

## SETTLEMENT AGREEMENT

This settlement agreement ("Settlement Agreement") is entered into as of March 21, 2014 ("Effective Date") by and between Experimental Aircraft Association, Inc., a Wisconsin nonstock not-for-profit corporation ("EAA" or a "Party"), with offices at 3000 Poberezny Road, Oshkosh, WI 54902, and the Federal Aviation Administration, an operating administration of the United States Department of Transportation (the "FAA" or a "Party"), with offices at 800 Independence Avenue, SW Washington, DC 20591

### Background

- A. EAA is a member organization, with approximately 180,000 members, whose mission is to grow participation in aviation.
- B. The FAA is the Federal agency charged, among other responsibilities, with safely and efficiently moving air traffic within the National Airspace System through its Air Traffic Organization, and with maintaining and regulating aviation safety.
- C. EAA has operated its annual convention, now known as EAA AirVenture Oshkosh ("AirVenture"), since its founding in 1953. AirVenture currently attracts approximately 500,000 guests to Oshkosh and 10,000 aircraft to Wittman Regional Airport and nearby airports during its one-week run. As is necessary to facilitate the arrival and departure of so many aircraft in a short time period, the FAA has provided specialized and expert air traffic control ("ATC") services since the first AirVenture. The FAA provided ATC services for AirVenture at no charge through AirVenture 2012. In 2013, as a condition of providing AirVenture ATC services, the FAA required EAA to enter into a Reimbursable Agreement, dated June 12, 2013, (the "2013 Reimbursable Agreement") and to reimburse the FAA \$447,924 for certain categories of expenses incurred by the FAA in connection with AirVenture.
- D. EAA objected to the FAA's imposition of fees for AirVenture ATC services, and filed a Petition For Review and Other Relief (the "Petition") in the U.S. Court of Appeals for the Seventh Circuit (the "Court") on July 3, 2013. EAA filed its opening Brief with the Court on December 2, 2013, and the FAA timely filed its responsive brief on February 24, 2014. Two other aviation-related organizations filed Amicus Curiae briefs with the Court on December 10, 2013.
- E. The Parties desire to finally dismiss the litigation (the "Litigation") that was initiated by the Petition, and to rectify any adverse relationship between them that may have arisen as a result of the Litigation, and to provide for reasonable assurance by the FAA to EAA of continued availability of FAA ATC services, and reasonable assurance of the availability of FAA waivers, procedures, equipment and other resources, for at least the term of the 2014 Reimbursable Agreement (defined below), and to address other matters, all as further described in this Settlement Agreement.

### Agreement

In consideration of the mutual covenants stated herein and other good and valuable consideration, the Parties agree as follows:

1. The FAA will provide the necessary and appropriate ATC and other services for the continuation of AirVenture in the format and with the general aviation-related features as operated for AirVenture 2013 for at least the Term of the Reimbursable Agreement attached hereto as Attachment A (the "2014 Reimbursable Agreement"), which shall commence on its Effective Date and end after AirVenture 2022, under the terms and conditions provided therein. Such

services (the "Services") will include ATC services and technical operational support, as provided in the 2014 Reimbursable Agreement. The FAA, as the agency charged with the responsibility for the safe and efficient flow of air traffic through the National Airspace System, will decide within its sole discretion what services and support are necessary and appropriate for the continuation of AirVenture in the format and with the general aviation-related features as operated for AirVenture 2013, as provided in the 2014 Reimbursable Agreement. The Parties will execute and deliver the 2014 Reimbursable Agreement simultaneously with execution and delivery of this Settlement Agreement.

2. EAA will dismiss the Litigation with prejudice promptly after mutual execution and delivery of this Settlement Agreement, releasing the FAA from any potential liability for claims and causes of action arising on or before the date hereof. The Parties will mutually execute and deliver a Stipulation for Dismissal in the form of Attachment B hereto, simultaneously with execution and delivery of this Settlement Agreement. Thereafter, during the Term of the 2014 Reimbursable Agreement, provided that the FAA is not in default of its obligations under this Settlement Agreement or the 2014 Reimbursable Agreement, EAA will not: (i) sue the FAA on any of the claims or causes of action stated in the Petition; or (ii) file *amicus curiae* briefs or provide any financial contributions in support of the same or similar claims or causes of action. Further:
  - a. Nothing herein will preclude either Party from seeking enforcement of this Settlement Agreement in a forum of competent jurisdiction at any time.
  - b. EAA may raise new claims or causes of action arising after the 2014 Reimbursable Agreement expires or terminates pursuant to the terms thereof in a new petition or complaint based upon the same legal arguments raised in the Petition or other legal arguments. FAA may raise any affirmative defenses or counter-claims in response to any such future EAA petition or complaint.
3. If EAA ever decides that it would be in its best interests to obtain AirVenture ATC services from a private contractor, the FAA will make reasonable efforts to assist EAA in making that transition, including granting the Waivers and providing use of the Tower Equipment and the Other Equipment (all as defined in the 2014 Reimbursable Agreement) on a reasonable basis.
4. The FAA will grant EAA a discount against its charges for services for AirVenture 2014, pursuant to the 2014 Reimbursable Agreement, in the amount of Two Hundred Twenty-Three Thousand Nine Hundred Sixty-Two and 00/100 Dollars (\$223,962.00). Said discount will be given as a credit toward payments required for the AirVenture 2014 event, and may be taken by EAA beginning with the first installment to be paid to the FAA for AirVenture 2014.
5. Promptly after dismissal of the Litigation with prejudice as described in Section 2 hereof, EAA will publicly release copies of this Agreement and the 2014 Reimbursable Agreement.
6. No provision of this Settlement Agreement or the 2014 Reimbursable Agreement shall be interpreted to require obligation or payment of funds by the FAA in violation of the Anti-Deficiency Act, Title 31 U.S.C. § 1341, Title 31 U.S.C. § 1342, and Title 31 U.S.C. § 1517 .
7. **EAA and the FAA waive all claims against each other (and against the other's affiliates, contractors, subcontractors, consultants, employees, volunteers, agents and vendors) for any, punitive damages of any kind arising directly or indirectly out of this Agreement or any performance hereunder under any legal theory (including without limitation tort, indemnity, or contribution).**
8. The Parties shall not be liable for delinquency or failure to perform obligations hereunder to the extent that such failure is delayed or prevented by fire, flood or other natural disaster, war, civil unrest, government intervention, or other external circumstances beyond the control of the Parties, including changes resulting from legislation, safety regulations issued by the Department of Transportation or other regulations by bodies external to the Department of Transportation, or other governing law that impedes the FAA's ability to provide the services

described in this Agreement. In the event of such failure, the Parties will work together in good faith to address and resolve any resulting impact on AirVenture for the year in question, including without limitation any necessary rescheduling of AirVenture.

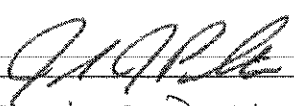
9. General


- a. This Settlement Agreement, which includes the Recitals, contains the entire and exclusive understanding and agreement between EAA and the FAA with respect to the matters referred to herein and supersedes any and all prior or contemporaneous agreements, understandings, communications and representations, whether oral or written, with regard to its subject matter. This Settlement Agreement is binding upon, and inures to the benefit of, EAA and the FAA and their respective successors and assigns. This Settlement Agreement may not be amended except in a writing signed by both parties hereto.
- b. Neither Party may assign or subcontract its rights or obligations hereunder to any other person without the express written consent of the other Party.
- c. No delay or failure by either Party to exercise any right or remedy, except as otherwise provided by law, under this Settlement Agreement will constitute a waiver of such right or remedy. All waivers must be in writing and signed by an authorized representative of the party waiving its rights. A waiver by either Party of any breach or covenant shall not be construed as a waiver of any succeeding breach of any other covenant.
- d. Federal law, including statutes, regulations, treaties, and the U.S. Constitution will govern all matters arising out of or relating to this Settlement Agreement, including without limitation its interpretation, construction, performance and enforcement, without regard to any rules of construction concerning the persons drafting this Settlement Agreement. In the event that Federal law provides for State law to govern certain aspects of any such matter, then the Parties agree to use the laws of the State of Wisconsin.
- e. This Settlement Agreement is the product of negotiation among the Parties and therefore shall be considered to have been jointly drafted for the purpose.
- f. EAA and the FAA may give notices to each other at the respective addresses listed above and to the attention of the respective officers listed below or the then-current equivalent officer, by personal delivery, commercial courier or certified mail.  
EAA: Vice President - Advocacy and Safety  
FAA: Chief Counsel  
Notices shall be deemed delivered on the date actually received by the Party to whom the notice is addressed.

AGREED:

EXPERIMENTAL AVIATION ASSOCIATION, INC.

FEDERAL AVIATION ADMINISTRATION

Signature:   
Name: Jack J. Pelton  
Title: Chairman  
Date: March 19, 2014

Signature:   
Name: Michael P. Huerta  
Title: Administrator  
Date: 19 March 2014