

# Guidelines for Dry Lease Agreements

## I. Eligibility Checklist

- A. Dry Lease Defined: An arrangement whereby the lease of an aircraft is without crew (pilot in command, second in command, flight attendant, etc.)
- B. The aircraft and the crew must absolutely be separate and distinct. The lessor may not provide any of the crew members or the lease could be construed as wet lease and thereby subject to severe restrictions under FAR Part 91 and subject to the ten percent commercial federal excise tax.

## II. Terms and Conditions of Written Contracts

- A. Identity of the Parties. Name, address, place of incorporation or organization if not acting in an individual capacity. Identify parties as Owner and Operator.
- B. Subject Matter/Terms. This section should describe the aircraft by its make, model and serial number, including the serial number of the engines.
- C. Term of Lease. Months or years with a beginning and ending date specified.
- D. Consideration
  1. Terms of the rent may vary considerably. It may be a fixed amount per month or specified on an annual basis. In addition to a basic rental charge, there may be a charge for each hour of operation over and above the basic rental charge.
  2. Where appropriate, a fixed amount may be specified for the engine hourly reserve over and above other rental charges. If the Owner of the aircraft is on a "power by the hour" arrangement, appropriate provisions should be made to recognize the agreements and

the payment of the appropriate hourly sums as specified.

## E. Taxes

1. Excise Taxes. Ideally, dry leases are subject to fuel taxes rather than the IRS §4261 ten percent Federal Excise Tax (FEE), but if it appears that the Owner has retained too much possession, command or control of the aircraft the IRS could assess the ten percent FET on the amounts paid in the lease.
2. Personal property taxes are reserved to the Owner.
3. The Operator typically agrees to pay all fees and charges, including gasoline sales taxes or any other taxes or fees assessed or charged by any airport or other entity for the operation of the aircraft.

## F. Delivery

1. The time and place of delivery of the aircraft to the Operator should be specified.
2. In addition to delivering the aircraft, all applicable airframe and engine logs and any other records or documents in the Owner's possession should be delivered to the Operator. Prepare itemized list.

## G. Acceptance and Warranty

1. It is appropriate to spell out the condition of the aircraft and what warranties and representations are made by the Owner to the Operator. The Owner typically represents that the aircraft is in good operating and mechanical condition and that he knows of any facts or information which would prohibit or restrict the Operator's use of the aircraft.
2. The status of all airworthiness directives and compliance with service bulletins, service instructions and any other maintenance or operational publications of the manufacturer of the airplane, engines or accessories is also stated.

## H. Title of the Aircraft

1. Title and ownership of the aircraft shall remain with the Owner throughout the terms of the Lease Agreement.
2. The Operator shall do nothing which shall encumber, interfere with or otherwise dilute the Owner's unrestricted title to and ownership of the aircraft.

#### I. Return of Aircraft at End of Lease

1. The Operator agrees to return the aircraft, at the expiration of the Lease, to the Owner at a designated location.
2. The aircraft is to be in as good a condition as when it was delivered, normal wear and tear excepted and in an undamaged and airworthy condition, with all systems functioning properly and all applicable maintenance complied with. Any exceptions or deviations shall be noted and listed separately in a document forwarded by the Operator to the Owner at the expiration of the Lease.
3. Depending upon the utilization of the aircraft, the Operator is to return the aircraft and its interior in a good condition with the exception of reasonable wear and tear. If the interior is removed for cargo operations, arrangements should be made for the reinstallation of the interior.

J. Owner's Right to Inspect: The Owner or its designee shall have the right to inspect the aircraft at any reasonable time upon reasonable advance notice. At the time of the inspection, provision should be made for the Operator to have available to the OWNER or its designee all of the aircraft and engine logbooks and other appropriate maintenance records.

#### K. Lawful Use

1. The aircraft is not to be maintained, used, operated or stored in violation of any law, rule or regulation of any state or governmental authority nor in violation of its airworthiness certificate promulgated by the Federal Aviation Administration.
2. Provisions should be made to the effect that any unlawful use of the aircraft or any operation of the aircraft in violation of any regulation will render the Lease null and void and entitle the Owner to immediately retake possession of the aircraft.

#### L. Aircraft Location

1. The aircraft is not to be operated in any location that may be excluded from the terms of any applicable insurance policy. The predominant use of the aircraft is typically within the United States and if

such aircraft is temporarily operated outside the United States, it will be operated only in those territories where it is not threatened by risk of hostilities or by seizure.

2. Close scrutiny should be made between the operating area of the aircraft as specified in the insurance agreements and any anticipated use of the aircraft by the Operator.

#### M. Logbooks and Records

1. The Operator should maintain all logs, books and other records pertaining to the operation of the aircraft and its engines, in compliance with all applicable Federal Aviation Regulations.
2. The location of the logs and records should be stated with the Owner's right to inspect as herein provided.

#### N. Additional Equipment and Modification

1. Provision should be made regarding the removal, substitution or replacement of any instrument or component of avionics without the Owner's prior consent. Such provision should contain acknowledgment that items that are removed or swapped shall be of like value with the items that were removed or swapped.
2. There should be no diminution in value of the aircraft by reason of any swapped or replaced item.

#### O. Pilot Qualifications

1. Strict adherence should be required with regard to the operating requirements of all flightcrew members as specified in the aircraft insurance policy. Additional qualifications and flight times over and above the minimums specified may be stated.
2. Additional requirements may be stated with regard to the crewmembers attending certain designated flight schools such as Simuflite and required to attend recurrent training programs.

#### P. Maintenance and Repairs

1. The Operator should warrant that it will keep and maintain the aircraft in a good and airworthy condition in compliance with all applicable Federal Aviation Regulations and all service letters, bulletins, and instruc-

tions issued by the manufacturer of the airframe or engines.

2. Provisions should be made for the replacement, overhaul or repair of any life-limited component or part during the life of the Lease Agreement.
3. During the life of the Lease Agreement, if a manufacturer of a component or part provides for a new kit, modification or otherwise updated item, the cost incurred by the Operator shall either be prorated between the Owner and the OPERATOR if it is anticipated that the useful life of the part will exceed the Lease Agreement or as otherwise may be negotiated between the parties.
4. Scheduled or unscheduled overhaul, repair or maintenance of the engines on the aircraft shall be the responsibility of the Owner except as otherwise provided for.

#### Q. Hold Harmless

1. The Operator should agree to indemnify and hold the Owner harmless from any and all damages or losses that may occur during the operation, possession and control of the aircraft.
2. The parties should agree on a stated value of the aircraft and its components and provide that hull insurance shall be maintained on the aircraft by either party as agreed to in the stated amount.

#### R. Liability Insurance

1. The Agreement should provide that either the Owner or the Operator shall maintain satisfactory liability insurance, as may be negotiated and agreed to between the parties. The amount of the total liability insurance should be agreed upon by the parties.
2. Payment of the insurance policy should be provided for with an appropriate copy of the paid bill forwarded to the remaining party as evidence of
3. Provision should be made regarding the seizure, confiscation or damage to the aircraft or engines behind repair. Further provision should be made regarding the aircraft or engines if they are partially damaged and the application of the insurance proceeds to repair any damages.

#### S. Assignment, Sublease and Encumbrance

1. The Owner should have the right to assign this Lease without notice or consent of the Operator. The Operator's rights under the Lease shall continue during the period of the Lease Agreement.
2. The Operator shall not sublease, mortgage or pledge or otherwise encumber the aircraft. The Operator shall pay all maintenance and repair costs so that no mechanic's or repairman's liens are placed or levied against the aircraft.
3. If appropriate, provision should be made for the Owner to pledge or otherwise encumber the aircraft as security for a loan to finance its purchase.
4. Provision should be made for the recording of this Lease with the Federal Aviation Administration in Oklahoma City.

#### T. Default and Breach. Provision should be made regarding the Owner's default and breach of the Lease. They typically include:

1. Operator files a petition in bankruptcy or becomes insolvent;
2. The Operator is involved in involuntary proceedings under the bankruptcy laws;
3. In the event the rents and other sums due and payable remain unpaid for more than fifteen (15) days after notice to the Operator;
4. The Operator fails to perform the terms and conditions of the Agreement after he has been notified of a deficiency;
5. The Operator abandons the aircraft; and,
6. The Operator attempts to assign or transfer his interest in the aircraft to third persons.

#### U. Repossession

1. In the event of default as previously specified, the Owner shall have the right to terminate the Lease and retake immediate possession of the aircraft.
2. The Owner's remedies are cumulative and the Owner may exercise them as he chooses.
3. In the event the Owner retakes possession of the aircraft, he shall have an obligation to

mitigate damages and release the aircraft at the highest and best obtainable rental.

V. Waiver. A waiver of one or more parts of any requirement or performance by either party shall not be deemed a continuing one, but all the other terms and conditions shall remain in force.

W. Covenants and Conditions. The parties agree that time shall be of the essence.

X. Truth-in-Leasing Provisions

1. Determine if FAR §91.23 is applicable.
2. Include required statements and certifications, if applicable, as concluding paragraph immediately preceding the signature blocks.

Y. Signature Blocks. Ensure that they match the parties.

### III. Pre-Operation Checklist

- A. Comply with following notice and mailing requirements of truth-in-leasing provisions of FAR §91.23.
1. Mail to FAA-Oklahoma City within 24 hours of execution.
  2. Carry agreement aboard the Aircraft.
  3. Notify nearest FSDO at least 48 hours before the first flight under the agreement.

B. Notice. To provide for the sending and receiving of notices under the terms of the Lease and the addresses of the various parties where notice is to be received and sent.

C. Entire Agreement. A statement should be made that the provisions of the Lease constitute the entire agreement between the parties.

D. Modification of Agreement: No change in the Agreement or modification shall be effective unless it is signed in writing by both parties.

E. Laws Governing. The parties agree that the laws of \_\_\_\_\_ (state) govern the obligations and remedies under the terms of the Lease.

F. Option to Renew. Provision should be made for renewal of the Lease.

### Disclaimer

*NBAA offers these guidelines as an aid to its Members who are considering entering into a dry lease arrangement. They are based on FAA and IRS regulations and statutes, and are not to be considered as an opinion or an interpretation of these rules. No document can fully cover all of the possible variations that arise in individual circumstances. This guideline is not intended to be a substitute for the advice and counsel of an attorney experienced in aviation law.*

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## Insurance Considerations – Dry Lease

### Company A (Lessor)

Will want to be named on Company B's insurance policy as an Additional Named Insured with respect to liability coverage.

Will want an invalidation clause with respect to liability coverage on Company B's insurance policy

Will want a waiver of subrogation with respect to physical damage coverage on Company B's insurance policy.

Will want to be a loss payee with a Breach of Warranty endorsement with respect to physical damage (hull) coverage on Company B's policy.

### Company B (Lessee)

Will carry the liability and physical damage (hull) coverage on the aircraft as the Named Insured