

# TRANSPORTATION SERVICE AGREEMENT

Download PDF

This Transportation Service Agreement (this "Agreement") made and entered into as of May 16, 2024 by EvoLux Transportation, LLC. (hereinafter "Company"), a Florida limited liability company, whose headquarters is located at 175 Atlantic Street, Suite 209, Stamford, CT 06901 and \_\_\_\_\_ (hereinafter "Carrier"), a \_\_\_\_\_ corporation with its principal place of business at \_\_\_\_\_.

## WITNESSETH:

WHEREAS, the Company is an aviation transportation services broker and arranges and facilitates transportation services for customers of the Company utilizing helicopters; and

WHEREAS, the Carrier provides transportation related services in the aviation industry, including but not limited to helicopters, and Company desires to use Carrier for arranging transportation on behalf of the customers of the Company (the "Customers") and Carrier desires to provide such services to the Customers of the Company.

NOW, THEREFORE, in consideration of these premises and the mutual agreements herein contained, the parties hereto agree as follows:

1.

## SCOPE OF WORK.

- o 1.01 Services. Upon Company's request, Carrier will arrange transportation services as requested by the Company from time to time originating from the departure and destination points in the United States and the Bahamas as identified in Exhibit A, and as such Exhibit A may be amended from time to time (herein the "Services"). The Services shall include, without limitation, the following: providing transportation as determined by the Company; Provide current certificates of insurance as may be requested by the Company; perform all documentation necessary to facilitate the Services; maintain agreements in good standing with the departure and destination points listed in Exhibit A; maintain and service all equipment to be used to perform the Services in optimum working condition; and provide such other logistical services as the Company may require from time to time. The Company's engagement of the Carrier's Services hereunder are on a non-exclusive basis.
- o 1.02 Service Levels. Carrier will at all times: (i) comply with all federal, state and local regulations relating to the Services and, in general, the transportation of individuals; and (ii) arrange the best, safest, and most efficient, comfortable and clean transportation services. Carrier will meet on-time departure (being present at least fifteen minutes prior to designated departure time) and arrival standards and provide a minimum of 48 hours advance notice of failure of equipment or pilot availability to perform the Services; provided however that in the event a trip is booked in less than 48 hours, then Carrier shall provide us much notice in advance of the trip as possible.
- o 1.03 Additional Covenants. Carrier covenants and agrees that:
  1. It shall use an insurance company acceptable to Company and maintains insurance coverage and limits as outlined in Section 5.02 herein. Carrier shall keep on file proof of such insurance and provide a copy to the Company upon execution of this Agreement and otherwise make it available to Company upon request;
  2. It shall be in compliance with all applicable provincial, federal, state and local laws, rules and regulations governing the transportation of Company's Customers;
  3. It shall have all necessary equipment and properly qualified, trained and licensed pilots and other staff for the transportation of Company's Customers. Equipment furnished shall be well-maintained, clean, empty, insect and rodent free, odor-free and watertight. Equipment shall not have been used for transportation of pesticides, rodenticides, insecticides, toxic chemicals, or industrial, municipal

- or any type of waste, except as agreed to by Company in writing
4. It shall be able to safely and adequately provide the transportation and related services for the movement of Company's Customers;
  5. All liability for Customer, loss, injury, destruction or damage to Customer or Customer's property shall be the sole and exclusive responsibility of the Carrier and Carrier shall indemnify the Company as set forth herein;
  6. Any of Customer's property which has been tendered to the Carrier intact, and released by the Carrier in a damaged condition or is lost or destroyed subsequent to such tender, shall be conclusively presumed to have been lost, damaged or destroyed by the Carrier;
  7. Carrier shall provide information about itself as requested from time to time by Company. Carrier shall immediately notify Company of any information that comes to its attention that might affect Carrier's performance, ability to provide the Services hereunder, its financial condition, licenses or registrations to operate, or safety of operations, as well as any information relevant to Company concerning the Carrier and its ability to perform the Services hereunder;
  8. During any trip with any Customer, the Carrier shall not make any stops or excursions except as authorized by the Company in advance of a trip; provided however that the consent of the Company shall not be needed for (i) any emergency services that may be required during a flight, (ii) fuel services that are necessary to complete the trip, (iii) reasonably necessary maintenance services or (iv) other diversions that reasonably relate to the safety and well-being of the Customer;
  9. The Carrier shall provide the Company with post flight invoices that are completely accurate with respect to any charges and the actual amount of "in air" flight time; and
  10. The Carrier shall enter complete and accurate information into the proprietary booking system of the Company which is accessed via the internet.
- o 1.04 Non-Exclusivity. Company makes no guarantees or representations as to the types or quantities of Services to be used by Company. Company has the right to perform any Services on its own or to procure Services from other parties, without any resulting obligation to Carrier.

2.

## TERM AND TERMINATION.

- o 2.01 Term of Agreement. This Agreement shall commence on the date first above written and, unless earlier terminated as provided herein, shall continue for eighteen months from the date hereof.
- o 2.02 Termination without Cause. Either party shall have right to terminate this Agreement at any time, without cause and without any termination liability (other than obligations arising pre-termination), by giving the other party at least thirty (30) days' prior written notice.
- o 2.03 Bases For Company's Immediate Termination of Agreement. Company may terminate this Agreement immediately upon written notice in the event of: (i) loss of or adverse impact to any of Carrier's licenses, registrations or permits; (ii) loss of or reduction in any of Carrier's insurance coverage provided for in this Agreement; (iii) Carrier's filing of a petition in bankruptcy or its adjudication as a bankrupt, the appointment of a receiver in light of Carrier's insolvency or Broker's making a general assignment for the benefit of creditors; (iv) upon Carrier's failure to substantially perform the Services hereunder to the sole satisfaction of the Company or any of the Customers of the Company; or (v) material breach of any other provision of this Agreement by Carrier, and Carrier's failure to cure such breach (if curable) within fifteen (15) days after written notice from the Company.

3.

## COMPENSATION.

- o 3.01 Rates. Company shall pay Carrier for the Services at the rates specified in Exhibit B hereto. The Carrier may not increase the rates specified in Exhibit B before, during, or after a confirmed mission request without notifying the Company; provided, however, that in the event of fuel increases in excess of 15% during the term of this Agreement, the Company and the Carrier will agree to negotiate in good faith a temporary fuel surcharge until such time as fuel charges drop below the 15% threshold mentioned above. During the term of this Agreement, the hourly rates provided by the Carrier to the Company which are or will be applicable to Customers of the Company (including those entered into the proprietary system of

the Company) shall not be higher than the retail hourly rates charged by the Carrier to the public.

- o 3.02 Payment. Carrier shall provide a post flight invoice to Company within 30 days after a flight for all charges applicable to each transport made utilizing Carrier's Services. Each post flight invoice submitted to Company shall be accurate and complete with all data which is requested by the Company. Company will pay Carrier's invoices within 15 days of Company's receipt of the post flight invoice. All pre-printed terms and conditions contained in Carrier's quotes and invoices shall be of no force and effect.
- o 3.03 Stripe. Payment processing services for operators on Company are provided by Stripe and are subject to the Stripe Connected Account Agreement, which includes the Stripe Terms of Service (collectively, the "Stripe Services Agreement"). By agreeing to these terms or continuing to operate as an operator on Company, you agree to be bound by the Stripe Services Agreement, as the same may be modified by Stripe from time to time. As a condition of Company enabling payment processing services through Stripe, you agree to provide Company accurate and complete information about you and your business, and you authorize Company to share it and transaction information related to your use of the payment processing services provided by Stripe.

4.

## LICENSES AND PERMITS.

- o 4.01 Licenses. Carrier represents, warrants and covenants that it is, and shall be, licensed by appropriate state, federal, and local agencies as necessary to perform the Services. Carrier represents, that it holds all appropriate and necessary federal, state and/or local licenses, registrations, and permits required to carry out the Services, and covenants that it will keep all such licenses and permits in full force and effect at all times during the term of this Agreement. Carrier shall notify Company immediately by electronic mail, telephone or facsimile in the event of any suspension, cancellation, termination, withdrawal, modification or transfer of said licenses, permits and/or registrations or any portion thereof and immediately terminate the performance of Services hereunder. A copy of Carrier's authority is attached as Exhibit C and a copy of Carrier's Surety Bond or trust fund agreement as required by applicable law is attached as Exhibit D.

5.

## INDEMNIFICATION AND INSURANCE.

- o 5.01 Indemnification. Except to the extent of Company's gross negligence or wilful misconduct, Carrier, on behalf of itself, its successors, assigns, representatives and agents, hereby waives, releases, and agrees to indemnify, defend and hold harmless Company and its customers, consignees, consignors and affiliates from and against (a) any and all liabilities, charges, suits, losses, damages, costs and expenses of whatever kind arising out of or in any manner related to Carrier's negligent performance of (including failure to perform) any of its obligations under this Agreement; and (b) all loss, damage, expense, actions and claims for injury to persons (including injury resulting in death) and damage to property arising out of or in connection with Carrier's performance of the Services hereunder.
- o 5.02 Insurance. Carrier shall procure and maintain, at its sole cost and expense, with reputable and financially responsible insurance companies, the following insurance in not less than the amounts specified below (all coverage to include non-attended vehicles):
  1. Comprehensive general liability insurance (including contractual liability and protective liability coverage) insuring against liability for injuries to persons, including injuries resulting in death, environmental restoration, and loss or destruction of or physical damage to property, in a combined single limit per occurrence which is reasonably acceptable to the Company;
  2. Cargo insurance insuring against liability for loss of or damage to commodities while in the custody, possession or control of Carrier in an amount for each aircraft which is reasonably acceptable to the Company;
  3. Excess liability insurance in addition to insurance specified in subparagraphs (a) and (b) of this section in an amount which is reasonably acceptable to the Company; and
  4. Environmental liability insurance insuring against liability for accidental sudden environmental damage or pollution, in amounts not less than US\$1 million per occurrence and US\$5 million in the aggregate for occurrences during any one calendar year.
- o 5.03 Certificates. Carrier shall furnish to Company written certificates from insurance companies

establishing that the insurance has been procured and is being properly maintained. All such insurance policies shall provide that in the event of cancellation or material modification thereof, written notice of such cancellation or modification shall be given to Company at least thirty (30) days prior to the effective date of such cancellation or modification.

- o 5.04 Each of the policies of insurance specified in this section shall name Company, its directors, officers, employees, stockholders, subsidiaries and affiliates, as an additional insured and shall provide that (i) Company shall not be obligated to pay premiums for any such insurance, (ii) such insurance shall be primary with respect to all insureds, and (iii) such insurance shall be applicable separately to each insured and shall cover claims, suits, actions, or proceedings by each insured against any other insured.

## 6. NON-CIRCUMVENTION/NON-COMPETE.

Carrier will have, at all times hereunder, certain proprietary information from the Company concerning the name, address and contact information respecting the Customers of the Company. Accordingly, Carrier does hereby agree that the following accurately reflects the Parties' entire understanding:

1. Carrier, intending to be legally bound, hereby irrevocably agrees not to circumvent, avoid, bypass, or obviate the Company, directly or indirectly, for the purpose of soliciting, engaging or transacting any business whatsoever with any Customer of the Company during the term of this Agreement and for a period of two years after the termination of this Agreement. Furthermore, as a material inducement to the Company to enter into this Agreement, the Carrier shall not (i) solicit or do business with, or attempt to solicit or do business with, directly or indirectly any of the Company's Customers or with any competitor of the Company, except on the Company's behalf, (ii) solicit or do business with or attempt to solicit or do business with, directly or indirectly, any of the Company's Customers or with any competitor of the Company or (iii) enter into any agreement to partner with, any third party who or which provides business-to-consumer and other services of the type provided by the Company, during, with respect to any of clauses (i), (ii) and (iii), the term of this Agreement and for the two year period beginning on the termination of this Agreement. In the event any Customer were to contact the Carrier directly, the Carrier shall not perform any services for such Customer except at rates that are higher than that which the Company charges the Customer. Notwithstanding the foregoing, in the event of any violation of this provision, the Carrier shall pay to the Company all compensation that would have been otherwise due Company hereunder, in addition, and not in lieu of, any other rights or remedies available to the Company under this Agreement, at law or in equity.
2. The Carrier acknowledges and agrees that the foregoing provision is fair and reasonable, for a number of reasons, including that the Company has developed their relationships with various Customers expense over a significant period of time and such relationships are proprietary.
3. IN THE EVENT OF A BREACH OR THREATENED BREACH OF THIS SECTION, COMPANY MAY, IN ADDITION TO ALL OTHER REMEDIES AT LAW OR IN EQUITY, OBTAIN INJUNCTIVE RELIEF AND/OR SPECIFIC PERFORMANCE, WITHOUT HAVING TO POST A BOND. COMPANY AND CARRIER STIPULATE AND AGREE THAT ANY VIOLATION OF THIS SECTION WOULD IRREPARABLY DAMAGE COMPANY BY, AMONG OTHER THINGS, DAMAGING ITS RELATIONSHIPS AND GOOD WILL AND JEOPARDIZING ITS BUSINESS, AND THEREFORE, IN ANY ACTION TO ENFORCE THE TERMS OF THIS SECTION, NO INDEPENDENT SHOWING OF IRREPARABLE INJURY NEED BE SHOWN TO OBTAIN INJUNCTIVE RELIEF.

## 7. MISCELLANEOUS.

- o 7.01 Force Majeure. Neither party hereto shall be liable to the other for failure of performance hereunder if such failure is due to or results from one or more of the following causes: floods, severe storms, earthquakes, hurricanes or tornadoes; acts of the public enemy, war, blockade, riot, terrorism, sabotage, or insurrection; strike, or other work stoppage, and authority of law.
- o 7.02 Assignment. Neither party may assign or transfer this Agreement, in whole or in part, or any interest arising hereunder, without the prior written consent of the other party, except that, without such consent, this Agreement may be assigned or transferred by (a) either party hereto to its affiliate, or (b) the

Company in connection with the sale of all or substantially all of its assets. This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the parties hereto. Any assignment in contravention of this Section 7.02 shall be null and void and of no force or effect for purposes of this Agreement.

- o 7.03 Entire Agreement; Modification; Waiver. This Agreement exclusively and completely states the rights and obligations of the parties hereto with respect to the subject matter hereof and supersedes all other agreements, oral or written, with respect to such subject matter and supersedes all tariffs heretofore or hereafter published or filed by Carrier. No modification of this Agreement and no waiver of any of its terms, conditions or provisions shall be valid or binding unless in writing duly executed by the authorized representatives of both parties hereto.
- o 7.04 Survival of Rights. Notwithstanding the termination, expiration or cancellation of this Agreement, any duty or obligation which has been incurred hereunder and which has not been fully observed, performed or discharged, and any right which has been created hereunder and which has not been fully enjoyed, enforced or satisfied, shall survive such termination, expiration or cancellation.
- o 7.05 Confidentiality. Except as and to the extent required by law, the existence of this Agreement, its terms, conditions and provisions, and all information pertaining to each shipment hereunder, any information concerning any customer of the Company, shall be confidential and shall not be disclosed by either party hereto to persons other than its directors, officers, employees, agents, attorneys, accountants, and auditors. Company shall have the right in its sole and absolute discretion to disclose any such information to one or more of its vendors, affiliates or consignees. The provisions of this section shall survive the termination, expiration or cancellation of this Agreement for a period of two (2) years.
- o 7.06 Notices. All notices, requests, demands, invoices, and other communications under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the second day after mailing, if sent to the party to whom notice is to be given, by registered mail, full postage prepaid and properly addressed to the addresses set forth in the preamble to this Agreement.
- o 7.07 Severability. Any provision of this Agreement which may be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remaining provisions hereof.
- o 7.08 Governing Law. The validity, enforceability, performance and construction of the terms, provisions and conditions of this Agreement shall be governed by the laws of the State of Connecticut, excluding conflicts of law principles that would require the application of laws of any other state. The parties hereby agree to the exclusive jurisdiction of the federal and state courts located in New Haven, Connecticut for any disputes or controversies arising under this Agreement.
- o 7.09 Definition of Affiliate. As employed in this Agreement, the word "affiliate" shall mean any corporation which controls, is controlled by or is under common control with, directly or indirectly, another corporation.
- o 7.10 Headings. All section headings in this Agreement are inserted herein for convenience only and shall not affect any construction or interpretation of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.

Company: EvoLux Transportation, LLC

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

Title: Founder & CEO

Date: 05/16/2024 EDT

Carrier: \_\_\_\_\_

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

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

Date: 05/16/2024 EDT

# LIST OF EXHIBITS

## EXHIBIT A: DEPARTURE AND DESTINATION POINTS

All identified publicly serviceable "Vertiports" in the EvoLux System and Privately Serviceable "Vertiports" the operator is permitted to take-off and land.

## EXHIBIT B: RATES

## EXHIBIT C: CARRIER'S OPERATING AUTHORITY



# EXHIBIT D: CARRIER'S SURETY BOND OR TRUST FUND AGREEMENT