

Public Charter Depository Agreement

This agreement, made and entered into as of _____, by and among
_____, a _____ corporation (“Charterer”)
(charter operator) (state or country)
_____, a _____ corporation (“Carrier”) and
(direct air carrier) (state or country)
_____, an FDIC-insured depository institution (“Bank”).
(depository bank)

Whereas Charterer is a charter operator or foreign charter operator within the meaning of 14 CFR Part 380 of the regulations of the Department of Transportation (“DOT”) and intends to market Public Charter flight(s) to be flown by Carrier (“Charter Flights”) to charter participants (“Participants”); and

Whereas Bank (a depository institution whose deposits are insured by the Federal Deposit Insurance Corporation) desires to act as the depository bank within the meaning of Part 380, subject to the terms and conditions contained herein;

Now, therefore, in consideration of the mutual agreements contained herein, the parties hereto agree, under the terms of Part 380 as follows:

Section 1: Deposits

- 1.1 Bank shall establish a special account into which Charterer and Bank shall cause all funds received by Charterer or its agents on behalf of Participants to be deposited (“Account”). Bank shall maintain a separate accounting with respect to each charter group encompassed by the charter flight program.
- 1.2 All funds received by Bank and required to be maintained by Bank under this Agreement (“Total Deposits”) shall be disbursed, paid out, or reduced in amount only as provided herein; *provided*, however, that nothing herein shall prevent Bank from commingling all or any portion of the Total Deposits in accordance with generally accepted banking practice.
- 1.3 On all sales made directly by Charterer, Charterer shall cause Participants to remit all payments in the form of a check, or money order, or credit card transaction payable to Bank. Charterer shall deliver such checks, money orders, or credit card transactions to Bank within five business days after receipt.
- 1.4 In the event Charterer markets the Charter Flight through retail travel agents, payments may be made to the retail agents in any form and the retail travel agents may deduct their commissions from such payments, and remit the balance by check, or money order, or electronic transfer payable to Bank. Travel agents shall remit such payments to Bank within five business days after receipt; *provided*, that Charterer and each retail travel agent shall enter into a written agreement requiring that, if the Charter Flight is canceled, the travel agent shall remit to Bank the full amount of the commission previously deducted or received within five days after receipt of notice of cancellation of the Charter Flight.

Section 2: Disbursements

2.1 Subject to the limitation expressed in Section 2.2 hereof, Bank shall disburse funds from the Account directly to:

- (a) Carrier (or depository bank)¹ in an amount equal to the balance of the charter price due for each Charter Flight. Such payment is to be made no earlier than 60 days prior to, and no later than, the scheduled date of the originating flight.² With respect to each Charter Flight, Bank shall receive a certificate (in the form attached hereto as Schedule A), signed by both Carrier and Charterer, specifying the exact amount due, the date on which payment is due, and the address to which payment is to be sent.
- (b) Charterer, as reimbursement for refunds made by it to Participants by reason of a Participant's cancellation of his or her reservation on a Charter Flight, in an amount equal to the amounts set forth in written notification from Charterer to Bank. Refunds may be made directly to Participants upon written notification to Bank from Charterer of the amounts due to such canceling Participants.
- (c) Participants, in an amount equal to the amount paid by or on behalf of such Participants for a particular Charter Flight, within five business days after receipt by Bank of notification by Carrier or Charterer that such Charter Flight has been canceled.
- (d) Hotels, sightseeing enterprises, or other persons or companies furnishing ground accommodations or services in connection with charter flight, if any, upon presentation to Bank of vendor's bills and upon certification by Charterer of the amounts payable and the persons or companies to whom payment is to be made. Such payments shall not be made until the charter price has been paid in full to Carrier.
- (e) Notwithstanding any of the provisions of this Section, the amount of total cash deposits required to be maintained in the Account may be reduced by one or both of the following: the amount of any security agreement in the form prescribed by Part 380 in excess of the minimum coverage required by section 380.34(b); an escrow with the Bank of Federal, State, or municipal bonds or other securities, consisting of certificates of deposit issued by banks having a stated policy of redeeming such certificates before maturity at the request of the holder (subject only to such interest penalties or other conditions as may be required by law), or negotiable securities which are publicly traded on a securities exchange, all such securities to be made payable to the Account; *provided*, that such other securities shall be substituted in an amount no greater than 80 percent of the total market value of the Account at the time of such substitution; *and provided further*, that the total market value of such other securities subsequently decrease, from time to time, then additional cash or securities qualified for investment hereunder shall promptly be added to the Account, in an amount equal to the amount of the decreased value.

¹ If the carrier meets DOT's requirements for protection of customer's deposits by establishing an escrow account, all payments to Carrier shall be made payable to the bank which acts as depository for the escrow. Bank shall make payments for the subject charter program to: _____.

² In the case of a split charter, payment must be made no later than 10 days prior to the scheduled date of departure.

- 2.2 The total amount of funds paid by Bank pursuant to paragraphs 2.1(a) and (d) of this section shall not exceed either the total cost of the air transportation or 80 percent of the total deposits received by Bank less any refunds made to Participants under paragraphs 2.1(b) and (c) of this section, whichever is greater.
- 2.3 Except as provided in Section 2.1, Bank shall not pay out any funds from the Account prior to two banking days after completion of the Charter Flight, when the balance in the Account shall be paid to Charterer, upon certification of the completion date by Carrier. Such certification shall be made in the form attached hereto as Schedule B. *Provided*, however, that if the charter involves air transportation only and the Bank has paid the Carrier the charter price for the originating and returning flights and has paid all refunds due to Participants pursuant to paragraph 2.1(b) of this section, then the Bank shall pay the balance in the Account to the Charterer upon certification by the Carrier performing the originating flight that such flight has in fact departed.
- 2.4 If the Charter Flight is canceled after Carrier has been paid pursuant to paragraph 2.1(a), Carrier or its depository bank (per paragraph 2.1(a)) shall refund to Bank all moneys received for this Charter Flight within five business days after cancellation; *provided*, however, that in the event the Charter Flight is part of a split charter canceled by the Charterer within 10 days of the scheduled departure, the carrier shall retain all moneys received pursuant to DOT's Economic Regulations, in which event the Charterer shall promptly deposit sufficient funds in the Account to make full refunds to all participants.
- 2.5 Bank shall not make any disbursements of moneys in the Account except in accordance with the provisions of this section and Part 380.

Section 3: Indemnification

- 3.1 Charterer hereby agrees to assume liability for, and does hereby indemnify, protect, save, and keep harmless Bank and Carrier and their respective successors, agents, and servants from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, or expenses of any kind which may be imposed on, incurred by, or asserted against Bank or Carrier in any way relating to, or arising out of, this Agreement or the enforcement of any of the terms hereof by any persons not party hereto, except only in the case of negligence, whether of omission or commission, by Bank and the Carrier in performance if their respective duties or obligations hereunder.

Section 4: Amendment and Termination

- 4.1 No term or provision of this Agreement may be changed, waived, discharged, or terminated except by written amendment signed by Bank, Carrier, and Charterer.
- 4.2 Any party hereto may at any time terminate this Agreement by mailing a notice of its intent to terminate by registered mail to each of the other parties hereto and DOT. Termination shall not become effective until accepted by DOT.
- 4.3 This agreement shall commence on the date hereof and shall remain in effect, unless sooner terminated, until all Charter Flights provided for in this Agreement are completed or canceled and all moneys relating thereto have been paid in full.

Section 5: Accounting and Reporting

5.1 Charterer shall furnish Bank with passenger lists, which shall include the names and addresses of, and the amounts paid on behalf of, each Participant for each Charter Flight, and such other reports and information sufficient to permit Bank to maintain a separate accounting for each charter group.

Section 6: Miscellaneous

6.1 Notices relating to this agreement shall be sent to:

For Charterer:

For Carrier:

For Bank:

and to: Special Authorities Division, X-57
Office of Aviation Analysis
U.S. Department of Transportation
400 7th Street, S.W.
Washington DC 20590-0001

6.2 This agreement shall be governed by and be construed under the laws of the State of _____.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their officers thereunto duly authorized as of the date first above written.

[CHARTERER]

[CARRIER]

By: _____
[name]
[title]

By: _____
[name]
[title]

Date: _____

Date: _____

[BANK]

By: _____
[name]
[title]

Date: _____