



## OAG License Agreement

Effective from the date of the last signature below (the “**Effective Date**”), **OAG Aviation Worldwide LLC (“OAG”)**, a Delaware limited liability company with its principal office at 550 West Van Buren Street, Suite 1520, Chicago, Illinois 60607 USA, and the **City of Minot**, with its offices at the Minot International Airport, 305 Airport Road, Suite 216, Minot, North Dakota, 58703, USA (“**Customer**”), agree as follows:

TERM SUMMARY	
<b>Contract Amount (excluding usage based fees)</b>	\$5,336.10
<b>Currency</b>	USD
<b>Invoicing Frequency</b>	Annually
<b>Term (commencing from JUN-13-2021)</b>	1 Year with Auto Renewal Terms of 1 Year
<b>Contract Non-Renewal Notice Period</b>	at least 30 days before end of then-current term

PRODUCT FAMILY: FLIGHTVIEW			
DATA PRODUCT	DETAILS	PERMITTED USAGE	PRICE
<b>FV-4tab Web Components</b>	<b>Version:</b> FV Web Components 4 tab implementation <b>Method of Delivery:</b> Web Service	4	\$5,336.10
		<b>Total</b>	<b>\$5,336.10</b>

### PERMITTED USAGE

#### Full Details:

#### **Usage 4:**

As value-added data at Customer’s website for the personal use of travelers.

Any use of the Data outside of the Permitted Usage may be subject to an additional charge.



## **Flight Status**

### **Data**

The above selected Data Product(s) may include the System Wide Information Management (SWIM) Traffic Flow Management Data (TFMData) service of the Federal Aviation Administration (“FAA”). Customer shall direct all technical or system problems regarding the TFMData to OAG, rather than the FAA. Neither the United States Government nor the FAA sponsor, endorse or guarantee the Data Product(s) containing the TFMData, or make any warranties in relation to the availability, accuracy, reliability or any other quality of the TFMData. Customer must use such data in compliance with all requirements of law, including any restrictions imposed by the FAA or any other governmental agency.

Customer acknowledges that disclosure to the public of the flight information of general aviation operators (i.e., flight operators who do not conduct business according to a published listing of services and schedules) could compromise the privacy and/or security of individuals, and agrees not to disclose or otherwise make available any information regarding general aviation operators’ flights in any form to anyone other than its employees and agents having a need-to-know in the conduct of Customer’s business operations. Customer agrees to exercise no less than reasonable care to prevent the unauthorised disclosure of such information.

This OAG License Agreement shall be comprised of the terms and conditions set forth herein, together with the attached General Terms and Conditions and any other attachment annexed hereto, which are incorporated by this reference (collectively, the “**Agreement**”).

AS WITNESSED by the duly authorized representatives of the parties:

**City of Minot**

**OAG Aviation Worldwide LLC**

Signature:

Signature:

Print Name:

Print Name:

Title:

Title:

Date:

Date:

# OAG Aviation Worldwide LLC GENERAL TERMS AND CONDITIONS

(version: February 6th, 2019)

For the definition of any defined term used below see the front pages of this Agreement.

## 1. Data Products/Services

OAG shall provide to Customer a license to use the listed Data Products and Services in accordance with the terms and conditions of this Agreement. OAG may modify any Data Product or Service on reasonable prior written notice to Customer, provided such modified Data Product or Service will provide no less functionality to Customer, unless such modification is imposed on OAG by industry rules or standards or applicable laws or regulations, international or domestic.

## 2. Payment

2.1 All charges are payable in U.S. dollars, clear of all setoffs and deductions, within 30 days from the date of invoice, at such location as OAG shall designate. Notwithstanding anything herein contained to the contrary, OAG may, upon at least thirty (30) days written notice prior to the end of any Non-Renewal Notice Period, increase prices for a renewal term by an amount not to exceed five percent (5%) of the prior year's prices. All charges payable hereunder are exclusive of any applicable shipping charges and/or taxes, duties and similar governmental assessments. Customer shall pay any shipping charges and/or taxes, duties and assessments resulting from this Agreement, including any value-added, sales or use taxes (excluding taxes based on OAG's net income) and related interest and penalties.

2.2 Invoices not paid in full within 30 days of the date of invoice are past due. Without prejudice to any other right or remedy, OAG may charge a late payment fee equal to the lesser of one and one half percent (1½%) per month or the maximum permitted by applicable law on any unpaid amount for each calendar month or fraction thereof that payment is overdue.

## 3. Ownership; Restrictions on Use; Grant of License; Compliance with Laws; Confidentiality

3.1 The data or information contained within the Data Products and Services ("Data") is licensed, not sold. As between the parties, OAG owns all right, title and interest in and to the Data Products and Services. Customer acknowledges that certain aspects of the Data Products and Services, including but not limited to the databases, programs, protocols and displays (as well as the selection, arrangement and sequencing of the contents thereof), are proprietary and unique to OAG, as to which copyright, patent or other proprietary rights may be held by OAG or third parties from whom OAG has licensed or otherwise acquired such rights. Customer agrees to comply with all copyright, trademark, trade secret, patent and other laws necessary to protect OAG's (or its licensors') rights in such proprietary information, and agrees not to remove or conceal any copyright or similar notices from the Data Products, Services or other material supplied by OAG and to only display any Data delivered as graphics in its entirety. Customer shall not block or obstruct OAG's logo contained in any Data delivered as graphics. Any printed report or document Customer generates from the Data Products or Services shall include an appropriate attribution reflecting that the relevant Data was furnished by OAG.

3.2 OAG grants Customer a non-exclusive, non-transferable, revocable, worldwide license to use the

Data Products and Services solely for the Permitted Usage. Customer shall ensure that the Data Products (including extractions or compilations thereof) and Services may only be accessed and used by authorized users on a Customer owned or controlled system, in accordance with the Permitted Usage. Except as expressly allowed in writing by OAG, the Services and Data Products (including extractions or compilations thereof) may not be copied or reproduced (except for internal back-up purposes), used, amended, modified, reverse engineered (unless applicable law prohibits such restriction), distributed, sold, sublicensed, displayed, transmitted or broadcast in any form without the prior written permission of OAG. Except as necessary to achieve the Permitted Usage, Customer shall not permit any user of the Data Products or a Service to download, extract, copy or otherwise reproduce all or any substantial part of the Data and place such Data into a secondary database, including, without limitation, caching of the Data.

3.3 Customer warrants that Customer will not: (i) interfere with another user's use and enjoyment of any Data Product or Service; (ii) interfere with or disrupt: (a) the security measures of any Data Product or Service; or (b) the networks connected to any Data Product or Service; or (iii) perform any potentially disruptive actions such as stress testing or scripting/automation of user interfaces without OAG's prior written approval.

3.4 Customer shall promptly notify OAG if Customer becomes aware of any breach of the Permitted Usage or any other unauthorized use or copying of any Data Product or Service.

3.5 Each party shall ensure that the supply and use of the Data Products and Services will comply with all local, state, national and international laws, regulations and codes of practice to the extent applicable to each party.

3.6 The terms and conditions of this Agreement, all access codes and user IDs and passwords issued to Customer by OAG hereunder, and all information as to the business methods or operations of either party acquired or learned by the other party, shall be treated as confidential and only disclosed to a party's employees, permitted service providers and agents on a need-to-know basis, unless disclosure is otherwise required by law or court order.

3.7 In the event Customer provides data or a data feed to OAG that Customer wants to have integrated into a Data Product or Service, Customer hereby grants OAG a non-exclusive, royalty-free, revocable, worldwide license to use such data or data feed in such Data Product or Service, as well as in other OAG products and services, for use by Customer and other OAG customers.

## 4. Termination

4.1 Either party may terminate this Agreement by notifying the other party in writing of its desire to terminate within the Non-Renewal Notice Period (excluding fixed-term and ad-hoc or one-time delivery agreements).

4.2 Either party may suspend performance of, or terminate, this Agreement if the other party breaches any material term hereof and such breach is not remedied within thirty (30) days (fourteen (14) days in the case of non-payment of any sum due to OAG) after written notice to the breaching party. In the event Customer terminates this Agreement due to a breach by OAG, OAG shall

- refund to Customer any portion of the charges prepaid as of such termination date with respect to the cancelled term of this Agreement.
- 4.3 Either party may, at its option and without prior notice, terminate this Agreement effective immediately, should the other party (or the Customer entity that OAG has been billing) become the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors in any jurisdiction.
- 4.4 In the event a data provider requires OAG to suspend provision of its data to Customer or one of Customer's customers, OAG (or Customer if it is one of its customers) will be required to do so until a resolution is reached. OAG will use commercially reasonable efforts to assist Customer to obtain such data provider's data. Additionally, OAG may (i) cease provision of Data Products or Services hereunder if required to comply with applicable laws or regulations, international or domestic; or (ii) terminate this Agreement upon thirty (30) days prior written notice in the event a third party data or service provider discontinues provision of or materially alters its respective data or services, which discontinuance or alteration adversely impacts OAG's provision of Data Products or Services hereunder. In such instances, OAG shall refund to Customer any portion of the charges prepaid as of such cessation date with respect to the cancelled term of this Agreement.
- 4.5 Upon the termination or expiration of this Agreement (excluding ad-hoc or one-time delivery agreements), Customer will cease to have any rights to use the Data Products or receive the Services and will destroy all copies of the Data and any derivatives thereof in its possession or control and purge all electronic versions of the same. If requested by OAG, Customer shall promptly certify in writing, signed by an authorized representative of Customer, that it has so removed and destroyed the Data.
- 4.6 Termination or expiration of this Agreement will not affect any accrued rights or liabilities of either party.
- 5. Limitation of Liability and Indemnification**
- 5.1 EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, OAG MAKES NO REPRESENTATIONS, CONDITIONS, GUARANTEES OR WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, AND EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, INCLUDING, WITHOUT LIMITATION, REGARDING SATISFACTORY QUALITY OR MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE DATA PRODUCTS OR SERVICES WILL BE AVAILABLE FOR USE, UNINTERRUPTED, ERROR FREE OR THAT ANY ERRORS WILL BE CORRECTED. CUSTOMER HEREBY ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY WARRANTY, CONDITION, GUARANTEE OR REPRESENTATION MADE BY OAG, EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT. CUSTOMER ASSUMES ALL RISK FOR ANY RESULTS IT OBTAINS BY OR AS A RESULT OF USING THE DATA PRODUCTS OR SERVICES.
- 5.2 SUBJECT TO CLAUSE 5.6, AND EXCEPT FOR OAG'S INDEMNIFICATION OBLIGATIONS HEREUNDER, IN NO EVENT SHALL OAG HAVE ANY LIABILITY FOR ANY LOST PROFITS, REVENUES OR INDIRECT, INCIDENTAL, PUNITIVE, CONSEQUENTIAL OR SPECIAL DAMAGES OR LOSSES SUFFERED BY CUSTOMER OR ANY THIRD PARTY, INCLUDING ANY LOSS OF OPPORTUNITY, ANTICIPATED SAVINGS OR GOODWILL, EVEN IF OAG HAS BEEN ADVISED OF THE POSSIBILITY OF THE SAME.
- 5.3 To the extent allowed by North Dakota law, Customer shall indemnify, defend and hold OAG harmless from and against any and all third party claims, liabilities, damages, and related costs and expenses (including reasonable attorneys' fees and expenses) (collectively, the "**Claims**") that may be asserted against or incurred by OAG to the extent arising out of or related to Customer's use of the Data Products or Services due to (i) breach of the terms of this Agreement, (ii) negligence or willful misconduct, (iii) any claim that a Customer Product or website in which the Data Products or Services are incorporated infringes any third party proprietary rights, or (iv) breach of applicable laws or regulations.
- 5.4 OAG shall indemnify, defend and hold Customer harmless from and against any and all Claims that may be asserted against or incurred by Customer to the extent arising out of or related to (i) OAG's breach of applicable laws or regulations or (ii) any claim that Customer's use of the Data Products or Services pursuant to the terms of this Agreement violates any third party intellectual property rights. OAG shall not have any responsibility or liability for any Claim if (a) the use or activity alleged to be infringing is not a Permitted Usage, (b) such Claim results from (1) any modification or development of the Data Products or Services by Customer or a third party without OAG's prior written approval, or (2) Customer's combination or use of the Data Products or Services with software, services or products not provided by OAG under this Agreement, or (c) Customer does not notify OAG of the Claim within thirty (30) days of becoming aware of it.
- 5.5 SUBJECT TO CLAUSE 5.6, IN NO EVENT WILL OAG'S MAXIMUM TOTAL AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT EXCEED THE TOTAL AGGREGATE CHARGES CUSTOMER HAS PAID TO OAG FOR THE DATA PRODUCTS AND/OR SERVICES DURING THE TWELVE (12) MONTHS PRIOR TO THE DAMAGE ALLEGED TO HAVE BEEN CAUSED.
- 5.6 NOTWITHSTANDING ANY OTHER CLAUSE IN THIS AGREEMENT, NEITHER PARTY EXCLUDES ITS LIABILITY FOR (I) DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE; (II) DAMAGES CAUSED BY ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; OR (III) FRAUD.
- 6. Notices**
- All notices shall be given to the addresses set forth below. If delivered by private express delivery service, notice shall be deemed conclusively made upon delivery by such service. If delivered by mail, notice shall be deemed conclusively made five (5) days after deposit thereof in the mail. Notices to OAG shall be sent to: OAG Aviation Worldwide LLC, Attn: Legal Counsel, 550 West Van Buren Street, Suite 1520, Chicago, IL 60607. Notices to Customer shall be sent to: City of Minot, Attn: Airport Director, 305 Airport Road, Suite 216, Minot, ND 58703.
- 7. Force Majeure**
- Neither party shall be liable for any delay in performing or failure to perform any obligation under this Agreement (save for a payment obligation), to the extent that the delay or failure results from events or circumstances outside its reasonable control, including but not limited to, war, riot, civil commotion, strike, lockout or any other industrial action, act of God, storm,

fire, earthquake, flood, disruption of communication systems, disruption of data feeds, electrical failure or action of government. If any such event occurs then the periods in which the parties are required to perform their obligations hereunder shall be extended by the period of the duration of any such event and the party prevented from performing its obligations hereunder shall as soon as practicable give notice to the other of the occurrence of such event and of its cessation. Notwithstanding the foregoing, in the event of a delay exceeding six (6) months, either party may terminate this Agreement on written notice to the other party.

## 8. Assignment

- 8.1 The terms and conditions of this Agreement shall be binding upon, and shall inure to the benefit of, the parties and their permitted successors and assignees, and references in this Agreement to a party shall include its permitted successors and assignees.
- 8.2 Neither party may assign or transfer this Agreement or any rights or obligations under it (and any such attempted assignment shall be deemed null and void), except (i) as approved in writing by the other party, which consent shall not be unreasonably withheld; (ii) to any company which is that party's subsidiary, holding company, or a subsidiary of any such holding company, so long as it remains a subsidiary or holding company as the case may be; or (iii) to any company to which all or the relevant part of its business is transferred, provided that the purchaser of the business agrees in writing to be bound by the obligations of that party under this Agreement; and provided further that the assignee under (ii) or (iii) above is not a competitor of the other party.

## 9. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of North Dakota, without regard to its principles of conflicts or choice of laws. Each party, as a condition of entering into this Agreement, hereby submits to the jurisdiction of and venue within the state and federal courts of the State of North Dakota.

## 10. General

- 10.1 This Agreement supersedes all prior agreements, arrangements and understandings between the parties, whether written or oral, in respect of its subject matter and constitutes the entire agreement and

understanding between the parties relating to the subject matter of this Agreement. This Agreement may only be modified, amended, or any of its terms waived, by a written document signed by authorized representatives of each party.

- 10.2 Any terms and conditions contained in a Customer purchase order or in any other document submitted by Customer which are additional to or inconsistent with the terms and conditions of this Agreement are null and void.
- 10.3 Where this Agreement is translated into a language other than English that translation shall be for reference only. In the event of any conflict between the non-English and English language versions then the English language version of this Agreement shall take precedence.
- 10.4 Nothing in these terms shall constitute or be deemed to constitute either party as agent or partner of the other for any purpose whatsoever.
- 10.5 Customer will not use any trade names, trademarks, brand names or logos of OAG in connection with any document, product, service or material without OAG's prior written consent.
- 10.6 Nothing in this Agreement confers or purports to confer on any person who is not a party to this Agreement any beneficial rights, or any other right, to enforce any term or provision of this Agreement.
- 10.7 If any one or more provisions of this Agreement is held to be unenforceable, such provision shall be reformed to permit its enforcement in a manner that most closely accomplishes the original objectives of the provision, and the other provisions of this Agreement will remain in full force and effect.
- 10.8 A failure or delay of either party to enforce a provision of this Agreement or a previous waiver or forbearance by either party shall not be construed as a continuing waiver of any provision of this Agreement.
- 10.9 If any litigation results in connection with this Agreement, the prevailing party shall be entitled to reasonable fees, costs and expenses, including, but not limited to, court costs, expert witness fees and attorneys' fees. The prevailing party shall be the party who receives substantially the relief sought, whether by judgment, summary judgment, dismissal or otherwise.
- 10.10 Notwithstanding termination or expiration of this Agreement, the terms of clauses 2, 3.1, 3.6, 4.5, 4.6, 5, 6, 9, and 10 shall survive termination or expiration and remain in full force and effect.