



# RESOLUTION No. 19-084

## OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

### RESOLUTION APPROVING A PRICING AGREEMENT CONTRACT BETWEEN THE COUNTY OF NEVADA AND AVFUEL CORPORATION, FOR AVIATION FUEL SERVICES AND SUPPORT AT THE NEVADA COUNTY AIRPORT FOR THE PERIOD MARCH 1, 2019 THROUGH JUNE 30, 2024 AND AUTHORIZING THE CHAIR OF THE BOARD OF SUPERVISORS TO EXECUTE THE CONTRACT

WHEREAS, specifications and requirements for the supply of fuel and dealer related services was prepared; and

WHEREAS, sealed proposals were solicited for these services and three timely bids were received and opened on December 7, 2017; and

WHEREAS, the proposal that best meets the needs of the Nevada County Airport for the specified services was determined to be Avfuel Corporation; and

WHEREAS, the contract will be for the period of five and a half years, for the initial period commencing March 1, 2019 through June 30, 2024, with an option to renew and renegotiate for an additional 5-years as long as the fuel pricing differentials, listed on page 9 of the contract, do not exceed 10% of the current rate.

NOW, THEREFORE, BE IT RESOLVED that the Nevada County Board of Supervisors of the County of Nevada, State of California, hereby directs that the Board Chair is authorized to execute the contract on behalf of the County of Nevada with Avfuel Corporation upon receipt, approval, and acceptance of the certificates of insurance.

Funding: 4116910042741000/522030

PASSED AND ADOPTED by the Board of Supervisors of the County of Nevada at a regular meeting of said Board, held on the 26th day of February, 2019, by the following vote of said Board:

Ayes: Supervisors Dan Miller, Susan K. Hoek,  
and Richard Anderson

Noes: None.

Absent: Supervisors Heidi Hall and Edward Scofield

Abstain: None.

ATTEST:

JULIE PATTERSON HUNTER  
Clerk of the Board of Supervisors

By: 



Richard Anderson, Chair

2/26/19 cc: Airport\*  
AC\* (Hold)

3/04/19 cc: Airport  
AC\* (Release)  
AC

**PERSONAL SERVICES CONTRACT**

County of Nevada, California

This Personal Services Contract is made between the COUNTY OF NEVADA (herein "County"), and

**Avfuel Corporation**

(herein "Contractor"), wherein County desires to retain a person or entity to provide the following services, materials and products generally described as follows:

(§1) **Aviation Fuel Services and Support**

**SUMMARY OF MATERIAL TERMS**

(§2) **Maximum Contract Price:** N/A  
(§3) **Contract Beginning Date:** 3/1/19 **Contract Termination Date:** 6/30/2024  
(§4) **Liquidated Damages:** N/A

**INSURANCE POLICIES**

Designate all required policies:

		Req'd	Not Req'd
(§6) <b>Commercial General Liability</b>	(\$1,000,000)	<u>X</u>	<u>      </u>
(§7) <b>Automobile Liability</b>	(\$ 300,000) Personal Auto	<u>      </u>	<u>X</u>
	(\$1,000,000) Business Rated	<u>      </u>	<u>X</u>
	(\$1,000,000) Commercial Policy	<u>X</u>	<u>      </u>
(§8) <b>Worker's Compensation</b>		<u>X</u>	<u>      </u>
(§9) <b>Errors and Omissions</b>	(\$1,000,000)	<u>      </u>	<u>X</u>

**LICENSES AND PREVAILING WAGES**

(§14) Designate all required licenses:  
N/A

**NOTICE & IDENTIFICATION**

(§26) **Contractor:** Avfuel Corporation  
14821 Juniper Street  
Leawood, KS 66224

**County of Nevada:**  
950 Maidu Avenue  
Nevada City, CA 95959

Contact Person:  
David Mittleman  
(734) 276-5180  
e-mail: dmittleman@avfuel.com

Contact Person:  
Kevin Edwards  
(530)273-3374  
e-mail: kevin.edwards2@co.nevada.ca.us

**Contractor is a:** (check all that apply)

Corporation:        Calif., X Other,        LLC,        Non-profit  
Partnership:        Calif.,        Other,        LLP,        Limited  
Person:        Individ.,        Db,        Ass'n,        Other

**EDD:** Independent Contractor Worksheet Required:        Yes X No  
**HIPAA:** Schedule of Required Provisions (Exhibit D):        Yes X No

**ATTACHMENTS**

Designate all required attachments:

	Req'd	Not Req'd
<b>Exhibit A: Schedule of Services</b> (Provided by Contractor)	<u>X</u>	<u>      </u>
<b>Exhibit B: Schedule of Charges and Payments</b> (Paid by County)	<u>X</u>	<u>      </u>
<b>Exhibit C: Schedule of Changes</b> (Additions, Deletions & Amendments)	<u>X</u>	<u>      </u>
<b>Exhibit D: Schedule of HIPAA Provisions</b> (Protected Health Information)	<u>      </u>	<u>X</u>

## Terms

Each term of this Contract below specifically incorporates the information set forth in the Summary at page one (1) above as to each respective section (§) therein, as the case may be.

## Services

### 1. **Scope of Services:**

Contractor shall provide all of the services, materials and products (herein "Services") generally described in **Exhibit "A"**, according to a performance schedule, if applicable, as set forth in said exhibit (herein "Performance Schedule") . If requested, Contractor agrees to serve as an expert witness for County in any third party action or proceeding arising out of this Contract.

## Payment

### 2. **Charges and Payments:**

The charges (herein "Charges") for furnishing the aforesaid Services under this Contract are set forth in **Exhibit "B"**, including, if applicable, hourly rates, unit pricing, and expense, mileage and cost limits. Said Charges shall be presented monthly by invoice, and shall be due within thirty (30) days of receipt unless payment is otherwise set forth in said **Exhibit "B"**, and shall remain in effect for the entire term of this Contract, and any extension hereof. In no event will the cost to County for Services to be provided under this Contract, including direct non-salary expenses, exceed the **Maximum Contract Price** set forth at §2, page one (1), above.

## Time for Performance

### 3. **Contract Term:**

This Contract shall commence on the **Contract Beginning Date** set forth at §3, page one (1), above. All Services required to be provided by this Contract shall be completed and ready for acceptance no later than the **Contract Termination Date** set forth at §3, page one (1), above.

### 4. **Liquidated Damages:**

County and Contractor agree that damages to County due to delays in timely providing Services in accordance with the aforesaid Performance Schedule and Contract Termination Date are impractical and difficult to ascertain. Therefore, if §4 at page one (1) hereof shall indicate a daily amount as **Liquidated Damages**, County shall have the right to assess said daily sum, not as a penalty, but as and for damages to County due to delays in providing Services not in accordance with the said Performance Schedule, or later than the Contract Termination Date (herein "Delay"). Liquidated Damages shall be offset against amounts owing to Contractor, including retention sums.

To the extent that any Delay is a result of matters or circumstances wholly beyond the control of Contractor, County may excuse said Liquidated Damages; provided however, that County may condition such excuse upon Contractor having given prompt notice to County of such delay immediately by telephone and thereafter by written explanation within a reasonable time. The time for Contractor's performance shall be extended by the period of delay, or such other period as County may elect.

### 5. **Time of the Essence:**

Time is of the essence with respect to Contractor's performance under this Contract. Delay in meeting the time commitments contemplated herein will result in the assessment of liquidated damages, if indicated at §4 at page one (1), hereof. If Liquidated Damages are not so indicated, damages shall be as otherwise provided by law.

## Insurance

### 6. **Commercial General Liability Insurance:** (County Resolution No. 90674)

If §6 at page one (1) hereof shall indicate a **Commercial General Liability** insurance policy is required, Contractor shall promptly provide proof of such insurance evidenced by a certificate of insurance with properly executed endorsements attached, which insurance shall include the following:

- (i) Broad form coverage for liability for death or bodily injury to a person or persons, and for property damage, combined single limit coverage, in the minimum amount indicated at said §6;
- (ii) An endorsement naming County as an additional insured under said policy, with respect to claims or suits arising from the Services provided or the relationships created under this Contract;
- (iii) A provision that said insurance shall be primary and other insurance maintained by the County of Nevada shall be excess only and not contributing with Contractor's insurance;



(iv) A provision that said insurance shall provide for thirty (30) days written notice to County of any termination or change in coverage protection, or reduction in coverage limits (except ten (10) days notice for non-payment of premium).

**7. Automobile Liability Insurance:** (County Resolution No. 90676)

If §7 at page one (1) hereof shall require either a Business Rated or a Commercial Automobile Liability insurance policy, for each vehicle used including non-owned and hired automobiles, Contractor shall promptly provide proof of such insurance evidenced by a certificate of insurance with properly executed endorsements attached, which insurance shall include the following provisions:

- (i) Liability protection for death or bodily injury to a person or persons, property damage, and uninsured and underinsured coverage, combined single limit coverage, in the minimum amount indicated at said §7;
- (ii) An endorsement naming County as an additional insured under said policy, with respect to claims or suits arising from the Services provided or the relationships created under this Contract;
- (iii) A provision that said insurance shall be primary and other insurance maintained by the County of Nevada shall be excess only and not contributing with Contractor's insurance;
- (iv) A provision that said insurance shall provide for thirty (30) days written notice to County of any termination or change in coverage protection, or reduction in coverage limits (except ten (10) days notice for non-payment of premium).

If §7 at page one (1) hereof shall require a Personal Auto policy, for each vehicle used including non-owned and hired automobiles, Contractor shall promptly provide proof of such insurance for a minimum of three hundred thousand dollars, (\$300,000), in combined single limits, and naming the County as additionally insured.

**8. Worker's Compensation:** (County Resolution No. 90674)

If §8 at page one (1) hereof shall indicate a **Worker's Compensation** insurance policy is required, Contractor shall maintain said policy as required by law, and shall promptly provide proof of such insurance evidenced by a certificate of insurance, or other documentation acceptable to County.

Before commencing to utilize employees in providing Services under this Contract, Contractor warrants that it will comply with the provisions of the California Labor Code, requiring Contractor to be insured for worker's compensation liability or to undertake a program of self-insurance therefor.

**9. Errors and Omissions:**

If §9 at page one (1) hereof shall indicate **Errors and Omissions** insurance is required, Contractor shall maintain either a professional liability or errors & omissions policy in the minimum amount indicated, and shall promptly provide proof of such insurance evidenced by a certificate of insurance, or other documentation acceptable to County.

**10. Miscellaneous Insurance Provisions:** (County Resolution No. 90675)

All policies of insurance required by this Contract shall remain in full force and effect throughout the life of this Contract and shall be payable on a "per occurrence" basis unless County specifically consents to "claims made" coverage. If the County does consent to "claims made" coverage and if Contractor changes insurance carriers during the term of this Contract or any extensions hereof, then Contractor shall carry prior acts coverage.

Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by County, its officers, agents and/or employees, shall be excess only and not contributing with insurance required or provided under this agreement.

At all times, Contractor shall keep and maintain in full force and effect throughout the duration of this Contract, policies of insurance required by this Contract which policies shall be issued by companies with a Best's Rating of B+ or higher (B+, B++, A-, A, A+ or A++), or a Best's Financial Performance Rating (FPR) of 6 or higher (6, 7, 8 or 9) according to the current Best's Key Rating Guide, or shall be issued by companies approved by the County Risk Manager. In the event the Best's Rating or Best's FPR shall fall below the rating required by this paragraph, Contractor shall be required to forthwith secure alternate policies which comply with the rating required by this paragraph, or be in material breach of this Contract.

Failure to provide and maintain the insurance policies (including Best's ratings), endorsements, or certificates of insurance required by this Contract shall constitute a material breach of this agreement (herein "Material Breach"); and, in addition to any other remedy available at law or otherwise, shall serve as a basis upon which County may elect to suspend payments hereunder, or terminate this Contract, or both. (See §13, ¶2, below, as these provisions additionally apply to subcontractors.)

**11. Indemnity .**

Nothing herein shall be construed as a limitation of Contractor's liability, and Contractor shall indemnify, defend and hold harmless the County and its officers, officials, employees, agents and volunteers from any and all liabilities, claims, demands, damages, losses and expenses (including, without limitation, defense costs and attorney fees of litigation) which result from the negligent act, willful misconduct, or error or omission of Contractor, except such loss or damage which was caused by the sole negligence or willful misconduct of County or its officers, officials, employees, agents and volunteers.

**Personal Services**

**12. Contractor as Independent:**

In providing services herein, Contractor, and the agents and employees thereof, shall act in an independent capacity and as an independent contractor and not as agents or employees of County.

**13. Assignment and Subcontracting:**

Except as specifically provided herein, the rights, responsibilities, duties and Services to be performed under this Contract are personal to the Contractor and may not be transferred, subcontracted, or assigned without the prior written consent of County. Contractor shall not substitute nor replace any personnel for those specifically named herein or in its proposal without the prior written consent of County.

Contractor shall cause and require each transferee, subcontractor and assignee to comply with the insurance provisions set forth herein at §§6, 7, 8, 9 and 10, to the extent such insurance provisions are required of Contractor under this Contract. Failure of Contractor to so cause and require such compliance by each transferee, subcontractor and assignee shall constitute a Material Breach of this agreement, and, in addition to any other remedy available at law or otherwise, shall serve as a basis upon which County may elect to suspend payments hereunder, or terminate this Contract, or both.

**14. Licensing and Permits:**

Contractor warrants (i) Contractor is qualified and competent to provide all Services under this contract; (ii) Contractor and all employees of Contractor hold all necessary and appropriate licenses therefor, including those licenses set forth at §14, page one (1) hereof; and, (iii) Contractor shall obtain, and remain in compliance with, all permits necessary and appropriate to provide said Services. Contractor shall cause said licenses and permits to be maintained throughout the life of this Contract. Failure to do so shall constitute a Material Breach of this agreement, and, in addition to any other remedy available at law or otherwise, shall serve as a basis upon which County may elect to suspend payments hereunder, or terminate this Contract, or both.

**Public Contracts**

**15. Prevailing Wage and Apprentices:**

To the extent made applicable by law, performance of this Contract shall be in conformity with the provisions of California Labor Code, Division 2, Part 7, Chapter 1, commencing with Section 1720 relating to prevailing wages which must be paid to workers employed on a public work as defined in Labor Code §§1720, et seq.; and shall be in conformity with Title 8 of the California Code of Regulations §§200 et seq., relating to apprenticeship. Where applicable:

(i) Contractor shall comply with the provisions thereof at the commencement of Services to be provided herein, and thereafter during the term of this Contract. A breach of the requirements of this section shall be deemed a material breach of this contract. Applicable prevailing wage determinations are available on the California Department of Industrial Relations website at <http://www.dir.ca.gov/OPRL/PWD>.

(ii) Contractor and all subcontractors must comply with the requirements of Labor Code Section 1771.1(a) pertaining to registration of contractors pursuant to Section 1725.5. Registration and all related requirements of those Sections must be maintained throughout the performance of the Contract.

(iii) Contracts to which these prevailing wage requirements apply are subject to compliance monitoring and enforcement by the Department of Industrial Relations. Each contractor and subcontractor must furnish certified payroll records to the Labor Commissioner at least monthly.

(iv) The County is required to provide notice to the Department of Industrial Relations of any public work contract subject to prevailing wages within five (5) days of award.

**16. Accessibility (County Resolution No. 00190):**

It is the policy of the County of Nevada that all County services, programs, meetings, activities and facilities shall be accessible to all persons, and shall be in compliance with the provisions of the Americans With Disabilities Act and Title 24, California Code of Regulations. To the extent this Contract shall call for Contractor to provide County



contracted services directly to the public, Contractor shall certify that said direct Services are and shall be accessible to all persons.

**17. Nondiscriminatory Employment:**

In providing Services hereunder, Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, national origin, political affiliation, ancestry, marital status or disability. This policy does not require the employment of unqualified persons.

**18. Prior Nevada County Employment (County Resolution No. 03-353):**

Effective July 22, 2003, it is the policy of the County of Nevada that former members of the Board of Supervisors, a former CEO, or a former Purchasing Agent, for a period of twelve (12) months following the last day of employment, shall not enter into any relationship wherein that former employee or former Board member receives direct remuneration from a legal entity that, during the last twelve (12) months of said employment or Board member's service, entered into a contract with, or received a grant from the County of Nevada. Provided however, that this prohibition shall not apply to any employee that did not personally approve a contract with or grant to said legal entity during the last twelve (12) months of said employment, and shall not apply when the Board of Supervisors did not approve a contact with or grant to said legal entity during the last twelve (12) months of said Board member's service.

A violation of this policy shall subject Contractor to all of the remedies enumerated in said resolution and as otherwise provided in law, which remedies shall include but not be limited to injunctive relief, cancellation and voiding of this contract by County, a return of grant money, a cause of action for breach of contract, and entitlement to costs and reasonable attorney fees in any action based upon a breach of contract under this provision.

**19. Cost Disclosure:**

In accordance with Government Code Section 7550, should a written report be prepared under or required by the provisions of this Contract, Contractor agrees to state in a separate section of said report the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of said report

**Default and Termination**

**20. Termination:**

A Material Breach of this Contract pursuant to the terms hereof or otherwise, in addition to any other remedy available at law or otherwise, shall serve as a basis upon which County may elect to immediately suspend payments hereunder, or terminate this contract, or both, **without notice**.

If Contractor fails to timely provide in any manner the services materials and products required under this Contract, or otherwise fails to promptly comply with the terms of this Contract, or violates any ordinance, regulation or other law which applies to its performance herein, County may terminate this Contract by giving **five (5) days written notice** to Contractor.

Either party may terminate this Contract for any reason, or without cause, by giving **thirty (30) calendar days written notice** to the other, which notice shall be sent by registered mail in conformity with the notice provisions, below. In the event of termination not the fault of the Contractor, the Contractor shall be paid for services performed to the date of termination in accordance with the terms of this Contract. Contractor shall be excused for failure to perform services herein if such performance is prevented by acts of God, strikes, labor disputes or other forces over which the Contractor has no control.

County, upon giving **sixty (60) calendar days written notice** to Contractor, shall have the right to terminate its obligations under this Contract at the end of any fiscal year if the County or the State of California, as the case may be, does not appropriate funds sufficient to discharge County's obligations coming due under this contract.

**Miscellaneous**

**21. Books of Record and Audit Provision:**

Contractor shall maintain complete records relating to this Contract for a period of five (5) years from the completion of Services hereunder. Said records shall include but not be limited to bids and all supporting documents, original entry books, canceled checks, receipts, invoices, payroll records including subsistence, travel and field expenses, together with a general ledger itemizing all debits and credits

Contractor shall permit County to audit said records as well as such related records of any business entity controlled by Contractor. Said audit may be conducted on Contractor's premises or at a location designated by County, upon fifteen (15) days notice. Contractor shall promptly refund any moneys erroneously charged and shall be liable for the costs of audit if the audit establishes an over-charged of five percent (5%) or more of the Maximum Contract Price.

**22. Intellectual Property:**

All original photographs, diagrams, plans, documents, information, reports, computer code and all recordable media together with all copyright interests thereto (herein "Intellectual Property"), which concern or relate to this Contract



and which have been prepared by, for or submitted to Contractor, shall be the property of County, and upon fifteen (15) days demand therefor, shall be promptly delivered to County without exception. Provided however, for personal purposes only and not for commercial, economic or any other purpose, Contractor may retain a copy of Contractor's work product hereunder.

**23. Entire Agreement:**

This Contract represents the entire agreement of the parties, and no representations have been made or relied upon except as set forth herein. This Contract may be amended or modified only by written, fully executed agreement of the parties.

**24. Jurisdiction and Venue:**

This Contract shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue shall be in Nevada County, California.

**25. Compliance with Applicable Laws:**

The Contractor shall comply with any and all federal, state and local laws, codes, ordinances, rules and regulations which relate to, concern, or affect the Services to be provided by this Contract.

**26. Notices:**

This Contract shall be managed and administered on County's behalf by the department and the person set forth at §26, page one (1) of this Contract, and all invoices shall be submitted to and approved by that Department. In addition to personal service, all notices may be given to County and to Contractor by first class mail addressed as set forth at said §26 Said notices shall be deemed received the fifth (5th) day following the date of mailing or the earlier date of personal service, as the case may be.

**27. Authority:**


All individuals executing this Contract on behalf of Contractor represent and warrant that they are authorized to execute and deliver this Contract on behalf of Contractor.

IN WITNESS WHEREOF, the parties have executed this Contract effective on the Beginning Date, above.


CONTRACTOR:

  
\_\_\_\_\_  
William B. Light  
Vice President, Administration

Dated: 2-21-19

  
\_\_\_\_\_  
Approved by County Counsel

COUNTY OF NEVADA:

  
\_\_\_\_\_  
Honorable Richard Anderson  
Chair, Board of Supervisors

Dated: 2/26/2019

Attest:   
\_\_\_\_\_  
Julie Patterson Hunter  
Clerk of the Board





EXHIBIT "A"

SCHEDULE OF SERVICES

AVFUEL CORPORATION  
FIXED BASE OPERATOR  
AVIATION FUEL SUPPLY AGREEMENT

SUMMARY

This Agreement is between Avfuel Corporation and its affiliates and subsidiaries all of which have principal offices at 47 West Ellsworth Road, Ann Arbor, MI 48108 USA, hereinafter referred to, individually or collectively as "Avfuel", and **County of Nevada** having its principal office at (Street address only) **950 Maidu Ave., Nevada City, CA 95959**, hereinafter called "Customer", collectively called "the Parties", and is effective on the Effective Date or, if no Effective Date is specified then on the Reference Date noted above.

**THIS IS AN INTEGRATED AGREEMENT CONSISTING OF SEVERAL PARTS, ALL OF WHICH SHALL BE READ TOGETHER AND INTERPRETED AS ONE AGREEMENT.** The parts shall include this Summary, the Special Terms and Conditions, and the General Terms and Conditions. In the event of any inconsistencies between the Special Terms and Conditions and the General Terms and Conditions, the Special Terms and Conditions shall govern. Avfuel offers other Programs that it believes are of benefit to Customer. Customer chooses to participate in those Programs that are checked below and agrees that the applicable provisions of the Special and General Terms and Conditions govern those Programs. Additions or deletions to this agreement are governed by the Changes Provision set forth in Section 19 of the General Terms and Conditions. If customer should avail itself of any of the Programs not checked below then Customer specifically agrees to be bound by the Special and General Terms and Conditions that govern those Programs.

Applicable Certificates of Insurance are attached hereto, Insurance Company Name \_\_\_\_\_

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> Customer Credit Program                    | <input type="checkbox"/> Addendums                                      |
| <input checked="" type="checkbox"/> Brand Program                              | <input type="checkbox"/> AVTRIP Program                                 |
| <input checked="" type="checkbox"/> Credit and Charge Cards Acceptance Program | <input type="checkbox"/> Contract Fuel Dealer Program                   |
| <input type="checkbox"/> Equipment Lease Agreement                             | <input type="checkbox"/> Avsurance Primary Commercial Insurance Program |

**CUSTOMER FEIN: 94-6000526**      **TYPE OF BUSINESS: Local Government**  
(i.e. C-corp, S-corp, Partnership, LLC, Sole Prop, or other)

**STATE ID NUMBER:**      **STATE OF INCORPORATION: CA**



for the supply of 100% of the requirements of the Supplemental FBO for aviation fuel. Customer represents and warrants that all products and services purchased hereunder will be for commercial purposes and Avfuel has relied on this representation in entering into this Agreement.

2. **TERM:** The initial term of this Agreement is five years six months beginning on the Effective Date specified in the Summary. After completion of the initial term of the contract including any extensions County and Contractor may renegotiate the contract terms and conditions.

3. **PRICE AND PAYMENT:**

3.1 **FUEL PRICING**

**Jet A:** The formula for avgas is the weekly average of Platt's Los Angeles Jet Mean plus a differential of \$.11312 per gallon. This differential is a rack price and includes freight. The Platt's average price will be calculated each Monday (or Tuesday when Monday is a holiday) for the previous week (Monday-Friday-published trading days only) and will be effective for the following Tuesday through Monday period.

**Avgas 100LL:** The formula for avgas is the weekly average of Platt's Los Angeles Premium Unleaded plus a differential of \$1.06925 per gallon. This differential is a rack price and includes freight. The Platt's average price will be calculated each Monday (or Tuesday when Monday is a holiday) for the previous week (Monday-Friday-published trading days only) and will be effective for the following Tuesday through Monday period.

Please note that all the above confidential fuel prices include freight, are exclusive freight surcharges and any federal, state or local taxes, into-wing charges, fuel or any other surcharges or fees. If any documented surcharges are imposed upon Avfuel, Avfuel reserves the right to assess surcharges to customer.

The price formula is valid when fuel is delivered from the primary supply terminal. If fuel is delivered from an alternate supply terminal additional charges may be applicable. In the event that there is a change in Avfuel's costs for supplying the above products Avfuel reserves the right to amend any component of the aforementioned formula. In such case, Avfuel will notify customer in writing of the changes which will take effect as of the date in the notification but before any increased charges begin to accrue. Customer reserves the right to decline product/services at any increased rate pursuant to this section. Failure to notify Customer of increased rates prior to the accrual of amounts owed at those increased rates is grounds for Customer to pay for product and services at the reduced price formula. Declination of Customer to pay higher rates is not considered a breach of this agreement.

Prices shall be F.O.B. the Customer's facilities at the Airports (each a "Delivery Address") and shall be exclusive of all taxes, fees, surcharges and other charges.

3.2 Unless otherwise agreed in writing or otherwise required by the state law where the Product is 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.

3.3 Unless otherwise agreed in writing by the Parties, Customer agrees to pay in advance by bank wire transfer for all Products purchased hereunder. Failure to pay in advance shall be construed as a credit transaction and shall be subject to the Terms and Conditions of the Customer Credit Program set forth below.

4. **TAXES AND OTHER CHARGES:**

- 4.1. 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 Customer, excepting Taxes which are imposed upon Avfuel based upon its net income or revenues.
- 4.2. 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 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 advise Customer of additional Taxes payable with respect to the Products covered by that invoice, then Customer shall promptly pay such additional Taxes.
- 4.3. 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.

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 of a rejection of the claimed exemption for the Products or Customer.

**5. DELIVERY:**

Deliveries shall be made to the Delivery Address(es) listed in the Special Terms And Conditions. 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 in writing, 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.

- 5.1 Delivery shall be into tanks designated by Customer. Customer shall specifically designate and gauge the available capacity of the tanks into which the Product shall be unloaded, and shall bear all responsibility for all unloading operations including if such designation or gauge of available capacity results in spillage or contamination of the Product. 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 the placement of hoses into the proper storage tanks 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. Contractor shall bear all responsibility of spillage or contamination of the Product before it leaves the end of any properly operating hose or as a result of Avfuel's or its Shipping Agent's improperly operating hose. 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.
- 5.2 Any claim by Customer of any discrepancy in the quantity of the Product delivered shall be effective only if made by written Notice delivered to Avfuel within seventy-two (72) 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.

**6. FORCE MAJEURE:** Except as provided below, neither Party shall be responsible for any failure to comply with the terms of this Agreement due to causes beyond its reasonable control for the period the effects of such causes continue. These causes shall include but shall not be restricted to: fire, storm, flood, earthquake, explosion, accident, acts of any local, state or federal authority or agency or of a public enemy, war, rebellion, terrorism, insurrection, sabotage, epidemic, quarantine restrictions, labor disputes, transportation embargoes or delays, acts of God and unavailability of the Product. For purposes of this Agreement, 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 two (2) days of the specific time requested by Customer. In that event, and only to the extent of such unavailability, the Parties hereto shall be relieved of their obligations under the applicable provisions of this Agreement. 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 shall not apply to the failure of a Party to pay any monetary amounts when due under this Agreement.

**7. LIMITED WARRANTY:**

7.1 Avfuel warrants that all Products delivered pursuant to this Agreement 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.

7.2 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.

7.3 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. If it is determined that the Product is non-conforming, Avfuel's sole obligation shall be either (1) replacement of the non-conforming Product with conforming Product, or (2) 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. TIME IS OF THE ESSENCE AND ANY FAILURE TO FOLLOW THE ABOVE PROCEDURE SHALL VOID THE LIMITED WARRANTY.

**8. FUEL ISLAND UPGRADE**

Avfuel will provide a QT M4000 upgrade for the self-serve equipment at no charge. On going maintenance of the software for the point of sale at the Fuel Island is provided by QT Pod. A separate software maintenance agreement will be established between the County and QT Pod. AV Fuel is not responsible for the maintenance of the QT Pod software.

**9. TRAINING**

Avfuel Rampside Training Program is offered at no charge for the length of the contract.

Training to include but not limited to the following:

- comprehensive QA programs and experienced staff reflect our ongoing dedication to the critical issues of fuel quality and safe handling.

- Annual fueling operation inspections and training (conducted by AV Fuel's team of experts and through line training videos) are available upon mutually acceptable schedules to help you provide quality fuel to your customers.
- Additional onsite fuel handling training is available as mutually agreed upon.
- Daily operation and inspection forms to assist you with record keeping can be provided.
- Avfuel provides regional Quality Assurance and Fire Safety Seminars (14 CFR Part 139 Approved). These regional seminars are provided at no cost, and held throughout the country three to four times every year. Transportation and lodging are the customer's responsibility.
- The online Avfuel Rampside Training program is available for Avfuel FBOs, consisting of 18 different fuel handling and safety topics. This is part of the overall online Avfuel Training System, which also includes customer service training.
- Avfuel provides a Quality Assurance Hotline, available 24/7/365 for information and assistance on refueler equipment, fuel quality, contamination, fuel spills, etc.
- All Avfuel QA materials and training programs are up to date with industry standards.

## 10. AVFUEL HUB SOFTWARE

Avfuel's automated charge card processing and verification system ensures flexibility and efficiency in processing card activity while helping control your credit exposure. Bi-weekly activity reports are designed to assist dealers with account reconciliation, and our EFT draft capture/charge card deposit program helps streamline operations and eliminate paperwork.

Avfuel customers can look at remittance summaries, batch and invoice details, request account changes, and receive customer support information online. The site is password protected; Avfuel FBOs determine which staff members can access this information. Avfuel will waive processing fees for jet fuel for CALFIRE and USFS through the Avfuel Contract Fuel Program.

Avfuel does not charge a per-transaction or monthly statement fee for charge-card processing. The information in the Avfuel Hub is downloadable into various accounting programs. Credit card monies are remitted to FBO twice per week.

There are no flat fees and no fee for the Avfuel Hub.  
Training for the AV Hub is provided at no charge.

## 11. COMPLIANCE WITH LAWS:

**11.1** Each Party shall, at all times and in all respects, comply with all federal, state, county or municipal laws, ordinances, rules and regulations governing the performance of its obligations under this Agreement, including, but not limited to its actions in the purchase, storage, handling, use and sale 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 Agreement. Each Party reserves the right to terminate those portions of this Agreement governing the purchase of a Product if the other Party violates the provisions of this subsection with respect to that Product. In such event, the remaining provisions of this Agreement shall continue in full force and effect.

**11.2** 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 use, sale and distribution of the Products that are the subject of this Agreement.

**12. 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.

**13. : ASSIGNMENT:** Customer shall not assign its rights or delegate its obligations under this Agreement, 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 this Agreement (each a "Notice") shall be in writing. Notices by facsimile or email transmission shall be deemed "delivered" on the date of confirmed transmission, without error, to the fax number or email address designated in the Summary. 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. PROGRAM PARTICIPATION:**

**15.1** The provisions of these General Terms And Conditions will apply to the CUSTOMER CREDIT PROGRAM, BRANDED PROGRAM, AND CREDIT CARD PROGRAM that are described in the subparts below (each a "Program") except to the extent these provisions are inconsistent with the provisions in the subpart describing that Program..

**15.2** If the Customer participates in any Program, whether by formally electing to participate in that Program by selection in the Summary or by informally electing to participate in that Program by taking part in the benefits of that Program, the Customer will be bound by and subject to the provisions in the subpart relating to that Program, as supplemented by the provisions of these General Terms And Conditions.

**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 this Agreement shall exclusively be the courts of the state of California sitting in Nevada County, and any applicable California appellate court. This Agreement shall be construed as having been made and entered into in the State of California. Each Party submits and consents to personal jurisdiction in Nevada County, California, 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:** This Agreement, and all other matters arising from or relating to this Agreement, are exclusively governed by, and exclusively construed in accordance with, the laws of the State of California, 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 this Agreement 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. ENTIRE AGREEMENT/AMENDMENTS:** This Agreement, including all of its parts, sets forth the entire agreement between Avfuel and Customer with respect to the subject matter hereof and there are no other terms or conditions, oral or written, express or implied, relating to or otherwise affecting such subject matter. No term or condition of the Summary or Special Terms And Conditions shall be changed, supplemented, cancelled or waived unless in writing and signed by both Avfuel and Customer.

**CUSTOMER CREDIT PROGRAM:**

IN THE EVENT THAT AVFUEL CHOOSES TO DELIVER GOODS OR SERVICES THAT HAVE NOT BEEN PAID FOR IN FULL BY WIRE TRANSFER PRIOR TO THE TIME OF THAT DELIVERY, AVFUEL SHALL BE CONSTRUED AS HAVING EXTENDED CREDIT TO CUSTOMER AND THE FOLLOWING TERMS AND CONDITIONS SHALL APPLY.

1. Credit terms may not be used during any period in which the Customer is in breach of its obligations under this Agreement. In addition to the provisions of Section 11 of the General Terms And Conditions, for the specific purposes of this

Customer Credit Program, the Customer will be in breach if (a) any amount charged to the Customer's account is not paid in accordance with the agreed upon payment terms; (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 Special Terms And Conditions of this Agreement. No purchase may be made which would cause the total amount owed under this Agreement to exceed that credit limit.

2. Upon termination of this Agreement, 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 the terms of this Agreement shall pertain to those charges.

3. 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.

4. Avfuel shall invoice Customer for all Products delivered to Customer or to Customer's designees. Invoices shall include the selling price of the Products delivered, taxes, duties, and any other charges as separate line items. Each invoices will be payable in full on or before that due date specified in that invoice.

5. 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.

6. 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.

7. 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 the other terms of this Agreement. 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.

8. In the event that any invoice is not paid in full by the due date stated therein, the unpaid amount of the invoice shall bear interest in accordance with section 926.10 of the California Government Code, Nevada County will pay interest at the rate of 6% per annum on invoices which are unpaid 61 or more days beyond the "beginning date" as defined in Exhibit B. Notwithstanding anything in this Agreement 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.

9. If, at any time during the term of this Agreement, 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 shipment of fuel and shipment may be withheld until such payment or security is received.

10. For the purpose of securing a payment of all indebtedness of Customer to Avfuel from time to time outstanding (including, without limitation, any amounts due under this Agreement or any other agreement or instrument between Avfuel and the Customer) grants to Avfuel a purchase money security interest in and to all of Customer's inventory of the Products purchased from Avfuel, and all accounts, contract rights and other proceeds from such inventory, whether now owned or hereafter acquired. Customer warrants that the purchase money security interest granted herein is and shall remain superior to any other security interests granted by Customer to any other entity. For so long as this Agreement is in effect, all of Customer's inventory of aviation fuels will be presumed to be Products purchased pursuant to the Agreement and subject to the purchase money security interest granted by this Agreement. Customer hereby authorizes Avfuel to sign and record all financing statements and other instruments which Avfuel may reasonably require in order to create, perfect and continue in force said security interest and first priority lien. Customer authorizes Avfuel to file a true copy of this Agreement in lieu of any financial statement. The rights and obligations of Avfuel and the Customer under and with respect to the security interest and first priority lien created by this Section shall be interpreted in accordance with the Uniform Commercial Code in effect in the state of the Billing Address of the Customer as stated in the Summary.

11. Avfuel reserves the unilateral right to amend, suspend, or terminate the Customer Credit Program at any time effective upon written notice to the Customer. Customer may withdraw from this Program upon sixty (60) days Notice to Avfuel. See Section 14 of the General Terms and Conditions regarding Notices. Termination of Customer's participation in this Program shall not be construed as terminating the Agreement or Customer's participation in another Program.

**BRAND PROGRAM:**

IF CUSTOMER HAS ELECTED TO PARTICIPATE IN AVFUEL'S BRAND PROGRAM, THE FOLLOWING WILL APPLY.

1. Customer has been invited and has elected to participate in Avfuel's Brand Program. Accordingly, Avfuel hereby licenses Customer as a dealer ("Branded Dealer") to use Avfuel's Brand Names and Trademarks subject to the provisions set forth herein. All trade names, trademarks, service marks, logos and other commercial symbols that Avfuel either owns or has the right to sub-license (the "Intellectual Property") shall be and remain the property of Avfuel. Further all signs, decals, graphic materials and other tangible property supplied by Avfuel which bear or are imprinted with any of the Intellectual Property or are used to imprint or display the same (the "Branded Property") and all replacements thereof shall be and remain the property of Avfuel. Any use of the Intellectual Property or the Branded Property by the Customer otherwise than as expressly authorized by this Agreement is hereby expressly prohibited. Upon termination of Customer's participation in the Brand Program Customer shall, at its expense, de-install and return to Avfuel all salvageable signage and return or destroy all other items that identify Customer as a branded Avfuel dealer.

2. Avfuel agrees to supply to Customer, for Customer's use and possession during the term of this Agreement such signs, decals, credit card imprinters and other graphic materials as Avfuel deems necessary in order to identify Customer as an Avfuel Branded Dealer. Unless otherwise agreed in writing, Avfuel will bear all costs of such materials. Customer agrees to honor all Avfuel charge cards, subject to the provisions of the Credit and Charge Card Acceptance Program set forth below, during Customer's

participation in Avfuel's Brand Program.

3. Customer shall be responsible for obtaining all necessary permits and for installation of all Branded Property including (without limitation) all electrical and other connections, and shall make sure that all installations shall comply with all brand specifications and with all applicable state and local codes, ordinances and governmental regulations (if any). Unless otherwise agreed in writing, the Customer will bear all costs of installation. No signage shall be installed so as to become a fixture upon real property. The use of color schemes and Intellectual Property painted on facilities and equipment owned by Customer or others and used in the conduct of Customer's business, shall comply with particular and displayed specifications. Customer shall be responsible for maintenance and upkeep of Branded Property and Paint- ons, and agrees to keep and maintain the same at all times in a good, clean, safe, operative and first class condition, neatly painted and displayed. If any of such installation or maintenance is performed by Avfuel, Customer agrees to remit upon demand all costs thereof, including (without limitation) all expenditures for labor, materials and the like. If any Branded Property is damaged, lost or destroyed while in Customer's use, possession or control, or if Customer shall deliver any of such property to anyone not herein expressly authorized to use or possess it, Customer agrees to repair, recover or replace such property forthwith, at Customer's expense.

4. Customer shall keep all Branded Property insured at all times against loss, theft, fire or physical damage, up to the full replacement cost thereof, designating Avfuel as the loss payee. The Customer shall pay when due all personal property taxes and assessments assessed against the Branded Property and shall neither suffer nor permit any lien or encumbrance or any attachment against any of such Branded Property.

5. Customer agrees that it will not use or display any Branded Property or Intellectual Property: (a) in a manner which causes or is calculated to cause confusion among patrons of Customer or the general public as to the type, characteristics, quality, manufacture or sponsorship of any fuel or other product which Customer offers for sale; (b) for the purpose of selling or promoting the sale of aviation fuel other than fuels supplied by Avfuel; or (c) for the purpose of selling or offering for sale any product which has been diluted or adulterated, whether intentionally or not. Customer further agrees that it will at all times maintain its facilities and conduct its operations in compliance with those standards and procedures established from time to time by Avfuel and applicable to aviation fixed base operators displaying any of the Intellectual Property. Such standards and procedures may include (without limitation) image quality standards for the brand displayed, quality control and refueling procedures for products bearing such brand, and standards for services offered and facilities utilized by Customer in conjunction with such products. Avfuel may, but shall be under no obligation to conduct periodic tests and inspections as it may deem appropriate to evaluate compliance with this Agreement. Copies of all test and inspection reports shall be given to Customer. It is expressly understood that the purpose of any such tests or inspections is to assist Customer in complying with the standards set for a Branded Dealer. By performing such tests or inspections Avfuel assumes no responsibility for Customer's failure to comply with the Standards or for safety hazards, latent or patent, created or maintained by Customer. If Avfuel determines, in its sole discretion, that Customer is or has violated this provision, then Avfuel may suspend or terminate Customer's right to use Avfuel's Brands and or Trademarks.

6. Avfuel has invited the Customer to participate as a Branded Dealer on the expectation and condition that (a) the Customer's deliveries of aviation fuel at the Delivery Addresses will be limited to deliveries to end users pursuant to direct sales by the Customer to those end users and deliveries to purchasers listed as Contract Fuel Customers (a "CFC") to facilitate direct sales by Avfuel to those CFCs pursuant to Avfuel's Contract Fuel Program (the "CFD Program"), (b) the Customer will make deliveries of aviation fuel at the Delivery Addresses to purchasers listed as CFCs only pursuant to the CFD Program and will not make direct sales to those CFCs and (c) except for sales pursuant to the CFD Program to purchasers listed as CFCs for brokered resale by those CFCs to end users, the Customer will not make any deliveries of aviation fuel at the Delivery Addresses pursuant to brokered sales (i.e. sales to end users in which a third party receives a brokerage margin or commission or other fee from the Customer or the end user or sales to third parties who resell the fuel to end users). The Customer acknowledges that these conditions are necessary to preserve Avfuel's continuing investment in developing and maintaining Avfuel's Brand Program and that Customer's failure to comply with these conditions will result in Avfuel's exercise of the right pursuant to Section 7 to discontinue the Customer's participation as

a Branded Dealer.

7. Avfuel reserves the unilateral right to amend, suspend, or terminate the Brand Program at any time effective upon written notice to the Customer. Customer may withdraw from this Program upon sixty (60) days Notice to Avfuel. See Section 14 of the General Terms and Conditions regarding Notices. Termination of Customer's participation in this Program shall not be construed as terminating the Agreement or Customer's participation in another Program.

**AVTRIP PROGRAM:**

IF CUSTOMER HAS ELECTED TO PARTICIPATE IN AVFUEL'S AVTRIP PROGRAM, THE FOLLOWING WILL APPLY.

1. Customer has been invited and has elected to participate in Avfuel's AVTRIP Program a marketing incentive program intended to reward pilots who choose to purchase fuel and services from participating Avfuel dealers.

2. Customer will:

2.1. Use its best efforts to enroll pilots in the AVTRIP Program;

2.2. Award all participating pilots two AVTRIP Points for each U.S. gallon of fuel purchased from Customer and, at Customer's discretion, a minimum of one point for each U.S. dollar, or part thereof, spent by a participating pilot for parts and services at Customer's facilities;

2.3. Pay to Avfuel, by deduction from amounts due to Customer or in cash if no amounts are due Customer, \$.01 for each AVTRIP point awarded;

2.4. Maintain complete records of all points earned by participating pilots;

2.5. Train its personnel in the operation of the AVTRIP Program, and prominently post written materials relating to AVTRIP in and around its facilities in order to encourage pilot participation in the program; and

2.6. Promptly send all enrollments to Avfuel so that the enrollee can be added to the list of AVTRIP participants. Not less frequently than every two weeks, Customer will send Avfuel copies of all records pertaining to points earned by pilots that have not been previously reported via POS transmission, and remit to Avfuel all sums due hereunder.

3. Avfuel will:

3.1. Act as the administrator of the AVTRIP Program; and

3.2. Include the AVTRIP Program in its local, national and international marketing and advertising efforts as it deems appropriate to encourage pilot participation in the AVTRIP Program.

4. The price charged to any pilot for fuel, parts or service shall not be based on whether a pilot participates in the AVTRIP Program.

5. Avfuel reserves the unilateral right to amend, suspend, or terminate the AVTRIP Program at any time effective upon written notice to the Customer. Avfuel also reserves the right to terminate any individual's participation at any time for misuse of the AVTRIP card, violation of the rules of the program, or inactivity for a period of twelve (12) consecutive months. Customer may withdraw from this Program upon ninety (90) days Notice to Avfuel. See Section 14 of the General Terms and Conditions regarding Notices. Termination of Customer's participation in this Program shall not be construed as terminating the

Agreement or Customer's participation in any other program.

**CREDIT AND CHARGE CARD ACCEPTANCE PROGRAM:**

IF CUSTOMER HAS ELECTED TO PARTICIPATE IN AVFUEL'S CREDIT AND CHARGE CARD ACCEPTANCE PROGRAM, THE FOLLOWING WILL APPLY.

1. Customer has been invited and has elected to participate in Avfuel's Credit and Charge Card Acceptance Program (the "Charge Card Acceptance Program") Accordingly, Customer may honor any valid credit or charge card listed as accepted in the most current Acceptable Card List ("ACL") issued by Avfuel and published in its website at Avfuel.com (the "Accepted Cards") for the purchase by the party to which that card is issued (the "Cardholder") of products and services if the purchase has been specifically approved by Avfuel.

2. Customer shall prepare a voucher for each transaction (a "Card Transaction") with an Accepted Card (a "Voucher") and shall promptly submit that Voucher to Avfuel. The term "Voucher" means an electronically prepared credit card slip or other written record of a credit sale in form acceptable to Avfuel that has been fully completed by Customer and for which Customer is retaining a copy signed a person authorized to use that Accepted Card (an "Authorized User"). Each Voucher must be submitted electronically by means of an approved point of sale machine or point of sale software system (a "POS Device") in accordance with the instructions contained in the then current edition of Avfuel's Manual that can be viewed or downloaded at Avfuel's website at Avfuel.com. In all Card Transactions, the Customer is responsible for making sure that the card presented is an Accepted Card and is not expired and that the person signing the Voucher is an Authorized User. In Card Transactions where the Voucher is first prepared manually, the Customer is also responsible to make sure that the Voucher is complete and legible. If imprinted and hand written amounts on a Voucher do not agree the lesser amount shall be presumed to be correct. The Customer shall make a manual imprint of all cards electronically processed but requiring that the card number be entered manually, in order to prove that the card was present at the time of sale. "Promptly" means batches of Vouchers should be submitted (settled) at least once per day and by 11:00 PM Central Time but in no case any less frequently than once every 72 hours. Customer must keep copies of signed Vouchers and summaries for a period of seven (7) years and supply Avfuel with duplicates if requested. Manual Card Transactions are for pre-arranged emergency processing only and are not accepted under most circumstances. Higher discount rates apply for manual Card Transactions and electronic Card Transactions not settled and received daily by 11 pm Central Time.

3. Upon receipt from the Customer of a properly prepared and processed Vouchers together with any necessary summaries thereof on forms prescribed by Avfuel at its website at Avfuel.com, Avfuel shall, on its normal schedule, remit to Customer or, as Avfuel may elect, credit Customer's fuel purchase account with Avfuel, in an amount equal to the total face amount of all such Vouchers less such discounts as applicable according to Avfuel's then current Accounts Receivable Discounts Schedule ("ARDS") issued to Customer by Avfuel and subject to adjustments and chargebacks as provided in Section 7 below and less any fees for AVTRIP point awards. In addition to any lien rights which Avfuel might otherwise possess as a result of services provided to the Cardholder, upon Customer's receipt of the payment or credit from Avfuel for the Vouchers generated from the Customer's sales to that Cardholder, the Customer automatically and irrevocably transfers to Avfuel any lien rights that Customer has or may have with respect to any property owned by the Cardholder arising from the Card Transaction(s) for which those Vouchers were issued. Avfuel's ARDS is subject to change upon five (5) days prior written Notice.

4. Customer acknowledges merchant processing instructions and rules and regulations established by the issuers of the Accepted Cards (the "Issuers") in the Issuers' websites that are included in or referenced in Avfuel's website at Avfuel.com and agrees to abide by these instructions, rules and regulations, as updated from time to time by the Issuers. Furthermore Customer agrees to comply with all Data Security Standards and Data Security Policies of the Issuers (the "PCI/DSOP Requirements") and certifies to Avfuel that it is and will continue to be compliant with those PCI/DSOP Requirements. Customer shall defend, indemnify and hold harmless Avfuel and its credit card processor from any claims based on Customer's non-compliance with Customer's commitments in this Section including but not limited to penalties, fines, and any costs incurred in responding to any action alleging such non-compliance. Customer understands that

failure to be fully compliant with the PCI/DSOP Requirements may result in loss of right to process Card Transaction under the Charge Card Acceptance Program.

5. Customer acknowledges receipt of, and agrees to observe, Avfuel's current instructions for recording and processing Card Transactions that are included in Avfuel's website at Avfuel.com. Avfuel reserves the right to amend any and all instructions in its website and to add new instructions to its website from time to time, and Customer agrees to be bound by all such amendments and new instructions. Avfuel also reserves the right to issue new or revised forms, POS Machines, software and imprinters from time to time, and to issue instructions regarding their use to be effective upon five (5) days prior written Notice.

6. Customer shall be solely liable and responsible for charging and subsequent remittance of all taxes to the proper authorities for all Card Transaction regardless of whether charged to purchaser. Avfuel does not assume any responsibility for the setup, tax rate, reporting or payment of any tax applicable to sales or other transactions resulting in credit card accounts receivable and Customer shall defend, indemnify and hold harmless Avfuel from any such claims. CUSTOMER IS SOLELY RESPONSIBLE FOR KNOWING THE TAXES THAT MUST BE CHARGED FOR EACH CARD TRANSACTION AND FOR PROPER SETUP FOR TAXES IN ANY ELECTRONIC SYSTEM AND THE MAINTENANCE OF THAT ELECTRONIC SYSTEM.

7. Without limiting the generality of other provisions of this Agreement or in Avfuel's website at Avfuel.com pertaining to charge backs, it is specifically understood and agreed that Avfuel may decline to accept or, if accepted, may subsequently charge back to Customer any Voucher:

7.1. Where any of the required information is omitted or illegible;

7.2. That is imprinted or processed with an expired credit card;

7.3. Covering a purchase not authorized by the Cardholder or involving fraud or any misuse of a credit card by the purchaser with or without Customer's knowledge;

7.4. Covering a transaction that has not been authorized by Avfuel or does not carry a valid authorization code;

7.5. Covering a transaction or series of related transactions (constituting in the reasonable opinion of Avfuel a single sale transaction) the aggregate face amount of that exceeds any of the single sale limitations to which the parties hereto may agree;

7.6. That becomes the subject of a dispute between Customer and Cardholder, including but not limited to cases where the Customer did not conspicuously post at its facility and print on a work order signed by the Cardholder the Customer's return policy for goods and services.

7.7. Where the Authorized User has not received a copy of the Voucher;

7.8. For which Customer has received or will receive any payment or reimbursement from any person other than Avfuel;

7.9. Where Customer has granted any right of ownership or security interest to any person other than Avfuel unless the invoice is accompanied by a written waiver of such interest;

7.10. Presented by Customer to Avfuel more than ten (10) days after the transaction date;

7.11. If the Card Transaction occurred or was settled after the date of expiration or termination of this Agreement;

7.12. Created by any person other than Customer, or in any transaction other than a Card Transaction in which Customer has sold merchandise or services to a purchaser presenting an Accepted Card for use in

payment for that Card Transaction;

7.13. That are charged back to Avfuel by an Issuer for any reason at all; or

7.14. That in any other manner does not conform to this Agreement or with Avfuel's or Issuer's instructions for recording and processing Card Transactions in its website at Avfuel.com.

8. In the event that a charge back exceeds the credit balance in Customer's fuel purchase account then carried by Avfuel, Customer agrees to pay such excess within three (3) days after notice that such excess is due. Upon reimbursement, title to the Voucher(s) that include such excess and the indebtedness represented thereby (to the extent of such excess) shall pass to Customer. If any funds come into Avfuel's possession for any voucher that has previously been charged back to Customer, Avfuel will promptly credit the full amount thereof to Customer's account. Avfuel's charge back rights and rights of recourse against Customer shall survive the termination of this Agreement.

9. Cash advances may not be charged on any Accepted Card and charges for fuel in Vouchers shall only include charges for fuels from stocks delivered by and purchased from Avfuel.

10. From time to time, Avfuel will send Customer a Credit Card Remittance Summary for Customer's information showing in such detail as Avfuel may deem appropriate the Card Transactions and amounts that have been credited to Customer's account or paid to Customer during the period since the last report. The failure of Avfuel to furnish a Summary shall not relieve Customer of any obligations under the Charge Card Acceptance Program. Customer agrees to review all such Summaries promptly after receipt. In any event, Customer shall be solely responsible for making sure that it has received proper payment for each Card Transaction submitted. Customer shall have forty-five (45) days from the date of a Card Transaction to provide Avfuel Notice that the Card Transaction has not been properly accounted for or that payment has not been received. If no such Notice is given, such Card Transaction shall be conclusively presumed to have been settled and closed.

11. Avfuel reserves the unilateral right to amend, suspend, or terminate Charge Card Acceptance Program at any time effective upon written notice to the Customer. Customer may withdraw from the Charge Card Acceptance Program upon 60 days Notice to Avfuel. Termination of Customer's participation in the Charge Card Acceptance Program shall not be construed as terminating the Agreement or Customer's participation in any other Program.

12. This Charge Card Acceptance Program is further governed by the Avfuel Corporation AFSA General Terms and Conditions, latest edition, as updated from time to time and published at Avfuel.com. In the case of conflicts, the terms of this Charge Card Acceptance Program shall prevail.

#### **CONTRACT FUEL DEALER PROGRAM:**

IF CUSTOMER HAS ELECTED TO PARTICIPATE IN AVFUEL'S CONTRACT FUEL DEALER PROGRAM, THE FOLLOWING WILL APPLY.

1. Customer has been invited and has elected to participate in Avfuel's Contract Fuel Dealer Program (the "CFD Program"). Accordingly, Customer agrees to sell and deliver to clients who participate in Avfuel's Contract Fuel Program (the "CFCs" or a CFC" as the context may require) aviation fuel supplied by Avfuel and other products and services supplied by the Customer. A CFC is a person or entity that has executed a Contract Fuel User's Agreement with Avfuel or that is specifically authorized in writing, in accordance with authorization procedures established from time to time by Avfuel, and is included in a listing of purchasers eligible to purchase aviation fuel and other products and services under the CFD Program. The Customer will secure authorization from Avfuel before completing a sale to a CFC and the failure to obtain such authorization may result in Avfuel's dishonor of the invoice for that sale.

2. Subject to agreement between Customer and Avfuel, Products supplied hereunder shall be supplied from either Avfuel inventory on site or from Customer inventory. If, as a convenience to Customer, Avfuel maintains inventory at Customer's facility then Customer agrees to the following: (a) if Avfuel's inventory is

held separately in a segregated storage facility, Customer will withdraw fuel from that facility only to supply authorized CFCs and (b) if Avfuel's inventory is commingled with the inventory of the Customer (and, if applicable, third parties) in unsegregated facilities, Customer will not use or permit others to use Avfuel's inventory to supply parties other than authorized CFCs and to that end Customer shall not at any time make or permit withdrawals from that facility that would reduce the fuel in such facilities below the level of Avfuel's inventory (and, if applicable, the inventories of third parties). Customer shall measure Avfuel's inventory and reconcile that inventory on an ongoing basis. Reconciliation reports, in a form satisfactory to Avfuel, shall be delivered to Avfuel no later than the 5th day following the end of each month. If Avfuel's inventory is commingled in an unsegregated storage facility, gains and losses shall be allocated proportionally to the parties sharing the storage facility based on receipts of fuel during the month and losses shall be limited to no more than ¼% of total receipts for per annum. Book inventory shall be adjusted to coincide with actual inventory each month. Unless the Products are contaminated by an act or omission of Dealer, Avfuel will be liable if the Products do not conform to specifications. If the Products are supplied from the Customer's inventory, the Customer will be liable if the Products do not conform to specifications. Customer shall maintain Avfuel's inventory level in accordance with Avfuel's guidelines and shall specify when ordering fuel whether that fuel is for Customer's or Avfuel's inventory (which is subject to approval by Avfuel).

3. Under the CFD Program, all aviation fuel delivered by the Customer to a CFC will be deemed sold by Avfuel and will be at the prices and terms independently established between Avfuel and the CFC. If Avfuel maintains an inventory of aviation fuel at the Customer's facilities, then aviation fuel supplied by the Customer to CFCs will be drawn from Avfuel's inventory. If Avfuel does not maintain an inventory of aviation fuel at the Customer's facilities, then aviation fuel supplied to a CFC is drawn from the Customer's inventory and Avfuel will account for that aviation fuel by issuing a credit to the Customer equal to the Customer's cost for that aviation fuel, including applicable taxes, based upon the Customer's cost for the last load of aviation fuel purchased from Avfuel prior to the date of supply to the CFC.

4. The charges for all aviation fuel supplied to the CFC will be payable solely to Avfuel. Avfuel will be responsible for collecting and remitting any taxes imposed thereon by any local, state or federal taxing authority. Avfuel will invoice and collect those charges and taxes from the CFC. Avfuel, as the seller of all aviation fuel supplied to the CFC, will be the holder of and have the sole right to exercise all lien rights under applicable law on the aircraft into which that aviation fuel is supplied. In addition to any lien rights which Avfuel might possess as a result of services provided to a CFC, upon Customer's receipt of the credit from Avfuel for the vouchers generated from the Customer's deliveries of fuel to that CFC, the Customer automatically and irrevocably transfers to Avfuel any lien rights that Customer has or may have with respect to any equipment or other property owned by the CFC arising from such deliveries of fuel.

5. In all sales of aviation fuel drawn from Avfuel's inventory, title to that aviation fuel will be retained by Avfuel until the point in time that the aviation fuel enters into the aircraft of the CFC, at which point in time title will pass to the CFC. In all sales of aviation fuel drawn from Customer's inventory, title to that aviation fuel will be retained by the Customer until the point in time that the aviation fuel enters into the aircraft of the CFC, at which point in time title will pass instantaneously first to Avfuel and then to the CFC. The risk of loss or contamination of aviation fuel will be borne at each point in time by the party who or which holds title to that aviation fuel at that point in time. If, while Avfuel holds title, any aviation fuel is lost or contaminated as a result of the acts or omissions of the Customer, then the Customer will be liable to Avfuel for that loss or contamination.

6. The into-wing services provided by the Customer in delivering the aviation fuel to the CFC and any other services or products other than aviation fuel to the CFC for which a fee is charged will be deemed sold by the Customer to the CFC. The Customer's fees for into-wing services will be at a charge equal to the lowest charge imposed by the Customer to any other purchaser of aviation fuel at the FBO, less the discount that would be applicable to that charge under Avfuel's Credit and Charge Card Acceptance Program (in that Avfuel will incur the discount in collecting that charge from the CFC). All other services and products will be supplied at the Customer's normally established rates. Such other products may include, without limitation, lubricants, spare parts, food and other amenities. Such other services may include, without limitation, flowage fees, tie-down services, catering services and similar services that expedite deliveries and facilitate arrangements for the CFC. No cash advances will be permitted as "other products or services". The Customer will supply all such other products or services as an independent contractor to

the CFC and not as an agent or a subcontractor of Avfuel.

7. All other products and services that are supplied by Customer to CFCs 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 Customer's facilities are located. Customer will be solely liable if such other products and services do not conform to such standards, procedures or requirements.

8. The charges for all other products and services supplied by the Customer to the CFC will be payable solely to the Customer. The Customer will be responsible for collecting and remitting any taxes imposed thereon by any local, state or federal taxing authority. Customer may directly invoice and collect such charges from the CFC. Alternatively, at the Customer's option, Customer may assign to Avfuel for collection the account receivable from the CFC for other products and services supplied by the Customer (a "CFC Receivable"). If the Customer assigns a CFC Receivable to Avfuel, then Avfuel will issue a credit to the Customer's account for the amount of that CFC Receivable and Avfuel will thereafter invoice, collect and retain those charges from the CFC.

9. Any fees for any services supplied by the Customer in the delivery of aviation fuel to a CFC, including, without limitation any flowage fees or into-wing fees, will be earned by the Customer only after it has completed delivery of the entire load of aviation fuel into the aircraft of the CFC and title to that aviation fuel has passed to the CFC. Initial into-wing fees are established in the Special Terms and Conditions and, subject to the "most favored customer" provision in Paragraph 6, Customer may change those fees upon seven (7) days written Notice to Avfuel.

10. Customer will generate a written record (a "Ticket") of all aviation fuel supplied to a CFC at the Customer's facility. Each Ticket will include the following information: the CFC's name; the authorization number; pilot's name; aircraft registration number; flight or ID number provided by the CFC if applicable, transaction date(s); and type and quantity of fuel products provided, as measured in U.S. gallons. In addition, if the Customer assigns to Avfuel the CFC Receivable for other products and services supplied by the Customer to the CFC, the Customer will include in the Ticket the type and quantity of such other products or services and the charges payable by the CFC for such other products or services. Any charges for such other products or services must be separately stated and clearly identified as fees charged by the Customer that are separate from and independent of the amounts charged by Avfuel for aviation fuel. The pilot or other responsible representative of the CFC shall sign and be given a copy of the completed Ticket.

11. The Ticket (or all information required to be shown on the Ticket) for each sale to a CFC shall be delivered to Avfuel by POS Transmission or facsimile within twenty-four (24) hours following the completion of that sale. The original Tickets shall be kept on file by Customer for a period of five (5) years from the invoice date and will be sent to Avfuel upon request. Avfuel will from time to time provide Customer with instructions for processing these transactions and may provide the forms for doing so. Avfuel reserves the right to change these procedures upon seven (7) days written Notice to Customer.

12. The total amount due with respect to each Ticket shall be paid or credited to Customer's by Avfuel within ten (10) days following Avfuel's receipt of the Ticket.

13. Except as provided herein, all Tickets will be accepted by Avfuel without recourse. The exceptions are: a) Customer warrants the validity of all charges, and any charge that is disputed by the CFC, correctly or incorrectly, on grounds that the charge is invalid or inaccurate or that the aviation fuel, products or services supplied were unsatisfactory may be charged back to Customer at Avfuel's option; b) charges not previously authorized by Avfuel may be charged back to Customer at Avfuel's option; and c) any Ticket that is incomplete, illegible, or is otherwise not prepared in accordance with Avfuel's processing instructions may be charged back to Customer at Avfuel's option.

14. Avfuel has invited the Customer to participate as a CFD in the CFD Program on the expectation and condition that (a) the Customer's deliveries of aviation fuel at the Delivery Addresses will be limited to deliveries to end users of that fuel pursuant to direct sales by the Customer to those end users and deliveries to purchasers listed as CFCs to facilitate direct sales by Avfuel to those CFCs pursuant to the CFD Program, (b) the Customer will make deliveries of aviation fuel at the Delivery Addresses to purchasers



listed as CFCs only pursuant to the CFD Program and will not make direct sales to those CFCs and (c) except for sales pursuant to the CFD Program to purchasers listed as CFCs for brokered resale by those CFCs to end users, the Customer will not make any deliveries of aviation fuel at the Delivery Addresses pursuant to brokered sales (i.e. sales to end users in which a third party receives a brokerage margin or commission or other fee from the Customer or the end user or sales to third parties who resell the fuel to end users). The Customer acknowledges that these conditions are necessary to preserve Avfuel's continuing investment in developing and maintaining the network of participating fixed base operators and participating end users for the CFD Program and that Customer's failure to comply with these conditions will result in Avfuel's exercise of the right pursuant to Section 15 to discontinue the Customer's participation in the CFD Program.

15. Avfuel reserves the unilateral right to amend, suspend, or terminate the CFD Program at any time effective upon written notice to the Customer. Customer may withdraw from the CFD Program at any time upon 60 days Notice to Avfuel. See Section 14 of the General Terms and Conditions regarding Notices. Termination of Customer's participation in this Program shall not be construed as terminating the Agreement or Customer's participation in any other Program.

16. Avfuel will waive the processing fees for jet fuel for CALFIRE and USFS through the Avfuel Contract Fuel Program.

## EXHIBIT "B"

### SCHEDULE OF CHARGES AND PAYMENTS

**INVOICES AND PAYMENT TERMS.** Invoices are to be mailed to the County department specified on the resulting contract. All invoices must include the contract number. Failure to comply will result in delayed payments. The County will make payment on a Net 30-day basis unless a cash discount is allowed for payment within the time period specified by vendor. The payment term shall begin on the date the acceptance of services are authorized by the County, or on the date a correct invoice is received in the office specified in the order, whichever is later. Prompt payment discounts shall be considered earned if payment is postmarked or personally delivered within the prescribed term. For the purposes of this section, the beginning date described above shall be considered day zero for the purposes of counting days in the prescribed term. **LATE FEES:** In accordance with Section 926.10 of the California Government Code, Nevada County will pay interest at the rate of 6% per annum on invoices which are unpaid 61 or more days beyond the "beginning date" as defined above.

**Jet A:** The formula for avgas is the weekly average of Platt's Los Angeles Jet Mean plus a differential of \$.11312 per gallon. This differential is a rack price and includes freight. The Platt's average price will be calculated each Monday (or Tuesday when Monday is a holiday) for the previous week (Monday-Friday-published trading days only) and will be effective for the following Tuesday through Monday period.

**Avgas 100LL:** The formula for avgas is the weekly average of Platt's Los Angeles Premium Unleaded plus a differential of \$1.06925 per gallon. This differential is a rack price and includes freight. The Platt's average price will be calculated each Monday (or Tuesday when Monday is a holiday) for the previous week (Monday-Friday-published trading days only) and will be effective for the following Tuesday through Monday period.

Please note that all the above confidential fuel prices include freight, are exclusive freight surcharges and any federal, state or local taxes, into-wing charges, fuel or any other surcharges or fees. If any documented surcharges are imposed upon Avfuel, Avfuel reserves the right to assess surcharges to customer.

The price formula is valid when fuel is delivered from the primary supply terminal. If fuel is delivered from an alternate supply terminal additional charges may be applicable. In the event that there is a change in Avfuel's costs for supplying the above products Avfuel reserves the right to amend any component of the aforementioned formula. In such case, Avfuel will notify customer in writing of the changes which will take effect as of the date in the notification but before any increased charges begin to accrue. Customer reserves the right to decline product/services at any increased rate pursuant to this section. Failure to notify Customer of increased rates prior to the accrual of amounts owed at those increased rates is grounds for Customer to pay for product and services at the reduced price formula. Declination of Customer to pay higher rates is not considered a breach of this agreement.

Prices shall be F.O.B. the Customer's facilities at the Airports (each a "Delivery Address") and shall be exclusive of all taxes, fees, surcharges and other charges.

**EXHIBIT "C"**

**SCHEDULE OF CHANGES**

The parties agree to the following amendment to the contract:

1. Replace Paragraph 11 in its entirety with the following:

**11. Indemnity.**

EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, EACH PARTY (AS SUCH, THE "INDEMNIFYING PARTY") AGREES TO DEFEND INDEMNIFY AND TO HOLD HARMLESS THE OTHER PARTY AND THE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS OF THE OTHER PARTY (AS SUCH, 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 THIS AGREEMENT OR AS A RESULT OF ANY NEGLIGENCE, WILLFUL MISCONDUCT, OR ERROR OR OMISSION OF THE INDEMNIFYING PARTY OR OF ANY OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS OF THE INDEMNIFYING PARTY. WITHOUT LIMITING THE GENERALITY OF THE ABOVE PROVISIONS, THE OBLIGATION OF THE INDEMNIFYING PARTY UNDER THIS SECTION 11 SHALL INCLUDE ANY REASONABLE COSTS INCURRED BY THE INDEMNIFIED PARTIES IN ENFORCING THE OBLIGATION OF INDEMNITY UNDER THIS SECTION. EACH PARTY'S OBLIGATION TO INDEMNIFY SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT 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.

1. Replace Paragraph 20 in its entirety with the following:

**20. Breach and Termination:**

20.1 BREACH AND CURE PERIOD. Failure of a Party to comply with the provisions of this Agreement shall constitute a breach of the Agreement by the non-complying Party. Except as otherwise permitted under this Agreement, the non-breaching Party shall provide Notice of that breach to the other Party in the manner set forth in Section 26. The Notice shall specify the alleged breach and the period within which the breach must be cured which, except as otherwise permitted under this Agreement, shall be at 30 calendar days. The Party receiving such Notice shall respond thereto in writing within five (5) business days.

20.1.1 A material breach by Contractor that results in a material health or safety issue reasonably requiring immediate action, in addition to any other remedy available at law or otherwise, shall serve as a basis upon which County may elect to immediately suspend payments hereunder, suspend performance under this contract, or, if such material breach shall remain uncured five (5) days after delivery of written Notice to Contractor, terminate this contract **effective upon delivery of Notice**.

20.1.2 If the breach is of the County's obligation to make a payment to Contractor when due, then Contractor, in addition to all other rights hereunder, may suspend its performance under this Agreement forthwith. Contractor shall also have the right to offset any undisputed amount that Contractor then or thereafter owed to County.

20.2 TERMINATION. If a breach is not cured within the period specified in the Notice, the Party claiming breach, by further written Notice, at its election, may affirm this Agreement and initiate appropriate legal actions to require the other Party to remedy that breach or may immediately terminate this Agreement. In either instance, the Party claiming the breach may by appropriate legal proceedings seek and secure recovery of any damages resulting from that breach.

20.2.1 If Contractor violates any material ordinance, regulation or other law which applies to its performance herein and if such violation shall remain uncured five (5) days after delivery of written Notice to Contractor, County may terminate this Contract by giving **five (5) days Notice** to Contractor.

20.2.2 Either party may terminate this Contract for any reason, or without cause, by giving **thirty (30) calendar days Notice** to the other, which notice shall be sent by registered mail in conformity with the notice provisions in Section 26. In the event of termination, the Contractor shall be paid for services performed to the date of termination in accordance with the terms of this Contract. Contractor shall be excused for failure to perform services herein if such performance is prevented by acts of God, strikes, labor disputes or other forces over which the Contractor has no control.

20.2.3 County, upon giving **sixty (60) calendar days Notice** to Contractor, shall have the right to terminate its obligations under this Contract at the end of any fiscal year if the County or the State of California, as the case may be, does not appropriate funds sufficient to discharge County's obligations coming due under this contract.

20.3 If the Agreement is terminated in accordance with this Paragraph 20, Contractor or its agents or employees may, upon reasonable Notice to County, and during a mutually agreed-upon time and date, enter onto any facility of County for the purpose of repossessing any item of Equipment or any personal property of any description owned by Contractor, and County shall make reasonable efforts to assist Contractor in such repossession. Exercise of the foregoing remedies shall not constitute a waiver of any amount due by County hereunder or of any damages accruing by reason of the breach of any of the terms or conditions of this Agreement.

20.4 The Party claiming a breach may waive that breach by giving Notice to the other Party in the manner set forth in Section 26 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.

20.5 Except as set forth in Section 20.2, any dispute that arises under this Agreement, pursuant to Section 20.1 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 for at least 30 days while the process set forth herein runs 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.

20.6 The exercise of a Party's right to terminate the Agreement or to exercise any other remedy shall not be deemed an election of remedies and shall be without prejudice to the non-breaching Party's rights to exercise any other remedy afforded to it by this Agreement or by law or equity. In any action related to the enforcement or breach of this Agreement, the prevailing Party shall have the right to recover its costs actually incurred.