

UNIVERSITY OF NEBRASKA – KEARNEY OPERATING AGREEMENT - UNMANNED AERIAL VEHICLE

This Agreement sets forth the terms between The Board of Regents of the University of Nebraska for and on behalf of the University of Nebraska-Kearney and its _____, having an address at _____, Kearney, NE _____ (the “University”) and _____, having an address at _____ (the “Operator”) with regard to the use of any Unmanned Aerial Vehicle (UAV) as described herein.

RECITALS

WHEREAS, the University is willing to allow the Operator to provide certain services to the University by operating an unmanned aerial vehicle (UAV) in certain instances on property owned or controlled by the University for the purposes defined herein; and

WHEREAS, the Operator represents that it has appropriate expertise and experience to provide such services in a safe and appropriate manner for, and wishes to operate a UAV on University property for commercial purposes;

THEREFORE, in consideration of the mutual promises and benefits herein, the University and the Operator hereby agree to the following terms, responsibilities and conditions:

1. Purpose and Term. The Operator will conduct operations with the UAV on _____ (Date) between the hours of _____ and _____ for the sole purpose of _____ (the “Purposes”). This term may be extended by written approval of the University.

2. Responsibility of Operator. Operator agrees to abide by the following requirements of the University related to utilizing a UAV on the property of the University: (a) Operator will provide copy of FAA 333 Exemption or FAA Certificates of Waiver or Authorization (COA) or Special Airworthiness Certificate (SAC) Operator agrees to comply with all FAA guidelines, regulations and statutes in effect at the time of the flight(s).

(b) will maintain a horizontal clearance of at least 500 feet from all buildings, people and other obstacles, (c) will record images of public areas only, (d) will obtain written consent from any and all identifiable individuals appearing in photos or video obtained during UAV operation, (d) certifies that UAV has been properly maintained per manufacturer’s guidelines, and (e) the UAV has a fully charged battery prior to the flight.

In addition, the operator agrees the UAV will be operated only within the following conditions: (a) visibility of three (3) or more miles, (b) wind gusts not to exceed 35 MPH, and (c) ambient temperatures of between 0 and 110 degrees Fahrenheit.

Operator will provide a photo of the UAV and FAA assigned registration number (Exhibit A) and emergency contact information for the date of the flight (Exhibit B)

3. Payment. When the services are requested by the University, and services are performed by the Operator under this Agreement, in full consideration of the services provided by the Operator, the University shall pay or cause to be paid to the Operator a fee of _____ dollars (\$_____). The total fee and any incidentals shall be payable upon submission of an invoice to University by Operator.

4. Independent Contractor. The Operator is and shall be an independent contractor and is solely responsible for maintenance and payment of any and all taxes, insurances and the like that may be required by federal, state or local law with respect to any sums paid by University to Operator, and that the University will not deduct any such taxes due to the proper taxing authorities. The Consultant is not the University's agent or representative and has no authority to bind or commit the University to any agreements or other obligations.

5. Indemnification. The Operator shall defend, indemnify and hold the University, its Regents, officers, agents, employees and/or assigns, from any and all claims, demands, actions and causes of action against the University, whether groundless or not, in connection with any and all injuries, losses, damages or liability of any kind whatsoever arising, directly or indirectly, out of Operator's performance of the services and/or Operator's operation of the UAV pursuant to this Agreement. This indemnification obligation shall include, without limiting the generality of the foregoing, reasonable attorney fees and other costs or expenses incurred in connection with the defense of any and all such claims, demands, actions, or causes of action.

6. Ownership of Work Product and Intellectual Property Rights. In the case where photos or other data is gathered through the UAV, Operator shall have no rights to the deliverables provided under this Agreement, and the University shall be the sole owner of all such deliverables, including photographs, produced or developed or otherwise created by the Operator during its' performance of the Services (the "Work Product"). Accordingly, the Operator hereby expressly assigns all right, title and interest in and to the Work Product, to the University, and agrees to execute all documents required to evidence such assignment. Without limiting the foregoing, the Operator hereby grants to the University the sole and exclusive right throughout the world, in all languages, and in perpetuity, to use the Work Product pursuant to this Agreement. The Operator also hereby waives any and all claims it may now or hereafter have in any jurisdiction to so-called "moral rights" or rights of "droit moral" with respect to the use, results and/or proceeds of the Operator's services and Work Product. This provision shall survive the termination of this Agreement.

7. Termination. UNK has the express right to terminate this Agreement with no notice if the Operator is found to be in breach of this Agreement or is otherwise out of compliance with University's written UAV policy. The University may, at its discretion, bill operator for any damages to personal or real property imposed prior to the termination of the agreement.

8. Representations and Warranties. The Operator represents and warrants that in performing the Services it will not be in breach of any agreement with a third party. The Operator also represents and warrants that no third party has any rights in, to, or arising out of, the Work Product rendered pursuant to the performance of the Services. Author agrees to hold University and its respective assigns and licensees harmless from any loss, damage or expense, including court costs and reasonable attorneys' fees, that University and its assigns and licensees may suffer as a result of a breach or alleged breach of the foregoing warranties or as a result of claims or actions of any kind or nature resulting from the use in any way of the Work.

9. Insurance Requirements. The Operator will obtain and maintain a UAV Liability Insurance certificate with a minimum of \$1,000,000 coverage naming the Board of Regents of the University of Nebraska as an additional insured. A copy of the insurance certificate is to be provided with the signed agreement.

10. Notice. Any notice to either party hereunder shall be in writing and shall be served either personally or by registered or certified mail addressed to the following individuals:

To the Operator:

Name: _____

Address: _____

City, State, Zip: _____

Cell Phone: _____

Office Phone: _____

To the University:

Vice Chancellor for Business and Finance

University of Nebraska-Kearney

2504 9th Av

Kearney, Nebraska 68849

11. Assignment. This Agreement is non-assignable and non-transferrable. Any attempt by either party to assign its obligations hereunder shall be void.

12. Amendment. This Agreement constitutes the entire understanding between the Operator and the University with respect to the subject matter hereof and may not be amended except by an agreement signed by the Operator and an authorized representative of the University.

13. Governing Law and Forum. This Agreement shall be governed by the laws of the State of Nebraska. Any legal actions brought by either party hereunder shall be in the District Court of Buffalo County, Nebraska.

14. Conflict of Interest. No article or service shall be purchased from any University faculty or staff member without prior approval by the Vice Chancellor of Business and Finance and any such approve purchase shall comply fully with the requirements of the conflict of interest provisions of the Nebraska Political Accountability and Disclosure Act, Neb. Rev. Stat., §§ 49-1493 through 49-14,104.

15. Section 503. If applicable, this operator shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors to employ and advance in employment qualified individuals with disabilities.

15. LB 429. Pursuant to Nebraska's Taxpayer Transparency Act (Neb. Rev. Stat. §84-602.01, as may be amended), as of January 1, 2014, the University of Nebraska is required to provide the Nebraska Department of Administrative Services with a copy of each contract that is a basis for an expenditure of state funds, including any amendments and documents incorporated by reference in the contract. Copies of all such contracts and documents will be published by the Nebraska Department of Administrative Services at www.nebraskaspending.gov. It shall be the sole responsibility of the Contracting Party to notify the University of any requested redactions to such contracts and documents under Neb. Rev. Stat. 84-712.05(3) at the time of execution.

16. Operator Attestation. The State of Nebraska requires that every contract between a public employer and individual or sole proprietor shall contain a provision requiring the public contractor and its subcontractors to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska (Exhibit D). If the attestation indicates that the individual or sole proprietor is a qualified alien, then the University will verify through the U.S. Department of Homeland Security's Systematic Alien Verification for Entitlements Program ("SAVE"), or an equivalent Homeland Security program, prior to any contract approval or signature. No professional services contract will be executed by the University without an attestation form and a SAVE confirmation, if required.

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this Agreement as of this ____ day of _____, 20__.

The Board of Regents of the University of Nebraska (the University)

Signature: _____ Date: _____

Printed Name: _____

Title: Vice Chancellor, Business and Finance

Operator (the Operator)

Signature: _____ Date: _____

Printed Name: _____

Title: _____

EXHIBIT A

Photo of UAV

Exhibit B

Emergency Contact Information for Date of Flight

Please Print or Type:

Name: _____

Cell Phone: _____

Exhibit C

Insurance Certificate

EXHIBIT D
University of Nebraska - Attestation

Department Contact: _____

Address: _____

Email: _____

Phone: _____

Date: _____

Consultant: _____

Address: _____

City, State, Zip: _____

Email Address: _____

Phone: _____

Fax: _____

United States Citizenship Attestation Form

For purposes of complying with Neb. Rev. Stat. §§4-108 through 4-114, I attest as follows:

☐ I am a citizen of the United States.

☐ I am a qualified alien under the federal Immigration and Nationality Act, my immigration status and alien number are as follows: _____, and I agree to provide a copy of my USCIS documentation upon request.

I hereby attest that my response and the information provided on this form and any related application for public benefits are true, complete and accurate and I understand that this information may be used to verify my lawful presence in the United States.

Print Name _____
(first, last, middle)

Signature: _____

Date: _____