



## AIRCRAFT CHARTER AGREEMENT - TERMS AND CONDITIONS

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### Article 1 CHARTER PRICE AND PAYMENTS

- 1.1 The charter price includes all expenses of operating the aircraft. The charter price applies from airport to airport only and does not include ground transportation, accommodations or services prior to the scheduled departure or subsequent to arrival at a destination, unless otherwise specified in writing. Charterer shall not pledge the aircraft or the credit of Carrier for any purpose. The individual passengers shall not have the right to claim any refund of the charter price or portions thereof from Carrier.
- 1.2 Deviation from the routing or any of the terms set out in the schedule through the action or at the request of the Charterer may involve alteration in the charter price.
- 1.3 All amounts due Carrier under this contract shall be payable in U.S. dollars unless Carrier agrees in writing to accept one or more payments in foreign currency. In all cases, where any payment is made in foreign currency, such payment shall be freely convertible into U.S. dollars transferable to the United States and shall be in an amount equivalent to the U.S. dollar amount otherwise required hereunder for such payment as determined by the rate of exchange prevailing on the date on which any such payment is made.
- 1.4 Payments of all amounts due Carrier under this contract shall be made only by bank wire transfer or certified check payable to Carrier. Payment in any other form or to any other person including any travel agent or travel company shall constitute the payee or recipient thereof the agent of Charterer and not of Carrier.
- 1.5 The deposit and total charter price must be paid in accordance with the Aircraft Charter Agreement – Schedule of Payments.
- 1.6 Charterer acknowledges and agrees that unless the Carrier has specifically agreed to the contrary, the charter price is subject to adjustment as provided in the Fuel Surcharge Formula as set forth in the FUEL PRICE ADJUSTMENT APPENDIX. Charterer agrees to pay fuel surcharge within ten (10) days after Carrier's issuance of a written fuel surcharge calculation and notification. Carrier will use commercially reasonable efforts to obtain the most economical fuel price available.

### Article 2 OPERATION OF AIRCRAFT AND SCHEDULES

- 2.1 Carrier shall operate the charter in accordance with applicable rules and regulations issued by the United States Department of Transportation as required by its Air Carriers Certificate and the Certificates of Public Convenience and Necessity.
- 2.2 The operating personnel are the employees or agents of Carrier and are authorized to take orders only from Carrier, unless a written agreement has been made between the parties, whereby certain defined instructions may be accepted by operating personnel from the Charterer. The Captain of the aircraft shall have complete discretion concerning preparation of the aircraft for flight, the flight of the aircraft, the load carried and its distribution, whether or not a flight shall be undertaken, the route to be flown, whether and where landings shall be made and all other matters relating to the operation of the aircraft. The Charterer shall accept all such decisions as final. Passengers and property will be carried within the space and weight limitations of the aircraft.

- 2.3 Carrier shall use its best commercially reasonable efforts to meet the departure times set forth in the Contract page or Exhibit A (if present) attached hereto. The Carrier may, with notice, substitute one or more alternate aircraft of similar quality. Subject to Charterer's prior approval, which shall not be unreasonably withheld or delayed, Carrier may subcontract the performance of any of its obligations hereunder.
- 2.4 If one or more members of the group fail to report for check-in, Carrier may depart as scheduled at Charterer's request or if required by Carrier's schedule and shall in no way be responsible to Charterer, or to such individual but shall be deemed fully to have completed its contractual obligations.
- 2.5 The Charterer shall have the right to utilize all available passenger and baggage space contracted for on the aircraft as described in the cover page of this Agreement subject to applicable regulations and configuration. Carrier's decision as to the amount of space available to be utilized on any portion of the charter flight shall be final. In the event of substitution of aircraft, Charterer has no right to more space than it had on the original aircraft.
- 2.6 In the event of flight delay, Carrier will provide meals and accommodations only to the extent required by DOT Regulations and will provide substitute air transportation to the extent required by said Regulations, as applicable or as otherwise set forth in the Flight Delay Appendix.
- 2.7 Charterer acknowledges that it is guaranteed the exclusive use of the Aircraft only during the period(s) of flight operations as shown on the Aircraft Charter Agreement attached to these Terms and Conditions. During periods when the Aircraft is not in use on this Charter, though this Charter may have begun but not yet have been completed, Carrier may move the Aircraft as necessary for maintenance or other functions, including use of the Aircraft in service for other customers of Carrier. If Charterer desires access to aircraft, or use of aircraft, during ground stays or any other period between flight operations shown in the schedule of aircraft operations, then Charterer should advise Carrier at the earliest opportunity. Such requirements may affect the pricing of the Charter.

### **Article 3 TARIFFS, GOVERNMENTAL LAWS, REGULATIONS AND APPROVALS**

- 3.1 This contract and all transportation provided hereunder are subject to all applicable tariffs and tariff rules of Carrier on file with regulatory bodies of various countries. A copy of such tariffs and the tariff rules may be inspected on request at any office of Carrier and Charterer shall be deemed to have notice of their contents, whether or not Charterer shall have availed itself of its right to inspect them.
- 3.2 Carrier represents and warrants that it has its Air Carriers Certificate and Certificates of Public Convenience and Necessity for domestic and international transportation and that it will maintain them during the term of this Agreement. Carrier will use its best efforts to obtain approvals, clearances, permits or operating authority required to perform the contracted transportation that is not issued or granted until immediately prior to or during the flight.
- 3.3 The Charterer will comply with, and shall use its best efforts to comply and shall insure the compliance by passengers with all Treaties, Customs, Police, Public Health and other regulations including the immigration and customs laws, of each country or state from, through, or to which a charter flight is operated pursuant to this Agreement and, subject to applicable laws, shall indemnify Carrier against, and shall pay any loss, damage or expense suffered or incurred by Carrier by reason of such passengers' failure to comply. Carrier shall not be liable for any aid or information given by any agent or employee of Charterer to Charterer or any passenger in

connection with obtaining necessary documents or complying with laws, regulations, orders, demands or travel requirements of any country or state, whether given in writing or otherwise or for the consequences to Charterer or any passenger resulting from failure to obtain such documents or to comply with such laws, etc. Carrier reserves the right to refuse carriage to Charterer or any passenger whose documents are not complete or who has not complied with the applicable laws, regulations, orders, demands or travel requirements and Carrier shall not be liable for loss or expense due to failure to comply with applicable treaties, laws and regulations.

- 3.4 Charterer agrees that Charterer and its agents and charter passengers have and shall act with regard to the Carrier in a manner wholly consistent with said applicable laws and regulations and it will timely supply the passenger manifest information and any other paperwork or information required thereby.

#### **Article 4** WARRANTY OF CHARTERER

- 4.1 Charterer agrees, represents and warrants that this Agreement is entered into on its own behalf.

#### **Article 5** PASSENGERS

- 5.1 Notices to Passengers – Charterer agrees at its own expense to give such notice to charter flight participants as Carrier shall request upon the occurrence of any event that causes or may cause or result in the delay or cancellation of any one or more charter flights.
- 5.2 Security – Passengers are subject to search of their person and search or inspection of their property, including checked baggage, in accordance with security screening procedures, which can include an electronic detector with or without the passenger’s consent or knowledge, to ensure the safety and security of the flight. Any person, who does not consent to a search of his or her person and any property of any person who does not consent to a search or inspection of such property, may be refused transportation by Carrier and Carrier will have no liability for refund.
- 5.3 Handicapped Passengers – Passengers with handicaps such as blindness, deafness, paralysis, stroke victims, pregnant women, passengers with mental deficiencies, speech impediments, heart conditions, physical weakness, etc., must contact Carrier at least one week in advance of travel for regulations governing such passengers in accordance with Carrier’s procedures on file with the FAA.
- 5.4 Unacceptable Passengers – Carrier will refuse passage to any person whose condition will present any hazard or risk to himself, other persons or property.
- 5.5 Personal Documents – Passports, Visas, Entry/Exit Documents, Vaccination Certificates and all other required documents are the responsibility of the individual passenger.
- 5.6 Special Dietary Requests – Carrier will use its best efforts to provide food and refreshments in conformity with special dietary requirements. Written requests for such special diets must be submitted by Charterer and must name each passenger who has made known such requirements by Charterer. Such written requests must be submitted for receipt by Carrier not less than forty-eight (48) hours prior to scheduled departure time of the charter flight. Carrier shall not be responsible for or liable to Charterer or to any passenger for failure to provide such special dietary requirements whether so requested or otherwise.

## Article 6 BAGGAGE

- 6.1 Conditions of Acceptance –Carrier will accept for transportation over its line as baggage only such personal property as is reasonably necessary for the purposes of the trip which will not compromise the safety of the flight and which can be transported in accordance with applicable laws and government regulations. Carrier may refuse to carry baggage or property for transportation on any flight other than the one on which the passenger is to be transported. Carrier may refuse any property for transportation if it cannot accept ordinary handling or if its weight, size or character renders it unsuitable for transportation.
- 6.2 Fragile and Perishable Items – Fragile or perishable items unsuitable as checked baggage such as, but not limited to, musical instruments (guitars, drums), electronics (computers, CD's, TV's), ornamental (wigs, antiques, clocks), artistic (paintings, sculpture), photographic (more than one camera, lens), sporting/recreational (golf clubs, skis, bicycles), paper (decorations, manuscripts), perishable items (fruits, candy, plants, chemicals, film, medicines) or items made of or bottled in glass (crystal, perfumes, liquor) must be adequately packaged and protected in an original factory sealed carton, cardboard mailing tube/container or case designed for shipping or packed with internal protective material, otherwise, a release will be required before acceptance of such items for carriage. Liability for items appropriately packaged as stated above is limited by this Agreement, except Carrier will not be liable for spoilage of perishables. Soft pack suitcases or bags constructed of cloth, canvas or plastic or combinations thereof are also considered fragile and the Carrier shall have no liability with respect to the damage of such items.
- 6.3 Live Animals – Carrier will not accept any live animals except seeing-eye dogs with their masters and certain animals on Overseas Military Personnel Charters in accordance with company regulations, which are available on request.
- 6.4 Identification – Carrier may refuse to accept for transportation any baggage that does not bear a tag, label or other device with the passenger's full name and address.

## Article 7 LIMITATIONS OF LIABILITY

- 7.1 This Agreement shall be subject to the limitations and obligations set forth in the International Transportation Appendix," if applicable, and its terms, if attached are incorporated herein by reference.
- 7.2 Carrier assumes liability only for passenger baggage in its possession, from airport to airport, and assumes no responsibility for baggage in the possession of tour operators, transfer companies, shipping companies, hotels, inns, other airlines, or property not delivered to Carrier or delivered to Carrier in damaged condition.
- 7.3 In no event shall Carrier be liable for indirect, special, consequential, exemplary or incidental losses and/or damages, including but not limited to loss of profits, lost business, loss of goodwill, loss of opportunity, arising out of or resulting from, or in any way related to this Agreement or the provision of services hereunder or the failure of or delay in the services and contractor hereby waives for itself and on behalf of the charter participants any right to such losses and/or damages.

**Article 8 CLAIMS**

- 8.1 No action shall be maintained for any loss, or any damage to, or any delay in the delivery of, any property or baggage, or on any other claims (other than personal injury or death), arising out of or in connection with the contracted transportation unless (a) such action is commenced within 2 years after such alleged occurrence and (b) written notice of the claim shall have been mailed, by certified mail, to the Carrier's home office within 45 days after the agreed occurrence of the events giving rise to the claim, except that when international transportation is involved, notice of a claim respecting damages to baggage shall have been given within 7 days from the date of receipt, and with respect to delay of baggage notice shall have been given within 21 days from the date on which the baggage was placed at passenger's disposal. However, failure to give the above notice shall not be a bar if a claimant establishes to the satisfaction of Carrier that he or she was unable to give such notice.

**Article 9 FORCE MAJEURE**

- 9.1 Carrier shall not be liable for any cancellation, delay, interruption or prevention of completion of the contracted transportation or its failure to perform, beyond its reasonable control, any act required pursuant to this contract arising from any of the followings: laws, regulations, requirements, acts, demands, orders, interposition's or interference of any government or governmental authority, Acts of God, sanctions (financial or otherwise), seizure under legal process, hijacking, riots, civil commotions, strikes or labor stoppage (whether resulting from disputes between Carrier and its employees or between other parties), fire, fog, weather, inability to obtain fuel, inability to obtain fuel at a cost that, in the Carrier's judgement, is prohibitive, quarantines, requisitions of the aircraft, military emergency, war, rebellion, insurrections, hostilities or hazards or dangers incident thereto, damage or accident to or failures, mechanical difficulties or breakdown of the aircraft or any part thereof or any machinery or apparatus in connection therewith, failure or refusal by any governmental authority to issue approvals, clearances, permits, operating, layover or traffic rights or rescission or revocation thereof, or any other cause whatsoever which is beyond the control of the Carrier.

**Article 10 TRANSPORTATION SECURITY**

- 10.1 Charterer agrees and understands that in the event the Transportation Security Administration (TSA) or other Foreign Transportation Security Agencies (FTSA) implements enhanced security procedures for private charters that all persons and their accessible baggage will be subject to security screening and search. Additionally, this may require any private charter flight that departs from an airport normally served by scheduled air carrier service to utilize the air carrier's passenger terminal for departure to accomplish passenger and accessible baggage screening. Furthermore, if the origination airport is not normally serviced by a scheduled air carrier and TSA or FTSA approved screening is not available or cannot be arranged, the Charterer will be refunded any paid but unearned amounts.
- 10.2 For charters that operate over multiple legs, in the event that TSA or FTSA approved screening is not available or cannot be arranged, the segment shall be operated out of an airport where TSA or FTSA approved screening is available – normally a scheduled air carrier airport.
- 10.3 The Charterer understands they will be invoiced for any additional costs associated with the required screening of passengers and their accessible baggage; and agrees to provide payment to the Carrier within ten (10) days after Carrier's issuance of written notification.

**Article 11 CANCELLATION**

- 11.1 Either party may, subject to the notice and cure provisions set forth below, terminate this contract if the other party (a) commits any material breach of this contract, or (b) becomes bankrupt (or if a company, goes into liquidation), commits an act of bankruptcy, or enters into an arrangement with its creditors, or (c) if Charterer is ineligible for charter transportation under the provisions of applicable tariffs, DOT Regulations or Canadian Air Carrier Regulations; provided that the terminating party must have provided the breaching party with (1) written notice specifying the breach, and (2) a reasonable opportunity to cure such breach (provided such breach is of a nature which is reasonably susceptible of cure and if payment is in default Carrier shall be relieved of any performance obligations). For purposes of this Section, five (5) days is reasonable opportunity to cure payment.
  
- 11.2 In the event this contract is canceled prior to the date scheduled for commencement of the charter journey either at the request of the Charterer for any reason or by Carrier for the reasons set forth in Article 11.1 above; the parties specifically agree that the amounts on deposit with Carrier may be retained and applied to the cancellation charges hereinafter set forth in this contract and that the Carrier has a security interest in the deposit and has all rights of a secured credit under the Uniform Commercial Code of North Carolina.
  
- 11.3 Unless otherwise set forth in the Cancellation Appendix, should this contract be cancelled by the Charterer, more than thirty (30) days prior to the first departure, the Charterer shall have a cancellation charge of fifty percent (50%) of the total charter price. Should the Charterer cancel the contract within thirty (30) days of the first departure, the Charterer's cancellation charge will be 100% of the total charter price
  
- 11.4 In the event the cancellation of a charter under the circumstances in Article 11, other than a breach by Carrier, and causes Carrier to ferry the aircraft, there may be assessed in addition to the applicable cancellation charge(s) specified herein, a charge equal to the ferry rate per mile, multiplied by the mileage operated without payload, in order to either complete a series of charter flights or when the charter agreement does not provide for a series of charter flights, to return the aircraft to the point specified in the charter agreement. The ferry rate shall be ten percent (10%) less than the live mile rate used.

**Article 12 INSURANCE**

- 12.1 Carrier will maintain in full force at all times, with respect to the aircraft, and all operations incidental to the operation thereof, including without limitation, the charter flights, insurance meeting or exceeding the requirements of the DOT Regulations.

**Article 13 INDEMNIFICATION**

- 13.1 Charterer will indemnify and hold Carrier (including without limitation, Carrier's officers, directors, shareholders, employees, servants and agents) harmless, for, from and against all damages and claims for damages, demands, liabilities, actions, losses, costs, taxes, assessments, suits, recoveries, judgments or executions (including, without limitations, reasonable cause of investigation, litigation costs, court costs, expert witness fees, litigation support services, settlement cost or reasonable attorney's fees), damages or injury to person or property (including, without limitation, injury resulting in death) however caused arising from or relating to any act of Charterer or its agents, employees or other persons for whom Charterer is responsible (whether by Charterer's acts or omission or the act of any passenger with whom Charterer has contracted) or any breach of this Agreement or as it may relate to any other subject matter of this Agreement.

- 13.2 Carrier will indemnify and hold Charterer and its owners, directors, officers, employees, and agents harmless from and against any claim, suit, demand, action or liability arising out of any breach of this Agreement by Carrier, its agents and employees, including but not limited to the crew aboard the chartered aircraft.

**Article 14 MISCELLANEOUS**

- 14.1 Charterer may not assign this contract or subcontract all or any portion of the aircraft capacity chartered hereunder, or permit the aircraft to be used by any person other than Charterer and the group and/or property agreed to be carried by Carrier at the time of the signing of the agreement without the written consent of the Carrier.
- 14.2 This Agreement shall be construed according to the laws of the State of North Carolina.
- 14.3 The illegality or non-validity of any paragraph, clause or provision contained or Referred to in this Agreement shall not affect or invalidate any other paragraph or provision hereof.
- 14.4 No agent, representative or employee of Carrier, except an officer of Carrier, is authorized to alter, modify or waive any provision of this Agreement.
- 14.5 Titles are inserted in this contract for the purpose of reference and convenience and in no way define, limit or describe the scope or intent of this contract and are not to be deemed a part hereof.
- 14.6 In the event of any conflict(s) between the provisions set forth on the cover page of the Aircraft Charter Agreement (attached to these Terms and Conditions) and provisions of these Terms and Conditions, the provisions set forth on the cover page of the Aircraft Charter Agreement shall control and supercede those provisions set forth in these Terms and Conditions.

## FUEL PRICE ADJUSTMENT APPENDIX

Charterer agrees and acknowledges that the charter price is calculated upon the Base Fuel Price as set forth in the Aircraft Charter Agreement. If the Average Fuel Price Per Gallon, defined below, does not exceed the Base Fuel Price, then the charter price established in the Aircraft Charter Agreement will remain unchanged by the provisions of Article 1 Section 6.

A charge, in addition to the charter price, will be assessed to the Charterer in accordance with the Fuel Surcharge Formula, defined below, in the event the Average Fuel Price Per Gallon exceeds the Base Fuel Price. Payment of the Fuel Surcharge shall be as shown by the Aircraft Charter Agreement and Article 1 Section 6.

For purposes of this Appendix, the following definitions shall apply:

**“Fuel Surcharge Formula” – Means for every \$0.01 increase in the Average Fuel Price Per Gallon as compared to the Base Fuel Price, the charter price will be increased by \$14.00 multiplied by the actual block hours flown on each affected charter flight.**

“Average Fuel Price Per Gallon” – Means the total price of fuel purchased, including all taxes incurred and fuel purchasing fees, divided by the total gallons purchased which coincides with the Charterer’s point(s) of origin, intermediate points, and point(s) of destination including all flights required for positioning to and from those points.

## INTERNATIONAL FLIGHT APPENDIX

Carriage hereunder shall be subject to the rules and limitations relating to liability and all other provisions established by the Warsaw Convention and Hague Protocol thereto insofar as such carriage is “international transportation” as defined therein and is governed thereby. Carriage hereunder which is not governed by the Warsaw Convention shall be subject to all applicable laws which extend the provisions of the Convention to such carriage or which otherwise limit Carrier’s liability.

The Warsaw Convention limits Carrier’s liability for death or personal injury to passengers to \$10,000 (or \$20,000 where the Hague Protocol is applicable). However in accordance with Article 22 (1) of said Convention as amended by said Protocol, in the case of transportation, which according to the Contract of Carriage, includes a point in the United States of America as a point of origin, point of destination or agreed stopping place, Carrier’s liability for death or personal injury to passengers is limited to proven damages not to exceed \$75,000 US/Canadian dollars inclusive of legal fees and costs, except that, in the case of a claim brought in a State where provision is made for separate award of legal fees and costs, the limit shall be the sum of \$58,000 US/Canadian dollars exclusive of legal fees and costs. Carrier shall not, with respect to any claims arising out of the death, wounding or the bodily injury of a passenger; avail itself of any defense under Article 20 (1) of said Convention as amended by said Protocol. Nothing herein shall be deemed to affect the rights and liabilities of Carrier with regard to any claim brought by, or on behalf of, or in respect of, any person who has willfully caused damage, which resulted in death, wounding or other body injury of a passenger. Charterer shall take all reasonable actions necessary to ensure that Pace Airlines will be entitled to the benefits of limiting its liability to passengers for its contract of carriage in effect at the time of the flight and under any law, regulation, international treaty or agreement, including but not limited to the Warsaw Convention. Charterer acknowledges that notification of the limitations of liability of the Warsaw Convention will be extended to and acknowledged by all passengers.

The Warsaw Convention limits Carrier’s liability for loss, damage or delay of baggage to approximately \$9.07 US/Canadian dollars per pound for checked baggage and approximately \$400 US/Canadian dollars for each passenger’s unchecked baggage unless a higher value is declared. In computing these liability limitations, a

baggage weight of 75 pounds (the maximum baggage weight allowed) will be presumed to be the total weight of the participant's baggage recorded on the baggage check. Charterer agrees to include the foregoing notice of Carrier's baggage liability and weight presumption in any contract between himself and the passenger. With respect to transportation between points in the United States which is not part of an international journey or other transportation to which the Warsaw Convention does not apply and where Carrier's liability is not limited by an applicable law, Carrier's liability for direct and consequential damages due to loss of, damage to, or delay in the delivery of any personal property including baggage (whether or not such property has been checked or otherwise delivered into the custody of Carrier) shall be limited to \$2500 per passenger unless a higher valuation is declared.

Maximum declared value on baggage shall be \$1,000 per passenger carried on the aircraft unless special arrangements are made in advance with Carrier. When a higher valuation is declared in advance and payment of additional charges are made, Carrier's liability shall be limited to such higher declared value, but in no event shall Carrier's liability exceed the actual value of such baggage or property at the time loss, damage or delay occurs. Excess valuation will not be accepted on fragile or perishable articles or on wigs, boxes, liquor, money, paintings, antiques, artifacts, manuscripts, irreplaceable books or publications, cameras, watches or other such valuable articles when such valuables are included in baggage checked with or otherwise delivered into the custody of the Carrier.

#### **FLIGHT DELAY APPENDIX**

Carrier and Charterer mutually agree that Carrier may not be able to provide another aircraft of similar capabilities or configuration in the event the contracted aircraft is not available due to or associated with mechanical failures, aircraft damage, weather delays, lack of crew availability (outside of Carrier's reasonable control) or acts of god. Carrier will use commercially reasonable efforts to provide substitute transportation to the extent required by United States Department of Transportation.

**CANCELLATION ADJUSTMENT APPENDIX**

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