

Terms and Conditions

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1. GENERAL TERMS & CONDITIONS OF USE

1.1. Definitions

In these T&C, the words starting with a capital letter shall have the following meaning:

<i>Aircraft</i>	<i>Shall mean any equipment, motorised or not, capable of soaring and circulating in the air.</i>
<i>Flight Share</i>	<i>Shall mean a flight where the Costs are Shared, operated with a simple motorised aircraft under the conditions described in the appendices of these T&C.</i>
<i>Post</i>	<i>Shall mean the Flight offer placed on-line buy a Flight Publisher.</i>
<i>BERLARIC</i>	<i>Indicates the company which owns and manages the website www.wingly.io, a joint stock company with share capital of EUR 20,713, the Registered Head Office of which is located at 7 Rue Voltaire, 92300 Levallois Perret, France registered on the Trade Register of Nanterre, France SIRET number 81230976300017, as well as on the Register of Travel and Tour Operators under number IM092200002, with financial guarantees provided by Groupama Assurance-Crédit et Caution, 8-10 Rue d'Astorg, 75008 Paris, France, and Civil Liability Insurance provided by Generali IARD, 2 Rue Pillet-Will, 75009 Paris, France.</i>
<i>T&C</i>	<i>Shall mean these General Terms & Conditions of Use</i>
<i>User Account Or Account</i>	<i>Shall mean the account which must be created in order to become a User and to access the Services.</i>
<i>Shared Costs</i>	<i>Shall mean the Sharing of the Costs, in the context of a Flight Share, between all of the occupants of the aircraft including the Pilot, limited to direct costs of the flight.</i>
<i>Pilot</i>	<i>Shall mean the physical person with directional control and control of the Aircraft, duly authorised, with the relevant up to date qualifications, licences and medical certificates required to pilot an Aircraft and to carry out the tasks of the captain on board.</i>
<i>Passenger</i>	<i>Shall mean the physical person having made a request to book a flight proposed by the Flight Publisher and which the latter has formally accepted.</i>
<i>Share of Costs</i>	<i>Shall mean the amount of money requested by a Private Pilot in the context of a Flight Share.</i>
<i>Service</i>	<i>Shall mean any Service rendered by means of the website to a User, it being specified that BERLARIC shall never be party to a transport contract of carriage.</i>

Site	<i>Shall mean the website accessible at www.wingly.io</i>
Private Flight	<i>Shall mean the operation of a Flight Share for which the Pilot has accepted to take a Passenger in an Aircraft for a defined Journey on payment of a Share of the Costs in accordance with the principle of a Flight Share.</i>
Journey	<i>Shall mean the circuit of the Flight, including take-off from point A in order to land at point B, or, where applicable, with a stop-over at point C and/or take-off at point A and landing at the same point A, depending on the terms proposed by the Pilot in the advertisement.</i>
User	<i>Shall mean any physical person or entity having opened an account on the Wingly website with a view to using the Wingly web-based platform.</i>
Wingly Pro	<i>Shall mean the Commercial Flights offered by Operators holding an Air Carrier Certificate (ACC) and an Air Operator Certificate (AOC), or ATO and DTO establishments or their agent(s).</i>
ACC	<i>Air Carrier Certificate issued to an Operator by administrative authorities for having demonstrated that it has the requisite professional capacities and organisation in place to provide the operations outlined on the Certificate.</i>
Local Flight	<i>Shall mean a flight where the points of departure and destination are located at the same airport.</i>
Operating Licence	<i>Authorisation issued by a national authority, permitting the company to provide air services in accordance with the specific details featured on the licence, including commercial carriage between two different airports.</i>
Flight Fare	<i>The fare to be paid by one or several passengers by an Operator as posted on the website.</i>
Flight Publisher	<i>A Private Pilot or an Operator, as appropriate who posts a flight on Wingly.</i>
Operator	<i>Shall mean a professional Air Carrier authorised to operate commercial flights or the agent representing it during the conclusion of the contract of carriage.</i>
ATO	<i>Shall mean an accredited Approved Training Organisation.</i>
DTO	<i>Shall mean an accredited Declared Training Organisation.</i>
Private Pilot	<i>Shall mean a pilot operating a Private Flight.</i>
Booking	<i>Shall mean the attribution of a place on a specific flight requested by the Passenger and accepted by the Flight Publisher.</i>
Commercial Flight	<i>Shall mean a flight operated by an Operator under the conditions and limits of the national authorisation to which he is subject, for a payable fare.</i>
SDR	<i>Special Drawing Rights – IMF monetary reference resulting from the average of a basket of currencies, corresponding to approximately EUR 1.25.</i>
Service Charges	<i>The fees deducted by BERLARIC from the price of the flight taken.</i>

1.2. Scope

The General Terms and Conditions of Use, including these Common General Terms and Conditions and the Special Terms and Conditions for Flight-sharing (Appendix I) and the Special Terms and Conditions for Commercial Flights (Appendix II) apply to the Services offered on the WINGLY Site.

*The Services offered on this Site are published by **BERLARIC SAS**, a joint stock company with share capital of EUR 20,713, the Registered Head Office of which is located at 7 Rue Voltaire, 92300 Levallois Perret, France, registered on the Companies and Trade Register of Nanterre under no. 812 309 763.*

1.3. Operations covered by these T&C

*The **Site** is a community platform accessible on the internet, set up and operated by the BERLARIC company.*

BERLARIC proposes to put Flight Publishers in touch with Passengers in order for them to carry out Aircraft Flights in common, in accordance with the Terms and Conditions defined herein, including the appendices, Appendix I in respect of a Flight Share and Appendix II in respect of Commercial Flights.

The Site offers Users the on-line tools and technical functionality to post content which:

- i. Puts Flight Publishers wishing to operate a Flight in touch with one or more Passengers, by:*
 - Posting a Flight offer on the Site and*
 - providing a tool for the management of bookings and payment.*
- ii. Gives Users an opportunity to assess the relationships formed via the Site and to provide feedback with regard to their overall experience*

1.4. On-line acceptance of the T&C

Use of the Site shall be subject to acceptance of these T&C.

By creating an account on the Site, Users imply their acceptance of the T&C.

Solely the acceptance of the T&C shall permit Users to access the services proposed on the Site. The acceptance of these T&C shall be whole and indivisible, and Users shall not have the option to accept the application of one part only, or to formulate reserves.

In the event of non-adherence to one of the obligations detailed herein, BERLARIC reserves the right to delete the relevant User Account. The same shall apply should a Private Pilot act in a commercial capacity or an Operator no longer holds the administrative authorisation necessary for commercial transport.

1.5. Amendments to the T&C

BERLARIC reserves the right to amend the T&C at any time, as well as the functionality offered by the Site or the operating rules of the Service

Amendments shall take immediate effect once they appear on-line in the T&C, which each User shall acknowledge as having understood and accepted.

Where an amendment takes place after the Passenger has paid for a flight booking or a gift voucher, the amendment shall not apply to the outstanding transaction.

BERLARIC reserves the right to propose new services, free or for payment, on the Site.

2. USING THE SERVICE

2.1. Preliminary registration and the setting up of a User Account

The Site is freely accessible to any Internet user with modern computer hardware, the necessary software configuration and a high-speed internet connection.

In order to use the Services, the User must first set up a User Account in accordance with the instructions given on the Site, by completing the on-line form or by using the access codes provided by a third-party partner through their site.

The Services which are available on the site are exclusively for the use of those persons considered legally competent to commit themselves in respect of the T&C.

The username and password ('Access Codes') chosen by the User must not violate the rights of any third party - in particular the rights associated with surnames or trademarks - nor offend with regard to morality.

Registration shall be confirmed to the User via the email address which they shall have provided, in the form of an email from the Site containing the links necessary to confirm registration.

This email shall be sent only if all mandatory fields have been filled in on the aforementioned registration form. The truth and accuracy of the information communicated by the User during the Account opening process shall be assumed and shall engage the liability of the named person.

In order to protect private information relating to Users, only selected information regarding the Account shall be visible to others, and some information shall only be released to a User following their Acceptance with regard to a Request for Booking initiated by another User.

BERLARIC shall under no circumstances be liable for any erroneous or fraudulent information communicated by the Users.

2.2. Undertakings of the User

The User undertakes:

- (i)** *To hold a single Account only on the Site;*
- (ii)** *To only use the Site for personal transactions; all actions undertaken using their Access Codes shall be considered as having been effected by themselves ;*
- (iii)** *To regularly update their information when accessing the Account;*
- (iv)** *Not to assign their Account to another User;*
- (v)** *To keep their Access Codes secret. In the event of User Access Codes being forgotten, misused or used without authorisation, BERLARIC shall under no circumstances be liable, and the User must inform BERLARIC of the situation in an email, to: contact@wingly.io*

2.3. Deletion of the Account

Any User can delete their Account by logging in to the Site, but they shall remain committed in respect of any outstanding transaction(s) with any other User.

BERLARIC reserves the right to delete any User Account, particularly in the event of:

- a. Violation of one of the provisions of the T&C, specifically with regard to misappropriation of the Services offered by the Site;*
- b. Absence of any log-in to the User Account for a period of two (2) years, following the sending of an email alerting the User that if no response is received, the Account will be deleted in eight (8) weeks;*
- c. Legal action being taken by a User against other Users, specifically with respect to damage or regular destruction to Aircraft or other equipment attached to it;*
- d. Bypass or attempting to circumvent the Wingly website (i.e. an attempt to carry out a flight by circumventing the Wingly Platform). Any exchange of contact details (phone number, email, social media profile...) by the Wingly messenger may be considered as an attempt of bypass and can be punishable by banning of the user and the account in question;*

The User undertakes to set up one sole Account, and not to create or use any other Account(s) which they have previously created, whether in their own name or that of a third party.

Exceptions to this rule shall subject to a direct request being sent from the User, and express authorisation from BERLARIC. The setting up or use of new accounts under their own identity or that of any third party without having requested and obtained authorisation from BERLARIC could result in the immediate suspension of the User's account(s) and all associated Services.

2.4. Terms of use of the Service

2.4.1. Creation of a Flight offer

Any private pilot User or an authorised representative of the Operator can publish one or several Post(s) on the Site in order to benefit from the Services.

To this end, the Flight Publisher or their authorised representative must:

- (i) Complete the different forms provided on the Site for this process, and, at the very least, populate the fields indicated as mandatory;*
- (ii) Indicate the schedule of dates and times of the Flight;*
- (iii) Indicate the amount of the Fare, or the Share of the Costs;*
- (iv) Where appropriate, stipulate the conditions for cancellation which the Publisher wishes to impose on the Passenger;*
- (v) Detail the rules and any supplements which may be charged to the Traveller in the context of the Flight;*
- (vi) Be able to provide evidence on demand, to BERLARIC and / or the Passenger:
 - a. Of their right to the use of the aircraft;*
 - b. Of the qualifications and, where applicable, the licence(s) and certificate(s) which shall permit him/her to fly the proposed aircraft;**
- (vii) Not to post or circulate via the Site:
 - a. Redirection to other websites featuring activities which are in competition with or ancillary to the Services, except with the prior express authorisation of BERLARIC.**

- b. *Redirection to external content such as personal pages;*
- c. *Material which is malicious, disparaging, deliberately misleading, unlawful and/or contrary to good morals or to these T&C;*
- d. *Any sensitive material of a racial or ethnic origin or relating to political, philosophical or religious opinions, trade union membership, sexual life or health, or which is contrary to morality and the law.*

(viii) *To comply with public policy provisions.*

Non-compliance with these provisions could result in the deletion of the User Account by BERLARIC.

2.4.2. *Booking of a Flight by the Passenger*

2.4.2.1. *Requesting a Flight Booking*

Passengers have a range of filters at their disposition, enabling them to target their search for a Flight. The results obtained are classified in order of pertinence with the search criteria entered by the Passenger.

Any request to book a flight shall be carried out in accordance with the Site booking procedure. During the Flight Request process, the Passenger can see on-screen:

- (i)** *The content of the Post selected and the places, dates and times of the Flight featured;*
- (ii)** *Where applicable, the applicable conditions for cancellation;*
- (iii)** *The price to be paid, which shall include:*
 - a. *The amount to be paid to the Flight Publisher;*
 - b. *Where appropriate:*
 - *Supplementary charges specifically detailed in the Post (consumables, cleaning etc.);*
 - *The cost of insurance (cancellation, assistance, excess waiver, or other) possibly taken out by Passengers with an external insurance provider if this Service is offered on the Site;*
 - c. *The amount of the service charges invoiced by BERLARIC.*

Responsibility rests with the Passenger to check that they have taken any additional charges into account for which they shall be invoiced.

Once the Flight Request has been raised by the Passenger, they will be asked to follow the procedure for payment, described here below, in order to confirm the Flight Request.

2.4.2.2. *Conditions of Acceptance of the Flight Request*

The Flight Request shall be considered as confirmed once the payment process has been validated.

- (i)** *An email summarising the Flight Request shall be sent to the Passenger;*
- (ii)** *An email summarising the Flight Request shall also be sent to the Flight Publisher who shall have forty-eight (48) hours in which to formally accept or refuse it;*

Should there be no response within the 48 hours, the Flight Request shall be cancelled, and the Passenger will be informed by e-mail. The Passenger will then receive a full refund on a Wingly gift card enabling them to make a new reservation as follows:

1. If the payment had been made in full via CB/Paypal, the refund will be made in full on a gift card created for this purpose, valid for one year from the date of cancellation, and which will have the value of the full payment made.

2. If the payment was made in full by gift card, the card will be re-credited and in the event that the gift card has an expiration date of less than 6 months, the gift card will be extended by six months from the date of cancellation.

3. If the payment had been made partially with a gift card and a CB/Paypal payment, then the gift card will be recredited under the same conditions as for the previous case (N°2), and a new gift card will be created corresponding to the amount that had been paid by CB/Paypal as in case N°1. The two gift cards can then be used simultaneously when a new booking is made.

Gift cards created following the failure of a Flight Request enjoy the same terms of use as the Gift Cards sold on the wingly.io website and detailed in article 2.4.3.4, paragraph iii.

2.4.3. Service charges and payment to the Flight Publishers

2.4.3.1. Service Charges

BERLARIC shall take payment of the Service Charges included in the advertised price of the flight via the Site.

The Service Charges shall include the following:

- The payment for putting the passenger and the Flight Publisher in touch through the use of BERLARIC as an internet platform marketplace;
- VAT at the rate applicable in the relevant country.

The Service Charges shall be applied in respect of each seat offered for booking on the Site.

The Service Charges shall be included in the Share of Costs for the Flight Share or the fare required of each passenger.

2.4.3.2. Payment by the Passenger

Payment for a reservation by the Passenger shall be made at the time of the Flight Booking via the BERLARIC payment system, using a bank card (Visa or MasterCard), or a PayPal account, or by any other means which BERLARIC may make available on the Site.

A secure system of payment for those using a bank card has been put in place for BERLARIC by MANGOPAY (www.mangopay.com). This method of payment is globally recognised for the protection of information transmitted via the internet.

The instruction of a payment by a passenger via the Site implies acceptance of the T&C of MANGOPAY, which may be accessed via this link: https://www.wingly.io/docs/Mangopay_Terms_en.pdf

Once a positive response has been received from the bank regarding the payment instructed by the User, the Flight Request shall be sent to the Flight Publisher, who shall have forty-eight (48) hours in which to accept it.

In the event of a negative response from the bank, BERLARIC shall immediately inform the Passenger of the failure of the transaction.

The sums received by BERLARIC shall be deposited in a holding account with MANGOPAY. The sums thus deposited shall be used for payment of the costs.

The payments instructed by the Users in accordance with these T&C shall be irrevocable and shall be executed in favour of BERLARIC by MANGOPAY.

The Passenger and the Flight Publisher agree to respond positively to any request from BERLARIC or MANGOPAY and

more generally to any administrative authority or competent court, with regard to preventing and combating money laundering, and specifically, they agree to provide any proof of address or identity which may be required. In the absence of an immediate response to such a request, BERLARIC and/or MANGOPAY shall take all appropriate measures, specifically the freezing of sums paid and/or the suspension of the Services used by the Passenger or offered by the Publisher.

Payment to Flight Publisher shall only be instructed in favour of those Flight Publishers having opened a bank account in their own name.

2.4.3.3. Payment of the Flight Publisher charges

Once the payment has been made, the Flight Publisher shall inform Wingly of the fulfilment of the flight. The Passenger shall then be informed of the notification from the Publisher by Wingly. The Passenger shall then have forty-eight (48) hours to challenge the declaration of the Publisher, which shall have the effect of suspending the payment until the outcome of legal proceedings is known.

At the end of the forty-eight-hour period, in the absence of any confirmation or challenge from the Passenger, BERLARIC shall consider that the confirmation of the Passenger is implied.

From the moment of this confirmation, the Flight Publisher shall have a credit due on his User Account. This credit shall be equal to the amount paid by the Passenger minus the Service Charges.

BERLARIC shall transmit the payment instructions to MANGOPAY on the first business day following the request made on the Site by the User.

For this purpose, the Flight Publisher shall transmit their bank details to BERLARIC (IBAN / SWIFT) so that the payment can be made to their account. This information is to be provided solely by the User via their User Account on the Site.

Under no circumstances shall BERLARIC make payment other than by bank transfer, to the absolute exclusion of cheques and cash.

BERLARIC shall under no circumstances be liable, or guarantor, in respect of any payment incident suffered by the Flight Publisher, for whatsoever reason, if the sum paid by the Passenger has to be returned, notably in the event of a bank card being refused, or used fraudulently.

The Flight Publisher agrees to pay BERLARIC on demand, any sum received which is subject to dispute due to such a payment incident.

2.4.3.4. Payment for Wingly gift cards

i. Miscellaneous:

The Wingly gift card represents a mode of payment which may be used exclusively on the wingly.io website, in total or over several transactions up to the total amount available.

It may be (i) offered by a third party as a gift to the User, in the amount of their choice from a minimum of five (5) pounds or euros (<https://www.wingly.io/en/shop/gift-cards>) (**Classic Gift Card**) (ii) or purchased for a specific flight in the 'gift a flight' section ('**Gift Card linked to a specific Flight**') (iii) or created after the cancellation of a flight for which all or part of the booking amount had been paid by a mean other than a Gift Card ("**Cancelled Flight Gift Card**"); (hereafter referred to as the '**Wingly Gift Card**').

Wingly Gift Cards are available in printable electronic form (E-cards), or as a physical card subject to confirmation by e-mail of a surcharge relating to the cost of manufacturing the physical card and its delivery.

In any event, any order for a Wingly Gift Card shall require the purchaser to make a payment.

ii. Period of validity of the cards

The Wingly Gift Card shall be valid for one (1) year from the date of purchase. However, the User may request at any time during the period of validity of the Wingly Gift Card to extend the validity for 6 months from the date of the request, up to a maximum of ten (10) years following the purchase of the Gift Card (In the event that the expiration date is more than 6 months, the original date will be maintained.).

The User must make their request in writing, via email, prior to the expiry date of the Gift Card, to hello@wingly.io in order for the validity of the Wingly Gift Card to be extended for an additional 183 days; the date the email is sent by the User shall be the start-date for the extension. The User can also extend the gift card directly from their account, in the 'My Gift Cards' section.

iii. Terms of use for Gift Cards

The Wingly Gift Card may be used for all the flights posted on the Site in the same currency (i.e. a card in EUR for flights priced in EUR, and a card in GBP for flights priced in GBP).

The Wingly Gift Card shall have no monetary value; the amount figuring on the Card may under no circumstances give rise to a refund, even partial, in any form whatsoever.

The User's attention is drawn to the fact that Gift Cards do not benefit from a 14-day withdrawal period. Indeed, in accordance with Article L221-28 of the French Consumer Code, the right of withdrawal cannot be exercised once the contract has been executed, that is, as soon as the Gift Card is sent to the User or the Beneficiary.

Indeed, pursuant to the provisions of Article L. 221-28 of the French Consumer Code, the right of withdrawal cannot be exercised for contracts for the supply of digital content without physical support, where execution has begun before the end of the withdrawal period. As such, the Customer acknowledges and agrees that the Gift Card is sent and displayed immediately after purchase, i.e., before the end of the fourteen-day withdrawal period provided by the Consumer Code, and therefore, they cannot benefit from the right of withdrawal.

Wingly Gift Cards cannot be used to purchase another gift card or be merged with other Wingly Gift Cards to make a Booking. They can, however, be used together for a reservation.

To use the Wingly Gift Card, the User must enter the Gift Card code during the payment procedure, so that the amount of the order can be reduced by the amount available on the Gift Card. Alternatively, the user can add the gift card to their account from the 'My Gift Cards' section.

Wingly Gift Cards may be used one or several times, until the balance of the card is zero.

In the event of the total amount due being higher than the balance on the Gift Card during a purchase, the User shall pay the difference by any other means of payment at their disposal which is accepted on the Wingly Site, as detailed in Sub-clause 2.5.4.2.

Should the User fail to use the total balance on the Gift Card, neither the purchaser of the Card nor the User shall be entitled to any refund or return of money, even partial, but the User could use the Wingly Gift Card when paying for any other flight booking for as long as the Gift Card has not expired.

If the Flight booked is cancelled, the Wingly Gift Card used shall be automatically re-credited with the amount due in respect of the cancelled flight.

iv. Respect for privacy and personal data

The information collected in the context of the purchase and use of a Wingly Gift Card may be subject to computer processing for the purpose of compiling a customer and prospect file for sending information on the Wingly network and for statistical analysis

The protection, security and confidentiality of the data collected shall be pursuant to the requirements of Clause 6 of these T&C.

The User may oppose the processing of data concerning them by written request. In such a case, Wingly undertakes to delete all information concerning the User from its databases.

v. Specific conditions relating to Gift Cards linked to a specific flight

Where the User receives a specific gift card, with details of the flight, excursion or event for which it is destined, and the amount credited to the card, this gift card shall be subject to all the above-mentioned conditions of use.

If there is a change in price for the flight after payment of the booking, the difference between the initial price of the flight and the amended price shall be payable by the User, by any other means of payment at their disposal which is accepted on the Wingly Site, as detailed in Sub-clause 2.5.4.2.

If the flight booked should be cancelled, the User shall not be entitled to any refund, even partial, for the cancelled flight. However, the card would be credited in the amount of the cancelled flight and could be used when paying for any other flight booking on the Wingly Site. Should the User fail to use the total balance on the Gift Card for the intended flight, the User could use the Wingly Gift Card when paying for any other flight booking for as long as the Gift Card has not expired.

3. FEEDBACK

The Site contains an assessment tool which gives Users the opportunity to provide feedback following a Flight and to indicate a level of confidence for each User, which shall be visible to all Users of the Site.

In all but exceptional cases, the Site does not systematically check the feedback, and invites Users:

- o to only provide feedback which is honest, objective and strictly relating to the Flight;*
- o not to include any names, email or postal addresses or telephone numbers;*
- o not to infringe the rights of third parties, in particular personality rights;*
- o not to make any vulgar, obscene, racist, harmful to youth or insulting remarks or to refer to any link or text of this kind;*
- o not to make any defamatory remarks;*
- o To inform the Site in the event of any non-adherence to any of the points detailed above by another User, by writing to contact@wingly.io*

In the event of non-adherence to these provisions, to a legal provision or as a result of an administrative or legal ruling, BERLARIC shall delete all or part of the feedback provided by a User.

4. LIABILITY

4.1. Liability with regard to Flights posted by Users

The BERLARIC company, in limiting itself to the publication of a website with the requisite tools to put Flight Publishers in touch with Passengers, can under no circumstances be considered as a Publisher.

BERLARIC is acting only in the capacity of technical intermediary and its Services are limited to providing a community platform with varied functions, specifically the management of Flight Bookings by its Users. The company is not involved in the definition of the Flight, the schedule, the flight conditions, the aircraft selected, nor the identity of the Pilot.

4.2. Liability with regard to the services offered on the Wingly site

BERLARIC cannot guarantee to the User that its Services will be free of errors or defects or that they are likely to meet the expectations and constraints specific to each User.

The company reserves the right to temporarily suspend access to the site or to certain functionalities, in particular for technical maintenance operations or corrective operations specific to its operation.

BERLARIC:

- (i) shall not be held liable in the event of total or partial suspension of its Services in the event of force majeure, application of a judicial or administrative decision or disruption to telecommunications, computer and/or telephone networks, and
- (ii) declines all responsibility for the possible loss of information relating to Users of the Site and recommends that they back up this information regularly .

In accordance with the provisions of Article 6-I of French law no. 2004-575 of 21st June 2004 on confidence in the digital economy, the Civil Liability of BERLARIC shall only be engaged if it has been notified of the illicit nature of the activities or information stored on the Site by a User. BERLARIC consequently reserves the right to delete any Account which contravenes any legal or regulatory provisions or the T&C.

In particular, the Services provided on the site do not include the verification of the content, nor the truthfulness or accuracy of the Posts. In addition, BERLARIC is never party to the contracts between Users which are made via the means and technical tools of the Site and cannot guarantee the operation of the flights.

FOR THIS REASON, BERLARIC:

- (i) Provides no guarantee, specifically with respect to deceptive Posts or those which mislead the User;
- (ii) Strongly recommends that Users check the aircraft against the description in the Post, as well as the actual skills and experience of the Pilots prior to, or during boarding;

BERLARIC shall verify the licences and/or certificates on which the Publisher is relying to carry out the posted flight. In any event, BERLARIC shall not be held liable for the consequences of any fraud or falsification of the documents transmitted.

The liability of BERLARIC is strictly limited to cases of non-performance of the T&C and as such, it has a simple obligation of means, which the Users expressly acknowledge.

Any User of the Site whose behaviour during a Flight could have revealed a breach of the provisions of the T&C or which could have led to a breach, or risk of breach of the safety of the Users shall have their Account deleted by BERLARIC without the possibility of such a User claiming any compensation of whatsoever nature.

5. INTELLECTUAL PROPERTY

5.1. Intellectual property belonging to BERLARIC

BERLARIC is the owner or holder of intellectual property rights on the Site and in particular all texts, comments, works, illustrations, logos, pictograms, or any graphic or design content, architecture, software, videos, images, music, etc., whether visual or audio, reproduced on the Site, as well as databases for which it has the status of producer within the meaning of the provisions of the French Intellectual Property Code ('Site Content').

All the Site Content produced and placed on-line by BERLARIC is protected by copyright and/or trademark law and/or the law of sui generis for databases, across the entire world. BERLARIC shall institute all legal proceedings necessary in the preservation of its rights and interests, against any person engaging in the reproduction, representation, translation, extraction, adaptation, or dissemination, in whatsoever form, of any part or all of the Site Content without prior written authorization.

5.2. Intellectual property belonging to the Users

Users shall be solely responsible for the content which they publish on the Site and must ensure that they have at their disposal all the rights and authorisation necessary prior to disseminating the content on the Site

The uploading by the User of any content protected by copyright, trademark, databases or otherwise shall confer on BERLARIC, for the duration of the copyright and across the entire world, a non-exclusive right to reproduce, represent, translate and adapt the Site Content on any other digital, analogue or paper medium.

The User shall guarantee BERLARIC against the consequences of all claims relating to the rights to content which they upload to the Site, invoked by third parties in respect of violation of whatsoever rights (infringement, unfair and/or parasitic competition etc.) on the basis of a right to intellectual property or any other right belonging to them.

The User commits to compensating BERLARIC with regard to any prejudice to which it may be subjected, and to reimbursing any damages, interest, and costs, specifically in terms of legal counsel, which it may engage in this respect.

6. DATA PROTECTION - PERSONAL INFORMATION

*BERLARIC shall collect personal information from the User relating to him/herself, as well as to parties linked to him/her, in the context of the booking of flights and ancillary services. BERLARIC shall treat the protection of personal information as a priority in its role as 'Data Controller as defined in French Law No. 2018-493 of 20th June 2018 promulgated on 21st June 2018 having amended French Law No. 78-17 of 6th January 1978 regarding data processing, data files and liberties, pursuant to Regulation (EU) 2016/679 regarding data protection ('the **GDPR**'), with regard to the confidentiality and security of data.*

The personal information transmitted by the Users shall be collected in order to perform the Services available on the Site (names, electronic and postal contact details, bank information, information relating to Gift Cards, etc.)

6.1. Use of cookies during User visits to the website

For this reason, and in order to simplify User access to the Services and their Profile during visits after their first connection to the Site, BERLARIC also uses cookies which reside on the hard drive of the User's computer once the web browser is closed. BERLARIC also uses 'session cookies' for the analysis of the use and content of the Site, in the interest of continuous improvement of the Services and the technical means available to the Site User. Some cookies are essential for use of the Site, others enable the optimisation of the use of the Site and the customisation of the content displayed.

Thus, Cookies permit:

- o The measurement and analysis of the frequency with which the Site is used, and the sections and flight services for posts, and to study the ergonomics of the Site with a view to improvement;*
- o The User reserved access and personal spaces on the Site or our Services (registration, account access) or information which the User has selected (services, or flights posted, shopping basket contents);*
- o The implementation of safety and security measures;*
- o The limiting of the number of advertisements displayed.*

*(Hereafter referred to as 'the **Purposes**')*

Solely the issuer of the relevant cookie can read or modify the information contained therein.

The User can always delete these cookies manually or manage their authorisations for their implementation by amending the parameters in their web browser.

BERLARIC does not use these tracking tools to transmit this information to third parties or E-commerce platforms, nor to link this data to personal data (names, addresses etc.) without the express consent of the User. Where appropriate, this consent shall be sought from the User in advance.

6.2. Communication of personal data to related third parties

In order to accomplish the Purposes outlined here above, the User shall expressly consent to the data collected being transmitted to the following recipients:

- o *Social media platforms which may offer functions which allow it to integrate information from their account on such platforms into their Wingly profile;*
- o *The insurance partners of BERLARIC, e.g. BERLARIC shall potentially provide certain information to its insurer, Allianz GC&S and its broker, SAAM Verspiieren Group in order to confirm the eligibility of Users for its insurance programme.*
- o *The marketing trading partners and service providers of BERLARIC within the limits authorised by law.*
- o *The voluntary sector partners of BERLARIC, such as the FFA (French Aeronautical Federation);*
- o *Organisations which carry out questionnaires and surveys;*
- o *More generally, the service providers, agents and subcontractors contractually linked with the BERLARIC company, for the performance of tasks which are directly linked to the purposes described here above;*

The User acknowledges and expressly accepts that certain personal information collected by BERLARIC for the management of their Post and the management of the flight reservations and related tasks requires the transmission to Users of certain information, such as surnames, first names, postal, electronic and telephone contact details, aircraft names, precise location of the aircraft, with the specific exception of bank details.

6.3. Right of access to and rectification of personal information

Personal data may give rise to the exercise of a right to access and rectification under the conditions provided for in the GDPR, as well as by Law No. 78-17 of 6th January 1978, amended, relating to data processing, files and consumer rights. The User may obtain a copy of the data relating to him/her and, where appropriate, have it corrected and updated, or have information which is inaccurate, incomplete or out of date, removed. The User may also exercise their right to object, notably in respect of commercial or prospective marketing, and limitation of the use of their data, as well as their right to portability of the data relating to them.

The exercise of these rights shall be by sending an email to contact@wingly.io or a letter to the Registered Head Office of BERLARIC:

BERLARIC
7 Rue Voltaire
92300 Levallois Perret
France

Any question relating to the use of personal data may be addressed to BERLARIC at the above- mentioned address.

For all requests for access to the data, the User is required to enclose proof of identity with their letter.

7. NULLITIES

If one or several of the provisions in the T&C is deemed to be invalid or declared as such through the application of a law or regulation, or following a definitive legal ruling, the other provisions shall retain their full force and scope. Where appropriate, BERLARIC commits to the immediate deletion of any such Clause and its replacement with a similar, legally valid clause.

8. TITLES

In the event of any difficulty in respect of the interpretation between the Title and the chapter of any of the Clauses and

any of the Sub-clauses, the Titles shall be deemed to be unwritten.

9. TIME LIMIT

Any claim in connection herewith shall lapse within one year.

It is irrefutably presumed that the Flight Publisher or the Passenger shall forego any payment which has not been requested within one year. Any unclaimed funds shall become the property of BERLARIC.

10. JURISDICTION AND APPLICABLE LAW

These T & Cs shall be governed by French law.

All claims must be raised within a maximum of fifteen (15) days of the performance or the planned date of performance of the Service that the User has agreed to, and sent to the following address: BERLARIC, 7 Rue Voltaire, 92300 Levallois Perret, France, or by email to contact@wingly.io.

Any dispute that may arise in connection with the execution or interpretation of these T&C, if not settled amicably, shall fall within the jurisdiction of one of the courts provided for in section 4 of Regulation (EU) 1215/2012 of 12th December 2012 regarding jurisdiction.

APPENDIX I: SPECIAL FLIGHT SHARE CONDITIONS

1. NON-COMMERCIAL FLIGHTS

With regard to a Flight Share (see Definitions), the linking proposed by BERLARIC excludes all commercial and professional operations.

European Regulation 379/2014 authorises Shared Cost flights by private individuals, provided that the direct cost is shared by all occupants of the aircraft, including the pilot, and that the number of persons bearing the direct cost does not exceed six (6). The regulation has not changed in the UK following Brexit. Regarding fixed-wings microlights (3-axis) it is national regulations that apply and not the European one.

In this respect, it is strictly forbidden by the Regulation and by these Special Flight Sharing Terms & Conditions, for the Pilot to make any profit whatsoever.

2. AIRCRAFT AUTHORISED TO CARRY OUT FLIGHT-SHARING

In respect of Flight Sharing, only fixed-wing microlights (3-axis) and non-complex motor powered aircraft, within the meaning of the Order of 9th February 2015 implementing EU Regulation 965/2012 amended by Regulation 379/2014 determining the technical requirements and administrative procedures applicable to air operations, i.e. aeroplanes with a maximum take-off weight of 5.7t, certified to be operated by a single pilot, and helicopters with a maximum take-off weight of 3,175kg certified to be operated by a single pilot, duly registered or identified and benefiting from administrative authorisation to fly freely in European and UK airspace, are permitted. Solely operators of this type of Aircraft are permitted to become Users of the Site.

3. SHARED COSTS

The sum of money requested from the passenger, corresponding to their share of the cost of the flight shall be calculated by the Pilot, and remains under their sole responsibility. It must be strictly limited to the share of the costs between the occupants of the aircraft, i.e. the pilot and the passengers, the total number of which must not exceed 6 people. The Pilot may not make any profit whatsoever, under any circumstances, from this operation. Failing this, solely the Pilot shall bear the risks of any reclassification of his unauthorised service.

4. FLIGHT OPERATION

4.1. Respective obligations of the parties

It is hereby reiterated that in the context of the agreed Flight, the Pilot and the Passenger mutually undertake:

- (i) To present themselves on the date, at the time and in the location agreed: in the event of failure to do so, or cancellation, BERLARIC reserves the right to store information relating to the cancellation in its database and/or to inform Users on the profile of the Pilot and/or to suspend access to the Site to the Publisher concerned;*
- (ii) To make their best efforts for the successful operation of the Flight.*

4.2. Specific obligations of the Pilot

4.2.1 Licences, qualifications and airworthiness

Prior to the Flight, the Pilot expressly undertakes to:

- (i) have in their possession:
 - o a valid and current Pilot's Licence,
 - o a valid and current Medical Certificate,*
- (ii) abide by the conditions of carriage in respect of passengers, i.e. 3 landings and 3 take-offs in the 90 days preceding the flight,*
- (iii) ensure that their Aircraft is compliant with the declaration and registration required by the local, national and international authorities;*
- (iv) ensure that the Aircraft and all the optional and mandatory equipment aboard is in compliance with the regulations, particularly in respect of all safety related equipment;*

4.2.2 Insurance

The Pilot undertakes to the use of an Aircraft with a valid Civil Liability Insurance Policy, which at the very least, covers the mandatory minimum requirements set out in the Regulation governing the flight and/or the aircraft used, i.e. regulation EC 785/2004 of 24th April 2004 or any potential National or European regulation that may amend it or apply instead, and shall ensure that they comply with the conditions of guarantee set out in the policy, in particular that they do not make any profit that would enable the insurer to refuse their guarantee by reclassifying the flight as a commercial flight, or that they does not carry out any manoeuvre likely to lead to the exclusion of a guarantee provided for in the insurance policy (e.g. flight below the regulatory safety heights). In the event of refusal by the insurer to meet any claim, BERLARIC shall not be liable in any circumstances for the financial consequences of such a refusal, the Pilot being personally liable for any compensation due to the Passengers. In addition, if it is advised of any such lack prior to any accident, BERLARIC reserves the right to suspend the User Account and to inform the relevant authorities.

4.2.3 Operation of the Flight

The Pilot undertakes:

- (i) To wait for the Passenger at the meeting place for up to thirty (30) minutes after the agreed meeting time (this does not dispense the Passenger from being punctual);*
- (ii) To inform the Passenger immediately of any amendment to the Flight;*
- (iii) If one or more Passengers has booked and the Pilot decides to change any condition whatsoever of the Flight, the Pilot undertakes to inform each of the Passengers and to seek their consent to the change. In the event of refusal by a Passenger, they shall have the right to completely cancel their Booking without being invoiced for any cancellation fees, and without any compensation being due to the Pilot, and no increase to the Share of the Cost to be paid by the other Passengers permitted.*

4.3. Specific undertakings of the Passenger

The Passenger undertakes:

- (i) Not to challenge the place in the Aircraft which is attributed to them by the Pilot;*
- (ii) Not to challenge any decision made by the Pilot during the Flight, particularly with regard to any diversion due to weather conditions or for any other reason given by the Pilot based on a safety issue or adherence to regulations in force;*

- (iii) *To adhere to the on-board rules set by the Pilot (cigarettes, animals, food, drinks, children, maximum authorised size and weight of luggage, etc.).*

5. FLIGHT CANCELLATION

The Pilot is at liberty to cancel the Flight for any reason and at any time, particularly for reasons of poor weather conditions, illness etc.

The Passenger may also cancel his booking provided that this is done at least 24 hours prior to the flight.

In both cases, the Passenger will receive a full refund on a Wingly gift card enabling them to make a new reservation as follows:

- 1. If the payment had been made in full via CB/Paypal, the refund will be made in full on a gift card created for this purpose, valid for one year from the date of cancellation, and which will have the value of the full payment made.*
- 2. If the payment was made in full by gift card, the card will be re-credited and in the event that the gift card has an expiration date of less than 6 months, the gift card will be extended by six months from the date of cancellation.*
- 3. If the payment had been made partially with a gift card and a CB/Paypal payment, then the gift card will be recredited under the same conditions as for the previous case (N°2), and a new gift card will be created corresponding to the amount that had been paid by CB/Paypal as in case N°1. The two gift cards can then be used simultaneously when a new booking is made.*

Gift cards created following the failure of a Flight Request enjoy the same terms of use as the Gift Cards sold on the wingly.io website and detailed in article 2.4.3.4, paragraph iii.

If the Passenger cancels less than 24 hours before the scheduled date and time of the flight, the Passenger will not be entitled to any refund.

Any seat vacated on a Flight following the cancellation of a booking by a Passenger shall be automatically posted on the site for booking by other Users.

6. LIABILITY OF THE PILOT

In the event of an accident, the liability of the Pilot shall be governed by the laws of the country where the accident occurred or the common law of the occupants of the Aircraft. This is usually limited liability. It is worth noting that the provisions of the Montreal Convention of 28th May 1999, for the automatic quasi unlimited liability of the Flight Publisher do not apply to Publishers who do not hold an Operating Licence, and thus, only to private carriage, which is the nature of a Flight Share.

APPENDIX II: SPECIAL CONDITIONS FOR COMMERCIAL FLIGHTS

1. INDICATION OF COMMERCIAL FLIGHTS

Commercial Flights are indicated as such on the Wingly Site by the words 'Wingly Pro'.

The contents of Flight offers are issued by the Operator on the basis of a form on the Wingly Site, which the Operator undertakes to complete the form fully.

A Flight Publisher operating commercial flights is a professional operator with the necessary authorisation to operate the type of flight proposed, such as an ACC, ATO or DTO Operating Licence (refer to Definitions).

2. TARIFS

The fare for the Flight, per Passenger, is transmitted with the offer for carriage, includes all taxes and corresponds to the price requested by the Operator for the selected date, plus Wingly's commission.

The total cost of the service is provided once the User has indicated the number of seats they wish to book.

3. PAYMENT AND CONFIRMATION OF THE BOOKING

Payment for the flight is to be effected under the conditions featured in Sub-clause 2.4.3.3 of the T&C entitled 'Payment of the Flight Publisher charges'.

4. CONFIRMATION OF THE BOOKING AND TRANSPORT TICKET

The Passenger shall receive the confirmation of their booking from Wingly, together with all of the relevant information regarding the location of the meeting place and the operation of the flight. If the regulations in the applicable country for the flight require the mandatory issue of a transport ticket, this shall be issued under the sole responsibility of the Operator, who shall be solely liable for the consequences in the event of any omissions to the wording.

5. FLIGHT OPERATION

a. Respective obligations of the parties

It is hereby brought to your attention that in the context of the agreed Flight, the Pilot and the Passenger mutually undertake:

To present themselves on the dates, at the times, and in the location agreed, pursuant to the T&C;

To make their best efforts for the successful operation of the Flight

b. Obligations of the Operator

(i) Licences and Certificates

Prior to the Flight, the Operator shall expressly declare that he holds the Licence, Certificate and authorisation required to undertake the planned flight, and that he shall bear any and all criminal and pecuniary consequences of any failure to comply with the regulatory requirements provided for in Regulations (EC) 216/2008, 965/2002 and EU 379/2014, as well as any National Regulation which detail the relevant technical requirements and administrative procedures applicable to flight operations.

(ii) Insurance

The Operator undertakes to take out and ensure the validity of an insurance policy which covers his liability for any damages suffered by the passengers during the flight in respect of the passengers themselves, their luggage and their personal effects, as well as to any third parties on the ground, and at the very least, meets the mandatory minimum requirements set out in EC Regulation 785/2004 of 24th April 2004 or any European and/or national regulation which may amend it or apply instead, as well as the requirements set out on the Licence, Certificate or authorisations which he holds, and shall ensure compliance with the conditions of cover set out in the policy.

In the event of refusal by the insurer to meet any claim, BERLARIC shall not be liable in any circumstances for the pecuniary consequences of such a refusal, the Operator being solely liable for any such consequences.

(iii) Operation of the Flight

a) The Operator undertakes:

- o *To operate a Flight with Aircraft which comply with his Licence, Certificate, Insurance and authorisation which he has specifically been given.*
- o *To wait for the Passenger at the agreed meeting place with a reasonable tolerance in the event of their late arrival;*
- o *To inform the Passengers immediately of any amendment to the Flight;*
- o *Should the Operator decide to change any condition whatsoever of the Flight, from the conditions originally stated in the Post, the Operator undertakes to inform each of the Passengers to seek their consent to the change. In the event of refusal by a Passenger, they shall have the right to ask the Operator or Berlaric to cancel their Booking without being invoiced for any cancellation fees, and without any compensation being due to the Operator.*

b) The Passenger undertakes:

- o *Not to challenge the place in the Aircraft which is attributed to him/her by the Pilot;*
- o *Not to challenge any decision made by the Pilot during the Flight, particularly with regard to any amendment due to weather conditions or for any other reason based on a safety issue or adherence to regulations in force;*
- o *To adhere to the on-board rules fixed by the Pilot (cigarettes, animals, food, drinks, children, maximum authorised size and weight of luggage, etc.);*

6. FLIGHT CANCELLATION

The Operator may cancel the Flight for reasons related to the safety of the flight, particularly for reasons of poor weather conditions, illness etc. and the Passenger will receive a full refund on a Wingly gift card enabling them to make a new reservation as follows:

1. If the payment had been made in full via CB/Paypal, the refund will be made in full on a gift card created for this purpose, valid for one year from the date of cancellation, and which will have the value of the full payment made.

2. If the payment was made in full by gift card, the card will be re-credited and in the event that the gift card has an expiration date of less than 6 months, the gift card will be extended by six months from the date of cancellation.

3. If the payment had been made partially with a gift card and a CB/Paypal payment, then the gift card will be recredited under the same conditions as for the previous case (N°2), and a new gift card will be created corresponding to the amount that had been paid by CB/Paypal as in case N°1. The two gift cards can then be used simultaneously when a new booking is made.

Gift cards created following the failure of a Flight Request enjoy the same terms of use as the Gift Cards sold on the wingly.io website and detailed in article 2.4.3.4, paragraph iii.

However, if the Operator holds an Operating Licence for fixed wing aircraft, they shall only be able to cancel the Flight in the extraordinary circumstances detailed in European Regulation 261/2004 in respect of the compensation of passengers in the event of cancellation. Failing that, they shall be liable to pay compensation of EUR 250 to EUR 600 or equivalent to each passenger, depending on the distance due to be covered.

Users already recognize that weather conditions which are incompatible with safe flying represent an extraordinary circumstance.

Passengers will not be able to cancel a booking once it has been accepted by the Operator. Operators may apply a more flexible cancellation policy for their flights, these details need to be stated in the flight description. In the absence of a passenger cancellation policy put forward by an Operator, passengers will not be able to cancel a booking once accepted.

7. LIABILITY OF THE OPERATOR IN THE EVENT OF AN ACCIDENT

In the event of an accident, the liability of the Operator shall be governed as follows:

(i) If the Operator holds an Operating Licence

Pursuant to the Montreal Convention of 28th May 1999 with automatic compensation of up to SDR 128,821 per passenger in the event of death or bodily injury and without limit if the carrier does not prove that it was not at fault.

(ii) If the Operator holds an ACC, ATO or DTO (without an Operating Licence)

The liability of the carrier shall be governed:

- o Either pursuant to the Warsaw Convention of 12th October 1929 which provides for a presumption of liability of the carrier up to a limit of SDR 100,000 per passenger except in the event of inexcusable fault on the part of the carrier if the flight is cross-border within Europe,*
- o Or by the law of the country in which the accident occurred in respect of domestic flights.*

Version placed on-line on 30 September 2024