

## AIRPORT USE AGREEMENT

Dated as of: June 1, 2015

This Airport Use Agreement is entered into this 1<sup>st</sup> day of June, 2015, by and between the Charlottesville Albemarle Airport Authority, a political subdivision of the Commonwealth of Virginia ("Authority") and Clear Sky Aviation, LLC. ("Operator").

### RECITALS

WHEREAS, the Authority owns and operates the Charlottesville Albemarle Airport, located in Albemarle County, Virginia, and deems it advantageous to the Airport and its operation of the Airport that Operator should be granted certain privileges, rights, uses, interests, and responsibilities, as hereinafter set forth; and

WHEREAS, Operator desires to engage in certain aeronautical activities at the Charlottesville Albemarle Airport, namely the provision of avionics maintenance and sales to the public; and

WHEREAS, the Authority and Operator have agreed upon the terms upon which the privileges, rights, uses, interests and responsibilities which are the subject of this Agreement should be granted to Operator; and

WHEREAS, Operator acknowledges that the Authority has provided it a copy of the Minimum Standards, and Operator certifies, through its authorized representative who has executed this Agreement below, that he has read and understands the Minimum Standards as they apply to Operator's commercial aeronautical activities at the Airport;

NOW THEREFORE, for and in consideration of the premises, rents, fees, covenants and mutual promises set forth herein, the Authority and the Operator do hereby set forth their agreement as follows:

### DEFINITIONS

**“Airfield”** As used in this Agreement, the term “Airfield” shall mean and refer to all necessary landing area appurtenances, e.g., approach areas, runways, taxiways, public aprons, floodlights, landing lights, signals, beacons, aids to navigation and other conveniences, for the flying, landing, and takeoff of aircraft at the Charlottesville Albemarle Airport.

**"Airport"** As used throughout this Agreement, the term "Airport" shall refer to Charlottesville Albemarle Airport located at 100 Bowen Loop, Suite 200, Charlottesville, Virginia, 22911.

**"Authority"** As used throughout this Agreement, the term "Authority" shall be mean and refer to the Charlottesville Albemarle Airport Authority and its officers, agents, employees, agents and other authorized representatives.

**"Calendar Quarter"** As used throughout this Agreement, the term "Calendar Quarter" shall refer to a period of three consecutive months starting on one of January 1, April 1, July 1 or October 1.

**"Calendar Year"** As used throughout this Agreement, the term "Calendar Year" shall refer to a period of twelve consecutive months starting on January 1, and ending on December 31.

**"EPA"** As used throughout this Agreement "EPA" shall mean and refer to the federal Environmental Protection Agency.

**"FAA"** As used throughout this Agreement "FAA" shall mean and refer to the Federal Aviation Administration.

**"FBO"** As used throughout this Agreement "FBO" shall mean and refer to the Fixed Based Operator.

**"Minimum Standards"** As used within this Agreement the term "Minimum Standards" shall mean and refer to the various provisions, terms and definitions contained in "The Minimum Standards for FBOs Providing Aeronautical Services to the Public at the Charlottesville Albemarle Airport," originally established adopted by the Authority in April 1979, and last revised in February 2000, and any amendments made thereto following the date of this Agreement.

**"TSA"** As used throughout this Agreement "TSA" shall mean and refer to the Transportation Security Administration.

**"Operator"** As used throughout this Agreement, the term "Operator" shall be construed as referring to Clear Sky Aviation, LLC., a corporation formed, organized and existing under and by virtue of the laws of the Commonwealth of Virginia (hereinafter, "Operator"), which has a business address of 660 Hunters Place, Suite 102, Charlottesville, Virginia 22911.

**"VDA"** As used throughout this Agreement "VDA" shall mean and refer to the Virginia Department of Aviation.

## **SECTION 1: TERM**

A. Term. This Agreement shall commence on June 1, 2015 ("Commencement Date"), and shall continue thereafter for a term of five years. This five-year term of years (hereinafter, the "Main Term") shall expire automatically (if not sooner terminated by either of the parties) at midnight on May 30, 2020.

## **SECTION 2: FEE**

A. Fee. As consideration for the rights herein granted, Operator shall make quarterly payments to the Authority. The Fee shall be calculated as 2% of commissionable gross receipts. The term "commissionable gross receipts" as used herein shall include the whole, entire, total receipts without deduction, attributable to goods and services sold, rendered or performed by the Operator on the Airport Premises during a given three (3) month period. Commissionable Gross receipts shall not include amounts received and paid to the United States, the Commonwealth of Virginia, or the County of Albemarle, Virginia for any federal or state retail sales or use tax, or for any local sales tax or any local excise tax. The Operator must provide sufficient reports to document commissionable gross receipts. The reports must be certified by the Operator. The reports and the corresponding payment will be due fifteen (15) days after the end of each Calendar Quarter, The Fee percentage will be reviewed every twelve (12) months and any positive adjustments will be mutually agreed upon by the Authority and the Operator.

## **SECTION 3: RIGHTS AND PRIVILEGES**

A. Provision of Services. Conditioned upon compliance with all the terms and conditions of this Agreement, and further conditioned upon Operator's compliance with all applicable requirements of the VDA and FAA as those requirements and regulations currently exist and may be amended in the future, Operator shall have, during the Term(s) of this Agreement, the non-exclusive right to provide the following aeronautical services to the public: **Avionics Maintenance and Sales**. Operator shall have no right or permission to offer any other aeronautical service(s) to the public at the Airport without the express written permission of the Authority

B. Use of Airfield. Conditioned upon compliance with all the terms and conditions of this Agreement and all applicable laws, regulations and policies, Operator shall have, during the Term(s) of this Agreement, the non-exclusive right and permission to use the Airfield in connection with its operations as an avionics maintenance and sales provider at the Airport. Unless with the advance written permission of the Authority, Operator shall have no right or permission to use the Airfield for any other purpose(s). Operator's use of the Airfield shall be subject to the following: (1) Operator shall be liable to the Authority for any damage(s) to the Airfield resulting from its operations, excluding ordinary wear and tear from normal use; repairs occasioned by any such damage(s) may be made by the Authority, and upon receipt of a bill from the Authority for such repairs, Operator shall pay the amount(s) specified in such bill to the Authority, and (2) Operator shall pay any and all airfield use charges as may be levied by the Authority, directly or indirectly, at the Airport. Operator shall timely submit payment for all such charges to the Authority or an agent designated by the Authority to collect such charges.

C. Ingress/Egress. Operator shall have reasonable rights of ingress and egress, in common with others, from its Premises over Airport roadways, including common use roadways, subject to the FAA required security program and all applicable badging and escort requirements, and subject also to any unanticipated interruption or mechanical breakdown of the Airport Security Program or associated equipment. The rights of ingress and egress granted herein are granted to Operator employees, guests, patrons, invitees, suppliers and other individuals authorized by Operator. In the event that the exercise of the referenced rights of ingress and egress adversely impacts Airport operations or security, in the sole judgment and opinion of the Authority, the Authority shall have the right to establish and/or limit hours in which such rights may be exercised or to establish other rules applicable to the exercise of such rights; however, if the Authority exercises this discretion it shall provide prior written notice of proposed changes to Operator.

#### **SECTION 4: AIRPORT PREMISES**

A. Land and Buildings. Operator hereby certifies that it shall establish a lease agreement with the FBO or other Airport lessor as mutually agreed for timely non-exclusive access to sufficient hangar space to accommodate at least one aircraft being worked on and two (2) tie down positions for customer aircraft awaiting repair or pick up and a paved area for employee and customer auto parking. Additionally, this lease agreement will provide the Operator with timely non-exclusive access to a minimum of 250 square feet of properly lighted and heated building space on Airport property for office, shop and restrooms. Such space(s) shall be accessible for Operator's aircraft at all times during the Term(s) of this Agreement.

B. Right of Entry. There is hereby reserved and granted to the Authority a right of entry to Operator's Office Space and Aircraft parking/storage space, for the Authority to conduct inspections to verify Operator's compliance with this Agreement and with all applicable ordinances, laws and regulations.

C. Surrender. Upon the expiration or earlier termination of this Agreement Operator shall quit and surrender all Airport Premises used or occupied by it, and shall leave such premises in good order and condition, ordinary wear and tear excepted. On or prior to the date of expiration or termination Operator may remove all fixtures installed by it, and all its equipment and property from Airport premises. Operator shall repair all damage(s) caused by such removal, and make reasonable restoration of the Airport premises to the condition in which they existed prior to Operator's use and/or occupancy thereof.

D. Safe Use and Operation of Premises. Operator covenants that it shall not introduce into or onto any Airport premises or property, any equipment, personnel, material(s) and/or activity which would be unsafe, unsightly, detrimental to the public or which would detrimentally affect the ability of others to utilize any Airport facilities.

E. Signs. Operator shall not install or display any billboards or signs advertising its company or the services offered by it to the public at the Airport, unless with the prior written approval of the Authority's Executive Director and the County of Albemarle, Virginia, if required.

F. Waste Disposal. Operator shall ensure the proper storage and removal from the Airport of all garbage, debris and other waste materials, whether solid or liquid, generated by or arising out of its operations at the Airport. Operator shall not utilize any facilities of the Authority for garbage or waste disposal without the prior and express written consent of the Authority. No garbage, debris, or waste materials shall be thrown, discharged or deposited, or permitted by Operator to be thrown, discharged or deposited, into or upon the lands or waters on or adjacent to the Airport.

G. Loss. Authority shall not be liable for any damage or injury to Operator, to any persons, or to any property caused by: fire; explosion; water; gas; oil; electricity, rain, ice, snow or any leak or flow from or into any Airport premises or any improvements thereon, or for the bursting or leaking of pipes, faulty sprinklers, steam, plumbing, electrical wiring and equipment or fixtures of any kind, or by any act or neglect of other Airport tenants or occupants of Operator's facilities, or resulting from any other cause whatsoever, unless said damage or injury is caused by the Authority's failure to fulfill an obligation imposed by this Agreement. Operator shall obtain insurance covering injury or damage to persons and property resulting from such occurrences. All property and equipment belonging to Operator, or used by Operator, and located on or about any Airport premises shall be there at the sole risk of Operator. The Authority shall not be obligated hereunder to carry any insurance on any property or equipment owned by Operator, nor be liable for any loss, damage or expense with respect thereto. Authority shall not be liable for the theft or misappropriation of any property or equipment owned or used by Operator, or of any property or equipment in or upon the Premises, or for any damage or injury thereto.

## **SECTION 5: ENVIRONMENTAL OBLIGATIONS**

A. Operator shall not cause or permit any Hazardous Material hereinafter placed, stored, generated, used, released or disposed of in, on, under, about or transported from any Airport premises by Operator, its agents, employees, contractors or other person, unless it has complied with the following : (i) with respect to Hazardous Materials other than oil, petroleum products and/or flammable substances reasonably necessary in connection with Operator's aeronautical activities, the prior written consent of Airport Authority shall be required, which shall not be withheld unreasonably. The Authority may impose, however, as a condition of such consent, such requirements as Airport Authority in its sole discretion may deem reasonable or desirable, including without limiting the generality of the foregoing, requirements as to the manner in which, the time at which, and the contractor by whom such work shall be done, **and** (ii) Operator must comply with all environmental laws and regulations, and with prudent business practices, with respect to such Hazardous Materials **and** (iii) the presence of Hazardous Materials must be reasonably necessary for the operation of Operator's use of Airport premises.

B. Operator shall comply, and shall at all times ensure that all Airport premises occupied by it

are kept in compliance with all applicable federal, state and local laws, ordinances, regulations, guidelines and orders relating to health, safety and protection of persons, the public, and/or the environment, (collectively, "Environmental Laws"). Operator shall furnish upon the reasonable request of Airport Authority, all report(s), assessments or other documents satisfactory to the Airport Authority showing that no Airport premises occupied by it are being used nor have been used by it for any activities involving, directly or indirectly, the use, generation, treatment, storage or disposal of any Hazardous Materials.

C. Operator shall not install or allow to be installed any above or underground storage tanks on any Airport premises.

D. Except as otherwise provided herein, Operator shall warrant that it shall keep Airport premises occupied by it free of all environmental, health or safety hazards and/or nuisances of any kind whatsoever. Prior to Operator's occupancy of any Airport premises, Operator and the Authority, or the Authority's designated agent, shall review the condition of premises to be occupied by Operator, and shall make a written notation of any pre-existing conditions discovered; subsequently, Operator shall not be responsible to the Authority with respect to such pre-existing conditions.

E. Operator shall notify Airport Authority immediately upon the discovery of any Hazardous Materials on, in, under or emanating from Airport premises occupied by it, any release or threat of release of a Hazardous Materials, illness caused by exposure thereto, as well as any actual, threatened or potential environmental, health or safety liability, including but not limited to claims, lawsuits, notices of violation, complaints, and investigations. Operator shall immediately, and at its own expense, take all actions necessary to remediate, abate, and/or rectify any such conditions at or upon the Airport. If Airport Authority is required to remediate and/or abate any such conditions on or upon such premises, it may do so upon reasonable notice (under the circumstances) to Operator, and Operator shall pay all costs incurred by Airport Authority in so doing immediately provide Airport Authority with copies of any reports, analyses, notices, claims, complaints, demands, investigations, requests for information, and/or other documents, correspondence or other written materials relating to the environmental condition on or of the Airport premises at issue and/or Hazardous Materials on, in, under, or emanating from those premises upon receipt, completion or delivery of such materials.

F. Except as may otherwise be provided herein, Operator will not make or allow to be made any change in usage, additions, or improvements in, on or to any Airport premises which will result in the presence or release of Hazardous Materials on any Airport premises.

G. If Operator breaches the obligations stated in this section, or if the presence of Hazardous Materials on Airport premises occupied by Operator results in a release of Hazardous Materials on, from or to said premises or contamination of the premises or other property (including groundwater), or if contamination of said premises or other property by Hazardous Materials otherwise occurs as a result of Operator's actions and/or operations, then, in addition to any other indemnification agreement(s) contained in this Agreement, Operator shall indemnify, and hold the Authority harmless from any and all resulting claims, judgments, damages, penalties, fines,

costs, liabilities or losses, (including, without limitation, diminution in value of the premises, damages for the loss or restriction on use of rentable or usable space or of any amenity of the premises, natural resource damages, damages arising from any adverse impact on marketing or space, damage to other property or the environment, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees). Without limiting the foregoing, if the presence of any Hazardous Materials on such premises caused or permitted by Operator results in any contamination of the premises, other property, or the environment, Operator shall promptly notify the Airport Authority.

H. As used herein, the term "Hazardous Materials" means: (a) any oil, petroleum products, flammable substances, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other wastes, materials or pollutants which pose a hazard to the Premises or to the safety and/or health of persons on or about the Premises and/or cause the Property to be in violation of any federal, state, or local laws governing or regulating hazardous materials; (b) asbestos in any form, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing regulated levels of polychlorinated biphenyls, or radon gas; (c) any chemical, material or substance defined as or included in the definition of "hazardous substances", "hazardous waste", "hazardous material", "extremely hazardous waste", "restricted hazardous waste", "toxic substance" or similar words under any applicable local, state or federal laws, or any regulations adopted or publications promulgated pursuant thereto, including, but not limited to: the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. §§9601, et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S. U.S.C. §§1801, et seq.; the Federal Water Pollution Control Act (CWA), as amended, 33 U.S.C. §§1251, et seq.; The Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. §§6901, et seq.; the Toxic Substances Control Act (TSCA), as amended, 15 U.S.C. §§32601, et seq.; (d) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority, and which may or could pose a hazard to the health and safety of the occupants of the Premises, and/or the owners and/or occupants of any property adjacent to or surrounding the Premises, or to any person entering upon the Premises or adjacent property; and/or (e) any other chemical, material or substance which may or could pose a hazard to the environment or a person.

## **SECTION 6: AIRPORT COMPLIANCE OBLIGATIONS**

A. Applicable Laws. Operator shall observe and comply with all federal, state and local (including, without limitation, those of the Authority, the County of Albemarle, Virginia and the Commonwealth of Virginia) laws, regulations, ordinances, orders, directives, and other requirements applicable to the Airport and/or Operator's operations at the Airport. This requirement shall include, without limitation, the obligation to comply with all applicable FAA, TSA and/or EPA regulations, policies, orders and directives. Operator shall obtain all necessary FAA and/or EPA approvals required in connection with its activities at the Airport. Authority and Operator shall each promptly provide notice to the other of any notice of violation, warning, summons or legal process received by either party in connection with the enforcement of any laws, regulations, ordinances, policies, orders, directives or other requirements. Operator shall

procure, from all governmental authorities having jurisdiction over its Airport activities, all licenses, certificates, permits, or other authorizations which are or may be required and/or necessary for the conduct of its operations and activities at the Airport, and shall maintain these in effect at all times during the Term(s) of this Agreement. Operator shall provide proof of the existence of such authorization(s) to the Authority upon its execution of this Agreement, and thereafter, upon the request of the Authority.

B. Authority's Rules. Operator shall observe at all times any and all policies, rules and regulations from time to time promulgated by Authority for the general management, well-being, safety, care and cleanliness of the Airport; provided however, that any such rules and regulations shall be of general application to Operator and other similarly situated Airport tenants and users. All such rules and regulations are incorporated herein as if fully set forth. Such rules and regulations shall include, but are not limited to the following:

1. Minimum Standards. Operator and all other persons over whom Operator has authority, direction, control or responsibility (including, without limitations, its invitees), shall be subject to, and shall comply with, all provisions of the Airport's Minimum Standards and any other resolutions, regulations or directives issued by the governing board of the Authority and/or its Executive Director. The Minimum Standards are incorporated herein by reference, as are any amendments thereto made subsequent to the Commencement Date of this Agreement. In the event of a conflict between the terms and conditions of this Agreement and the Minimum Standards, the strictest standard or obligation shall establish and govern Operator's responsibilities under this Agreement. It shall be the responsibility of Operator to ensure that its officers, agents, employees and other personnel, as well as its licensees, invitees, contractors, and/or subcontractors, have read and agreed to abide by the Minimum Standards. The Authority shall have the right, at any time and without liability to Operator, to suspend Operator's right to use the Airfield or any other Airport facilities or premises, upon Operator's failure to comply with any provision(s) of the Minimum Standards; such suspension shall not abate any fees or rentals due to the Authority pursuant to this Agreement and shall not constitute a waiver of any other rights or remedies to which the Authority may be entitled.

2. Airport Security Program: Operator agrees to comply, at all times, with the Airport's Security Program (ASP) and requirements. Operator shall, in conducting its activities and operations in or about the Premises and the Airport, be responsible for compliance with the ASP, and shall be liable for, and shall pay, any TSA fine or fee imposed on the Authority as the result of, or in connection with, Operator's failure to comply with the ASP. Operator shall implement all measures necessary to insure that no person gains access to or enters any Airport Operations Area (AOA) without first complying with the ASP. Operator shall allow no entry into any AOA, by any person, without prior approval from the Authority. Evidence of such approval shall consist of the following: an Authority-issued photo-identification badge, and/or an escort by a duly authorized and badged individual. Operator shall restrict access to the AOA. Operator shall not bring or operate any vehicle or motorized equipment into or within any AOA, unless having first complied with all insurance provisions and requirements specified in this Agreement, as



well as the Airport Vehicle Training Program and the ASP. When operating within any Air Operations Area, Operator shall cause all its vehicles and equipment to move directly to and from the entrance gate or Premises and the aircraft and shall not enter or move about any other non-movement area.

C. Drug-Free Workplace. Operator acknowledges and certifies that it understands that the following actions by it, its employees and/or agents on airport property are prohibited by this Agreement: (a) The unlawful manufacture, distribution, dispensing, possession or use of alcohol or any controlled substance(s); and (b) Any impairment or incapacitation from the use of alcohol or controlled substance(s).

D. Subordination of Agreement. This Agreement shall be subordinate to the provisions of any existing or future agreement(s) entered into between the Authority and the United States to obtain Federal aid for the improvement or operation and maintenance of the Airport.

E. Government Approval of Agreement. This Agreement is made by the parties subject to and contingent upon approval of the FAA and VDA.

F. Enforcement. The Authority shall have the right, at any time, and without liability to Operator, to suspend Operator's right to use the Airfield or any Airport facilities or premises for Operator's failure to comply with the obligations and requirements set forth in this Section, without abatement of any fees or rentals due to the Authority pursuant to this Agreement, and without waiver of any other rights or remedies to which the Authority may be entitled.

## **SECTION 7: PROVISION OF SERVICES**

A. No Discrimination. Operator shall furnish its services to the public at the Airport on a fair, equal and not unjustly discriminatory basis to all users thereof, and shall charge fair, reasonable and not unjustly discriminatory prices for such services. Operator may make reasonable, non-discriminatory discounts, rebates or other, similar types of price reductions, to volume customers, without breaching its obligations under this paragraph.

B. Minimize Impact. Operator shall conduct its operations in an orderly and proper manner so as not to unreasonably annoy, disturb or interfere with others conducting business or other operations on or near the Airport.

C. Demeanor and Appearance. Operator shall be responsible for the conduct, demeanor and appearance of its employees, invitees and of those doing business with it. Upon receipt of any complaint or objection to the conduct, demeanor or appearance of an employee, invitee or person doing business with Operator the Operator shall take reasonable steps to remove the cause.

D. Business Development. Operator shall use its best efforts to maintain, develop and increase

the business conducted by it pursuant to this Agreement.

E. Financial Statements. As stated in section 2A of this agreement, the Operator must provide sufficient reports to document commissionable gross receipts. The reports must be certified by the Operator. The reports and the corresponding payment will be due fifteen (15) days after the end of each Calendar Quarter. Additionally, within sixty (60) days after the end of each Calendar Year, Operator shall provide to the Authority a sworn statement from an officer of Operator ("Fiscal Year Statement"), showing the amount of Operator's Commissionable gross receipts from its Airport activities conducted pursuant to this Agreement for the prior calendar year. Additionally, at its option the Authority may, within ninety (90) days after the end of each calendar year, conduct a special audit of Operator's books and accounts of Operator's activities at the Airport ("Fiscal Year Audit"). If conducted, the Fiscal Year Audit shall be performed by an Independent Certified Public Accountant selected by the Authority, and in the event of any findings inconsistent with Operator's obligations under this Agreement the cost of the audit shall be paid by the Operator.

F. Inspection of Records. Upon request of the Authority Operator shall allow the Authority access to its books, records, files, accounts, other sources/repositories of information, and its facilities, as may be pertinent to Operator's activities at the Airport, to allow the Authority and/or the FAA to investigate and/or determine Operator's compliance with this Agreement and/or with any law, rule, order or regulation pertaining to Operator's activities at the Airport.

G. Business Organization. Operator shall notify the Authority immediately of any change(s) in its organizational and/or corporate status, and shall notify the Authority immediately upon receipt of information that its authorization to conduct business in Virginia is or will be revoked.

H. Notices. Notices, notifications and/or correspondence sent by one party to the other concerning this Agreement shall be deemed provided to the other if sent (a) by the United States Postal Service: on the date of the official postmark affixed thereto, or (b) by other mail or delivery service, or by hand-delivery: on the date the other party receives the notice, notification or correspondence. Notices, notifications and/or correspondence to the Authority shall be sent to its Administrative Offices located on the 2nd Floor, 100 Bowen Loop, Suite 200 Charlottesville, VA, 22911, to the attention of the Authority's Executive Director. Notices, notifications and/or correspondence to Operator shall be sent to, Clear Sky Aviation, LLC, 660 Hunters Place Suite 102, Charlottesville, Virginia 22911 to the attention of: "Accountable Manager".

I. No Discrimination. Operator shall not, on the grounds of race, color, religion, handicap, sex, or national origin, discriminate or permit discrimination against any person or group of persons in any manner prohibited by federal or state law. Operator shall not exclude any person from participating in or receiving the services or benefits of any program it offers at the Airport, on any grounds specified in this paragraph. Operator will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operations of Operator. Operator shall post in conspicuous places, available to employees and applicants for employment, notices setting for the provisions of this paragraph.

Operator, in all solicitations or advertisements for employees placed by or on behalf of it, shall state that it is an equal opportunity employer. The Operator shall not on the grounds of race, color or national origin discriminate or permit discrimination against any person or group of persons in any manner prohibited by the Federal Aviation Regulations (FAR) or any federal Civil Rights Act(s). The Airport Authority reserves the right to take any action(s) the Federal Government may direct to enforce the non-discrimination provisions of this Agreement, without liability to Operator therefor.

## **SECTION 8: RIGHTS RESERVED TO THE AUTHORITY**

A. Right to Lease Landing Areas. During war or national emergency, Authority shall have the right to lease the Airport's landing area(s), or any part thereof, to the United States Government for military use, and, if such lease is executed, the provisions of this Agreement (including, without limitation, Operator's financial obligations), to the extent they are inconsistent with, or prevented as the result of, such government lease, shall be suspended.

B. Right to Protect Approaches. Authority reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstructions, and to prohibit and prevent Operator from erecting, or permitting to be erected, any building or other structure on or adjacent to the Airport which, in the opinion of the Authority, would limit the usefulness of the Airport or constitute a hazard to aircraft.

C. Airport Operations. Authority reserves the right to control all Airport operations. This right shall include, without necessarily being limited to, the following: the right to close any airport facility(ies), without any liability to Operator for the consequences of any closing, when it deems such closing to be reasonably necessary for the maintenance, repair or development of any Airport property or facility(ies) and/or for the safety of the general public. This right shall include the right to reserve adequate apron area for the landing, unloading and parking of aircraft at the Airport. Authority reserves the right to make all Airport facilities developed with federal aid, and all Airport facilities for the landing and taking-off of aircraft, available to the United States at all times, without charge, for use by military aircraft.

D. Other Rights Reserved. All privileges and rights to the use of the Airport, other than those specifically granted to Operator within this Agreement, are hereby reserved to the Authority, including, without limitation, the right to develop and/or improve the Airport as it sees fit, regardless of the desires or views of Operator and without interference or hindrance by Operator.

E. Exercise of Rights. No exercise of any rights reserved to the Authority by this Article shall be construed as an eviction of Operator, nor such exercise be grounds for any abatement of rentals, fees or charges provided for by this Agreement, or for any claim or demand for damages.

## **SECTION 9: INDEMNIFICATION AND INSURANCE.**

A. Indemnification Provisions. Operator shall indemnify and hold harmless the Authority, its officers, members, employees and representatives from and against any and all liabilities, losses,

suits, actions, judgments, claims, demands, damages, penalties, fines, expenses and costs, of every kind and nature, incurred by or asserted or imposed against the Authority by reason of any accident, injury (including death) or damage to any person or property, however caused, resulting from or arising out of any act or omission of the Operator in (a) its use, development, and/or occupancy of any Airport facilities or premises; (b) its performance of services, or the exercise of any rights or privileges, pursuant to this Agreement, and any Default by Operator under this Agreement; and/or (c) Operator's use of the Airport. Operator hereby releases and discharges the Authority from any and all liability, claim(s) for damages, and/or other claim(s) for relief, of any kind, whether legal or equitable in nature, and from any action or cause of action arising or alleged to have arisen out of circumstances identified in provisions (a)-(c), above. Operator shall provide the Authority with a certificate or certificates of insurance confirming coverage for its contractual liability hereunder.

1. Employment Coverages. Operator shall also indemnify and hold the Authority harmless from and against any claim(s), expenses and/or liability, of any kind, asserted or accruing under the Worker's Compensation Act by or to Operator's employees, licensees, contractors, subcontractors, or sub-lessees.

2. Definition of Expenses. As used herein the term "expenses" shall be construed to include, but shall not be limited to, reasonable costs associated with the investigation, defense and/or reimbursement of liabilities, losses, suits, actions, judgments, claims, demands, damages, penalties, and/or fines, including fees associated with consultants, expert witnesses and reasonable attorneys' fees.

B. Insurance Requirement. In addition to any other insurance coverage required by this Agreement (e.g., insurance to cover the damage or loss of property and/or equipment in or on the Operator's Premises) Operator shall obtain and maintain in effect throughout the Term(s) of this Agreement the following insurance coverage:

1. Hangar Keepers Liability: \$1,000,000 combined single limit.

2. Products Completed Operations Liability: \$1,000,000 combined single limit.

3. Premises Liability: \$1,000,000 combined single limit.

4. If Applicable:

i. Aircraft Liability: \$1,000,000 combined single limit, with passengers limited to \$100,000 each.

ii. Workers Compensation: In the amounts and limits, if any, required of Operator by the laws of the Commonwealth of Virginia.

iii. Automobile Liability: \$300,000 combined single limit.

5. Other: Any other insurance required by state and federal law.

C. Required Provisions of Insurance. All insurance required by this Agreement shall be obtained in accordance with the following:

1. With the exception of worker's compensation and automobile liability policies, the Authority shall be named as an additional insured under the policies covering liability for personal and/or physical injuries (including death) and property damage.
2. The Authority shall receive 30 days advance written notice of any cancellation of or reduction in the required insurance.
3. The insurance required of Operator herein shall be primary, and any insurance or self-insurance maintained by Authority shall be in excess of the insurance required of Operator and shall not contribute therewith.
4. Operator's failure to comply with any reporting provisions of any insurance policy shall not affect coverage provided to Authority.
5. Neither party hereto shall be liable to the other party or to the insurer of other party claiming by way of subrogation through or under such other party with respect to any loss or damage to the extent that such other party shall be reimbursed or has the right to be reimbursed out of that party's property insurance coverage carried for such other party's protection with respect to such loss or damage, and the parties specifically waive, but only to the extent permitted by provisions of the insurance policy in question, their rights of subrogation as aforesaid. It is further understood and agreed that if either party's insurer does not waive its right of subrogation or the insurer's policy prohibits or does not allow for said waiver of subrogation, then the other party is also relieved of its waiver of subrogation obligation as aforesaid.
6. All insurance will be obtained by Operator from insurance companies legally authorized to do business within the Commonwealth of Virginia.

D. Proof of Insurance Required. Operator shall provide Authority with Certificates of Insurance confirming the insurance required by this Agreement, signed by a person authorized by the insurance company to bind it to the representations contained therein. These certificates shall be provided to the Authority by Operator upon execution of this Agreement, upon each anniversary of the Commencement Date (without demand by Authority), and at other times throughout the Term of this Agreement within ten days of a request by the Authority. The Operator may not undertake full-time avionics maintenance and sales activity until the requirements of Section 9 are met.

E. Enforcement. The Authority shall have the right, at any time, and without liability to Operator, to suspend Operator's right to use the Airfield or any Airport facilities or premises for Operator's failure to comply with the obligations and requirements set forth in this Section, without abatement of any fees or rentals due to the Authority pursuant to this Agreement, and without waiver of any other rights or remedies to which the Authority may be entitled.

## **SECTION 10: DEFAULT AND TERMINATION.**

**A. Default Defined:** The following shall constitute events of default ("Defaults") under this Agreement:

1. Failure of Payment. The failure of any party hereto to make any deposit or payment, or to remit any payment, required hereunder, which failure continues un-remedied for a period of fifteen (15) business days following receipt of written notice from the party to whom such deposit, payment or remittance is due;

2. Failure to Meet Other Obligations. The failure of any party hereto to observe or perform any promise, agreement, covenant, requirement or obligation made and/or imposed hereunder, which failure continues un-remedied for a period of fifteen (15) business days following receipt of a written notice from the other party;

3. Bankruptcy. The insolvency, business failure, appointment of a receiver of any of the property of, assignment for the benefit of creditors by, and/or the commencement of any proceeding under any state or federal bankruptcy or insolvency laws, by or against a party to this Agreement;

4. Assignment. An assignment by operation of law of Operator's interest(s) in this Agreement;

5. Abandonment of Business. Operator's abandonment of office space at the Airport, Operator's cessation of business at the Airport for a period in excess of thirty days, and/or Operator's failure to occupy at least 100 square feet of office space at the Airport under a binding lease agreement. No failure to perform or delay in performance which is caused by any war, civil disorder, or other national emergency, or which is due to any intervening act(s) of God, shall be deemed an event of Default.

### **B. Termination By Authority:**

1. For Default. Upon the occurrence of an event of Default as defined above, Authority may cancel this Agreement and terminate all of its obligations hereunder, by giving Operator notice fifteen (15) days in advance of the effective date of the termination. The notice of termination shall specify the termination date and shall specify the circumstances upon which the termination is based. At its sole option, Authority may elect to cure a Default; if the Authority chooses to do so, Operator shall reimburse and pay to the Authority all amounts expended by the Authority to effectuate the cure. No such cure by the Authority shall constitute a waiver of the Authority's rights to the Default in question, or any other Default. Upon an event of Default based on Operator's bankruptcy, the Authority may declare this Agreement terminated and canceled.

**C. By Operator.** Operator may terminate this Agreement at any time, for any reason or for no reason, by sending thirty (30) days' advance written notice of termination to the Authority.

**D. Obligations Upon Termination.** Receipt of a termination notice shall not relieve the Operator of the obligation to deliver and perform on all outstanding requirements (financial or other) prior to the effective date of the termination. As of the effective date of any termination, the applicable Term (Main or Renewal) of this Agreement shall expire and all of the rights and interests of Operator under this Agreement shall cease, but Operator's outstanding financial and other obligations hereunder shall continue until satisfied.

## **SECTION 11: OTHER TERMS AND CONDITIONS**

A. No Exclusive Rights. Nothing contained in this Agreement shall be construed as granting or authorizing the granting of any exclusive right within the meaning of the United States Code, Title 49, §40103(e). Operator understands that the Authority may grant to one or more other Operators the same rights and privileges granted to Operator by this Agreement.

B. Assignments. Operator shall have no right to assign, in any manner or fashion, any of the rights, privilege or interests accruing to it under this Agreement to any other individual or entity, without the prior written consent of the Authority. In the event of an assignment Operator shall remain fully liable for the performance of all obligations imposed by this Agreement unless otherwise agreed, in writing, by the Authority.

C. No Waiver of Rights. No waiver by the Authority shall be construed as or deemed to be a waiver of any other and/or subsequent default. The acceptance of any rentals, fees and/or charges by Authority, and/or the performance of all or any part of this Agreement by Authority, for or during any period(s) following a default by Operator, shall not be construed as or deemed to be a waiver by Authority of any rights hereunder, including, without limitation, Authority's right to terminate this Agreement. No failure on the part of the Authority to enforce any of the terms and/or conditions set forth in this Agreement shall be construed as or deemed to be a waiver of the right to enforce such terms and/or conditions.

D. Headings. Section, article and/or paragraph headings contained within this Agreement have been inserted only as a matter of convenience and for reference, and they in no way define, limit, or describe the scope or intent of any term, condition or provision of this Agreement.

E. Severability. In the event that any term, provision or condition of this Agreement, or the application thereof to any person or circumstances, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, and the application of any term, provision or condition contained herein to any person or circumstances other than those to which it has been held invalid or unenforceable, shall not be affected thereby.

F. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. All litigation arising out of this Agreement shall be commenced and prosecuted in the federal, state or local court(s) of the jurisdiction in which the Authority is situated.

G. Remedies not exclusive. All rights and remedies provided in this Agreement shall be deemed cumulative and additional to, and not in lieu of or exclusive of each other or of any other rights and/or remedies available to the parties by virtue of this Agreement, and/or by virtue of any administrative or legal proceeding, whether legal or equitable in nature.

H. Binding Effect. The terms, provisions and conditions of this Agreement shall bind and inure to the benefit of the respective parties hereto and to their representatives, successors, and (where permitted by this Agreement) their assigns.

I. Entire Agreement. This Agreement represents the entire agreement between the parties, and there are no other agreements or understandings between the parties, either verbal or written, which have not been incorporated herein.

J. Independent Entities. Nothing contained in this Agreement shall be construed as or deemed to make either party hereto the agent, partner or joint venture of the other, except as may otherwise be provided herein. Nothing contained in this Agreement shall give Operator any authority to represent the Authority before any court or governmental or regulatory agency without the express prior written authorization of the Authority. Unless otherwise provided in this Agreement, neither party shall be responsible or held liable for the acts or omissions of the other. In performing any services pursuant to this Agreement, Operator is and shall be acting as an independent contractor.

K. Modification. This Agreement may be modified by the parties during performance, but no modification shall be valid or enforceable unless in writing and signed by each of the parties hereto in the same manner and with the same formality as this Agreement.

L. Exhibits attached: The following exhibits are attached and incorporated herein by reference:

- a. Land and Building Space Lease Agreement between Landmark Aviation (Lessor) and Clear Sky Aviation, LLC (Lessee)

IN WITNESS WHEREOF, the parties do hereby set forth their signatures, representing that the individuals who affix their signatures hereto have been duly authorized to bind each party to the terms and conditions of the foregoing Agreement



WITNESS THE FOLLOWING SIGNATURES as of the date first herein above written:

THE CHARLOTTESVILLE ALBEMARLE AIRPORT AUTHORITY

By: \_\_\_\_\_

Its: \_\_\_\_\_ [Title]

Approved as To Form:

\_\_\_\_\_  
Legal Counsel to the Authority

OPERATOR: Clear Sky Aviation, LLC

By: \_\_\_\_\_

Its: \_\_\_\_\_ [Title]