawings, specifications, and other data that are part of the type certificate and any supplemental type certificate and field-approved alterations incorporated into the aircraft; and
 - (B) The aircraft is in compliance with all FAA Airworthiness Directives and mandatory service bulletins that apply to the aircraft.; and
 - (ii) In the case of a Light Sport Aircraft, the aircraft conforms to the provisions of the applicable consensus standard as contemplated by FAR § 21.190 and has been maintained in accordance with all applicable FARs.
 - (b) “Checkout” means an oral and practical demonstration of knowledge and skills associated with the operation of one or more Aircraft as then required and/or accepted by OpenAirplane.
 - (c) “FAA” means the United States Federal Aviation Administration.
 - (d) “FAR” means the Federal Aviation Regulations, 14 CFR § 1.1, et. seq., and any other directive, pronouncement, order, or regulation of the FAA or the National Transportation Safety Board that has the force of law.
 - (e) “Feedback” means any statement, assertion, or information provided by a Participant about another Participant by means of the Online Service or otherwise by or through OpenAirplane.
 - (f) “Light-Sport Aircraft” means an aircraft that meets the definition of that term contained in FAR § 1.1 and to which no a standard, primary, restricted, limited, or provisional FAA airworthiness certificate, or equivalent airworthiness certificate issued by a foreign civil aviation authority, applies. (For the avoidance of doubt, and primarily for the purposes of the warranties in Section 12, type-certificated aircraft that also qualify to be flown as light-sport aircraft under the FARs are addressed in this Agreement as type-certificated aircraft.)
 - (g) “Program Aircraft” means an aircraft that Operator holds out using the Online Service as available for rent.
 - (h) “Online Service” means the electronic system made available as such from time to time by OpenAirplane.
 - (i) “OpenAirplane Party” means Open Airplane and all of Open Airplane’s direct and indirect equityholders, members, managers, directors, officers, employees, agents, and affiliates.
 - (j) “Operational Control,” with respect to a flight, means the exercise of authority over initiating, conducting, or terminating the flight. If the definition of Operational Control in FAR § 1.1 changes from the foregoing definition, the definition of Operational Control will change so as to mirror the definition set by the FARs.
 - (k) “Operating Rules and Policies” or “ORP” means the rules and policies so styled by OpenAirplane, as updated or revised from time to time.
 - (l) “Releasee” means each OpenAirplane Party and each Operator.
2. **Rates and Payments.**

- (a) Pilot will pay to OpenAirplane the rates stated by the Operator through the Online Service. Unless otherwise stated in the Online Service, all rates are “wet,” i.e. including fuel and oil. If Pilot purchases fuel at a location other than one operated by the Operator, Operator will credit the amount paid by Pilot for fuel and oil at such other location against the amounts due to Operator. An Operator may limit fuel and oil reimbursements to the rates that Operator charges its aircraft renters or, if the Operator does not post rates for fuel or sell fuel, the prevailing rate at the airport at which the rental of the Aircraft begins.
- (b) Each Pilot will pay for all rentals of Aircraft through the Online Service and may not offer or give to any Operator any consideration with respect to any rental or other availability of any Aircraft other than through the Online Service.
- (c) Each Operator will accept payment for all rentals of Aircraft through the Online Service and may not collect or solicit from any pilot any consideration with respect to any rental or other availability of any Aircraft other than through the Online Service.

3. **Checkouts.**

(a) **Generally.**

- (i) In order to use the Online System or any other service of OpenAirplane for the purposes of renting, operating, possessing, or controlling an Aircraft, each Pilot must, have a Checkout that is current for the entire time during which the Pilot possesses or controls the Aircraft.
- (ii) All Checkouts are restricted to certain categories, classes, and types of aircraft. OpenAirplane will specify from time to time the categories, classes, and types of aircraft to which specific Checkouts apply.
- (iii) Checkouts remain valid for 12 calendar months (e.g. a Checkout accomplished April 1, XX01 is valid through April 30, XX02 and a Checkout accomplished April 30, XX01 is also valid through April 30, XX02).
- (iv) OpenAirplane may, but need not, permit a Pilot whose Checkout has expired to reserve and rent an Aircraft through the Online System, provided that the Pilot is reserving and renting the Aircraft for the purposes of accomplishing an OpenAirplane Checkout with an OpenAirplane Check Airman who is authorized by the applicable Operator to give instruction in the applicable Aircraft.
- (v) If OpenAirplane has reason to believe that a Checkout is or was invalid or that a Pilot is not capable of flying to the standard required by the then-current OpenAirplane Checkout, OpenAirplane may (but need not, and has no obligation to) require that a Pilot re-take a full or abbreviated Checkout and may suspend the Pilot’s use of the Online System or other services of OpenAirplane until such time as the Pilot satisfactorily completes such abbreviated or full Checkout.
- (vi) If and when OpenAirplane changes the requirements for Checkouts, OpenAirplane generally expects that such revisions will apply only on subsequent Checkouts and that Checkouts occurring prior to the effective date of the change will continue to be valid for use with OpenAirplane for the term of the Checkout. Notwithstanding the foregoing, if OpenAirplane believes that a revision should have immediate effect for reasons of safety, OpenAirplane reserves the right to require that Pilots holding otherwise current and valid Checkouts to complete an abbreviated additional flight or ground session before continuing to participate in the OpenAirplane program.

(b) **OpenAirplane Checkouts.**

- (i) An “OpenAirplane Checkout” is a Checkout administered by a check airman designated by OpenAirplane as such (each an “OpenAirplane Check Airman”) according to OpenAirplane’s then-current syllabus and procedures (the “OpenAirplane Checkout Guide”). Any departure from the Open Airplane Checkout Guide or this Agreement will invalidate the OpenAirplane Checkout.
- (ii) OpenAirplane may designate one or more Check Airmen and make the identities and contact information of such Check Airmen available to Pilots and Operators. Only OpenAirplane Check Airmen may conduct OpenAirplane Checkouts.
- (iii) Pilots wishing to obtain an OpenAirplane Checkout must contact an OpenAirplane Check Airman and make all arrangements necessary with respect to accomplishing an OpenAirplane Checkout. The Pilot

must provide, and pay for, the aircraft and all other resources for the OpenAirplane Checkout, including such fees as are associated with the OpenAirplane Check Airman's services.

- (iv) Any Pilot or Operator that becomes aware of any putative OpenAirplane Checkout that is not conducted according to the OpenAirplane Checkout Guide (such as, but not limited to, checkouts that omit required tasks or that do not actually occur at all) will immediately give notice of the same to OpenAirplane, which notice must include all relevant facts.
- (v) No OpenAirplane Check Airman has any property or other right in or to the designation of "OpenAirplane Check Airman" and OpenAirplane may terminate a person's designation as an OpenAirplane Check Airman at any time for any reason or no reason. Persons who are OpenAirplane Check Airmen may identify themselves as such, but they acquire no right in or to any trademark, service mark, or other property of OpenAirplane.
- (vi) OPEN AIRPLANE MAKES NO REPRESENTATION OR WARRANTY, AND GIVES NO ASSURANCE, WITH RESPECT TO ANY OPENAIRPLANE CHECK ARMAN, ANY CHECKOUT GIVEN BY ANY OPENAIRPLANE CHECK AIRMAN, OR WHETHER SATISFACTORY COMPLETION OF A CHECKOUT IS EVIDENCE TO THE PILOT, ANY OPERATOR, OR ANY OTHER PERSON THAT A PILOT IS COMPETENT TO OPERATE ANY AIRCRAFT.
- (vii) "OPENAIRPLANE CHECK AIRMAN" IS MERELY AN IDENTIFIER USED BY OPENAIRPLANE. OPEN AIRPLANE CHECK AIRMEN ARE NOT EMPLOYEES OR AGENTS OF OPENAIRPLANE AND NO ACT OR OMISSION OF ANY OPENAIRPLANE CHECK AIRMAN WILL BIND ANY OPENAIRPLANE PARTY OR SUBJECT ANY OPENAIRPLANE PARTY TO LIABILITY OF ANY KIND.
- (viii) Waiver.
 - (A) Except in the case of actual and intentional fraud committed by an OpenAirplane Check Airman, each Operator waives any and all claims against each OpenAirplane Check Airman and/or against any OpenAirplane Party that arise out of, or relate to, any Checkout conducted by such OpenAirplane Check Airman. Each OpenAirplane Check Airman is an express third-party beneficiary of the waiver in this Section 3(b)(viii).
 - (B) Notwithstanding anything in Section 3(b)(viii) to the contrary, the waiver in Section 3(b)(viii) will not apply to an Operator with respect to the OpenAirplane Check Airman to the extent that the OpenAirplane Check Airman is an employee, contractor, or agent of the Operator (such as, but not limited to, a flight instructor employed by the Operator). Where the OpenAirplane Check Airman is a an employee, contractor, or agent of the Operator, the contract between the Operator and such OpenAirplane Check Airman and/or the

(c) Third-Party Checkouts.

- (i) OpenAirplane may, but need not, accept, as a Checkout, one or more evaluations, credentials, and/or designations by one or more third parties that are not affiliated with OpenAirplane (each such evaluation or designation being a "Third-Party Checkout").
- (ii) OpenAirplane reserves the right to accept Third-Party Checkouts conditionally and/or limit privileges within the OpenAirplane system with respect to such Third-Party Checkouts (including, but not limited to, by limiting duration, aircraft types, or other aspects). OpenAirplane also reserves the right to suspend the application or effectiveness of Third-Party Checkouts at any time (which time may be before the Third-Party Checkout would itself expire for the purposes of non-OpenAirplane operations) and for any reason (which reason may include, but is not limited to, objection by the third-party organization of OpenAirplane's acceptance of the Third-Party Checkout).
- (iii) If a Pilot intends to use a Third-Party Checkout for the purposes of participation in the OpenAirplane program, the Pilot must provide to OpenAirplane all documentation of such Third-Party Checkout and evidence of the currency of same. Where the sponsor or provider of the Third-Party Checkout maintains an electronic repository of pilot qualifications bearing on the Third-Party Checkout (*and solely where, and as, such third party has given to Open Airplane its express permission to access such information in the third party's repository*), each Pilot grants to OpenAirplane permission to access

such information for the purposes of maintaining OpenAirplane's records of the Pilot's qualifications and otherwise to facilitate the operations of OpenAirplane.

- (d) **No Warranty or Assurance.** WITHOUT LIMITING ANY OTHER LIMITATION IN THIS AGREEMENT OR OTHERWISE, NEITHER OPENAIRPLANE NOR ANY ISSUER OR SPONSOR OF ANY THIRD-PARTY CHECKOUT MAKES ANY REPRESENTATION OR WARRANTY TO ANY OPERATOR OR OTHER PERSON WITH RESPECT TO:
- (i) ANY PILOT'S SKILLS, TEMPERAMENT, JUDGMENT, OR ANY OTHER ASPECT OF ANY PILOT;
 - (ii) WHETHER SATISFACTORY COMPLETION OF A CHECKOUT IS EVIDENCE TO THE PILOT, ANY OPERATOR, OR ANY OTHER PERSON THAT THE PILOT IS COMPETENT TO OPERATE ANY AIRCRAFT.
4. **Pilot Obligations.** The following obligations of Pilots are in addition to all other Pilot obligations in this Agreement.
- (a) Each Pilot will render to each operator from which the Pilot rents one or more Aircraft, and to any governmental agency that requires it, all reasonable assistance that the Operator requires in the course of any investigation of any accident, incident, or enforcement action.
 - (b) Each Pilot will comply with the then-current Operating Rules and Policies.
5. **Operator Obligations.** The following obligations of Operators are in addition to all other Operator obligations in this Agreement.
- (a) Each Operator will refrain from imposing upon any Pilot any requirement, charge, or fee that is more onerous or burdensome on any Pilot than the requirements, charges, or fees that the Operator imposes upon persons who rent aircraft from Operator who are not Pilots.
 - (b) Each Operator will refrain from requiring that any Pilot undergo a "local checkout," flight test, practical skills demonstration, or similar requirement as a precondition to renting an aircraft to any Pilot.
 - (c) Each operator may, in the Operator's sole discretion, refuse to rent any aircraft to any Pilot for any reason or no reason and may do so at any time prior to the time at which the Pilot starts the engine of the subject aircraft. Such refusal must be absolute and may not express or imply that the Operator may rent the aircraft upon completion or satisfaction by the Pilot of a "local checkout," flight test, practical skills demonstration, or similar requirement or the giving of additional consideration beyond the rental charge for the Aircraft.
 - (d) When a Pilot has reserved an Aircraft through the Online Service, the Operator will make available the Aircraft to the reserving Pilot at the pricing, and on the other terms and conditions, that the Operator listed for the Aircraft at the time at which the reservation was made, regardless of whether such information, terms, or conditions contains errors or omissions caused by the Operator or any agent of the Operator.
 - (e) Each Operator will render to each Pilot who rents one or more Aircraft from the Operator, and to any governmental agency that requires it, all reasonable assistance that the Pilot requires in the course of any investigation of any accident, incident, or enforcement action.
 - (f) Each Operator will comply with the then-current Operating Rules and Policies.
6. **Operational Control.** Each Pilot will, for all purposes, have Operational Control of each rented aircraft during the time during which the Pilot is in possession or control of the aircraft.
7. **Disclosure of Information by OpenAirplane.** OpenAirplane may disclose to any Participant any information that any other Participant supplies to OpenAirplane. OpenAirplane may, to the extent that OpenAirplane reasonably deems it necessary in order to provide the Online Service or otherwise facilitate or administer the program and relationships contemplated by this Agreement, disclose to any third party any information that any Participant provides to OpenAirplane.
8. **Beneficiaries.**
- (a) Each Pilot is an express beneficiary of all representations, warranties, and obligations of each Operator from which the Pilot rents or reserves any Aircraft or procures, or contracts to procure, any goods or services.

- (b) Each Operator is an express beneficiary of all representations, warranties, and obligations of each Pilot that rents or reserves any Aircraft, or procures, or contracts to procure, any goods or services from, such Operator.
- (c) If a Participant wishes to enforce any rights under this Agreement or otherwise against any other Participant and impleads or otherwise involves OpenAirplane, the Participant involving OpenAirplane will pay, and indemnify, defend, and hold harmless, all OpenAirplane Parties from and against, all costs associated with any such involvement, including, but not limited to, the fees and costs of counsel selected by the OpenAirplane Party(ies) and the fair market value of the time and efforts the OpenAirplane Party's non-attorney agents and experts. The impleading or involving Participant, upon request by the OpenAirplane Party, will pre-pay such amounts or post a bond to cover such costs.
- (d) OpenAirplane's sole obligation with respect to Participants' rights vis-à-vis each other is to use commercially reasonable efforts to give effect to the beneficiary designations in this Section 8. OpenAirplane makes no representation or warranty that any Participant will have any particular right as against any other Participant.

9. Feedback; Reputation System.

- (a) Each Participant waives, and releases each other Participant from, any claim, suit, or cause of action, arising out of, or related to the content of any feedback given about the Participant by another Participant, provided only that such feedback is not given with knowledge that the information contained in it is or was false and was not given with reckless disregard of whether the information was false.
- (b) Each Participant waives any and all claims against each OpenAirplane Party in any way related to Feedback. OpenAirplane may, but need not, remove or modify Feedback in OpenAirplane's sole discretion and the above waiver is effective notwithstanding that OpenAirplane has edited, curated, or otherwise acted with respect to any Feedback.

10. Waiver, Assumption of Risk, and Covenant Not to Sue.

- (a) Release. Each Pilot hereby releases each Releasee from any and all liability, claim, demand, or cause of action whatsoever arising out of, or related to, any damage, loss, or injury to the Pilot or any passenger in any Aircraft, the Pilot's property, and/or the death of the Pilot or any passenger associated in any way with the provision or operation of any Aircraft, whether resulting from the negligence or other fault, either active or passive, of any of the Releasees, or from any other cause.
- (b) Assumption of Risk. Each Pilot represents and warrants that he or she knows and understand the scope, nature and extent of the risks involved in aviation and that some dangers cannot be foreseen. Each Pilot represents and warrants that he or she understands that these risks include, but are not limited to, aircraft or other equipment malfunction or failure to function, defective or negligent design or manufacture of aircraft or other equipment, improper or negligent maintenance, improper or negligent operation or use of aircraft or other equipment, carelessness or negligence of other pilots, instructors, ground crew, passengers, bystanders, operators of other aircraft, and others, and improper or negligent instruction or supervision. Each Pilot voluntarily, freely, and expressly chooses to incur all risks associated with the provision or operation of any Aircraft, understanding that those risks might include, or lead to, bodily and personal injury, damage to property, disfigurement, and/or death. Each Pilot voluntarily and freely chooses to incur such risks and hereby takes responsibility for them.
- (c) Covenant Not to Sue.
 - (i) Each Pilot, for himself or herself and for any passengers in any Aircraft, agrees to never institute or pursue any claim, suit, or cause of action against any Releasee, or initiate, or to assist in the prosecution of, any claim for damages or any other relief against any Releasee, by reason of injury to his or her person or property, or his or her death, or by reason of injury to the person or property of any passenger, or the death of any passenger, arising out of, or related to, the operation of any Aircraft, regardless of whether caused by the negligence or fault, active or passive, of any Releasee, or from any other cause.
 - (ii) Each Pilot, for himself or herself and for any passengers in any Aircraft, further agrees that any heirs, executors, administrators, personal representatives, or anyone else claiming directly or indirectly on behalf of the Pilot or any passenger, may not institute or pursue any claim, suit, or cause of action

against any Releasee, or initiate, or assist in the prosecution of, any claim for damages or any other relief against any Releasee, that any Pilot or passenger or their heirs, executors, administrators, personal representatives, and/or anyone else claiming directly or indirectly on behalf of any Pilot or passenger have (now or in the future) by reason of injury to the person or property of any of the foregoing, or the death of any of the foregoing, arising out of, or related to, the operation of any Aircraft, regardless of whether caused by the negligence or fault, either active or passive, of any Releasee, or from any other cause. Each Pilot, for himself or herself and for any passengers in any Aircraft, hereby so instruct the heirs, executors, administrators, and personal representatives of the foregoing, and anyone else claiming, directly or indirectly, on behalf of any of the foregoing. Should any such claim, suit, or cause of action be instituted against any Releasee, each such Releasee will be entitled to recover attorneys' fees and costs incurred in the defense of such claim, suit, or cause of action.

- (d) **Indemnity.** Each Pilot will indemnify, defend, and hold harmless each Releasee from and against any and all losses, claims, actions, damages, fines, penalties, proceedings, costs, fees (including, but not limited to, attorneys' fees and costs), and every other liability of every kind and character, that is presented, alleged, asserted, or initiated by a third party that arises out of, or is related to, directly or indirectly, Pilot's possession or operation of any Aircraft, whether resulting from the negligence or other fault, either active or passive, of any Releasee, or from any other cause.

11. **OpenAirplane's Discretion; Disclosure of Personal Information.**

- (a) OpenAirplane may, at any time, and for any reason or no reason, discontinue services to, or access by, any Participant with respect to any of OpenAirplane's goods, services, or software. No completion of any Checkout, administrative setup, or any other fact, condition, or circumstance will create in any Participant any property right, membership right, or entitlement to, or any cause of action with respect to, any good, service, or software of OpenAirplane.
- (b) OpenAirplane intends to make rental requirements and pilot qualifications uniform across locations and aircraft types. Notwithstanding this, OpenAirplane reserves the right to vary its rules, policies, and practices at OpenAirplane's sole discretion where OpenAirplane sees fit. Such variations might include, but are in no way limited to, policies with respect to high-altitude airports, mountainous terrain, unimproved airstrips, and similar issues.
- (c) Each Pilot and Operator hereby consents to OpenAirplane's collection, use, processing, and onward transfer of all personal or other information that the Pilot or Operator provides to OpenAirplane (whether supplemented with other information or otherwise) as reasonably necessary to the operation of the Online Service and any other aspect of the business of OpenAirplane, including, but not limited to, clearing payments, processing reservations, handling inquiries, marketing the goods, services, and/or software of OpenAirplane and/or OpenAirplane's third-party designees, response to subpoenas or other process, cooperation with regulatory agencies, and participation in safety-related or other research.

12. **Certain Representations, Warranties and Covenants.**

- (a) **Pilots.** Each Pilot represents and warrants to OpenAirplane and to each Operator from which the Pilot rents one or more Aircraft as follows.
 - (i) **Information.**
 - (A) Each Pilot represents and warrants to OpenAirplane and to each Operator, on an ongoing and continuous basis, that all documentation and other information that the Pilot provides to OpenAirplane and/or to any Operator is true, current, and correct and contains no untrue statement of a material fact or to omits to state a material fact necessary in order to make the information provided by the Pilot, in the light of the circumstances under which the information was given or presented, not misleading.
 - (B) Each Pilot will immediately update any information provided to OpenAirplane or to any operator if the information about the Pilot then in the possession of Open Airplane or the Operator ceases to meet the standard stated in this Section 12(a)(i).
 - (C) Each Pilot will report to OpenAirplane any information that the Pilot is required by the FARs to report to the FAA, including, but not limited to, changes of address (FAR § 63.21) and reports of

facts involving alcohol or drugs (FAR § 61.15). Each Pilot must accomplish such reporting at or before the time at which the Pilot is required to report the same to the FAA.

- (D) Each Pilot who participates in the OpenAirplane program with a Third-Party Checkout will immediately report to OpenAirplane any suspension, revocation, modification, or rescission of the Third-Party Checkout and any limitation or restriction that any originator of the Third-Party Checkout places on the Pilot (including, but not limited to, any grounding or any other suspension or limitation of flight privileges).
- (E) Each Pilot represents and warrants to OpenAirplane and to each Operator that, at all times when the Pilot operates any Aircraft, the Pilot does not know or have reason to know of any medical condition of the Pilot that:
 - (1) Would make the Pilot unable to operate the Aircraft in a safe manner; or
 - (2) Would disqualify the Pilot from receipt of, or exercise of the privileges of, the minimum FAA medical certificate, if any, that would be required to conduct the flight(s) contemplated.

(ii) Operators.

- (A) Each Operator represents and warrants to OpenAirplane and to each Pilot that the description of each Aircraft offered through the Online Service is correct in all material respects.
- (B) Each Operator represents and warrants to OpenAirplane and to each Pilot who rents Aircraft from the Operator that, at the time at which the Operator tenders the Aircraft to the Pilot, the Operator has fulfilled all obligations of the owner of an aircraft under Subpart E of FAR § 91 (FAR §§ 91.401 to 91.499) and that the Aircraft will be Airworthy.
- (C) Each Operator will cause each Aircraft that it offers for rent to a Pilot to have on board, at the time at which Operator tenders the Aircraft to the Pilot, all documents, markings, placards, manuals, and information required by law in order to operate the Aircraft, including, but not limited to, those required by FAR §§ 91.9, 91.203, and 23.1589.
- (D) EACH OPERATOR MAKES TO EACH PILOT WITH RESPECT TO EACH AIRCRAFT ONLY THE EXPRESS WARRANTIES STATED IN THIS AGREEMENT. EACH OPERATOR DISCLAIMS ALL IMPLIED WARRANTIES WITH RESPECT TO EACH AIRCRAFT, WHETHER ARISING UNDER ARTICLE 2B OF THE UNIFORM COMMERCIAL CODE OR OTHERWISE, AND, WITHOUT LIMITING THE FOREGOING, EACH OPERATOR EXPRESSLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

13. **Indemnification.** Each Participant will indemnify, defend, and hold harmless each OpenAirplane Party from and against any and all losses, claims, actions, damages, fines, penalties, proceedings, costs, fees (including, but not limited to, attorneys' fees and costs), and every other liability of every kind and character, that is presented, alleged, asserted, or initiated by any other Participant or any third party that arises out of, or is related to, directly or indirectly, the provision, possession, or operation by the indemnifying Participant of any Aircraft or the Participant's participation in the activities contemplated by this Agreement.

14. **Limitation of Liability.**

- (a) Each Participant acknowledges that:
 - (i) Neither Open Airplane nor any OpenAirplane Party vets, qualifies, approves, certifies, or vouches for any pilot, aircraft, operation, good, service, or software;
 - (ii) No Checkout, completion of any particular prerequisite, or acceptance by OpenAirplane or any OpenAirplane Party of any particular qualification or achievement is intended to be a representation, warranty, or assurance by any OpenAirplane Party of the skill, qualifications, or competence of any person;
 - (iii) OpenAirplane operates the Online Service and otherwise conducts its business solely as a networking service that makes available information about Participants and Program Aircraft to other Participants and to the public;

- (iv) OpenAirplane would not offer or make available the Online service or any other good, service, or software – or would not make the same available at the same pricing – without the limitations on liability that are contained in this Agreement.
 - (b) UNDER NO CIRCUMSTANCES WILL ANY OPENAIRPLANE PARTY BE LIABLE TO ANY PARTICIPANT OR TO ANY OTHER PERSON FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL, OR ANY OTHER DAMAGES OTHER THAN DIRECT DAMAGES.
 - (c) UNDER NO CIRCUMSTANCES WILL ANY OPENAIRPLANE PARTY BE LIABLE TO ANY PARTICIPANT OR TO ANY OTHER PERSON FOR ANY AMOUNT IN EXCESS OF OPENAIRPLANE’S SHARE OF ANY FEES OR OTHER AMOUNTS ASSOCIATED WITH THE SPECIFIC AIRCRAFT RENTAL WITH RESPECT TO WHICH THE CAUSE OF ACTION ARISES.
 - (d) Each Participant waives, and will indemnify, defend, and hold harmless, each OpenAirplane Party from and against any claim, suit, or cause of action for any amount in excess of the limitations contained in Sections 14(b) and 14(c).
 - (e) EXCEPT IN THE CASE OF ANOTHER PARTICIPANT’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NO PARTICIPANT WILL BE LIABLE TO ANY OTHER PARTICIPANT, OR ANYONE CLAIMING DIRECTLY OR INDIRECTLY BY OUR THROUGH ANOTHER PARTICIPANT, FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR OTHER INDIRECT DAMAGES.
 - (f) EXCEPT IN THE CASE OF ANOTHER PARTICIPANT’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NO PARTICIPANT WILL BE LIABLE TO ANOTHER PARTICIPANT FOR DIRECT DAMAGES IN AN AMOUNT GREATER THAN THE CHARGES OR FEES PERMITTED UNDER THIS AGREEMENT.
 - (g) THE LIMITATIONS OF LIABILITY UNDER THIS AGREEMENT APPLY NOTWITHSTANDING THAT ANY PERSON KNOWS, OR HAS REASON TO KNOW, OF A PARTICULAR KIND OF DAMAGES AND NOTWITHSTANDING THAT ANY LIMITATION CAUSES ANY REMEDY TO FAIL OF ITS ESSENTIAL PURPOSE.
15. **Limitation of Liability of Certain Third-Party Organizations.** OpenAirplane may choose, from time to time, to accept qualifications achieved by Pilots in programs of third-party organizations who conduct flight operations. Such third-party organizations may include, but are not necessarily limited to, named flight schools, branches of the United States government or foreign governments, The United States or foreign military services, or Civil Air Patrol. Such organizations are not affiliated in any way with OpenAirplane and no such organization endorses OpenAirplane or makes any representation or warranty with respect to any Pilot. Each Operator and Pilot, for him/her/itself and for his/her/its affiliates, insurers, and lessors, waives any claim against any such third-party organization that arises out of, or relates to, any act or omission of any Pilot. Each such third-party organization is an express third-party beneficiary of this waiver and may assert this waiver directly with respect to any covered claim.
16. **Setoff.** OpenAirplane may set off from any amount that OpenAirplane owes to any Participant any amount that the Participant owes to OpenAirplane.
17. **Use of Information; Circumvention.**
- (a) No Participant may use any information available through the Online Service or otherwise acquired from OpenAirplane for any purpose other than renting Aircraft to Pilots or renting Aircraft from Operators through the Online Service. Without limiting the foregoing, no Participant or other person may scrape, window, or otherwise provide to any third party any information available through the Online Service.
 - (b) No person may automate any element of the use of the Online System, whether through the use of “bots,” scripts, or any other automation process.
 - (c) If any Operator makes available to any Pilot any aircraft on the basis of an OpenAirplane Checkout or other OpenAirplane credential, Operator will do so solely through the online System and will route all payment associated with such availability through OpenAirplane.

18. **Agency.** Each Participant will be liable for all acts or omissions of the Participants employees, contractors, or other agents. OpenAirplane and each other Participant will be entitled to rely upon actual, apparent, inherent, or other authority to bind, or hold liable, a Participant according to the applicable law of agency.

19. **Miscellaneous.**

- (a) **Notice.** Any notice required or permitted to be given under this Agreement must be in writing and will be deemed effective (a) if given by personal delivery, upon such personal delivery, (b) if given by nationally-recognized courier or mail service (in either case that has realtime or near-realtime tracking), at the time that the notice is delivered (or an attempt is made to deliver the notice, regardless of whether refused) to the receiver's premises according to the tracking records of the courier or mail service, (c) if given by fax, at the beginning of the next business day at the receiver's location, provided that the sender's fax device generates a confirmation that the fax arrived at the receiver's device and that there is no indication in the course of the transmission that the notice did not arrive at the receiver's fax device, or (d) if by e-mail, when sent, provided that sender receives no indication within four hours after sending that the e-mail message failed to reach the receiver. If a receiver knowingly or intentionally renders a fax device or e-mail system incapable of receiving notice by that means, any notice sent by fax or e-mail respectively will nevertheless be effective upon sending. The addresses for notice for each Party are those contained in the Online Service. Each party is entitled to rely on the then-current address in the Online Service for each other Party. Any Party may change its address(es) for notice by changing the Party's address as stored in the Online Service.
- (b) **Assignment.** No Party may assign any right or obligation under this Agreement without the consent of OpenAirplane, which consent OpenAirplane may withhold at OpenAirplane's sole discretion. Notwithstanding the foregoing, OpenAirplane may assign all, but not less than all, of its rights and obligations under this Agreement to any affiliate of OpenAirplane or to a person that succeeds to OpenAirplane's business, whether by transfer of assets, transfer of equity interests, merger, or otherwise.
- (c) **Severability.** If any provision of this Agreement is invalid under any applicable statute or rule of law, it is to that extent to be deemed omitted, and the balance of the Agreement shall remain enforceable.
- (d) **Counterparts.** This Agreement may be executed in counterparts and may be executed by Parties at different times and by different means.
- (e) **Electronic Signatures and Transactions.** Each Party agrees to engage in electronic transactions with the other Parties to this Agreement using electronic records and electronic signatures.
- (f) **Drafting Party.** No rule of law that requires that any part of the Agreement be construed against the person drafting the language will be used in interpreting this Agreement.
- (g) **OpenAirplane's Remedies are Cumulative.** The remedies available to OpenAirplane and the other OpenAirplane Parties under this Agreement, or at law or in equity, are cumulative. No pursuit by a OpenAirplane or another OpenAirplane Party of a particular remedy will be considered an exclusive election of remedies or limit any right of OpenAirplane or another OpenAirplane Party to pursue any other remedy.
- (h) **Changes to This Agreement.**
 - (i) OpenAirplane may change, update, and/or revise this Agreement and the Operating Rules and Policies from time to time at OpenAirplane's option. OpenAirplane may make any such change by posting the same in, or associated with, the Online Service, by notice to the Participant, or otherwise. Any change, update, and/or revision so provided will be effective beginning at 0600 Chicago, Illinois time on the third Business Day after OpenAirplane so posts, or gives notice of, the change, update, and/or revision.
 - (ii) No amendment or change to this Agreement that is not made in the manner stated in Section 19(h)(i) will have any effect unless it is in the form of a writing signed by the party against which enforcement is sought. No such writing will be effective as against OpenAirplane unless such writing conspicuously identifies this Section 19(h)(ii) of this Agreement.
- (i) **Choice of Law, Jurisdiction, and Venue.**
 - (i) Any dispute, claim, suit, or cause of action arising out of, or related to, this Agreement must be brought solely in the courts of the State of Illinois sitting in Cook County, Illinois or in the United

States District Court for the Northern District of Illinois. Each Party irrevocably submits to the jurisdiction of, and venue in, such courts.

- (ii) Notwithstanding anything in Section 19(i)(i) to the contrary, at OpenAirplane's option, any dispute, claim, suit, or cause of action arising out of, or related to, this Agreement will be finally decided by arbitration under the Commercial Arbitration Rules of the American Arbitration Association.

Notwithstanding anything in any such rules to the contrary, the arbitration will be held in Cook County, Illinois, the arbitrator (or, if more than one arbitrator sits on the panel, a majority of the arbitrators) must have substantial experience in general aviation operations, the arbitrator may not award attorneys' fees or costs (except that the provisions of Section 8(c) will apply), the parties may be represented by counsel if and to the extent that they pay the costs of their own counsel (except that the provisions of Section 8(c) will apply), and each party will pay its share of the arbitration fees (except that the provisions of Section 8(c) will apply). Any award by an arbitrator or arbitration panel may be entered in, and enforced by, any court of competent jurisdiction.

- (j) **Waiver of Jury Trial.** EACH OF THE PARTIES ACKNOWLEDGES THAT THE RIGHT TO A TRIAL BY JURY IS A CONSTITUTIONAL RIGHT, BUT THAT THAT RIGHT MAY BE WAIVED. EACH PARTY IRREVOCABLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY MATTER ARISING OUT OF, OR RELATING TO, THIS AGREEMENT.



OPERATING RULES AND POLICIES

Version 0.1 – Current as of _____ 2012

1. **Local Knowledge Briefing.** Each Operator will provide, and each pilot must receive, a local knowledge briefing before operating from an Operator's facility (a) for the first time, (b) if it has been longer than one year since the Pilot operated from the Operator's facility, or (c) if any material change has occurred in the local knowledge briefing since the last time at which the Pilot received a local knowledge briefing associated with the Operator's facility. Such local knowledge briefing may take the form of a verbal briefing, a written briefing, or other means calculated to impart the necessary information to a pilot unfamiliar with operations in the area. A local knowledge briefing may, but need not, include one or more of the following items.
 - (a) Restricted or special-use airspace in the vicinity;
 - (b) Places at which open-air gatherings take place;
 - (c) Adjacent or nearby airspace, especially any heavily congested airspace, including, but not limited to, Class B overhangs;
 - (d) Any local noise abatement procedures;
 - (e) Nearby fields or emergency landing areas;
 - (f) Local communications frequencies; and
 - (g) Where and how to obtain fuel, oil, and maintenance for the aircraft should the same be required.
2. **Rental Rates.** Rental rates are as stated at the time that the reservation is made in the Online Service. Unless otherwise stated in Online System, all rates are wet Hobbs rates.
3. **Non-Owned Aircraft Insurance.** Each Pilot must possess, at all times while operating any rented aircraft, a policy of non-owned aircraft insurance with liability (including, but not limited to, bodily injury and property damage) coverage of at least \$250,000 per occurrence (\$25,000 per person) and damage coverage of at least \$1,000 per aircraft.
4. **Cancellation; No-Show and Under-Utilization Charges; Failure to Timely Return Aircraft.**
 - (a) If Pilot fails to utilize a reserved aircraft for at least 40% of the time between 0800 local and 1700 local for which the Pilot reserved the aircraft, the Operator may charge, and the Pilot will pay, the rental rate for 40% of the time for which the Pilot reserved the aircraft. This policy applies both to no-show situations and to situations in which the Pilot operates the aircraft for less than 40% of the reserved time.
 - (b) Notwithstanding the foregoing, no no-show or underutilization charge will apply if:
 - (i) The Pilot cancels the reservation with the Operator at least 24 hours prior to the time at which the rental was scheduled to begin;
 - (ii) The Aircraft is not present at the Operator's site and ready for preflight inspection at the time at which the rental is scheduled to begin;
 - (iii) The Aircraft is not Airworthy at the time that it is tendered for rental;
 - (iv) The weather at the airport at which the aircraft is based is, at the time at which the rental period is to commence, worse than any of the following criteria. If the Pilot and Operator disagree with respect to any of the following weather conditions, the closest METAR immediately preceding the time scheduled for the rental to begin will be dispositive.
 - (A) Visibility less than six statute miles;
 - (B) Ceiling of less than 3,000 feet

- (C) Crosswind component (including gust) in excess of 15 knots (taking into consideration all available runways)
- (v) More than six hours prior to the time at which the rental period is to commence, a TAF for an aerodrome within 50 nautical miles from the place at which the aircraft is based calls for any of the conditions stated in Section 4(b)(iv), provided that the Pilot contacts the Operator and cancels the reservation for the aircraft at least six hours before the time at which the rental period is to begin.
- (c) Each Pilot must return each rented Aircraft at or before the end of the time for which the Pilot has reserved the Aircraft. An Aircraft is not returned until it is parked in the appropriate place at the Operator's place of business and is available for the next user of the Aircraft to preflight.

5. Pilot Documentation.

- (a) An Operator may, at the time at which the rental is to begin, and to the extent that the same are not already on file and available electronically with OpenAirplane, require that the Pilot show to the Operator the following documentation.
 - (i) Pilot certificate;
 - (ii) Medical certificate (except if operating exclusively gliders or Light-Sport Aircraft);
 - (iii) Current flight review;
 - (iv) Endorsements necessary to operate the aircraft (e.g. high-performance or complex endorsement);
 - (v) Proof of the required non-owned aircraft insurance;
 - (vi) Proof of currency of experience to carry passengers under FAR 61.57.
- (b) No Operator may require of a Pilot more documentation of the Pilot's qualification to operate an Aircraft than is stated in Section 5(a).

6. Requirements for, and Restrictions on, Operations.

- (a) Each Pilot will at all times comply with all applicable law including, but not limited to, all FARs.
- (b) The Pilot renting the aircraft must at all times serve as pilot in command of the rented aircraft.
- (c) The Pilot renting the aircraft must be the sole manipulator of the flight controls of the aircraft during taxi, takeoff, landing, or below 1,500 AGL.
- (d) No Pilot may perform, or permit to be performed, any aerobatic maneuver or any spin in any rented aircraft.
- (e) No person other than the Operator's authorized instructors may give instruction in any rented aircraft.
- (f) No Pilot may intentionally land at any location that is not a charted airport.
- (g) The Pilot must follow any Operator policy with respect to airports at which the aircraft may be landed (e.g. grass or other runway types), so long as that policy applies to all pilots (including both Pilots and non-Pilots) who rent aircraft from the Operator.
- (h) No Pilot may permit skydiving or the dropping of any object from any rented aircraft.
- (i) No Pilot may operate any rented aircraft in formation with any other aircraft.
- (j) No Pilot may hand-prop any rented aircraft or permit any other person to hand-prop any rented aircraft.
- (k) Each pilot will cause all available seatbelts and shoulder harnesses in each aircraft to be worn at all times, including times other than taxi, takeoff, and landing.
- (l) No Pilot may carry any passengers or cargo in any rented aircraft for hire and no Pilot may accept any consideration for any operation in any rented aircraft in excess of the contribution that FAR § 61.113 permits a private pilot to receive.
- (m) Under no circumstances may the Pilot or any other occupant of any rented aircraft wear or possess a kilt in the rented aircraft.
- (n) Each Pilot must conduct a thorough preflight inspection of the rented aircraft and immediately report any damage or squawks prior to starting the aircraft.

- (o) Each Pilot must operate each rented aircraft in a manner so as to land each time with fuel sufficient for at least one hour of operation at normal cruise power.
- (p) When taxiing within 10 feet of any obstacle, the Pilot must proceed at a pace not to exceed a slow walk until clear. During taxi, each Pilot must maintain at least 50 feet behind light single-engine aircraft, 100 feet behind light multiengine or light jet aircraft, and 500 feet behind helicopters or heavy multiengine or heavy jet aircraft.
- (q) No Pilot will operate any rental aircraft unless the Pilot complies in all material respect with the "I M SAFE" checklist from the FAA Risk Management Handbook FAA-H-8083-2.
- (r) Each Pilot will operate each Aircraft according to the checklists for the Aircraft as supplied by the manufacturer and/or the Operator.
- (s) No Pilot may operate any Aircraft outside the airspace of the United States.

7. **Remote Operations.**

- (a) The Operator will credit the Pilot for any fuel purchased at remote locations, up to the price per gallon charged at the Operator's home base.
- (b) Any costs of remaining in a remote location must be borne by the Pilot.
- (c) Retrieval of the Pilot and/or Aircraft from a remote location for any reason other than the failure of the Aircraft to be Airworthy will be at the Pilot's expense. If retrieval is necessitated because the Aircraft has ceased to be Airworthy other than due to the Pilot's act or omission will be at the Operator's expense.
- (d) If an Aircraft requires maintenance at a remote location other than because it has ceased to be Airworthy other than by an act or omission of the renting Pilot, any maintenance or repairs required to make the Aircraft Airworthy will be at the Operator's expense. The Pilot renting the Aircraft must solicit and receive the approval of the Operator before authorizing any maintenance or repairs to the Aircraft. If the required maintenance or repairs will require more than four hours to complete or the Aircraft must be left at a remote location overnight to accomplish such maintenance or repairs, the Pilot may, at the Pilot's option, terminate the rental and leave the Aircraft at the location at which it ceased to be Airworthy. In such a case, the Pilot will be liable to the Operator for the rental charges for the time during which the Pilot actually operated the Aircraft, the Pilot must make commercially reasonable arrangements to secure the Aircraft at the remote location, the Pilot must inform the Operator of such arrangements, the Operator will be responsible for, and will pay the costs of, retrieving the Aircraft from the remote location, and the Pilot will be responsible for transportation of the Pilot and any passengers from the remote location.

8. **Unavailable Aircraft.** If the reserved Aircraft is, or is likely to be, unavailable at the time at which the Pilot has reserved the Aircraft:

- (a) The Operator will promptly inform the reserving Pilot of the unavailability of the Aircraft; and
- (b) The Operator may offer a replacement aircraft at the same or reduced rental rate, but no Pilot is required to accept any Aircraft other than the Aircraft that the Pilot reserved.

9. **Additional Charges.** An Operator may charge a Pilot additional fees or charges for before-hours or after-hours call-outs or ramp support, retrieval of Aircraft, jumpstarts, and other similar services and circumstances. If such charges are not stated in the local knowledge briefing or posted conspicuously at the Operator's place of business, such charges will be commercially reasonable.

10. **Operator Waivers.** An Operator may, as to a Pilot and as to an Aircraft made available by the Operator, waive compliance by any Pilot with these Operating Rules and Policies. Any such waiver applies only as between the Operator and the specific Pilot and applies only to the specific rental of the specific Aircraft in connection with which the Operator gives the waiver.

11. **Wheaton's Law.** Every Pilot and Operator will behave in a principled and civil manner in their interactions with each other and with others during the course of the rental transaction. Every Pilot and Operator has an obligation of good faith and fair dealing in all interactions with all Participants.