

Guidelines for Time Sharing Agreements

1. Eligibility Checklist

- A. Determine whether parties are eligible to enter into a time-sharing agreement under FAR Part 91.501(b)(6)
- B. Time Sharing Defined. An arrangement whereby a person leases his airplane with flight crew to another person, and no charge is made for the flights conducted under that agreement other than those specified in paragraph (d) of FAR Part 91.501.
- C. Is the aircraft a “large” aircraft (within FAA definition – i.e., more than 12,500 pounds maximum certificated takeoff weight)?
Is aircraft a multi-engine turbojet airplane?
- D. If the aircraft is a helicopter, or if it is “small,” determine whether NBAA exemption applies (is time sharor, i.e., the operator, a member of NBAA) which permits operation under FAR Part 91.501. If operations are not performed pursuant to the NBAA exemption, individual exemption from FAA is required.
- E. Is the aircraft registered in the U.S.? If not, aircraft is not eligible to engage in time-sharing operations.
- F. If the aircraft is U.S.-registered but is “owned, controlled or operated” by a company that is not a U.S. citizen under the relevant aviation statutes and regulations, such aircraft will be deemed a “foreign civil aircraft” which may result in additional regulation and licensing by the Department of Transportation. Consult experienced aviation counsel if aircraft is a U.S. registered foreign civil aircraft.
- G. Time sharor. The operator or wet lessor must be a company and may not be an individual. Time sharee may be a company or individual.
- H. The aircraft operations of the time sharor must be incidental to its other Business – which rules out the so-called flight department company (i.e., a company whose only function is to own and operate the company aircraft) from engaging in time-sharing.

II. Terms and Conditions of Written Contracts

- A. Identity of the Parties. Name, address, place of incorporation or organization, if not acting in individual capacity.
- 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. Echo the appropriate language from FAR Part 91.501.
 2. Include a description of the aircraft (the “Aircraft”) by make, model, serial number of airframe and engine(s), and registration number.
- C. Subject Matter/Terms. Description of what is being provided by whom and to whom, on what basis, and for how long (e.g., Party A provides the Aircraft to Party B on a time-sharing basis under FAR Part 91.501(b)(6) and (c)(1) for the period _____).
- D. Consideration.
 1. What is being paid for the operation of the Aircraft under Part 91.501(b)(6); identify the specific categories of costs in subsections (1) through (10) of Part 91.501(d).
 2. Identify how and when expenses will be charged and deadline for and method of payment (e.g., Party A to invoice Party B for expenses as incurred, and broken down by permissible category with payment due within ____ days of the invoice date).
- E. Taxes.
 1. Excise Taxes. The amounts paid under Part 91.501(d) for time sharing flights are subject to the 7.5 percent Federal excise taxes as imposed under IRC §4261. It is the responsibility of the time sharor to collect and remit the Federal excise tax on the amounts paid.
 2. State Taxes. Normally states do not apply state sales and use taxes to a lease of an air-

craft with crew. However, it would be wise to check the rules of the state in which the aircraft is based.

F. Scheduling of Aircraft.

1. Specify how and when flights will be requested, confirmed, the form and content of such requests, and/or confirmations and the person (by name or title) or department from whom such requests will be accepted, and to whom confirmations should be sent. Provide similar information for the operator.
2. Specify party (usually the operator) having final authority over scheduling the Aircraft.

G. Maintenance Responsibility.

1. Identify the party (usually the operator) responsible for arranging and paying for maintenance, preventive maintenance and required or recommended inspections.
2. Specify that aircraft maintenance and inspections takes precedence over aircraft scheduling unless such maintenance or inspections can be safely deferred in accordance with applicable laws and regulations and within the sound discretion of the Pilot-In-Command (PIC).

H. Operational Control.

1. Identify party (the one providing the Aircraft and crew) having operational control, i.e., responsibility for providing the crew and for the physical and technical operation of the Aircraft and safe performance of all flights.
2. Reserve final authority in the PIC to initiate or terminate each flight, select the routing, determine the load to be carried, and otherwise decide all matters relating to the safety of such flight.

I. Warranties and Representations.

1. Relating to title and right to enter into timesharing arrangement.
2. Relating to each party's use of the Aircraft for its own account with prohibition against providing transportation of passengers or cargo for compensation and hire (for which specific Federal Aviation Administration and/or DOT licensing would be required).

3. Relating to compliance with applicable laws, regulations, and insurance provisions

J. Risk Allocation.

1. Insurance. Which party provides (usually the operator)? Scope of coverage? Limits of liability? Additional insured status for time sharee? Breach of warranty in favor of time sharee? Waiver of subrogation? 30 days' notice of cancellation for additional insured?
2. Indemnification/Hold Harmless. Will operator indemnify time sharee for liability arising out of the operation of the Aircraft? If so, under what conditions and to what extent? Will each party indemnify the other for liability arising out of the indemnifying party's breach of contract?
3. Limitations of Liability.
 - a. For delays or cancellation
 - b. For loss of baggage
 - c. For consequential/punitive damages
 - d. In case of Force Majeure

K. Flight Cancellations. Specify under what conditions a party may cancel a flight that has been requested and confirmed.

L. Termination.

1. Will each party have a right to terminate before the end of the term? If so, under what circumstance (with or without cause, upon days prior notice, etc.)?
2. Will a different termination right apply in the case of a breach of contract (i.e., termination for cause).

M. Boilerplate (standard) provisions relating to:

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. Integration clause/amendment
9. Arbitration as a means of resolving disputes.

N. Home Base of Aircraft. Identify the permanent base of the aircraft.

O. Truth-in-Leasing Provisions.

1. Determine whether FAR Part 9 1.23 is applicable.
2. Include required statements and certifications, if applicable, as concluding paragraph immediately preceding the signature blocks.

P. 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 Part 91.23, if applicable (review and comply with similar provisions in the NBAA exemption #1637, if small aircraft or helicopters are being "time-shared").
1. Mail to FAA-Oklahoma City within 24 hours of execution.
 2. Carry agreement and NBAA exemption notice (if applicable) aboard the Aircraft.
 3. Notify nearest FSDO at least 48 hours before the first flight under the agreement.

- B. Confirm with insurance backers or insurance company that existing coverage applies (or will have to be amended to apply) to the time-sharing arrangement which, by virtue of the limited cost recovery feature may be viewed as "commercial;" also confirm that any contractual liability, (e.g., indemnity provisions mentioned in Part II(I)(2) of these Guidelines) are covered by the policy.

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.

Insurance Considerations – Time Sharing

Company A (Owner)	Company B (User)
Will carry the liability and physical damage (hull) coverage on the aircraft as the Named Insured.	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 time-sharing use of the aircraft.	Will want a waiver of subrogation with respect to physical damage coverage on Company A's insurance policy.
	Will want an invalidation clause with respect to liability coverage on Company A's insurance policy.
Will want adequate liability coverage limits to ensure sufficient coverage if the liability coverage has to be shared with Company B.	Will want adequate liability coverage limits on Company A's 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 for the time-shared aircraft.
	May want to consider obtaining a non-owned aircraft liability policy for use of other non-owned aircraft.
Will want to determine whether, and the extent to which, any indemnification language in the time-share agreement will be covered by Company A's policy.	Will want to determine whether, and the extent to which, any indemnification language in the time-share agreement will be covered by Company A's policy.
	If Company B owns its own aircraft, will want to advise its insurer for the time-sharing agreement and make sure that its own insurer recognizes the agreement; Company B's insurer may agree to provide Company B's liability limit as excess over the primary limits provided by Company A's policy.
	Will want to receive advance notice of deletion, cancellation or material changes in coverage for Company A's aircraft on company A's insurance policy.
	Will want a Certificate of Insurance from Company A's insurer verifying coverage's provided under Company A's policy.