

# Guidelines for Aircraft Management Agreements

## I. Eligibility Checklist

### A. Type of Management Agreement

1. The owner's Aircraft is operated exclusively under FAR Part 91.
  - a. FAR Part 91 operations generally do not permit obtaining reimbursement from other parties for use of an aircraft. FAR Part 91.501 provides aircraft owners some limited exceptions to this general rule, including time-share, interchange and joint ownership arrangements. If one of these arrangements is contemplated, refer to the applicable NBAA guideline which deals with these specific types of agreements.
2. The owner's Aircraft is operated under both FAR Part 135 (commercial) and FAR Part 91 (noncommercial).
  - a. Placing the Aircraft onto the management company's FAR Part 135 charter certificate allows the owner to generate revenue to offset some of the aircraft's fixed costs. In addition, there may be positive tax or other reasons for the Aircraft to be engaged in charter activity.

## II. Terms and Conditions of Written Contracts

### A. Identity of the Parties

1. Name, address, place of incorporation or organization, if not acting in an individual capacity.
2. Ensure that the parties understand the different regulatory and tax consequences of their choice of entity.

### B. Recitals

1. The "Whereas" clauses at the beginning of the contract are traditionally used to

describe what each party brings to the deal and their respective intentions.

2. These statements, as well as the remainder of the agreement should emphasize that the management company is simply providing management services and not transportation. There can be substantial adverse FAA and IRS consequences if the management company is determined to be providing transportation services to the owner.
3. Include a description of the aircraft (the "Aircraft") by make, model, serial number of airframes and engine(s), and registration number.

C. Subject Matter/Terms. Description of what is being provided by whom, to whom, on what basis, and for how long.

D. Description of the services that will be provided by the Management Company. The management company may provide some or all of the following services. Each of the services to be provided should be noted in the Agreement.

1. Employment and supervision of the flight and maintenance personnel.
  - a. Delineate the rights of both the management company and owner for hiring, reviewing and fixing personnel.
  - b. Specify minimum experience levels for each job category.
  - c. Specify training requirements.
  - d. Indicate whether or not the personnel are exclusively assigned to the Aircraft.
  - e. Indicate whether or not alcohol and drug testing is required. (Not mandatory for Part 91 personnel.)

Note: How items 1(a) and 1(d) are resolved may have a significant impact on whether the relationship is treated as providing for aircraft management or for transportation services. See paragraph 6, below.

2. Performance and/or supervision of aircraft maintenance.
  - a. Enroll the Aircraft in an FAA approved inspection program.
  - b. Obtain an FAA approved Minimum Equipment List. (Not mandatory for Part 91 aircraft.)
  - c. Maintain proper maintenance records.

- d. Overall maintenance responsibility.
  - 3. Aircraft fleet insurance. Does the management company have a fleet policy available to owner?
 

Note: Who obtains the insurance may affect whether the relationship is characterized as providing for management or transportation services. See paragraph 6, below.
  - 4. FAA liaison and regulatory compliance. The management company should be responsible for this.
  - 5. Aircraft hangar and shop facilities. Will the Aircraft be kept in a hangar or require shop facilities?
  - 6. Payment of all aircraft related expenses.
    - a. Specify who is responsible for paying specific aircraft expenses. Include who is to receive the benefit of any management company fleet discounts.
    - b. Specify how the management company gets reimbursed. The parties should avoid reducing all charges to a single hourly cost or similar payment structure so that the arrangement does not look like an aircraft rental situation.
  - 7. Aircraft record keeping, budgeting and reporting. Indicate the types of reports the owner will receive.
  - 8. Aircraft, crew and passenger scheduling and related travel support. Delineate the travel related services each party is responsible for.
- E. Consideration. Specify how the management company is compensated for its services.
- F. "Operational Control" and "Possession, Command, and Control". In determining whether the Agreement provides for management or transportation services, the FAA focuses on which party has "operational control" and the IRS looks to which party has "possession, command, and control" of the Aircraft. Factors such as who employs and/or controls the pilots, who controls the scheduling and availability of the Aircraft and who procures the aircraft insurance are all relevant. Care should be taken in drafting the agreement to ensure that the owner and not the management company will be considered to have both operational control and possession, command and control.

## G. Taxes

1. Excise Taxes. Ideally, management arrangements under FAR Part 91 are subject to the fuel taxes rather than the IRS §4261 ten percent Federal Excise Tax (FET), but if it appears that the management company has too much "possession, command and control" of the aircraft, the IRS could assess the ten percent FET on flights for the owner. (See F).
2. State Taxes. The owner is responsible for paying the appropriate state taxes as state sales and use taxes, aircraft registration fees and local personal property taxes vary considerably from state to state.

## H. Insurance and Risk Allocation

1. Specify the minimum insurance requirements.
  - a. Aircraft insurance.
  - b. Workers compensation and employer's liability insurance. Be sure that the owner has worker's compensation coverage that is consistent with the owner's control over the pilots.
3. Indicate who is to be named as additional insureds.
4. Consider waiver of rights of subrogation and breach of warranty endorsements.
5. Issuance of insurance certificates.
6. Consider the management company's standard of care (i.e. should the management company be liable for losses caused by its negligence, its gross negligence, its willful misconduct, or not at all?) Depending on the resolution of this issue, a waiver of claims may be appropriate.
7. Hold harmless or indemnification provisions.
8. Provide a copy of the Agreement to the insurance carrier.

## I. Boiler Plate (Standard) Provisions

1. Notices.
2. Further assurances/duty to cooperate.
3. Assignment.
4. Construction of terms/choice of law/forum selection.
5. Severability.
6. Force Majeure.

7. Compliance with laws.
8. Dates, term and termination.
9. Confidentiality.

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

K. FAR Part 135 Operations

1. In addition to the terms noted above, if the aircraft is to be operated on the management company's FAR Part 135 charter certificate, then either additional provisions need to be incorporated into the Agreement, or a supplemental agreement is required.
2. The management company is normally responsible for the following.
  - a. Obtaining the necessary certifications and approvals to operate the Aircraft under FAR Part 135.
  - b. Obtaining the owner's prior authorization for all charter flights.
  - c. Having the crew meet the FAR Part 135 training requirements.
  - d. Administering an FAA-approved Drug and Alcohol Testing Program.
  - e. Invoicing charter customers for the cost of transportation and the applicable federal transportation tax.
3. The owner is normally responsible for:
  - a. Making the Aircraft available for certification and training flights.
  - b. Paying the cost of any Aircraft modifications that may be required to qualify the Aircraft for certification under FAR Part 135.
  - c. Paying for certain types of expenses related to placing and maintaining the Aircraft on the management company's Part 135 certificate.
4. Additional considerations include:
  - a. The formula used for allocating charter revenue and expenses between the parties.
  - b. Specifying which party is responsible for bad debts from charter customers.
  - c. Truth in Leasing is not applicable because the Aircraft is being furnished to a Part 135 certificate holder.
  - d. Making sure that the management company has "operational control" and

"possession, command, and control" when it operates the Aircraft for charter under its Part 135 certificate.

5. Taxes

a. Excise Taxes

1. Ideally, management arrangements under FAR Part 91 are subject to the fuel taxes rather than the IRS §426 1 ten percent Federal Excise Tax (FET), but if it appears that the management company has too much "possession, command and control" of the aircraft, the IRS could assess the ten percent FET on flights for the owner. (See F).
2. The management company is responsible for collecting the ten percent FET on the Part 135 charter flights and remitting the tax to the IRS.

- b. State Taxes. The owner is responsible for paying the correct state taxes as state sales and use taxes, aircraft registration fees and local personal property taxes vary considerably from state to state. However, in many states that are exemptions given to aircraft that are used in FAR Part 135 operations.

**III. Pre-Operation Checklist**

- A. Insurance. Make sure that all parties are named as additional insureds, and that the carrier fully understands the entire arrangement.
- B. Modification of Agreement. No change in the Agreement or modification shall be effective unless it is signed by all owners.

**Disclaimer**

*NBAA offers these guidelines as an aid to its Members who are considering entering into a management company 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.*

## Insurance Considerations – Management Arrangement

<b>Company A (Owner)</b>	<b>Company B (Management Company)</b>
Will want to be named on Company B's policy as an Additional Named Insured with respect to liability coverage for all uses of the aircraft by Company B (including use of the aircraft by Company A and Part 135 use of the aircraft by Company B).	Probably will carry the liability and physical damage (hull) coverage on Company A's aircraft on its own fleet insurance policy. Will want to be named as an Additional Insured with respect to liability coverage on Company A's insurance.
	Will need to have a "Purpose of Use" or "Approved Use" on the policy that allows for all uses (Part 91 and 135) of the aircraft.
Probably will not be able to obtain an invalidation of interest clause with respect to liability coverage on Company B's 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.	
Will want adequate liability coverage limits on Company B's policy to ensure sufficient coverage if the liability coverage has to be shared with Company B.	Will want adequate liability coverage limits on its policy to ensure sufficient coverage if the liability coverage has to be shared with Company A.
May want to consider obtaining an excess liability policy for the use of the aircraft.	
May want to consider obtaining a non-owned aircraft liability policy for use of non-owned aircraft that are outside of the fleet of aircraft insured under Company B's policy, if such coverage is not provided by Company B's policy.	Will want to carry non-owned aircraft liability coverage providing coverage for Company A's use of non-owned aircraft that are outside of the fleet of aircraft insured under Company B's policy.
Will want to determine whether, and the extent to which, any indemnification language in the management agreement will be covered by Company B's policy.	Will want to determine whether, and the extent to which, any indemnification language in the management agreement will be covered by Company B's policy.
Will want to receive advance notice of deletion, cancellation or material changes in coverage for Company B's aircraft on Company B's insurance policy.	
Will want a Certificate of Insurance from Company B's insurer verifying coverages provided under Company B's policy or a copy of the full policy.	