

## CONTRACT FUEL USER PROGRAM

### GENERAL TERMS AND CONDITIONS

AVFUEL CORPORATION ("Avfuel") has established the Contract Fuel User Program (the "Contract Fuel Program") under which approved customers (the "Customers"), pursuant to these Contract Fuel User Program General Terms and Conditions (the "Terms & Conditions"), will purchase aviation fuel and related products (the "Products") from Avfuel, with the Products delivered directly by Avfuel to storage facilities, if applicable, specified in the Contract Fuel User Agreement and Special Terms and Conditions ("Summary & STCs") (the "Customer Storage Facilities") or indirectly through Avfuel's authorized dealers (each a "CFD") at the dealer locations (each a "CFD Facility") listed in Avfuel's Contract Fuel Dealer Directory (the "Directory"). A CFD is an independent contractor authorized in writing by Avfuel, in accordance with authorization procedures established by Avfuel to deliver Products for Avfuel's account to Customers under the Contract Fuel Program. By purchasing Products pursuant to the Contract Fuel Program, Customer agrees to be bound by these Terms & Conditions. In committing to the Terms & Conditions, the Customer agrees to pay to Avfuel for all Products supplied to the Customer under the Contract Fuel Program in accordance with these Terms and Conditions and, if the Customer is paying with an Avfuel Pro Card (the "Pro Card"), the Pro Card General Terms & Conditions (the "Pro Card Terms & Conditions"). In committing to the Terms & Conditions and, if applicable, the Summary & STCs (the Terms & Conditions and, if applicable, the Summary & STCs, collectively referred to as the "CFU Agreement"), Avfuel agrees to deliver and to authorize each CFD to deliver Products to the Customer in accordance with the CFU Agreement. Under the Contract Fuel Program, all Products delivered to a Customer by a CFD will be deemed sold by Avfuel to a Customer and will be at prices and terms independently established between Avfuel and the Customer with the charges for those Products paid by the Customer to Avfuel in accordance with these Terms and Conditions. If the Products are delivered to the Customer by a CFD, then by separate agreement Avfuel will reimburse each CFD for such Products. All Products delivered at a CFD Facility or into Customer Storage Facilities located in Austria, Czech Republic, Denmark, Estonia, Finland, France, Germany, Isle of Man, Ireland, Italy, Latvia, Norway, Netherlands, Portugal, Spain, Sweden, Switzerland, and United Kingdom will be sold by Avfuel Limited which is registered to sell in those countries and will be sold to Customer as a subcontractor of Avfuel, but will be invoiced directly by Avfuel.

Avfuel agrees to sell and the Customer agrees to purchase Products under the Contract Fuel Program in accordance with the following Terms & Conditions:

#### **1. PRICE AND PAYMENT:**

1.1. Unless otherwise agreed in writing by Avfuel and the Customer (each a "Party" and both together the "Parties") in the Summary & STCs, the price per gallon for Products delivered to Customer shall be as established by Avfuel from time to time in its discretion based upon market and other conditions that it deems pertinent based on the date and time of delivery to the Customer. Prices shall be F.O.B., as applicable to the Customer's purchase requirement, the Customer Facility or the CFD Facility and shall be exclusive of all taxes, fees, surcharges and other charges. Unless otherwise agreed in writing by the Parties or otherwise required by the state law where the Products are delivered, the standard unit of measurement of quantities of Products purchased and delivered shall be the Net Gallon. The

term "Net Gallon" shall mean the volumetric measurement, in U.S. gallons, of a Product actually loaded and measured at the point of shipment, adjusted to the number of U.S. gallons that would have been loaded at a temperature of sixty degrees Fahrenheit (60° F). The conversion ratio shall be from the current American Society for Testing and Materials ("ASTM") IP Petroleum Measurement Tables.

1.2. The credit terms applicable to the Customer's purchases under the Contract Fuel Program (the "Credit Terms") will be as follows: (a) if the Customer is paying with its Pro Card, the Credit Terms are as specified in the Pro Card Terms & Conditions; (b) if Credit Terms are specified in the CFU Agreement, those Credit Terms will apply; and (c) if no Credit Terms are specified in the Summary & STCs, if applicable, then unless otherwise notified by Avfuel: (a) the Customer will pay each invoice in full within 15 days of the date of that invoice, without any abatement, deduction, set-off or counter claim whatsoever; and (b) the payment will be in cleared funds in U.S. Dollars and will be made by means of EFT (ACH), bank wire or other agreed upon method noting the number of the invoice and the Customer's name. Details regarding Avfuel's account, routing numbers or addresses for EFT (ACH), bank wires, or overnight express of checks will be included on the invoice. Avfuel reserves the right, in its discretion, by written notice to the Customer, to amend the Credit Terms at any time and from time to time as the purchase and payment record of the Customer and other circumstances warrant.

1.3. Credit Terms may not be used during any period in which the Customer is in default of these Terms & Conditions. In addition to the provisions of Section 10 of these Terms & Conditions, for the specific purposes of this Customer Payment/Credit Program, the Customer will be in default if (a) any amount charged to the Customer's account is not paid in accordance with the Credit Terms then applicable; (b) if and for so long as the Customer is in breach of any of its obligations under any Agreement with Avfuel or any of its subsidiaries; or (c) if Avfuel determines that there is any misrepresentation or breach of a warranty by the Customer under or with respect to any Agreement with Avfuel. Use of credit is limited to the amount specified in the then applicable Credit Terms. No purchase may be made which would cause the total amount owed under the Contract Fuel Program exceeds that credit limit.

1.4. Subject to the approval by Avfuel at its offices in Michigan, all purchases by Customer for which Avfuel does not receive payment at or prior to the time of delivery to Customer shall be charged as principal to Customer's account. Avfuel may require Customer or Customer's authorized representative, as a condition of delivery or at any time thereafter, to give receipt for all deliveries in writing and to sign sales slips and other documents in Avfuel's opinion necessary to record or substantiate any or all transactions resulting in a charge to Customer's account.

1.5. Upon termination of the Customer's participation under the Contract Fuel Program, Customer shall have no right to Credit Terms for new purchases, but all obligations incurred prior to the termination, as well as all remedies provided for default or breach, shall survive. If Avfuel, intentionally or unintentionally, permits any purchases on credit after termination, then these Terms & Conditions shall pertain to those charges.

1.6. The charges for all deliveries of Products to the Customer and its affiliates under the Contract Fuel Program shall be charged as principal to Customer's

account. Avfuel may, but shall not be obligated to, require Customer or Customer's authorized representative, as a condition of delivery or at any time, to give receipt for all deliveries in writing and to sign sales slips and other documents in Avfuel's opinion necessary to record or substantiate any or all transactions resulting in a charge to Customer's account.

1.7. Avfuel shall invoice Customer for all Products delivered to Customer or to Customer's affiliates. Invoices shall include the selling price of the Product delivered, taxes, duties, and any other charges as separate line items. Invoices are payable on or before that due date specified in the invoice. Unless otherwise determined by Avfuel in its discretion, all payments received will be applied by Avfuel (subject to collection of remittance if other than cash) first to interest, if any, accrued on Customer's account, then to the unpaid principal balance owed upon such account in direct calendar order of due date. Customer agrees to pay to Avfuel upon demand a fee of \$50.00 for each check, draft or other form of remittance that is not honored by the drawee upon due presentment by Avfuel or its agents. From time to time, Avfuel may send Customer a statement of Customer's account for Customer's information showing in summary, or in such detail as Avfuel may deem appropriate, current transactions Avfuel posted to Customer's account to date thereof, the amount of interest (if any) which has accrued, and the balance owing thereon; however, the failure of Avfuel to furnish any such statement shall not relieve Customer of the obligation to make payment against invoices when due in accordance with these Terms & Conditions. Customer agrees to review all statements promptly after receipt, and shall have fifteen (15) days from date of receipt to notify Avfuel in writing of any discrepancies. If no such notice is given, such statement shall be conclusively presumed correct.

1.8. In the event that the Customer does not pay in full any amount when due under the Contract Fuel Program by the due date under the statement then applicable Credit Terms, such unpaid amount of the invoice shall bear interest from the due date until the date paid at the lower of 18% per annum or the highest rate which may lawfully be contracted for, charged and received according to applicable law for business purchases at the time of delivery. Notwithstanding anything in these Terms & Conditions to the contrary, Customer shall never be obligated to pay and Avfuel shall never be entitled to receive any interest upon any indebtedness incurred by Customer pursuant hereto in excess of the maximum contract rate of interest authorized by applicable law for business purposes, and it is expressly understood and agreed that if Avfuel shall render any charge for the payment of usurious interest, such charge shall be automatically and unconditionally reduced to the maximum non-usurious amount, and the excess, if paid, shall be applied as credit to Customer's account. If such application results in a credit balance in Customer's said account, such balance shall be refunded to Customer or applied to the next due amount in such account as Customer shall direct.

1.9. In the event Customer fails to make full payment when due, Customer acknowledges and agrees that Avfuel may, in addition to all other rights and remedies, invoke any and all statutory or equitable lien rights in connection with the enforcement of Avfuel's right to payment under these terms and conditions, and hereby authorizes Avfuel to file a lien for the unpaid charges, plus late fees, aircraft title search fees, filing fees, collection costs and attorney fees, against any aircraft for which charges were incurred and made to Customer's

account. Customer warrants that it either owns the aircraft for which the Products will be purchased, or is lawfully possessed of the aircraft with the owner's express consent to purchase Products for the aircraft on credit provided by Avfuel. Customer agrees to indemnify and hold Avfuel harmless from and against any and all claims arising out of Avfuel's filing or enforcement of a lien against the aircraft. If any credit charge is not paid when due Avfuel may institute an action against the Customer (and/or the aircraft owner) to foreclose the lien and to collect the debt. In recognition of the international and mobile nature of aviation and aircraft, and the necessity for legal certainty, predictability and convenience, and to avoid filing liens in multiple jurisdictions, any lien filed by Avfuel shall be based, at Avfuel's sole discretion, either upon the aircraft lien statute of the State of Texas beginning at Section 70.301, or the applicable aircraft lien statute of the State or foreign country in which the aircraft is registered, regardless of where (a) the Customer or aircraft owner resides or does business, (b) the aircraft was at the time such charges were incurred, (c) the aircraft is registered, or (d) jurisdiction may otherwise be proper. The Customer will be liable to Avfuel for all costs and expenses of lien preparation and filing, collection and litigation including, but not limited to, late charges, reasonable attorney's fees, court and discovery costs and/or other reasonable costs incurred by Avfuel in enforcing its rights hereunder.

1.10. If, at any time, the financial responsibility of Customer becomes impaired or unsatisfactory to Avfuel, in the sole judgment of Avfuel, Avfuel, effective immediately upon delivery of Notice to Customer, may require the advance cash payment or other security satisfactory to Avfuel for any delivery of Products under the Contract Fuel Program and delivery may be withheld until such payment or security is received.

**1.11. THIS PARAGRAPH APPLIES ONLY TO THOSE PERSONS WHO HAVE AGREED TO GUARANTY THE OBLIGATIONS OF THE CUSTOMER UNDER THE CFU AGREEMENT. PERSONS SIGNING AS GUARANTORS SHALL BE CONSTRUED AS PERSONAL GUARANTORS REGARDLESS OF ANY OTHER DESIGNATION.** In consideration of the extension of credit by Avfuel to Customer, each of the parties signing as Guarantors on the signature page of this Agreement agrees to guarantee the prompt payment of all amounts owed to Avfuel by Customer whether such amounts are existing at the time that this Guarantee is signed or are incurred at any time during the life of this Guarantee. Avfuel may demand payment from a Guarantor under this Guarantee at any time that it reasonably deems itself insecure with respect to any amount owed by Customer. Each Guarantor hereby waives notice of acceptance of this Guarantee by Avfuel, notice of default by Customer, and all other notices that the Guarantor may otherwise be entitled to receive. Failure on the part of Avfuel to give any such notice shall not discharge any obligation of any Guarantor under this Guarantee. Each Guarantor also hereby waives any requirement that Avfuel proceed against Customer before making a demand for payment hereunder, and agrees to pay all reasonable attorney's fees and court costs incurred by Avfuel in the enforcement of its rights hereunder. This is a continuing Guarantee and shall not be revoked by the death of any individual party or by the dissolution of any corporate party or any other entity that is a party hereto, and shall remain in force until Avfuel receives written notice to extend no further credit to Customer on the security of this Guarantee. Such notice shall not discharge any obligation of any Guarantor as to any then existing indebtedness or obligation of Customer arising out of a transaction that took place prior to the receipt of such notice, regardless of the time for determination, maturity, or performance thereof. Each Guarantor agrees to provide periodic statements of financial condition to Avfuel upon request. This Guarantee shall survive the termination of

this Agreement until all amounts due Avfuel under this Agreement have been paid in full.

## 2. TAXES AND OTHER CHARGES:

2.1. Customer shall pay all taxes, assessments, fees and other charges (the "Taxes") which are imposed by any federal, state or local governmental agency or by any airport authority (collectively, the "Taxing Authorities") based upon the delivery, sale, importation, inspection, storage or use of the Products purchased by the Customer under the Contract Fuel Program, excepting Taxes which are imposed upon Avfuel or the CFD based upon its net income or revenues.

2.2. If the Taxing Authorities collect the Taxes directly from Customer, then Customer shall pay all such Taxes on or before their due dates. If the Taxing Authorities require that Avfuel collect the Taxes from Customer at the time of sale, Avfuel will use its best efforts to include all such Taxes in its invoices to Customer and Customer shall pay all such invoices on or before their due dates. (In its invoices, Avfuel will identify those Taxes as separate items.) If Customer is entitled to an exemption from any Taxes which the Taxing Authorities require to be collected by Avfuel, then, in order to permit Avfuel not to collect those Taxes, Customer shall obtain and provide to Avfuel current and valid exemption certificates relating to those Taxes. If, subsequent to the issuance of any invoice, the Taxing Authorities or Avfuel advises Customer of additional Taxes payable with respect to the Products covered by that invoice, then Customer shall promptly pay such additional Taxes.

2.3. Customer acknowledges that it remains solely responsible for all such Taxes, and will indemnify Avfuel against any liability for such Taxes even if Avfuel fails for any reason to include any such Taxes in its invoices to Customer. However, Avfuel will indemnify Customer against any late charges, penalties or other charges that Customer incurs if Avfuel's failure to include any Taxes in its invoice is due to gross negligence or willful misconduct.

2.4. Customer's obligation to indemnify Avfuel shall extend to any Taxes which are assessable against Customer as a result of any subsequent change or reinterpretation of the laws relating to those Taxes or any exemptions from those Taxes and to any Taxes for which an exemption had been claimed but which are subsequently assessed by Taxing Authorities based upon its rejection of the claimed exemption for the Products or Customer.

## 3. DELIVERY:

3.1. Deliveries shall be made, as applicable to the Customer's purchase requirement, at the Customer Storage Facilities or at the CFD Facilities. The Customer acknowledges that the Directory will from time to time be revised by Avfuel to add or to delete available CFD Facilities. Avfuel will endeavor to promptly update the Customer regarding revisions to the Directory but the Customer will be responsible for confirming in advance the availability of any CFD Facility for delivery under the Contract Fuel Program

3.2. For deliveries made into Customer's aircraft at CFD Facilities, the CFD shall be responsible for all loading operations at CFD Facilities, including the placement of hoses into the Customer's aircraft. The Customer or its agent shall specifically designate and gauge the available capacity of the tanks into which the Product shall be unloaded, and the Customer shall bear all responsibility of spillage or contamination of the Product after it leaves the end of any properly operating hose provided by the CFD. Access to Customer's aircraft shall be in such a manner as the CFD establishes for the CFD Facility and the CFD may refuse to complete any delivery which the

CFD determines, in its sole discretion, cannot be made safely. Customer's indemnity in Section 8 will extend to any claims made against Avfuel based on the acts or omissions of Customer or its agents in taking deliveries of the Product into Customer's aircraft. If the Customer or its agent requests or permits the CFD to remove fuel from the Customer's aircraft and dispose of that fuel (a "defueling"), the Customer and the CFD will bear all responsibility for that defueling, Avfuel will have no liability for that defueling and the Customer's indemnity in Section 8 will extend to any claims made against Avfuel based on that defueling. If the Customer requests or permits the CFD to deliver fuel into the Customer's aircraft while passengers are on the aircraft or are still exiting from the aircraft, the Customer and the CFD will bear all responsibility for any injuries to any passengers as a result of that delivery, Avfuel will have no liability for those injuries and the Customer's indemnity in Section 8 will extend to any claims made against Avfuel with respect to those injuries.

3.3. For deliveries made to the Customer Storage Facilities, Avfuel or its authorized shipping agent ("Shipping Agent") shall be provided access to Customer's Storage Facilities during normal business hours, or at such other times as may be approved by Customer's authorized representative, for the purpose of unloading the Products. Unless otherwise agreed to in writing by the Parties, the minimum delivery of Jet A fuel will be a full standard transport tanker load which is equivalent to 7,500 Gross Gallons, and the minimum delivery for Avgas fuel will be a full standard transport tanker load which is equivalent to 8,500 Gross Gallons. Avfuel reserves the right to impose a surcharge for deliveries of less than a full tanker load. Delivery shall be into tanks designated by Customer's authorized representative. Such designation shall be construed as a warranty that the designated tanks and containment areas have been inspected and approved by the appropriate regulatory agencies. Customer shall be responsible for all unloading operations including the placement of hoses into the proper storage tanks. Customer shall specifically designate and gauge the available capacity of the tanks into which the Product shall be unloaded, and shall bear all responsibility of spillage or contamination of the Product after it leaves the end of any properly operating hose provided by Avfuel or its Shipping Agent. Access to Customer's tanks shall be furnished in such a manner that Avfuel or its Shipping Agent can safely and conveniently reach Customer's storage facility with the hoses available, and Avfuel or its Shipping Agent may refuse to complete any delivery which Avfuel or the Shipping Agent determines, in its sole discretion, cannot be made safely. Customer shall sample and test each shipment of Product prior to delivery using industry standard test procedures. If Customer determines or suspects non-conformity then Avfuel must be immediately notified, while the Shipping Agent is still present, and the delivery shall not be completed until either Customer accepts the Product, acknowledging conformity, or Avfuel replaces the Product. Customer will permit Avfuel access to Customer's premises and records during normal business hours and upon four (4) hours' telephonic or written Notice to Customer for purposes of investigating any claim of non-conformity.

3.4 Any claim by Customer of any discrepancy in the quantity of the Product delivered shall be effective only if made by written notice (including fax and email notice) delivered to Avfuel within twenty-four (24) hours after the Product is delivered to Customer. **GIVEN THE NATURE OF THE PRODUCTS, TIME IS OF THE ESSENCE WITH RESPECT TO SUCH CLAIMS AND NO CLAIM SHALL BE PERMITTED OR EFFECTIVE UNLESS DELIVERED WITHIN THE SPECIFIED PERIOD.**

#### 4. FORCE MAJEURE:

Except as provided below, neither Party shall be responsible for any failure to comply with these Terms & Conditions due to causes beyond its reasonable control for the period the effects of such causes continue. (a "Force Majeure Event"). A Force Majeure Event shall include but shall not be restricted to: fire, storm, flood, hurricane, earthquake, explosion, accident, acts of any local, state or federal authority or agency or of a public enemy, war, rebellion, insurrection, terrorism, sabotage, epidemic, quarantine restrictions, labor disputes, transportation embargoes or delays, acts of God, and unavailability of the Product. For these purposes, the term "unavailable" shall mean that Avfuel, for any reason whatsoever, including but not limited to government action, reduced or allocated fuel supplies, lack of transportation or the like, is unable to procure and deliver a specific Product on a commercially reasonable basis within the specific time requested by Customer. During a Force Majeure Event, Avfuel reserves the right to increase the prices for Products and other fees and costs charged to the Customer and may obtain Products from other supply sources. By accepting Products from Avfuel or its authorized dealers during a Force Majeure Event, the Customer agrees to pay such increased prices, fees and costs. Avfuel shall not be liable to the Customer for consequential or other damages if Avfuel is unable to supply Products due to a Force Majeure Event. If and as applicable, Avfuel will comply with any governmental statute or regulation mandating the allocation of available supplies of Products. The provisions of this Section 4 shall not apply to the failure of a Party to pay any monetary amounts when due under the Contract Fuel Program.

#### 5. LIMITED WARRANTY:

5.1. Avfuel warrants that all Products delivered pursuant to the Contract Fuel Program will, at the time of delivery, conform to the then latest revision of following specifications: Aviation Gasoline will conform to the ASTM Specification D910; and Jet Fuel will conform to the ASTM Specification D1655. Avfuel retains the right to revise the applicable specifications upon written notice to Customer.

**5.2. THE LIMITED WARRANTY STATED ABOVE IS THE ONLY WARRANTY GIVEN BY AVFUEL REGARDING THE PRODUCTS. AVFUEL DISCLAIMS ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.**

5.3. If it is determined that the Product does not conform to Avfuel's warranty, Avfuel's sole obligation shall be either (a) replacement of the non-conforming Product with conforming Product, or (b) removal of the non-conforming Product and cancellation of the invoice for that Product or refund of the amount paid for that Product, as determined by Avfuel. Avfuel will be reasonably prompt in its actions hereunder.

#### 6. COMPLIANCE WITH LAWS:

6.1. Each Party shall, at all times and in all respects, comply with all federal, state, county or municipal laws, ordinances, rules and regulations governing its actions in the purchase, storage, handling, sale and use of the Products and all industry standards pertaining thereto, including those that may contain tetraethyl lead or lead alkyl. Further, each of the Parties agree to use its reasonable best efforts to assist the other Party in complying with such laws, ordinances, rules and regulations which the other Party may be required to observe in the performance of its obligations under this Contract Fuel Program.

6.2. Each Party shall properly instruct its employees, agents and contractors with regard to compliance with all applicable laws, ordinance, rules, regulations and standards governing the sale and distribution of the Products that are the subject of this Contract Fuel Program.

6.3. Each Party represents and warrants that it is a duly formed, validly existing entity with full authority to enter into and fulfill its obligations pursuant to these Terms and Conditions.

#### 7. INDEPENDENT STATUS:

Each Party shall at all times function as an independent contractor and not as a subcontractor, employee or other agent of the other Party. Neither Party shall have the authority to and shall not purport to make any commitments or representations on behalf of the other Party or otherwise to take any actions on behalf of the other Party. Each CFD shall at all times function as an independent contractor subcontracted by Avfuel to deliver Products to the Customer on the terms and subject to the conditions prescribed in these Terms & Conditions. No CFD shall have the authority to modify the terms of the Contract Fuel Program or otherwise to make any commitments or representations on behalf of Avfuel or to take any actions on behalf of Avfuel except as prescribed in these Terms & Conditions.

#### 8. RECIPROCAL INDEMNIFICATION:

Except as otherwise provided in these Terms & Conditions, each Party (the "Indemnifying Party") agrees to indemnify and to hold harmless the other party and the officers, directors, employees, subcontractors and agents of the other party (the "Indemnified Parties") from and against any and all claims, demands, losses, liabilities, causes of action, costs or expenses (including attorney's fees) of whatsoever nature which are asserted against or incurred by any Indemnified Party as a result of the breach by the Indemnifying Party of its obligations under the Contract Fuel Program or as a result of any wrongful act or omission of the Indemnifying Party or of any officers, directors, employees or agents of the Indemnifying Party. Any amount payable by the Indemnifying Party under this Section 8 shall be due within ten (10) days after written demand and any such amount which is not paid when due shall bear interest from the due date to the date of payment at the rate of 18% per annum (or, if less, at the maximum rate of interest permitted under the laws of the State in which the Indemnifying Party has its principal place of business). Without limiting the above provisions, the obligation of the Indemnifying Party under this Section 8 shall include any reasonable attorney's fees or other costs incurred by the Indemnified Parties in enforcing the obligation of indemnity under this Section 8. Each Party's obligation to indemnify shall survive the termination of the Customer's participation in the Contract Fuel Program and shall remain in full force and effect until the lapse of all applicable statutes of limitations or similar time periods within which an action for indemnity or contribution must be brought.

#### 9. LIMITATION OF LIABILITY:

Except for damages arising from a Party's indemnification obligations to third parties, reckless disregard of obligations or willful misconduct, gross negligence or fraud, neither Party and its affiliates (and their officers, directors, employees, and agents) shall be liable to the other Party and its affiliates (and their officers, directors, employees, and agents) for any indirect, incidental, special or consequential damages of any nature or kind whatsoever, including any loss of goodwill or profits, arising out of, or in connection with

Products or services made available by Avfuel, even if the Party has been advised of the possibility of such damages.

#### 10. BREACH AND TERMINATION:

10.1. Failure of a Party to comply with the provisions of these Terms & Conditions shall constitute a breach by the non-complying Party. Except as otherwise permitted under these Terms & Conditions, the non-breaching Party shall provide Notice of that breach to the breaching Party in the manner set forth in Section 14. The Notice shall specify the alleged breach and the period within which the breach must be cured which, except as provided in Section 10.2, shall be at least ten (10) business days. The Party receiving such Notice shall respond thereto in writing within three (3) business days. If the breach is not cured or the dispute resolved within the period specified in the Notice, the Party claiming breach, by further written Notice, at its election, may affirm the obligations of the breaching Party under the Contract Fuel Program and initiate appropriate legal actions to require the other Party to remedy that breach or may immediately terminate the participation of the Customer under the Contract Fuel Program. In either instance, the Party claiming the breach may by appropriate legal proceedings seek and secure recovery of any damages resulting from that breach.

10.2. The provisions of Section 10.1 to the contrary notwithstanding, if the breach is of the Customer's obligation to make a payment to Avfuel when due, then Avfuel may declare all amounts owed to it immediately due and payable, and Avfuel, in addition to all other rights hereunder, may suspend its performance or terminate the participation of the Customer under the Contract Fuel Program forthwith and without giving Customer Notice or the opportunity to cure. Avfuel shall also have the right to offset any amount that Avfuel then or thereafter owes to Customer, to any guarantor of the Customer's obligations under the Contract Fuel Program or to any affiliate entity that owns, is owned by or is under common ownership with the Customer against any amounts owed by Customer to Avfuel. Customer warrants that it is authorized to make this commitment with respect to amounts owed by Avfuel to such guarantors and affiliate entities. Pursuit of the foregoing shall not preclude pursuit of any other remedies provided by law, nor constitute a waiver of any amount due by Customer hereunder or of any damages accruing by reason of the breach of any of the terms or conditions contained herein.

10.3. The Party claiming a breach may waive that breach by giving Notice to the other party in the manner set forth in Section 14 below. The waiver of any breach shall not constitute a waiver of any subsequent breach of the same or any other term or condition. Any failure of either Party to enforce rights or seek remedies arising out of any breach by the other Party shall not prejudice or affect the rights and remedies of that Party in the event of any subsequent breach by the other Party.

10.4. Except as set forth in Section 10.2 above, any dispute that arises under the Contract Fuel Program, pursuant to Section 10.1 above or otherwise, shall be submitted to a senior officer or other person having the authority to negotiate the resolution of such disputes for each Party. Those persons shall attempt, in good faith, to resolve the dispute, and no action in law or equity shall lie until the process set forth herein shall have run its course. If the dispute involves the payment of money, all undisputed amounts shall be paid when due regardless of whether the undisputed amount is only part of an invoice.

10.5. The exercise of a Party's right to terminate the participation of the Customer under the Contract Fuel Program as aforesaid or to seek any other remedy shall

not be deemed an election of remedies and shall be without prejudice to the Terminating Party's rights to seek any other remedy afforded to it by the Contract Fuel Program or by law or equity. In any action related to the enforcement or breach of the Contract Fuel Program, the prevailing Party shall have the right to recover its reasonable attorney's fees and costs actually incurred.

#### **11. OTHER PRODUCTS & SERVICES:**

In instances in which Products are delivered to the Customer at CFD Facilities, the Customer may by separate agreement purchase from a CFD products other than the aviation fuel supplied by Avfuel under the Contract Fuel Program and other services (the "Other Products & Services")

11.1. Any Other Products & Services will be deemed sold by the CFD to the Customer and will be at the CFD's normally established rates. Such Other Products & Services may include, without limitation, lubricants, spare parts, food and other amenities and flowage fees, tie-down services, into-wing services, catering services and similar services that expedite deliveries and facilitate arrangements for the Customer. No cash advances will be permitted as Other Products & Services. The CFD will supply all such Other Products & Services as an independent contractor to the Customer and not as an agent or a subcontractor of Avfuel.

11.2. Any fees for any Other Products & Services supplied by the CFD in the delivery of aviation fuel to the Customer, including, without limitation any flowage fees or into-wing fees, will be earned by the CFD only after it has completed delivery of the entire load of aviation fuel into the aircraft of the Customer and title to that aviation fuel has passed to the Customer.

11.3. All Other Products & Services that are supplied by a CFD to the Customer will be provided in accordance with procedures and quality standards that are commercially reasonable and that comply with all legal requirements in the jurisdiction where the CFD Facilities are located. The CFD will be solely liable if such Other Products & Services do not conform to such standards, procedures or requirements. The Customer expressly waives any claims against Avfuel or its employees based upon any defect or deficiency in any such Other Products & Services and agrees to seek recourse only against the CFD for such claims.

11.4. The charges for all Other Products & Services supplied by the CFD to the Customer will be payable solely to the CFD. The CFD will be responsible for collecting from the Customer and remitting to the Taxing Authorities any Taxes imposed on such charges by any local, state or federal Taxing Authority. The CFD may directly invoice and collect such charges from the Customer. Alternatively, if requested by the Customer and agreed by the CFD, as a matter of convenience to the Customer the CFD will assign to Avfuel for collection the account receivable from the Customer for the Other Products & Services supplied by the CFD to the Customer (a "CFD Receivable"). If the CFD assigns a CFD Receivable to Avfuel, then Avfuel will issue a credit to the CFD's account for the amount of that CFD Receivable and Avfuel will thereafter invoice, collect and retain those charges from the Customer.

#### **12. TERM:**

12.1. If a fixed term is stated in the Summary & STCs, then the term of the agreement between Avfuel and the Customer will begin on the date specified in the Summary & STCs, will continue for that fixed term and will continue thereafter until one Party delivers a Notice to the other Party of its intent to terminate at least thirty (30) days prior to the effective date of termination. If a fixed term is not stated in the CFU Agreement, then the

term of the agreement between Avfuel and the Customer will begin on the date specified in the CFU Agreement and will continue thereafter until one Party delivers a Notice to the other Party of its intent to terminate at least thirty (30) days prior to the effective date of termination.

12.2. If Customer is not party to a Summary & STCs, the term of the agreement between Avfuel and the Customer will begin on the date of the issuance of the Customer's Pro Card and will continue thereafter until terminated pursuant to the Pro Card Terms & Conditions, or if Customer is not a party to a Summary & STCs and does not have a Pro Card, the term of the agreement between Avfuel and the Customer will begin on the date of Customer's first purchase pursuant to the Contract Fuel Program and will continue thereafter until one Party delivers a Notice to the other Party of its intent to terminate at least thirty (30) days prior to the effective date of termination.

#### **13. ASSIGNMENT:**

Customer shall not assign its rights or delegate its obligations under the Contract Fuel Program, in whole or in part, unless with the prior written consent of Avfuel, which consent will not be unreasonably withheld. Any transfer of a controlling interest in Customer shall be deemed an assignment requiring the consent of Avfuel.

#### **14. NOTICES:**

All notices permitted or required under the Contract Fuel Program shall be in writing. Notices by facsimile shall be deemed "delivered" on the date of confirmed transmission, without error, to the fax number of the addressee. Notices by email shall be deemed "delivered" on the date of confirmed transmission to the email address of the addressee. Notices by mail shall be deemed delivered three (3) business days following the date deposited with the United States Postal Service, certified mail, return receipt requested, postage prepaid, addressed to the Party at the address of the principal office. Notices sent by overnight courier shall be effective on the next business day following deposit with the overnight courier for overnight delivery with the delivery fee prepaid, addressed to the Party at the address of the principal office, and with instructions to obtain the signature of the addressee.

#### **15. EXCLUSIVE JURISDICTION:**

Each Party irrevocably and unconditionally agrees that venue and jurisdiction for the resolution of any dispute and the enforcement of any rights in any way arising from or relating to the CFU Agreement shall exclusively be the courts of the state of Michigan sitting in Washtenaw County, and any applicable Michigan appellate court. The CFU Agreement shall be construed as having been made and entered into in the State of Michigan. Each Party submits and consents to personal jurisdiction in Washtenaw County, Michigan, and agrees that it is a convenient forum to resolve any such disputes and enforce any such rights, each Party hereby waiving to the fullest extent possible the defense of an inconvenient forum. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in any jurisdiction anywhere in the world.

#### **16. EXCLUSIVE GOVERNING LAW:**

Except for filing and enforcing aircraft liens which are governed by Texas law, the CFU Agreement, and all other matters arising from or relating to the CFU Agreement, are exclusively governed by, and exclusively construed in accordance with, the laws of the State of Michigan, without regard to its conflict of laws provisions.

#### **17. SEVERABILITY:**

In the event that any court of competent jurisdiction shall determine that any provision of these Terms & Conditions shall be unenforceable, then that provision shall be deemed to be null and void and the remaining provisions hereof shall remain in full force and effect.

#### **18. SUSPENSION OR TERMINATION:**

Avfuel reserves the right to suspend, or terminate the Contract Fuel Program at any time, or to suspend or terminate the Customer's right to participate in the Contract Fuel Program at any time, effective upon written notice to the Customer. Customer may withdraw from the Contract Fuel Program at any time upon written notice to Avfuel. Termination of the Contract Fuel Program or the Customer's participation in the Contract Fuel Program will not affect any rights or obligations of Avfuel or the Customer with respect to any Products delivered to the Customer prior to the effective date of termination.

#### **19. ENTIRE AGREEMENT/AMENDMENT:**

These Terms & Conditions and, as applicable, the Summary & STCs or Pro Card Terms and Conditions, set forth the entire agreement between Avfuel and Customer with respect to the Customer's participation in the Contract Fuel Program and there are no other terms or conditions, oral or written, express or implied, relating to or otherwise affecting such participation. If there is any conflict between these Terms & Conditions and, if applicable, the Summary & STCs, the Summary & STCs shall prevail. No term or condition of the Summary & STCs shall be changed, supplemented, cancelled or waived unless in writing and signed by both Avfuel and Customer. Avfuel reserves the right at any time and from time to time to amend these Terms & Conditions. These Terms & Conditions, as amended from time to time, are posted at <https://www.avfuel.com/>. If Avfuel and Customer have, prior to the effective date, been parties to any other agreement relating directly to the sale of Products to Customer under the Contract Fuel Program (a "Prior Agreement"), such Prior Agreement, except for guarantees, shall be superseded as of the effective date and all rights and obligations between Avfuel and Customer with respect to the sale of Products under the Contract Fuel Program from and after the effective date shall be governed by these Terms & Conditions. The terms and conditions of such Prior Agreement, however, shall remain in full force and effect with respect to rights and obligations relating to the sale of Products under the Contract Fuel Program prior to the effective date and nothing contained in this Agreement shall be construed as terminating or otherwise affecting any such rights or obligations.