

EYES UP!

Legal Issues Relating to Drones in the Equine Industry

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INTRODUCTION

Beginning in late August 2016, the Federal Aviation Administration (FAA) authorized the operation of unmanned aerial vehicles (UAVs), otherwise known as unmanned aerial systems (UAS) or, simply, drones, under broad general criteria and opened a new chapter in the development of drone enterprises.¹ Basic registration and licensing requirements apply to individual aircraft and operators. As long as a certified operator flies his or her drone in compliance with the criteria set forth in FAAs regulations, no additional authorization or licensing is required.

The rules that went into effect on August 29 comprise the first of several phases of regulation to integrate remotely-piloted aircraft into the national airspace system (NAS), with the ultimate goal that manned and unmanned aircraft will share the nation's skies. Currently, only drones weighing under 55 pounds, including any payload, may be operated in civilian use. Over the next few years, FAA will be issuing rules governing the use of larger drones, including for freight and passenger use, and to extend the use of drones beyond existing regulatory limitations.

Drones are rapidly proving themselves essential tools, primarily for visual inspections, photography and videography, in industries as diverse as energy, public utilities, real estate marketing, cinematography, asset management, search and rescue, and surveillance. Agriculture has been among the most aggressive early adopters of drone technology, which has enabled rapid advances in efficiency in precision crop monitoring and planting through the use of drone-mounted moisture and nutrient sensors. Drones with RFID sensors can quickly and accurately maintain inventory in large warehouses or production yards. Drones enable the inspection,

¹ Despite earlier efforts by FAA to promote the use of the terms "UAV" or "UAS", "drone" has remained the prevalent descriptor. For most purposes, including for this discussion, the terms may be used interchangeably.

surveying or observation of large areas of land more quickly and in greater detail than can be accomplished on foot, in a vehicle, or from an airplane or helicopter.

The characteristics listed above make drones an important tool in managing equestrian properties, monitoring equine assets, and filming or photographing events. However, drone technology is rapidly developing and the technological and operational risks that remain to be resolved will influence the legal responses to using drones in connection with equine activities.

This paper discusses the current regulatory framework for commercial and recreational drone operations and means for accommodating or pursuing the use of drones in connection with equine-focused pursuits.

I. The Development of Civilian Uses of Drones

Remotely-piloted aircraft were initially developed for military purposes, beginning with the US Army's Kettering Bug, an experimental craft launched by catapult or controlled by radio and developed in 1918 for use in World War I. Although the technology proved effective, the war ended before the Army could deploy the devices.² In the years since, research on and development of remotely-piloted aircraft of all sizes has produced everything from micro-drones the size of a sparrow or smaller, to radio-controlled model airplane kits to full-sized aircraft designed for surveillance and military offensive use and piloted over distances of thousands of miles via GPS-based communications links.

The class of drones to which FAA's recent rules apply consists of those weighing less than 55 pounds, including any payload, known as small UAS (sUAS).³ sUAS are large enough to carry cameras and other kinds of sensing devices, and can even deliver light cargo, such as 7-Eleven's test-case delivery of Slurpees and a sandwich (it took 2 runs) by drone in Reno,

² <http://www.iwm.org.uk/history/a-brief-history-of-drones>.

³ FMRA Sec. 331(6); 14 C.F.R. § 107.3.

Nevada, last July.⁴ As drones see increasing service in commercial applications and for recreational use, we can expect to encounter them more frequently, until eventually such civilian use becomes routine.

II. UAV Regulation – Legislative Background and FAA Jurisdiction

A. Legislative Background

Congress enacted the FAA Modernization and Reform Act of 2012 (FMRA)⁵ and directed FAA to “develop a comprehensive plan to safely accelerate the integration of civil unmanned aircraft systems into the National Airspace System (NAS).”⁶ FMRA specified that the plan employ a phased approach to introducing drones into the NAS and that FAA (i) define the acceptable standards for operation and certification of civil unmanned aircraft systems; (ii) ensure that any civil unmanned aircraft system includes a sense and avoid capability; and (iii) establish standards and requirements for the operator and pilot of a civil unmanned aircraft system, including standards and requirements for registration and licensing.⁷ Although Congress established a deadline of September 30, 2015, for the completion of FAA’s integration plan,⁸ the technical demands involved and the large range of interested stakeholders delayed FAA’s rulemaking efforts.

The FAA published a notice of proposed rulemaking (NPRM) to govern the use of sUAS on February 23, 2015,⁹ and, after extensive public comment and review, issued its final

⁴ <http://fortune.com/2016/07/22/7-eleven-drone-flirtey-slurpee/>.

⁵ Pub. L. 112-95, 126 Stat. 11 (February 14, 2012).

⁶ FMRA Sec. 332(a)(1).

⁷ FMRA Sec. 332(a)(2).

⁸ FMRA Sec. 332(a)(3).

⁹ Operation and Certification of Small Unmanned Aircraft Systems, Docket FAA-2015-0150, 80 Fed. Reg. 9544 (Feb. 23, 2015) (to be codified at 14 C.F.R. pts. 21, 43, 45, 47, 61, 91, 101, 107, and 183).

rule on June 28, 2016, adding a new part to FAA’s regulations at 14 C.F.R. (Part 107),¹⁰ to establish the current framework for sUAS operation. In general, the Final Rule eliminates the detailed and time-consuming case-by-case review process by which FAA reviewed applications for sUAS operations between the passage of FMRA and publication of the Final Rule, and sets out straightforward parameters for sUAS use.

B. FAA Jurisdiction

FAA is the federal agency with broad responsibility to regulate the NAS to ensure the safety of persons and property in the air and on the ground, and to prevent collisions between aircraft and between aircraft and other objects.¹¹ FAA is also charged with ensuring the safe flight of civil aircraft in air commerce, which it accomplishes through regulations and the establishment of minimum standards for safe operations.¹²

FAA’s general airspace safety rule requires that “no person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.”¹³ This general requirement provides a blanket mechanism to allow FAA to impose sanctions for unsafe drone operations under its authority to regulate the NAS. Issues of federal preemption and the overlap of federal, state and local jurisdiction to prevent or provide relief for damages caused by unsafe drone operations are beyond the scope of this paper. However, existing legal mechanisms providing relief in tort, nuisance and trespass are sufficient to support actions under state law, in addition to any enforcement proceeding FAA may institute. State or local criminal penalties may also apply, depending on the context of drone-caused harms. Allegations of invasion of privacy arising from drone use are matters of state law; FAA has concentrated its efforts on the technical

¹⁰ Operation and Certification of Small Unmanned Aircraft Systems, 81 Fed. Reg. 42,063 (June 28, 2016) (codified at 14 C.F.R. pts. 21, 43, 61, 91, 101, 107, 119, 133 and 183).

¹¹ 49 U.S.C. § 40103.

¹² 49 U.S.C. § 44701(a).

¹³ 14 C.F.R. § 91.13.

and operational policy facets of UAS regulation, and has not sought to impose privacy protection standards in connection with drone operations.

III. Current Regulatory Status

A. 14 C.F.R. Part 107

As of March 15, 2017, over 750,000 UAV owners had registered their aircraft and over 20,000 people had passed the remote pilot licensing exam at FAA.¹⁴

Part 107 establishes the bounds within which sUAS operators must fly. Significantly, because the technology to ensure that drones can independently “sense and avoid” other objects is not sufficiently developed, operators cannot fly a drone beyond the visual line of sight (BVLOS) of the operator and/or a spotter without specific authorization from the FAA. In addition, nighttime operations are also forbidden without express authorization. These existing limitations have constrained the adoption of UAS for various commercial uses, including surveying and mapping. However, an operator who is able to demonstrate that his or her proposed operations will be safe can obtain a waiver from FAA for operations that go beyond the constraints defined in Part 107.¹⁵

The following discussion of Part 107 drone operating requirements addresses those elements that bear particular consideration in connection with the use of drones at equestrian facilities and events.

¹⁴ Unmanned Aircraft Systems: Innovation, Integration, Successes and Challenges, 115th Cong., 3 (2017) (statement of Earl Lawrence, Director of the Federal Aviation Administration’s Unmanned Aircraft Systems Integration Office).

¹⁵ As of March 15, 2017, FAA had issued 400 waivers under Part 107 for operations outside the rule’s constraints. *Id.* at 5.

1. Operating Requirements

- An operator **may never operate in a careless or reckless manner**.¹⁶ In the context of equestrian properties and events, the potential effect of drone operations on horses is the foremost consideration. In a February 2017 incident at a race for skiers being pulled by horses in Colorado, a sUAS was determined to have spooked a horse, which bolted and injured several spectators.¹⁷ No criteria exist for determining safe drone operations around horses. Property owners and event sponsors should consider what measures, in their experience, would be necessary to protect their visitors and participants, and establish rules for drone operators to suit specific conditions. Rules or agreements allowing the use of sUAS should hold the drone operator responsible for any damages.
- Drones **cannot be operated over persons who are not directly involved in flight operations**, unless those persons are under a covered structure or inside a stationary vehicle that provides protection from a falling sUAS.¹⁸ This requirement significantly limits the ability to use drones to film or photograph equestrian events. An operator may apply for a waiver of this requirement if the operator can demonstrate that the proposed use will be safe – i.e., not endanger any persons or property. Even if an operator seeking to fly a drone on your property has obtained a waiver of this requirement, property owners and venue operators should consider establishing their own rules and operating parameters for drone use to suit their particular circumstances. Such requirements might include specified take-off and landing areas for drones, a minimum distance from all horses and human participants, or a limit on the number of drones that can be operated in a given area at any one time.
- **No operations from a moving vehicle** are allowed **unless in a sparsely populated area**.¹⁹ Operators may seek a waiver from this limitation, which presents a particularly tricky call for equestrian venues, most of which are in sparsely populated areas. Operations from moving vehicles are likely to be most useful in connection with property management or surveying rather than for event filming, although races, eventing and steeplechasing may be significant exceptions. If you determine that your property or event is likely to attract requests for drone use involving moving vehicles, be sure to determine that the operator’s Part 107 waiver is current.
- The operator must **keep his or her drone within sight without the use of visual aids** such as binoculars.²⁰ A drone operator may use a **visual observer** to extend observation

¹⁶ 14 C.F.R. §§107.23, 91.13. Careless or reckless operation is that which endangers the life or property of another person or allows an object to be dropped from a sUAS in a manner that creates an undue hazard to persons or property.

¹⁷ Associated Press, *Drone blamed for spooking horse that injured 3 during Silverton skijoring race*, DENVER POST, February 20, 2017. Available at: <http://www.denverpost.com/2017/02/20/drone-silverton-ski-joring-race-accident/>.

¹⁸ 14 C.F.R. §107.39.

¹⁹ 14 C.F.R. §107.25. Part 107 does not define “sparsely populated area.” FAA observes that determining whether an area is sparsely populated is “typically fact dependent.” 81 Fed. Reg. at 42,115.

²⁰ 14 C.F.R. §107.31.

of flight operations beyond the operator’s visual line of sight as long as the operator and visual observer maintain uninterrupted contact.²¹ An operator or team may only operate one drone a time.²²

An operator may seek a waiver of these requirements, which would allow flight BVLOS of the operator or visual observer, and would allow the operation of more than one drone at a time. The limitation on BVLOS operations without a waiver is one of the most significant impediments to the expansion of sUAS use. The rapid advance of UAS technology and intense interest from a wide range of industries seeking BVLOS operations suggest that relaxation of this restriction is likely to be one of the next revisions of Part 107.

One of the essential requirements of safe autonomous drone flight is to prevent collisions through the capability to “sense and avoid” other aircraft or obstacles. Current technology does not reliably allow drones to do this, which is why visual line of sight and continuous communication between the operator and an observer is critical. Developing robust sense and avoid capacities is a difficult technical task, and much current UAS research is focused on developing this technology. BVLOS flight will become the norm once sense and avoid technology is fully developed.

- **Flights may only occur during daylight** or in twilight (30 minutes before official sunrise to 30 minutes after official sunset, local time) with appropriate anti-collision lighting.²³
- Minimum weather visibility is three miles from the operator’s control station.²⁴ **The maximum allowable altitude is 400 feet above the ground**, and higher if the drone remains within 400 feet of a structure.²⁵ The maximum speed is 100 mph (87 knots).²⁶

2. Pilot Certification

To operate the controls of a small UAS under Part 107, an operator must obtain a remote pilot airman certificate with a small UAS rating from FAA,²⁷ or be under the direct supervision of a person who holds such a certificate.²⁸ A person must be at least 16 years old to be licensed, and may obtain a remote pilot certificate by taking a written aeronautical knowledge

²¹ 14 C.F.R. §107.33.

²² 14 C.F.R. §107.35.

²³ 14 C.F.R. §107.29.

²⁴ 14 C.F.R. §107.51(c).

²⁵ 14 C.F.R. §107.51(b).

²⁶ 14 C.F.R. §107.51(a).

²⁷ 14 C.F.R. Part 107, Subpart C.

²⁸ 14 C.F.R. §§107.12, 107.63.

examination²⁹ and submitting to a background check. Licensed operators must update their knowledge test every two years.³⁰

A drone operator must report to the FAA within 10 days any operation that results in serious injury, loss of consciousness, or property damage (to property other than the UAS) of at least \$500.³¹ A drone mishap at an equestrian event will require a much faster and more vigorous response. Making sure any drone users assume full responsibility for any damages arising from their operations is essential.

3. Recreational Users

Section 336 of FMRA prohibits FAA from “promulgat[ing] any rule or regulation regarding a model aircraft.” Non-commercial model aircraft operations by hobbyists long predate the advent of drones, and the development of sUAS has created a confluence of recreational and other uses of remotely-operated aircraft. The same model drone may be used for recreational or commercial purposes, and the characterization of a drone’s use determines the degree of scrutiny and authorization the operator must undergo. Recreational drone operators are required to register their aircraft with FAA³² and FAA has issued guidelines with which hobbyists are urged to comply on a voluntary basis.³³ Recreational users are required to operate their drones in a safe manner, as must all operators of aircraft,³⁴ but, significantly, are not required to obtain a remote pilot certification.

²⁹ 14 C.F.R. §107.67.

³⁰ 14 C.F.R. §107.65.

³¹ 14 C.F.R. §107.9.

³² Public Law 112-95 § 336.

³³ FAA, AC 91-57A (January 11, 2016) – Model Aircraft Operating Standards.

³⁴ *Id.*

In general the voluntary standards for recreational drone operations replicate the salient elements of Part 107, and, indeed, recreational users may choose to become certified remote pilots and operate under Part 107 rules:

- Stay away from populated areas
- No operations more than 400' above ground surface
- Notify control tower if operating within 3 miles of an airport
- Give right of way to full-scale aircraft

Since the FAA guidelines for recreational users are voluntary, it is especially important that at a minimum property owners or event sponsors require recreational users to sign waivers of liability and agree to adhere to any venue-specific rules and regulations before using a drone near horses. Significantly, recreational users are not required to report accidents or damage to FAA, so any venue- or event-specific rules and regulations, along with a waiver of liability, should ensure that recreational users remain fully responsible for any damages they may cause.

4. Aircraft Requirements

Part 107 requires operators to register sUAS larger than 0.5 pounds and lighter than 55 pounds (including any payload).³⁵ The remote pilot must perform a preflight visual and operational check of each sUAS before each flight to ensure that safety-pertinent systems are functioning properly. This includes checking the communications link between the control station and the UAS.³⁶

As noted above, recreational drone operators are also required to register their aircraft under 55 pounds with FAA.³⁷

³⁵ 14 C.F.R. §§ 91.203(a)(2), 107.13.

³⁶ 14 C.F.R. §107.15.

³⁷ Public Law 112-95 § 336.

IV. What Does the Popularity of Drones Mean for Owners and Operators of Equine Businesses?

I have personally observed drones flying at regional and nationally rated USEF and USHJA competitions, and expect that most readers of this article have seen, and perhaps used, drones at equestrian facilities as well. As drone use becomes commonplace, we can expect to see more of them at equestrian events. The statutory distinction between recreational and other categories of users sets up an inherent dichotomy in the operational requirements with which each group must comply, even if Part 107 largely erases the distinction by setting out objective technical, operating and administrative standards for any sUAS user to follow. Because technical awareness and knowledge of federal safety rules varies greatly among the population of users seeking to fly drones, property owners, event organizers and those seeking to use drones for their own management activities should be prepared to adopt operating rules or modify their existing program to be sure anyone using a drone does so responsibly. Although the novelty of sUAS technology may seem distracting, already-established principles governing assumption of liability, risk allocation and insurance all apply.

A. Managing the Use of UAVs on Your Property

In many respects, allocating liability for the risks of drone use on an equestrian property echoes the general approach applicable to other users, including riders, trainers, and other service providers.

- Establish and publish rules governing the use of your facility or event and explicitly address drone use and authorization for both recreational and commercial users, including where drones may and may not fly
- Require users to enter into a license agreement or sign a waiver of claims and assumption of liability. In general, commercial drone operators should be prepared to enter into a license, whereas a waiver and assumption of liability may be sufficient for recreational users.

- Require all drone users to provide proof of UAS liability insurance. The novelty of sUAS technology and lack of an extensive history of use and claims has spurred insurance providers to offer creative and flexible solutions, including insurance coverage on a flight-by-flight or hourly basis.³⁸ Such products help control the cost of coverage, particularly for recreational or infrequent users.

Attached as **Appendix A** is a sample UAS operating license. The license has been drafted to protect a property owner or event manager who allows drone use in connection with equine activities or events, and addresses:

- Requiring drone operators to provide their remote pilot credentials, drone registration information, and any special operating authority the operator may have obtained from FAA.
- Establishing areas where drones may be used. You may wish to consider restricting drone take-off and landing to a specific area on your site.
- Providing a mechanism for drone flight plan notification from the operator. Given the nature and scale of the property, event, and proposed drone operations in any given circumstance, any of a wide range of approaches may be appropriate. A simple exchange of text messages or e-mail may be sufficient, or, particularly if a venue is within three to five miles of an airport, a notification form similar to **Exhibit C** to the license, requiring the operator to provide any necessary air traffic control approvals, would be more appropriate.
- Discretion of the property owner or event sponsor to require that the license holder observe all venue- or event-specific rules and regulations, determine conditions of drone operations, and revoke the license for failure to honor such requirements
- A waiver of claims against the property owner or event sponsor, indemnity to the property owner or event sponsor and assumption of liability by the drone operator for all damages

B. Conducting or Contracting for Drone Operations

For those considering using drones for property management, inspections, surveying, equine asset management, or photography/videography – for their own purposes or as an

³⁸ For example, Verifly offers \$2.5 million of coverage for \$10/hour to operate drones under 15 pounds, with other types of coverage available. <https://verifly.com/howitworks.html>

contractor – remote pilot certification for the operator and registration of any drones are the basic prerequisites. If use beyond the limits of Part 107 is necessary, the operator may apply to FAA for a waiver from specific limitations on a case by case basis upon a demonstration to FAA’s satisfaction that the proposed use will be safe.

Insurance needs for persons operating a drone business are similar to those for other types of contracting, including commercial general liability, automobile liability, and non-owned aircraft liability (if operating drones owned by others), in addition to specialized physical damage/hull coverage and UAV operations liability coverage.³⁹

Operating a drone on one’s private property for personal use would be considered a recreational use that requires registration of the drone but not pilot certification. Be aware, however, that if you use a drone in connection with your commercial operation, FAA may consider such flights to be a commercial use. Even though FAA’s analysis to date of whether drone operations are commercial or recreational have focused on whether the drone operations themselves are being conducted for hire, a business owner using a drone in furtherance of his or her own commercial enterprise may fall into the category of commercial users required to comply with Part 107.

Finally, if hiring a third-party drone operator, be sure to perform reasonable due diligence to determine that the operator is properly licensed, has registered its aircraft, has sufficient insurance for your purposes and is willing to assume liability.

V. Looking Ahead

FAA has been preparing a rule to govern sUAS flights over people or crowds, but release of a preliminary rule for public review and comment has been delayed by the change in Administration. Although Part 107 forbids sUAS operations over people or in densely populated

³⁹ As an example, www.harpenauinsurance.com/drone/uavsa.aspx offers coverage for commercial drone operators.

areas, operators may apply for a waiver of this limitation. Waivers are granted on a case-by-case basis, so a rule establishing generally-applicable criteria will be a significant step forward. The flights-over-people rule is particularly in demand to govern videography at sporting events.

As discussed above, standards for BVLOS operations are another near-term goal, which will depend on how quickly reliable sense and avoid technology develops.

Finally, although likely still years off, FAA will develop rules to allow much larger UAS to operate in the NAS to carry large cargo loads and passengers. In this case, large UAS have been in use for over a decade for military purposes and the technology is mature. FAA's task is to develop rules appropriate for civilian purposes. The operational characteristics of these larger aircraft more closely resemble those typical of piloted airplanes, so the need to accommodate large UAS in close proximity to people and human activities will not drive the development of rules as it has for sUAS.

APPENDIX A - Template UAS license

APPENDIX A

UAS Operations License Template

[Attached hereto]

Unmanned Aircraft System Operations License

AND NOW, this ___ day of _____, 20___, [VENUE OWNER] and [UAS OPERATOR] (collectively, the Parties) do hereby enter into this Unmanned Aircraft System Operations License (the License) and state as follows:

Preamble

WHEREAS, Venue Owner operates an [equestrian racing venue] [equestrian show venue] [equestrian training facility and boarding stable] [equestrian breeding facility] and has established the conditions under which it will allow the use of unmanned aerial systems (UAS) on the Venue;

WHEREAS, the Operator wishes to conduct operations of certain UAS on or near the Venue for [event photography and/or videography] [videography of training sessions] [asset management] [equine management] [security monitoring];

WHEREAS the Operator, by entering this License, is willing to consent to the Venue Owner's conditions of use for operations of UAS;

WHEREAS, the Parties wish to set forth the terms and conditions under which UAS operations will be conducted by Operator;

WHEREAS, but for the execution of this License the Operator would not be authorized to operate UAS on or around the Venue;

IT IS, THEREFORE, in consideration of the terms, conditions, covenants and provisions contained in this License, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, AGREED AS FOLLOWS:

Terms and Conditions

1. **Incorporation of Preamble.** The recitals stated above are true and accurate and are incorporated into the terms of this License.
2. **Type of UAS Authorized.** This License grants to the Operator a non-exclusive license to conduct UAS operations with only the specified type(s) of UAS described in more particularity in the mandatory or voluntary authorization issued by the Federal Aviation Administration (FAA), which shall include, at a minimum, Operator's remote pilot certification, confirmation of registration of all UAS Operator intends to operate on the Venue, and, if any, waivers or other special authorization from FAA, on _____, a copy of which is attached hereto as **Exhibit A**.

The Operator shall submit to Venue a copy of any amendments to the authorization described above or any additional authorization relating to operations governed by this License within thirty (30) days of the issuance of such amendment or additional authorization. If the Operator's proposed operations require any further federal authorization, a copy of such authorization shall also be attached as part of **Exhibit A**

3. **Persons Authorized To Operate UAS.** Only persons (a) holding a remote pilot license issued by the FAA or (b) acting under the direct supervision of a person so licensed will be authorized to operate under this License.

4. **Authorized Operations Areas.** Operator's UAS operations are restricted to only those areas as defined by the Venue. A graphical depiction of the Authorized Areas of Operation is attached here to as **Exhibit B**. The Venue reserves the right to relocate the Authorized Areas of Operation at Venue's sole discretion upon notice to the Operator.

5. **Notice and Coordination.** No UAS operation may take place without the written consent of the Venue Owner prior to any such operations. Venue Owner may, at its discretion, provide general consent to operations consistent with the terms and conditions of this License or may require Operator to request consent in specific instances. [**DRAFTING NOTE:** If e-mail or text message notification is sufficient for your purposes, specify here. For a more formalized notification process, attached **Exhibit C** provides a template form. If the venue is within a three mile radius of an uncontrolled airport or five mile radius of an airport with a control tower, Operator may be required to seek additional authorization from the FAA, and is solely responsible for obtaining such authorization.]

The Operator agrees to comply with all notification requirements set forth in its federal authorization.

If the Operator has obtained a waiver from the requirements of 14 C.F.R Part 107 or any other then-current form of special authorization for any aspect of its proposed operations, the Operator shall so notify the Venue Owner in writing and shall provide a copy of its authorization. Notwithstanding any federal authorization, Venue Owner reserves the right, in Venue Owner's sole discretion, to prohibit, limit or otherwise condition Operator's exercise of such authority at the Venue.

6. **Venue Owner Right To Revoke or Suspend Operations and/or License and Waiver of Rights.** This License is issued and shall remain valid in the sole discretion of the Venue Owner.

(a) **Termination without Cause:** The Operator agrees that the Venue Owner may, without cause, suspend or terminate this License at any time upon giving the Operator at least three (3) days' written notice.

(b) **Termination for Cause:** Notwithstanding the foregoing, upon any default by Operator of the terms and conditions of this License, the Venue Owner may, at its election, terminate this License by written notice to Operator of termination, in which event this License shall

immediately terminate on the date of notification or such later date as may be set forth in the notice of termination.

(c) Any termination of this License shall not relieve Operator from the payment of any sums then due to the Venue Owner or from any claim for damages or fees previously accrued or then accruing against Operator. Operator agrees that the Venue Owner shall have no liability or obligation to Operator, financial or otherwise, as a result of the suspension or termination of this License, and Operator voluntarily waives any rights the Operator may have to seek monetary damages in any court of law. Operator also waives any right it may have to seek injunctive relief against the Venue Owner or its agents in the event of suspension or termination of this License in accordance with this Section 6. In the event the Venue Owner elects to terminate this License, Operator shall pay to the Venue Owner all amounts owing at the time of termination on account of Operator's breach of any term, covenant or condition of this License including, but not limited to, unpaid fees plus interest thereon on all such amounts from the date due until paid at the rate of one percent (1%) per month, and in the event of a "for cause" termination, any other amount to compensate the Venue Owner fully for all detriment proximately caused by Operator's failure to perform its obligations hereunder or which in the ordinary course would likely result therefrom

7. **Operator Not an Agent of the Venue Owner.** Neither issuance of this License, nor any acts of Operator under this License shall in any way constitute Operator as an agent, contractor, partner, or employee of the Venue Owner for any purpose.

8. **Operator Safety Program.** The Operator shall, prior to the date of execution of this License, establish a safety management policy, identifying methods of identifying hazards, analyzing and mitigating risk, developing methods for ensuring continuous safety improvement, and creating organization-wide safety promotion strategies that addresses all aspects of its UAS operations.

9. **Waiver of Claims.** As a material part of the consideration to be rendered to the Venue Owner under this License, Operator hereby waives any and all claims or causes of action against the Venue Owner, and its officers, agents, or employees which it may now or hereafter have for damages or theft of Operator's aircraft or other property in, about, or on Venue, and for injuries or death to persons in, about, or on Venue, from any cause or causes arising at any time out of the use or presence of Operator's aircraft or other property at Venue.

By way of example and not limitation, Operator hereby waives any and all claims or causes of action which it may now or hereafter have against the Venue Owner, its officers, agents, contractors or employees (a) for loss, injury or damage sustained by reason of any deficiency, impairment and interruption of any water, electrical, gas, plumbing, air conditioning or sewer service or system serving any portion of the Venue; (b) for any loss, injury or damage arising or resulting from any negligent act or omission of any other operator, sub-operator, licensee, contractor, or occupant of the Venue, or any person who uses the Venue with or without the authorization or permission of the Venue Owner; (c) from the flight of any aircraft of any kind and all kinds in, though, across or about any portion of the airspace above the Venue; and (d) for any loss or damage to the property of, or injury or damage to Operator, its officers, agents,

employees, contractors or any other person whomsoever (including death), from any cause or causes arising at any time because of Operator's uses or occupancy pursuant to this License of the Authorized Areas of Operation or of the Venue, or its operations thereon.

10. **Indemnification.** By accepting this License, Operator hereby agrees to the fullest extent permitted by law, to defend, indemnify, protect and hold harmless the Venue Owner, and its respective officers, agents and employees from and against any and all claims, demands, damages (including, but not limited to, property damage and personal injury and death), obligations, suits, judgments, penalties, proceedings, causes of action, losses, liabilities or costs (including but not limited to fines), including third party claims or liability, at any time received, incurred, or accrued by the Venue Owner, its officers, agents or employees, as a result of or arising out of in whole or in part, directly or indirectly, the existence of or exercise of the rights or obligations of Operator under this License, including, but not limited to: Operator's use of the Authorized Areas of Operation or Venue; violation by Operator of any law, rule, regulation or other directive of any governmental or quasi-governmental body having jurisdiction over Operator its operations or other activities; or the conduct of its business, or from any activity, work or thing done, permitted or suffered by Operator, its agents, contractors, employees or invitees in or about the Venue.

Operator hereby agrees to further indemnify and hold harmless the Venue Owner, and its respective officers, agents and employees against and from any and all claims arising from any breach or default in the performance of any obligation on Operator's part to be performed under the terms of this License, or arising from any act, neglect, fault or omission of Operator, or of its agents, employees or invitees.

Such indemnities shall include all reasonable costs, attorneys' fees and expenses incurred in the defense of any such claim or any action or proceeding brought thereon. In the event any action or proceeding is brought against the Venue Owner, its commissioners, officers, agents or employees by reason of any claim falling within the scope of the foregoing indemnity, and Operator upon written notice from the Venue Owner within sixty (60) days after the Venue Owner receives notice of the claim shall defend same at Operator's expense by counsel reasonably satisfactory to the Venue Owner.

11. **Insurance.** Operator, at Operator's sole cost and expense, shall procure and maintain for the duration of this License any insurance that is mandatory pursuant to State law. In addition, operator shall provide proof to the Venue Owner of insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by Operator, its agents, representatives, employees or subcontractors. The specific types and amounts of this required where proof of coverage is required to be provided are specified in **Exhibit D** which is attached hereto. [DRAFTING NOTE: consult your insurance provider for appropriate limits of insurance to be included on **Exhibit D**.]

12. **Venue Rules and Regulations.** The Operator agrees to comply with and be bound by any Venue rules, regulations, safety and security measures or other directives issued by the Venue Owner, as they may be amended from time-to-time.

13. Venue Owner Right to Audit. The Venue Owner has the right to request and have access to all of Operator's documents relevant to this License, in whatever form they may be, paper, electronic, or any other form, that may be necessary to determine compliance with the requirements set forth in this License. The Operator agrees to provide any documents requested by the Venue Owner, or provide access to such documents in a timely manner.

14. Enforcement, Remedies & Penalties. The Venue Owner shall in its own right have the right to enforce the terms and conditions of this License, Venue Rules and Regulations, any other promulgation made by the Venue Owner, as well as to seek enforcement through the appropriate authorities of all applicable laws, ordinances, orders, rules and regulations issued by the federal, state or municipal government or other agencies or bodies having jurisdiction over Operator, its operations or activities, including, without limitation, the Federal Aviation Administration, the State of _____, the County of _____, and the [City/Town/Township of _____].

The Venue Owner may issue whatever sanction it determines in its sole discretion is warranted under the given circumstances, including but not limited to suspension or termination of this License, modification of this License or the manner in which UAS operations may be conducted pursuant to this License. Nothing in this License or this paragraph prohibits the Venue Owner from seeking monetary damages from Operator. Nothing in this License or this paragraph prohibits the Venue Owner from seeking injunctive relief from a court of competent jurisdiction and Operator agrees that upon application to any court of proper jurisdiction in [STATE], the Venue Owner may seek a temporary restraining order or preliminary injunction or other equitable relief to protect the status quo and/or restrain and enjoin Operator (or any agent of Operator) from any alleged violation of this License Agreement without prejudice as to any other remedies the Venue Owner may have at law or in equity. Operator hereby waives any defense to such claim that a remedy at law would be adequate. In the event of a violation, Operator agrees that it would be virtually impossible for the Venue Owner to calculate its monetary damages and that the Venue Owner would be irreparably harmed. If the Venue Owner seeks such temporary restraining order or preliminary injunction or other equitable relief, the Venue Owner shall not be required to post any bond with respect thereto, or, if a bond is nonetheless required, it may be posted without surety thereon. If any restriction herein is held by any court of competent jurisdiction to be unenforceable, or unreasonable, the Venue Owner and Operator agree that such provision(s) shall be and are hereby reformed to the maximum extent permitted by the applicable laws. Operator specifically acknowledges, represents, and warrants that the covenants set forth herein are reasonable and necessary to protect the legitimate interests of the Venue Owner, and the Venue Owner would not have entered into this License Agreement in the absence of such covenants

15. Subordination to Federal Law, Rules, and Regulations. In the event that this License, either on its own terms or by any other reason, conflicts with or violates federal law, rules or regulations, Venue has the right to amend, alter or otherwise modify the terms of this License in order to resolve such conflict or violation. In the case of a conflict not constituting a violation of such requirements, the more stringent requirement shall govern as between any federally-promulgated law, rule, or regulation on the one hand and this License Agreement on the other hand.

16. **Incorporation of FAA Authorization and FAA rules, regulations and directives.** The authorization issued to Operator by FAA (i) as a remote pilot and (ii) for registration of all of Operator's UAS governing the UAS operations covered by this License, as well as all applicable rules, regulations or directives issued by the FAA, are hereby incorporated by reference as if fully set forth herein.

17. **No Assignment, Transfer or Sale.** This License shall not constitute a deed, lease or grant of an easement or rights in property by the Venue Owner. This License is personal to Operator and is not transferable or assignable, in whole or in part, by operation of law or otherwise. Any voluntary transfer or assignment of this License by Operator shall be of no force and effect and shall render this License null and void.

18. **Hazardous Materials.** Storage, use or disposal of Hazardous Materials on the Venue is strictly prohibited.

19. **Integration.** This License supersedes any prior agreements, negotiations, and communications, oral or written, with respect to the subject matter of this License and constitutes the entire agreement between, and the final expression of, the Venue Owner and Operator with respect to the subject matter of this License. No subsequent agreement, representation, or promise made by either party hereto, or by or to an employee, officer, agent or representative of either party hereto, shall be of any effect unless it is in writing and executed by the party to be bound thereby.

20. **Venue Owner's Exculpation.** It is expressly understood and agreed that nothing in this License shall be construed as creating any liability whatsoever against the officers and/or directors of the Venue Owner or their respective successors and assigns, personally, and in particular without limiting the generality of the foregoing, there shall be no personal liability of any such persons to pay any indebtedness of the Venue Owner to the Operator accruing hereunder or to perform any covenant, either express or implied, herein contained, and that all personal liability of the above-mentioned persons or their successors and assigns, of every sort, if any, is hereby expressly waived by the Operator and every person now or hereafter claiming any right or security hereunder, and that so far as the Operator, or its successors and assigns, is concerned the owner of any indebtedness or liability accruing hereunder shall look solely to the Venue Owner's interest in the Assigned Space, for the payment thereof. Such exculpation of liability shall be absolute and without any exception whatsoever.

21.

22. **Counterparts and Electronic Signatures.** This License may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which, together, shall constitute but one and the same instrument. Facsimile signatures and signatures transmitted via electronic mail shall be as effective as original signatures.

23.

24. **Execution.** The person signing on behalf of the Operator and his/her employer has the requisite power and Venue Owner to execute, deliver and perform this License and all other agreements and documents to be delivered in connection herewith and has complied with all requirements and completed all procedures necessary under existing law to perform its

obligations herewith. The execution and delivery of this License and any other agreements and documents to be delivered by Operator in connection herewith, and the consummation of the transaction contemplated hereby and thereby, have been duly authorized.

25. Amendments. In the event that the Venue Owner determines that modifications or changes to this License are required or necessary, Operator agrees to consent in writing upon the request of the Venue Owner to such reasonable amendments, modifications, revisions, supplements or deletions of any of the terms, conditions, or requirements of this License as may be reasonably required, provided that in no event shall such changes materially impair the rights of Operator hereunder. A failure by Operator to so consent shall constitute a breach of this License.

26.

SO AGREED:

[VENUE OWNER]

[OPERATOR]

Signature

Signature

[NAME]

Printed Name

[TITLE]

Title

Exhibit A

Operator's FAA Authorization

[Attached hereto]

Exhibit B

Graphical depiction of the Authorized Areas of Operation

[Attached hereto]

Exhibit C
Notice of Proposed UAS Operation Form

UAS License Holder: _____

Name of Primary Point of Contact for License Holder: _____

Telephone Number: _____ Cellular Number: _____

E-Mail: _____

Date of Notice: _____

Date(s) of Proposed UAS Operation: _____

Time of Proposed UAS Operation: From _____ to _____ (Local Time)

Area of Proposed UAS Flight Operations: _____
(Attach map showing area of operations)

Type of Aircraft to be utilized: _____

Registration Number of Aircraft: _____

Name of Pilot In Command for Flight: _____

FAA Certificate Number: _____

Payload to be onboard aircraft: _____

Purpose of UAS flight: _____

[If required, Operator has notified FAA air traffic control of proposed UAS flight? Yes ___ No ___
_____]

(Note: Venue Owner will not authorize any UAS Operation unless the FAA has been notified in advance of the proposed flight and Venue Owner has evidence that the FAA has no objection to such flight operation).

FAA facility notified: _____ Date of notification: _____

Person or persons notified: _____

Copy of FAA notification attached? Yes ___ No ___

Is NOTAM required? Yes ___ No ___ (If YES, please attach a copy.)]

Exhibit D

Insurance Requirements

Operator, at Operator's sole cost and expense, shall procure and maintain for the duration of this License insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by Operator, its agents, representatives, employees or subcontractors.

A. Minimum Limits of Insurance

Operator shall maintain limits no less than:

1. Aviation Unmanned Aerial Systems (UAS)) Liability with a limit of no less than ___ Million Dollars (\$___, 000,000.00) combined single limit. If the UAS policy carries endorsement C064 which provides premises coverage, a separate Commercial General Liability policy is not needed.

2. Commercial General Liability, including products/completed operations (with no time limit), contractual liability and violation of governmental requirements, on an occurrence basis protecting the Operator, carried by an insurer licensed to do business in the State, and naming Venue Owner as an additional insured with respect to Operator's operations on a primary and noncontributing basis with any insurance carried by Venue Owner, against any and all claims for bodily injury, property damage and personal property, including loss of life or property occurring upon, in or about the Venue and from operations at the Venue. Such insurance shall be written with a combined single limit of not less than __ Million Dollars (\$___,000,000.00) each occurrence and __ Million Dollars (\$___,000,000.00) in the aggregate (with the aggregate applicable "per location" or "per project"). Unless the prior written approval of the Venue Owner is obtained, the Commercial General Liability insurance may have a deductible of not more than _____Dollars (\$___,000.00).

3. Automobile liability insurance covering all owned, non-owned, hired or borrowed vehicles with a combined bodily injury and property damage limit of no less than __ Million Dollars (\$___,000,000.00) per occurrence and covering all such vehicles. Automobile Liability coverage shall only be required if the Operator intends to operate vehicles on the as part of Operator's proposed UAS operations.

4. Pollution Legal Liability (if applicable) including coverage for Bodily Injury, Property damage and first and third party clean up expenses on and off site of no less than __ Million Dollars (\$___,000,000.00). The policy shall expressly waive and bar any claim of subrogation against Venue Owner. Pollution Liability coverage shall only be required if the Operator intends to use hazardous materials as part of or in connection with the operations conducted pursuant to this License.

4. The Operator, at its own cost and expense, shall insure its own fixtures, equipment and contents and on an optional basis any automobile physical damage, mobile equipment, business interruption and/or extra expense exposure and their policies for each shall include a waiver of

subrogation in favor of Venue Owner. If there is any deductible, the Operator shall be responsible for the deductible and will not make any claim for any deductible against Venue Owner. If the Operator self-insures any of the optional coverages the Operator will not claim against Venue Owner for any loss or damage regardless of the cause of loss.

B. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by the Venue Owner. At the option of Venue Owner, either; the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects Venue Owner, its commissioners, officer, employees, agents and contractors; or Operator shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by Venue Owner's Risk Manager.

C. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability, Aviation Unmanned Aircraft Systems Liability, Automobile Liability and Pollution Legal Liability Coverages

- a. All policies shall name Venue Owner as an additional insured on a primary and non-contributing basis with any insurance carried by Venue Owner, and shall be carried by insurers licensed to do business in the State and of recognized responsibility satisfactory to Venue Owner. The policy shall expressly waive and bar any claim of subrogation against Venue Owner.
- b. Venue Owner, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, Operator; products and completed operations of Operator; premises owned, leased or used by Operator; and automobiles owned, leased, hired or borrowed by Operator. The coverage shall contain no special limitations on the scope of protection afforded to Venue Owner, its officers, employees, agents and contractors.
- c. Any failure to comply with reporting provisions of the policies by Operator shall not affect coverage provided Venue Owner, its officers, employees, agents, or contractors.
- d. Coverage shall state that Operator's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- e. Required limits may be met by a combination of primary and excess coverage.
- f. Each insurance policy required by this License shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to Venue Owner, except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

D. Verification of Coverage

Operator shall furnish Venue Owner with certificates of insurance and with original endorsements affecting coverage required by this License. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

E. Cancellation

Failure to maintain required insurance coverage will result in cancellation of this License.