

# FLIGHT PLAN MEMBERSHIP AGREEMENT

By enrolling in a Flight Plan, LLC ("Flight Plan") membership you ("Member") and Flight Plan agree to the following Flight Plan Membership Agreement (this "Agreement") relating to Flight Plan's membership program. Flight Plan may amend or modify this Agreement from time to time. Amendments and modifications to this Agreement will be effective upon Flight Plan's publication of such amendments or modifications on its website and the Flight Plan mobile application (the "Application"). Member's continued access or use of the membership program or the Application after such publication constitutes Member's consent to be bound by the amended or modified Agreement. Flight Plan and Member are referred to herein collectively as "Parties" and each a "Party".

## 1. FLIGHT PLAN'S PROGRAM AND SOFTWARE

Flight Plan, as Member's agent, agrees to arrange on-demand air transportation services for Member and Member's guests to be provided by Sky Quest LLC ("Sky Quest" or "Operator") which holds an Air Carrier Certificate under Federal Aviation Regulations ("FAR") 14 CFR Part 119 authorizing it to furnish on-demand air transportation services pursuant to FAR Part 135 (the "Program"). Member understands that Flight Plan is not an air carrier or aircraft operator and arranges on-demand air transportation services solely as the manager of the Program and as Member's agent. Flight Plan may provide access to its software including applications, websites, and other communication tools, which are part of the Program, and are designed to enhance Member's experience ("Software"). Members and their guests can access and use the Program and Software under the terms and conditions of this Agreement. Member acknowledges and agrees that the Program and the Software are the exclusive intellectual and proprietary property of Flight Plan and may not be disclosed to third parties.

## 2. MEMBERSHIP SERVICES

In consideration for purchasing any new or preowned vehicle within the previous five (5) years ("Vehicle") from a Bernie Moreno Companies ("BMC") affiliated dealership and, if applicable to the tier of membership, payment of a membership fee, Flight Plan provides access to numerous services that include, but are not limited to, customer service of membership specialist; invitation to Flight Plan organized events; arranging for on-demand charter services from Operator ("Charter Flight"); access to purchase a seat or seats on scheduled flights to be posted on a regular basis (available on a first-come, first-served basis; provided however, that Platinum Members will receive forty-eight (48) hours advanced notice of any said flight) ("Scheduled Flight"); access to purchase a seat or seats on special event flights which will be posted from time to time (available on a first-come, first-served basis; provided however, that Platinum Members will receive forty-eight (48) hours advanced notice of any said flight) ("Special Event Flight"); acting as Member's agent in scheduling an open-request flight with Operator on Member's behalf, wherein a Member requests a flight that is made available to all Members and if all seats of the aircraft are sold, then the flight is booked ("Request Flight"); organizing aircraft reservation; coordinating payment; arranging inflight and ground services; and flight tracking (collectively,

the "Services"). The specific Services a Member will have access to (and any limits on such Services) and the costs of said Services are based on the tier of membership that a Member selects, which is specifically set forth in Schedule 1, attached hereto and incorporated herein. Additional Services only available to Platinum Members are set forth in Schedule 2. Flight Plan reserves the right to change, suspend or terminate any of the Services at any time, including, without limitation, type of aircraft used, those set forth in Schedule 2, and changes to (or imposition of new) fees or other charges for services. Flight Plan may from time to time offer other services, all of which are subject to change, suspension or termination at any time and also are subject to additional fees or charges.

## 3. FEDERAL AVIATION REGULATIONS PART 135 OPERATIONS

All flights under this Agreement are operated by Sky Quest, a FAR Part 135 air carrier, who shall have exclusive direction, control and authority over initiating, conducting or terminating flights ("Operational Control"). Flight Plan is not an air carrier and does not provide air carrier services. As the Operator conducting a flight(s) under this Agreement, Sky Quest will be subject to all FAR requirements, including without limitation, FAR Part 135 flight time, duty time restrictions, airport limitations and maintenance requirements. Member understands and agrees that the Operator shall have absolute discretion in all matters, including, without limitation, the preparation of the aircraft for flight and the flight itself, the load carried and its distribution, the decision whether or not a flight will be performed, what route will be flown, and all matters relating to the operation of the aircraft. Member specifically agrees that the Operator shall have final and complete authority to cancel any flight for any reason or condition that in its sole and absolute judgment could compromise the safety of a flight and may take any other action that, in its opinion, is necessitated in consideration of safety. In addition, Member agrees that, pursuant to FAR 91.3, the Pilot in Command of any Program flight shall have complete authority to take any action required for safety and no such action shall create any action for Member for loss, damage or delay. No such action of the Operator shall create or support any liability for loss, injury, damage or delay to Member. In addition, the Operator shall have the right to refuse boarding to any person: (a) who appears to be intoxicated or under the influence of any prohibited or controlled substance; (b) who refuses to be subject to any reasonable checks of his or her person or baggage by the Operator, or by government or airport authorities; (c) whose condition, including apparent illness or incapacity, in the sole judgment of the Operator could involve hazard or risk to himself, herself or others; or (d) who fails to provide proper identification or required travel documentation.

## 4. ACCEPTANCE OF MEMBERSHIP

Member agrees to provide all information requested by Flight Plan through the Application, software and forms provided online, via email or mail in accordance with Flight Plan policies and procedures. Acceptance of Members into the Membership Program and renewal of Member's Membership for an additional term is at the sole discretion of Flight Plan. If upon application, Member is refused admission to the Membership Program, Flight Plan will refund the Membership Fee, if

any was paid, and there shall be no further obligation owed by either Party. Flight Plan reserves the right to revoke Member's admission to the Membership Program at its sole discretion at any time during Member's Membership term by refunding to Member a prorated amount of the Membership Fee paid to Flight Plan.

#### 5. MEMBERSHIP FEE, AND THE MEMBERSHIP ACCOUNT

In consideration for access to the Services, Member has purchased a Vehicle from BMC and, depending on the tier of membership selected, agrees to pay an annual membership fee set forth in Schedule 1 during the Term (defined below) of this Agreement (the "Membership Fee"). The Membership Fee is due on an annual, recurring basis. Flight Plan reserves the right to increase the Membership Fee from time to time, which increases will apply to existing Members upon renewal of Membership for subsequent Terms. Member agrees to provide Flight Plan a credit card and authorizes Flight Plan to automatically charge the Membership Fee to the credit card on file. Member will be required to complete a "profile" with Operator and provide a copy of their driver's license and a completed credit card authorization form. The Membership Fee is an access fee for use of the Service, is not a payment for air transportation, and is non-refundable, except as specifically provided herein, even if Member fails to utilize the Program or the Services. The Membership Fee is not amortized over time and not based on Member's ability to purchase or use the Service.

#### 6. TERM

The Membership term commences on the effective date set forth on Schedule 1, but in no case earlier than (i) the day the Vehicle is purchased from BMC and (ii) in the case of the tier of membership, the date the Membership Fee is paid in full, and this Agreement is executed by Member (the "Effective Date") and terminates on December 31<sup>st</sup> ("Term"). Flight Plan reserves the right to terminate and cancel Member's Membership at any time and for any reason, including if Member breaches any terms or conditions of this Agreement or other agreements incorporated herein by reference. Member understands and agrees that if the Membership is cancelled due to Member's breach of any terms or conditions of this Agreement or other agreements incorporated herein by reference, Member will lose all privileges to the Program, Services, Membership Fee and any additional benefits that might be available to Member. Flight Plan will not owe any further obligation to provide any Services to Member. Except as expressly provided herein, Member agrees that he or she will not be entitled to a refund of the Membership Fee or any portion of it and will hold Flight Plan harmless for the loss of the Service.

#### 7. RENEWAL AND TERMINATION

Unless either Party elects not to renew by written notice to the other Party prior to the Term expiration date, the Membership Term will be renewed automatically and Member agrees to be charged for the subsequent Membership Term at the then-current membership level. If Member's credit card is declined, Member agrees to provide a different method of payment within three (3) business days from receipt of notice of the same. If Member fails to provide a different method of payment, and the Membership Fee is due and outstanding longer than ten (10) business days, the Member's Membership will be cancelled, and Member will forfeit and lose access to the Services and Program. Any outstanding charges shall remain due until paid in full.

#### 8. FLIGHT RESERVATION POLICY

Member will be responsible for arranging flights and seat purchases through the dedicated reservation telephone number, the Application,

website or other method acceptable to and made available by Flight Plan.

#### 9. SERVICE LIMITATIONS

Services are subject to Flight Plan's Terms and Conditions available for review at [flightplan.bernimoreno.com](http://flightplan.bernimoreno.com) and through the Application (collectively, "Terms and Conditions"). By entering into this Agreement, Member agrees to all Terms and Conditions and such Terms and Conditions are incorporated by reference herein. Flight Plan may amend or modify its Terms and Conditions from time to time. Amendments will be effective upon Flight Plan's publishing of such amended or modified Terms and Conditions on its website and the Application. Member's continued access or use of the Service after such publication constitutes Member's consent to be bound by the Terms and Conditions, as amended or modified.

Membership privileges are solely available to Member and cannot be shared, transferred, gifted, leased or sold to any third party, except as specified in this Agreement. While Member can invite guests to join them on flights they arrange and/or pay for, they cannot lend their account to someone else to book flights or access the Service. Member is required to be present on board any Charter Flight, Scheduled Flight, Special Event Flight, or Request Flight that Member books or arranges by using the Services of Flight Plan. Any breach of this section may result in Member losing privileges and membership cancellation with no further obligation to Member or recourse by Member.

Member acknowledges that Flight Plan is the manager of the Program and Service, and that the success of the Program and the ability to deliver the Service with high levels of customer satisfaction depends on a vibrant and cooperative membership. Member's good faith cooperation regarding booking, cancellations, notices, departure times, itinerary flexibility, communication, payments and documentation and other aspects of arranging flights and other aspects of the Service is required.

#### 10. NON-RELIANCE

EACH MEMBER ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS AGREEMENT AND IN THE TERMS AND CONDITIONS, IN EACH CASE AS AMENDED FROM TIME TO TIME, (A) NEITHER FLIGHT PLAN NOR ANY OTHER PERSON ON FLIGHT PLAN'S BEHALF HAS MADE OR MAKES ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY, EITHER ORAL OR WRITTEN, WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, TRADE OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED, AND (B) EACH MEMBER ACKNOWLEDGES AND AGREES THAT IN DECIDING TO ENTER INTO A MEMBERSHIP HE, SHE OR IT HAS NOT RELIED UPON ANY REPRESENTATION, WARRANTY OR DISCLOSURE MADE BY FLIGHT PLAN OR ANY OTHER PERSON ON FLIGHT PLAN'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT OR IN THE TERMS AND CONDITIONS, IN EACH CASE AS AMENDED FROM TIME TO TIME.

#### 11. PRIVACY OF MEMBER DATA

Flight Plan takes appropriate measures to maintain data regarding its Members and their guests confidential. Flight Plan may be required to furnish Member and guest data, such as name, date of birth, and passport information, to comply with national and international security requirements or rules of governing bodies or third parties providing services related to a flight including to the Operator and governmental

authorities. Flight Plan may use Member information to check the credit of Member in connection with its invoice collection efforts or to check the credit of Member and perform criminal and other background searches of Member in connection with evaluating whether to accept or continue Member's membership in the Membership Program.

## 12. GOVERNING LAW

Except as specifically required by applicable Federal law or regulation, this Agreement and all the rights of the parties hereunder shall be governed by, construed and enforced in accordance with the laws of the State of Ohio without reference to the conflict of law principles of any jurisdiction.

## 13. DISPUTE RESOLUTION

Any claim or dispute between the Parties and/or against any agent, employee, successor, or assign of the other, whether related to this Agreement, any of the Terms and Conditions or the relationship or rights or obligations contemplated herein, including the validity of this clause, shall be resolved exclusively by binding arbitration by the American Arbitration Association, under the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes then in effect, by a sole arbitrator. The place of arbitration shall be Cuyahoga County, Ohio. The existence and content of the arbitration proceedings and any rulings or award shall be kept confidential except (i) to the extent that disclosure may be required of a Party to fulfill a legal duty, protect or pursue a legal right, or enforce or challenge an award in bona fide legal proceedings before a state court or other judicial authority, or (ii) with the written consent of all Parties. Notwithstanding anything to the contrary, either Party may disclose matters relating to the arbitration or the arbitration proceedings where necessary for the preparation or presentation of a claim or defense in such arbitration.

Arbitration shall proceed solely on an individual basis without the right for any claims to be arbitrated on a class action basis or on bases involving claims brought in a purported representative capacity on behalf of others. The arbitrator's authority to resolve and make written awards is limited to claims between Member and Flight Plan alone. Claims may not be joined or consolidated unless agreed to in writing by all parties. No arbitration award or decision will have any preclusive effect as to issues or claims in any dispute with anyone who is not a named party to the arbitration. Notwithstanding any other provision in these terms and conditions and without waiving either Party's right of appeal, if any portion of this "class action waiver and other restrictions" provision is deemed invalid or unenforceable, then the remaining portions of the arbitration provision shall remain in full force and effect.

## 14. ASSIGNMENT

This Agreement shall be binding upon and inure to the benefit of the Parties. Member may not assign or transfer his or her rights or obligations without the prior written consent of Flight Plan, which may be withheld at its sole discretion.

## 15. CONSTRUCTION

If any provision of this Agreement is declared by an arbitrator or a court of competent jurisdiction to be invalid, illegal, or unenforceable, such provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect.

## 16. NOTICE

Flight Plan may give notice by means of a general notice through the Application, electronic mail to Member's email address in Schedule 1 or by written communication sent to Member's address in Schedule 1. Such notice shall be deemed to have been given upon the expiration of forty eight (48) hours after mailing (if sent by first class mail) or twelve (12) hours after posting or sending it via email or other means of electronic transmission. Member may give notice to Flight Plan (such notice shall be deemed given when received by Flight Plan) at any time by any of the following: letter delivered by nationally recognized overnight delivery service or first class mail postage prepaid with delivery confirmation to Flight Plan at the following address: Flight Plan LLC, 28364 Lorain Rd., North Olmsted, OH 44070 addressed to the attention of: Bernie Moreno, with a copy to Frantz Ward LLP, 200 Public Square, Suite 3000, Cleveland, Ohio 44114, Attn: James Niehaus.

## 17. MISCELLANEOUS

This Agreement together with the agreements and other documents referenced herein and incorporated herein by reference constitute the entire agreement between the parties concerning its subject matter and supersedes any prior or contemporaneous agreements, understandings or proposals. Paragraph headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement. No provision of, right, power or privilege under this Agreement shall be deemed to have been waived by any act, delay, omission or acquiescence on the part of any party, its agents or employees, but only by an instrument in writing signed by an authorized representative of each party. This Agreement shall not be construed as creating a joint venture, partnership or other form of association or cooperative arrangement between Flight Plan and Member. No waiver by any party of any breach or default of any provision of this Agreement by the other party shall be effective as to any other breach or default.

## 18. ELECTRONIC SIGNATURES

Each party agrees that the electronic signatures and acknowledgments, whether digital or encrypted, of the Parties to this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic signature means any electronic sound, symbol or process attached to or logically associated with a record and executed and adopted by a Party with the intent to sign such record, including facsimile or e-mail electronic signatures. Member's access or use of the Service and the Application constitutes Member's agreement to be bound by all terms and provisions of this Agreement (including the agreements and other documents referenced herein and incorporated herein by reference) as amended or modified from time to time.

The undersigned Parties have caused this Membership Agreement to be executed and is effective as of the Effective Date set forth in Schedule 1.

Flight Plan, LLC

Member: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**Schedule 1**

MEMBER INFORMATION:

Member Name: \_\_\_\_\_

Spouse Name (if applicable): \_\_\_\_\_

Member Address: \_\_\_\_\_

Member E-Mail Address: \_\_\_\_\_

Member Cell Phone Number: \_\_\_\_\_

MEMBERSHIP INFORMATION:

Effective Date: \_\_\_\_\_

Membership Level (select one):

\_\_\_\_\_ Standard Membership

\_\_\_\_\_ Platinum Membership

Membership Fee Due: \$ \_\_\_\_\_

Annual Membership Fee: \$ \_\_\_\_\_

<b>Flight Type</b>	<b>Membership Level</b>	
	<b><i>Platinum</i></b>	<b><i>Standard</i></b>
Charter Rate (whole aircraft)	\$3,112/hr	\$3,890/hr
Scheduled Flight (per seat)^	\$195/hr	\$295/hr
Special Event Flight (per seat)^	\$495/hr	\$595/hr
Request Flight (per seat)*	\$495/hr	\$595/hr

^ Platinum members will receive notice forty-eight (48) hours in advance of Standard members regarding Scheduled Flights and Special Event Flights.

\*A Request Flight is not confirmed and considered booked until all seats (8) on the aircraft are sold.

At any time a Standard Member may elect to move to the Platinum Membership Level by paying the prorated Membership Fee due for the remainder of the applicable Term.

## **Schedule 2**

Additional Services provided by Flight Plan, LLC to Platinum Members (subject to change at any time) each year:

### **Tom James Clothing:**

\$750 gift certificate towards custom made Tom James clothing

### **AutoSpa:**

Unlimited car washes and one free detailing per year

### **Alston Jewelers:**

\$500 gift certificate towards custom jewelry by Alston Jewelers