

Scope and General Information

These Terms & Conditions are applicable to any contract made between BIRDY Private Jets SAS, registered in Basse-Terre under RCS number 908 571 987 and headquartered at Carrefour des 4 Chemins – Marigot, 97133 Saint-Barthélemy ["BIRDY"], and the person designated on the first page of the contract [the "Client"].

"Air Charter Broker" shall refer to a company acting as an intermediary agent between a third-party aircraft "Operator" and a "Client", arranging "Passengers" air carriage by chartering an "Aircraft" from an "Operator", in the name and on behalf of a "Client". An "Air Charter Broker" does not operate aircraft and does not provide air transportation services itself. An "Air Charter Broker" is not a contracting or indirect carrier either and there is no carriage nor proper "Charter Agreement" between the "Air Charter Broker" and a "Client" and/or any "Passenger[s]".

The Client acknowledges and agree that BIRDY is an Air Charter Broker, acting as an intermediary agent between a third-party aircraft operator [the "Operator"] and the Client. BIRDY arranges passengers' air transportation services by chartering an aircraft from an Operator holding an air carrier certificate authorizing them to furnish air transportation services, in the name and on behalf of the Client. BIRDY does not operate aircraft and does not provide air transportation services itself. BIRDY is not a contracting or indirect carrier either and there is no carriage nor proper Charter Agreement between BIRDY and the Client and/or the Passengers. The Client hereby appoints BIRDY and its agents for arranging the flight[s] described on the first page by chartering the aircraft described on the first page [the "Aircraft"] from the Operator, it being understood that BIRDY shall act in a capacity as an agent, in the name and on behalf of the Client. Accordingly, the Client hereby authorizes BIRDY to enter into a Charter Agreement with the Operator [the "Charter Agreement"] – including its general terms and conditions of carriage – in the name and on behalf of the Client.

All travel arrangements are made on-demand according to customer-directed criteria and flight requirements under the terms and conditions, restrictions and limitations reflected herein, and in each contract that shall be specifically addressed to the Client by BIRDY upon a specific flight request from the Client [the "Flight Agreement"].

In the case of a subscription or a renewal to one of BIRDY's Membership Programs, the beneficiary [also referred as the "Member"] acknowledges that BIRDY is not an aircraft operator and arranges private jet charter services solely as a manager of the Program and as Member's agent. These Terms & Conditions shall be additional to, and prevail over, all specific agreements and clauses of the Membership Contract [the "Membership Agreement"].

BIRDY may amend or modify these Terms & Conditions from time to time. Amendments and modifications to this Agreement will be effective upon BIRDY's publication of such amendments or modifications on its website or the BIRDY's mobile application [the "Application"]. Client's continued access or use of BIRDY's services after such posting constitutes Client's consent to be bound by the amended or modified Terms & Conditions. BIRDY shall provide written notice of any changes to this Agreement, whether by periodic newsletter email, or any other means in its discretion.

Any Agreement together with other documents referenced herein and incorporated herein by reference constitute the entire agreement between the parties concerning its subject matter and supersedes any prior or contemporaneous agreements, understandings or proposals.

Paragraph headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement.

For the purposes of any Contract, and where applicable, the use of the singular herein shall include the plural and vice versa, and the use of the neutral or masculine personal pronoun shall include both masculine and feminine genders. Unless otherwise provided herein, the term "or" is not exclusive and "include", "including" and "in particular" are not limiting. BIRDY and the Client may sometimes be referred to herein collectively as "parties" and each a "party".

Booking Process

All flight reservations are subject to availability and are offered on a first-come, first-served basis. Prices are not guaranteed until the reservation is made and confirmed by BIRDY.

All Flight requests, to be considered as such and enable BIRDY to send appropriate Flight Offers to the Client (the "Flight Quotation"), shall include the following minimum information: [i] Departure city / airport [ii] Destination city / airport [iii] One Way or Round Trip [iv] Departure date and time range [v] Return date and time range [if applicable] [vi] Preferred aircraft model or category [if applicable], [vii] Passenger count and [viii] Volume of luggage [if applicable].

Once the Client confirms his intention to book one of the Aircraft options offered on the Flight Quotation sent by BIRDY to the Client, BIRDY shall verify the selected Aircraft availability from the Operator and, if the Aircraft availability is confirmed by the Operator, communicate the Flight Agreement to the Client without delay.

The Client shall review all the information listed on the first and second pages of the Flight Agreement, read carefully and agree with the General Terms and Conditions of the Flight Agreement, and explicitly give his written consent to book the flight[s] by signing the Flight Agreement, whether electronically or handwritten.

In order to secure the booking, the Client shall then proceed with the payment, or payment guarantee by credit card (the "Credit Card Hold"), of the first instalment of the Total Price (the "Deposit"), as per the amounts and terms contained on the Flight Quotation. In the case of a reservation made by a Member, and straight upon written confirmation from Member of his firm intention to book one of the Aircraft options offered on the Flight Quotation, the Deposit amount will be fully deducted from Member's Available Funds on his Member Account as per the conditions defined in the Membership Terms.

As soon as reasonably practicable after receipt of the Deposit [or Credit Card Hold – whichever occurs first] BIRDY shall enter into and sign the Charter Agreement with the Operator, acting as an agent, in the name and on behalf of the Client. At any time upon the Client's request to one of BIRDY's agents, BIRDY will provide the Client with a copy of the Charter Agreement, it being understood that BIRDY shall be entitled to redact the price paid by BIRDY to the Operator.

The Flight Agreement shall not be effective unless and until full payment of the Deposit [or Credit Card Hold – whichever occurs first] has been received by BIRDY and the Charter Agreement has been signed by BIRDY and the Operator.

At least seventy-two hours [72] hours before the departure of the first leg of the flight[s] – or immediately upon signature of the Flight Agreement, in case of booking less than seventy-two hours [72] hours before the departure of the first leg of the flight[s] – the Client shall communicate to BIRDY [for further transmission to the Operator] all the travel documents [including passport copies] of all passengers who will travel on the flight[s] (the "Passengers") and all information related to the Passengers as may be requested by BIRDY.

Before the Flight[s], BIRDY will send a flight brief to the Client indicating the details of the flight[s], including the name of the Operator (the "Flight Confirmation").

Electronic Signature

Each party agrees that the electronic signatures and acknowledgments, whether digital or encrypted, of the parties to any Contract generated by BIRDY are intended to authenticate this writing and to have the same force and effect as manual signatures.

Electronic signature means any electronic sound, symbol or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or e-mail electronic signatures.

Member's access or use to BIRDY's services constitutes Client's agreement to be bound by all terms and provisions of this Agreement [including the agreements and other documents referenced herein and incorporated herein by reference] as amended or modified from time to time.

Pricing Policy

The sum of all the amounts payable by the Client (the "Total Price"), indicated on the first page and on the first Invoice sent by BIRDY to the Client, includes exclusively:

- ◆ The cost of the flight (the "Flight charge"), based on aviation fuel costs calculated on the quote date indicated on the first page of the Flight Agreement (the "Quote Date"). If for any reason whatsoever there shall be any increase in the costs of aviation fuel between the Quote Date and the date of payment of the last instalment of the Total Price, the Client shall, if so required by BIRDY, immediately pay to BIRDY such amount to fully compensate BIRDY for such increase.
- ◆ The services (the "Services charge"), listed on the first page as "Inflight services" and/or "Concierge Services", unless otherwise stipulated on the second page of the Flight Agreement.
- ◆ BIRDY's remuneration: The Client acknowledges and agrees that the amount of BIRDY's remuneration – corresponding to the difference between the price paid by BIRDY to the Operator and the price invoiced by BIRDY to the Client – is a privileged information and shall not be disclosed to the Client. Specific additional charges may be applied, depending on the tier of membership the Client belongs to, such as administration fees ("the Admin Fee") and/or a last-minute booking penalty in case of a reservation within a week before the requested or scheduled departure date ("the Last-minute Fee").
- ◆ The Value Added Tax ("VAT"): If applicable, the Client shall bear and indemnify BIRDY against any value added tax and any other taxes or charges which may be imposed in any country on any part of the Total Price (and/or any other amount payable by the Client and/or the Passengers) or otherwise in connection with the flight[s].

The Total Price is a fixed price, subject to any increase as provided in the Flight Agreement. Unless otherwise expressly provided herein, the Client shall not be entitled to any reduction or refund of the Total Price (or any part thereof) for any reason whatsoever (including in case of reduction in the number of Passengers). Any special discount, such as those coming from seasonal offers of the Referral Program, if applicable, shall only be valid on flights exceeding 2000 nautical miles.

The Total Price is also based on the exchange rate between the United States Dollar (the "Dollar") and the currency in which the Price is to be invoiced (the "Applicable Currency"), as applicable at the Quote Date. If for any reason whatsoever there shall be any positive variation of such exchange rate (rise of the Dollar against the Applicable Currency or depreciation of the Applicable Currency against the Dollar) between the Quote Date and the date of payment of the Last Instalment, then the Client shall, if so required by BIRDY, immediately pay to BIRDY such amount to fully compensate BIRDY for such increase.

The Client acknowledges and agrees that the Flight Agreement (as executed by the Client) shall constitute a debt acknowledgment from the Client, in particular with respect to the Price and the Cancellation Fees.

Additional Services

The Total Price may not include any additional services, fees, charges and duties, in particular but not limited to: changes in itinerary, date, scheduled departure time and/or number of Passengers, de-icing costs (including for ferry and [re]positioning flights), fuel and insurance surcharges (including war insurance), on-board roaming (telephone and/or internet, if available aboard the Aircraft), additional/special inflight services, ground transportation, special assistance required by any Passenger(s), private terminal charges, security charges levied by airport authorities or any other security fees, taxes or duties (including passenger taxes or duties), parking fees and airport extension fees, ramp transfers, excess or special baggage, any bespoke items required (including welcome desks, personalized aircraft exterior or other on board services), unless otherwise stipulated in the "Special Conditions" on the second page of the contract.

Any additional service shall, if arranged directly by BIRDY (and not by the Operator), be conditioned upon the Operator's consent, arranged and invoiced separately by BIRDY, acting also in this case as an agent, in the name and on behalf of the Client, and payable by the Client immediately upon receipt of the corresponding invoices. BIRDY shall not be responsible for any other services requested by the Client without BIRDY's prior written consent and BIRDY shall not be entitled to payment for these services.

Payment Conditions

The Client shall pay the Total Price – as indicated on the first page of the Flight Agreement sent by BIRDY to the Client – either by wire transfer or by credit card, in accordance with the payment schedule also indicated on the first page (unless otherwise agreed in writings by BIRDY), plus any additional amount related to Additional Services as stipulated hereinabove if already known, agreed in writings and ordered by BIRDY by then.

Instead of paying immediately, the Client may elect to guarantee the payment (plus any card admin fee as described hereinunder) by proceeding with a Credit Card Hold; in such case, the Client shall proceed with the payment of the Total Price to BIRDY by wire transfer within two (2) business days or six (6) calendar days from the signature of the Flight Agreement, failing which BIRDY shall be entitled to exercise the payment guarantee by capturing the Credit Card Hold and charge the credit card for the total amount of the payment hold.

In case of payment by credit card or Credit Card Hold, an additional card admin fee of five (5) percent of the Deposit amount (plus any additional service to be paid by credit card) will be added and shall be payable by the Client.

By proceeding with such payment or guarantee, the Client represents and warrants to BIRDY that: (i) the holder of the credit card consents to such payment or guarantee (and accepts to be charged in case of exercise of the guarantee) and (ii) such payment or guarantee (and the exercise thereof) shall not breach any applicable national or international law or regulation.

In the case of a reservation made by a Member, and straight upon written confirmation from Member of his firm intention to book one of the Aircraft options offered on the Flight Quotation, the Deposit amount will be fully deducted from Member's available funds on his Member Account as per the conditions defined in the Membership Terms.

Upon reception of each instalment, BIRDY will transfer the necessary and appropriate amounts to the Operator, in accordance with the terms of the Charter Agreement signed then between BIRDY and the Operator, to secure the flight[s].

BIRDY shall not bear any liability in case the Operator eventually refuses to, or for any reason does not, enter into the Charter Agreement (in particular in case of unavailability of the Aircraft or if the owner of the Aircraft does not give approval). In such case, BIRDY's sole obligation shall be to reimburse the Deposit (to the extent already received from the Client) to the Client.

No security or guarantee is granted – and BIRDY shall not bear any liability and shall in particular not reimburse the Total Price, including the Deposit, or any other amount to the Client or the Passengers – in case the Operator ceases activity, becomes insolvent, files for bankruptcy or is affected by any other similar event before the departure of the flight[s].

In reference to the "Payment term" mentioned on the first page of the Flight Agreement and/or the "Due date" on the first Invoice provided by BIRDY to the Client – whichever grants the latest date – and in case of late payment of any amount (including any instalment) to be made by the Client and/or any Passenger[s], default interest shall accrue on such amount at the rate of ten (10) percent per annum from the first day of delay (without the need of any notice from BIRDY) until the date of actual payment (both before and after any debt enforcement or court proceedings), and the Client and/or the Passenger[s] – as applicable – shall indemnify BIRDY for any foreign exchange loss and court and legal fees.

Without prejudice to the foregoing, BIRDY shall be entitled to treat any delay in the payment of any amount (including any instalment) to be made by the Client and/or any Passenger hereunder as constituting a cancellation entitling BIRDY to the payment of the applicable Cancellation Amounts – as defined hereinafter – by the Client.

All payments to be made by the Client or any Passenger[s] shall be made without deduction, set-off, counterclaim or withholding whatsoever.

Travelers' Obligations & Compliance

Although BIRDY and its agents shall always try to provide advices and accurate guidance to its clients in general, the Client acknowledges that himself as well as all the Passengers of the flight(s) shall be solely responsible for complying, and shall comply, with all laws, regulations, orders, demands and travel requirements of any country to be flown from, into or over (including immigration and customs regulations) and with the Operator's rules and instructions pertaining thereto.

In particular: (i) the Client shall make sure all Passengers are legally authorized to take the flight(s) as they shall be solely responsible for carrying a valid passport, obtaining any VISA where required and ensuring the accuracy of any required document or information (including any invitation or sponsorship); (ii) neither the Client nor the Passengers shall use the Aircraft for any illegal purpose.

BIRDY shall bear no liability for the consequences to the Client or any of the Passengers resulting from its failure to comply with such laws, regulations, orders, demands, travel requirements, rules or instructions (in particular in respect of any Passenger's failure to hold the required travel documents). The Client shall be billed for any additional costs (including surcharges, fees, fines, penalties) resulting from such non-compliance by the Client or any Passenger.

If required, the Passengers shall accept inspection of their baggage by customs or other government officials. BIRDY shall not be liable to the Passengers or the Client for any damage, loss or delay suffered by the Passengers in connection with such inspection or the Passengers' failure to accept such inspection.

The Passengers shall not smoke nor bring any animals onboard the Aircraft, save with BIRDY's prior written consent – which shall be conditioned upon the Operator's consent.

The scheduled departure, arrival dates and times indicated in the Flight Agreement and/or the Flight Confirmation (and any other information set out herein and/or therein) may not be changed by the Client, save with BIRDY's prior written consent – which shall be conditioned upon the Operator's consent, in which case the Client shall pay to BIRDY any additional costs incurred by BIRDY as a result of such change. For the avoidance of doubt, any such change, if not accepted in advance in writing by BIRDY, shall be deemed a cancellation entitling BIRDY to the payment of the applicable Cancellation Amounts.

For flights outside of the European Union, the Client acknowledges that, from time to time, the Operator and/or the Operator's country may be subject to an operating ban or part of a ban list (including a ban within the European Union). The Client agrees that, although BIRDY will use reasonable endeavors to make the Client aware of any such bans BIRDY shall not bear any liability in relation to such flight(s) and bans and the Client shall be solely responsible for informing the Passengers of such bans in due course and for encouraging them to use alternative means of transport.

The Client acknowledges and agrees that the Operator shall be solely responsible for the issuance and delivery of all Passengers tickets, baggage receipts and other necessary documents to the Passengers, and that BIRDY shall not bear any obligation or liability in relation to the same.

Delay

The Client shall be solely responsible for ensuring that the Passengers and their baggage arrive at the specified check-in point at the airport, sufficiently in advance to be ready for boarding at the boarding time indicated on the Flight Confirmation.

In case any or all Passengers are not ready for boarding at such time for any reason (including late arrival for any reason, missing documents, customs formalities, baggage drop-off, large crowds at the airport), the Operator shall have no obligation to wait for such Passenger(s) and shall be entitled to leave without them. Client understands, acknowledges and agrees that a delay in departure may not be possible due to factors such as legally required crew duty time limitations and aircraft scheduling.

If the Operator is able to make commercially reasonable efforts to delay the departure and decides in its sole discretion to nonetheless wait for such missing Passengers (whether or not requested by the Client), the Client shall pay BIRDY any demurrage charge requested by the Operator and shall reimburse BIRDY for any amounts invoiced by the Operator to BIRDY as a result of such delay; in such case, the new departure time (take-off slot) and/or the new arrival time at destination (landing slot) will be re-allocated by the relevant airports' air traffic control, and neither BIRDY nor the Operator shall be liable for any damage, loss or delay caused by such re-allocation, which can extend to the following day, or the next airport opening day.

If BIRDY, upon request from the Client, arranges for any Passenger who has missed a flight to be carried on a later flight, the Client shall pay on demand to BIRDY all costs and expenses incurred by BIRDY in relation to such flight, as an additional service.

Cancellation Policy

A no-show will be charged the full amount of the Total Price. If the Client and/or any Passenger is late, the delay may be considered a no-show and the Operator may elect to depart, the flight(s) will be deemed to have been cancelled by Client, and neither BIRDY nor the Operator will have any further responsibility or liability to Client.

In case the Client cancels the flight(s), the cancellation charges listed on the second page of the Flight Agreement (the "Cancellation Fees") – which may be conditioned by the Operator's own terms and conditions – shall be due by the Client to BIRDY. Such Cancellation Fees shall be calculated on the Total Price.

In case of cancellation of the Flight(s), the Client shall in addition reimburse BIRDY for all costs actually incurred by BIRDY in connection with any Additional Services related to the flight(s) [all such costs, collectively with the applicable Cancellation Fees, the "Cancellation Amounts"].

The Client shall pay the Cancellation Amounts to BIRDY within two (2) business days of cancellation, upon deduction of any part of the Total Price already paid to BIRDY (which shall be retained by BIRDY). If the amounts already paid to BIRDY are higher than the Cancellation Amounts to be paid by the Client, BIRDY shall reimburse such part to the Client upon deduction of the Cancellation Amounts and any other amounts owed by the Client and/or the Passengers to BIRDY.

No partial cancellation (in particular, if the Flight Agreement concerns several flights, no cancellation of a flight) shall be possible at any time, save with BIRDY's prior written consent (which shall in particular be conditioned upon the Operator's consent). In case of partial cancellation, the Total Price (and any other amounts due by the Client and/or the Passengers hereunder) shall remain due and payable and no part thereof shall be reimbursed by BIRDY, save with BIRDY's prior written consent (which shall in particular be conditioned upon the Operator's consent).

Generally, BIRDY shall be entitled in its sole discretion to treat any of the following events as constituting a cancellation of the flight(s) entitling BIRDY in particular to the payment of the applicable Cancellation Amounts: (i) any failure or delay by the Client and/or the Passengers to comply with any of their obligations hereunder for any reason whatsoever; (ii) the Client admits in writing its inability to pay or becomes unable to pay its debts; (iii) the Client becomes insolvent, files for bankruptcy or is affected by any other similar event; (iv) debt enforcement proceedings (or similar proceedings) are initiated against the Client; (v) the Client suspends or ceases or threatens to suspend or cease to carry on its business or (except in the ordinary course of business) it sells, leases, transfers or otherwise disposes of or threatens to dispose of all or any substantial part of its undertakings or assets (whether by a single transaction or by a series), or all or any substantial part of its assets are seized or appropriated by or on behalf of any governmental or other authority or are compulsory acquired; or (vi) in the opinion of BIRDY a material adverse change occurs in the business, assets, condition, operations or prospects of the Client.

Dangerous Goods and Prohibited Articles

The Client and/or all Passengers of the flight(s) shall comply with the Operator's regulations regarding Dangerous Goods and Prohibited Articles. Such regulations are available upon request from the Client.

The Passengers shall not include in their baggage: [i] articles which are likely to endanger the Aircraft or persons or property on board the Aircraft, including explosives, compressed gases, corrosives, oxidizing, radioactive or magnetized materials that are easily ignited, poisonous, offensive or irritating substances and liquids of any kind (other than liquids in the Passengers' unchecked baggage for their use in the course of the journey, provided that the nature and volume is allowed under applicable regulations); [ii] weapons of any kind; [iii] articles the carriage of which is prohibited by applicable laws, regulations or orders of any country to be flown from, into or over; and [iv] articles which, in the opinion of the Operator, are unsuitable for carriage, by reason of their weight, size or character.

The Client acknowledges and agrees that the Operator is entitled to request any Passenger to permit a search to be made on his person and his baggage and may search the Passenger's baggage in his absence if the Passenger is not available for such permission to be sought for the purpose of determining whether he is in possession of or whether his baggage contains any articles which are prohibited under this article or the Operator's regulations regarding Dangerous Goods and Prohibited Articles. If a Passenger is unwilling to comply with such request, the Operator may refuse to carry the Passenger or his baggage and in that event BIRDY shall be under no liability to the Passenger or the Client.

Neither BIRDY nor the Operator is responsible for shipping excess or rejected baggage. If the Client tenders baggage than cannot be properly stored in the aircraft's designated baggage area or which exceeds the allowable weight for baggage, BIRDY will take commercially reasonable steps to assist the Client in shipping such items at the Client's sole expense. In the event the Client rejects the scheduled aircraft because of baggage capacity, the Client will be deemed to have canceled the flight(s) and will be subject to a cancellation fee of 100%.

Flight safety and limitations

The Client acknowledges and agrees that the Operator may refuse carriage or onward carriage, or may cancel the reservation of any Passenger when: [i] such action is necessary for reasons of safety; [ii] such action is necessary to prevent violation of any applicable laws, regulations, orders, demands or travel requirements of any country to be flown from, into or over; or [iii] the conduct, age or mental or physical state of the Passenger is such as to require special assistance from the Operator which the Operator is unable to provide, cause discomfort or make himself objectionable to other Passengers or involve any hazard or risk to himself or to other persons or to property.

The Client acknowledges and agrees that: [i] all ground and operating personnel, including cabin staff, are authorized to take orders only from the Operator unless specific written agreement shall first have been obtained from the Operator whereby certain defined instructions may be accepted by such personnel from the Client; [ii] all flight(s) are subject to airport slots, take-off, overflight, landing and parking permissions; and [iii] final payloads are subject to weight, balance and weather limitations at the time of the flight(s) and are also subject to the captain's final discretion.

The Client acknowledges and agrees that the Operator may have to change any information regarding the flight(s) which is provided in the Flight Agreement and/or the Flight Confirmation. In particular: [i] the Operator may change the handling agent(s) indicated in the Flight Confirmation; [ii] the scheduled departure and arrival times may be modified by the Operator, in particular because of airport slots, take-off, overflight, landing and parking permissions; [iii] the flight time is given for information only and may change in particular because of weather conditions and air traffic control orders; [iv] the routing may be adapted by the Operator in particular because of weather conditions or other operating reasons, and may include a diversion or a stop; [v] the Operator may replace the aircraft designated in the Flight Agreement and/or the Flight Confirmation by another aircraft of its fleet of an identical or similar type and/or model, which shall be deemed to be the "Aircraft" for the purposes hereof.

BIRDY shall not bear any obligation or liability out of or in connection with the limitations set forth in this article, and the Client shall bear and reimburse to BIRDY any additional costs arising therefrom.

The captain of the Aircraft is entitled, and has full authority, to take all necessary safety precautions at any time, including to make decisions on payload (Passengers, baggage, cargo), planned route, timing and landing at destination. BIRDY shall not be liable for any damage, loss or delay arising as a result of any such decision. If the planned route, timing or destination must be changed due to the conduct of a Passenger, the Client will be liable for the complete Price, plus any additional costs caused by any diversion and more generally by such conduct. If the captain has landed at a place not specified in the Flight Agreement for any purpose related to the safety of the Aircraft or because of the conduct of a Passenger and it may be reasonably expected that the captain will be unable to resume the flight within a short time after such landing, the flight shall be considered completed and the Price duly earned. The transportation [by road, sea or air] of the Passengers to the final destination is the sole responsibility of the Client. In such event, BIRDY shall not have any obligation or liability towards the Client and/or the Passengers.

Force Majeure

If by reason of any circumstances whatsoever, including (i) weather conditions, epidemic, quarantine, war, hijacking, riots and commotion, strikes or labor disputes, lock-outs, interferences of government authorities or their officials, order from the air traffic control, fire, explosions, requisitions, blockade, embargo, flood, fog, Act of God, act of nature, order from the owner of the Aircraft, mechanical failure, lack of essential supplies or parts, delay of suppliers, breakdown or accident to the Aircraft, seizure or detention of the Aircraft, failure to obtain airport slots, take-off, overflight, landing and/or parking permissions; (ii) cessation of activity, insolvency, bankruptcy or other similar event affecting the Operator; or (iii) loss by the Operator of its air operator certificate or any other required authorization or certificate, the Operator shall be unable to perform the flight[s] or to continue the flight[s], BIRDY shall not be liable for the delay, diversion or non-performance of any such Flight and the Client shall bear and reimburse to BIRDY any additional costs arising from any of the foregoing events.

To the extent the Operator repays the whole or part of the price paid by BIRDY to the Operator in respect of the non-performed flight[s], BIRDY shall repay to the Client the Price or such part thereof corresponding to the non-performed Flight[s], it being understood that the amount repaid by BIRDY to the Client may not be higher than the amount repaid by the Operator to BIRDY.

Instead of repaying the Price or any part thereof, BIRDY may [but shall not have any obligation to] endeavor to find an alternate operator and/or aircraft for the completion of the non-performed Flight[s], in which case a new and separate Aircraft Charter Brokerage Contract shall be presented for approval and signature by the Client, it being understood that the price may be increased. BIRDY shall not bear any liability if it proposes an alternate operator and/or aircraft and the Client refuses to enter into the new Aircraft Charter Brokerage Contract for any reason whatsoever.

In the event of any delay, deviation or diversion of any flight by reason of any circumstances whatsoever, the Client [and/or, as applicable, the Operator] shall be solely responsible for any and all accommodation, refreshments, meals, transportation and any other additional costs, losses, damages or liabilities of whatsoever nature incurred in respect of the Passengers wherever and howsoever the same shall arise. All such costs, losses, damages or liabilities shall, if incurred by BIRDY, be reimbursed by the Client to BIRDY on demand.

Liability and Insurance

BIRDY does not own or operate any aircraft on which the flights are performed and does not carry any aviation insurance. The Client is free to take out any additional individual insurance and is highly invited to get a comprehensive insurance covering cancellation, repatriation, illness, travel accidents and other expenses.

BIRDY is not itself a party to the Charter Agreement between the Operator and the Client [represented by BIRDY] and shall not bear any obligation or liability in relation thereto [in particular under or in connection with Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights].

As regards any potential liability of the Operator, the Client shall be solely responsible for providing all Passengers with the summary of the main provisions governing air carriers liability for passengers and their baggage, as set out in the Annex to Regulation [EC] No 2027/97 of the Council of 9 October 1997 on air carrier liability in respect of the carriage of passengers and their baggage by air as amended by the Regulation [EC] No 889/2002 of the European Parliament and of the Council of 13 May 2002 (as further amended or supplemented from time to time), if applicable.

The Client acknowledges that all services & benefits are provided and administered by third parties acting as independent contractors and BIRDY has no responsibility for the performance of these services. BIRDY neither supervises nor controls the actions of independent services providers, nor makes any representation either express or implied as to their suitability.

BIRDY does not assume liability for any injury, death, loss, expense, accident, delay, special or consequential damages, or any other irregularity due to any action or omission of the Operator or third parties, or caused by the defect of any aircraft or conveyance, or the negligence of any company or person engaged in conveying the Passengers, or carrying out the arrangements for the Client's trip, or providing any benefits, or by accident, delay, flight schedule, change, cancellation, sickness, weather, strikes, war, quarantine or any similar cause, occurring out of or in connection with the flight(s), whether incurred by the Client or by the Passengers. The Client hereby acknowledges to BIRDY that in any such event the Client and the Passengers shall only have recourse against the Operator and waives any and all claims and remedies against BIRDY.

To the full extent permitted by applicable law, any liability of BIRDY and of its shareholders, partners, affiliates, officers, directors, employees, agents, representatives, servants, auxiliaries, successors and assigns for any consequential or indirect damages, loss of revenues or profits, or for any injury, damage, death, loss, accident or delay arising out of or in connection with this Contract, the Flight(s) and/or its activities and/or services hereunder is excluded. Client understands and agrees that BIRDY is not liable for any claims arising out of or in connection with the services of the aircraft operator, any of its partners and affiliates, or any third-party provider of goods or services.

BIRDY's liability is limited to the statutory requirements of its main activity – i.e. INSEE NAF Code 5229B – and, as an agent, shall obtain satisfactory proof from the Operator that it has professional liability insurance and public liability insurance, details of which shall be made available to the Client upon request. It is the sole responsibility of the aircraft Operator that it holds, at its expense, maintain or cause to be maintained a valid Air Operator's Certificate and an up-to-date liability insurance covering aircraft, passengers, baggage and cargo, covering the total liability assumed by Operator in accordance with applicable regulations. If a flight is operated with an aircraft other than Operator's, the insurance and liability provisions of the transportation company shall apply. The same insurance obligation applies to any other independent provider of goods or services.

Indemnification

The Client and any Passenger shall be jointly and severally liable for, and shall indemnify BIRDY, its shareholders, partners, affiliates, officers, directors, employees, agents, representatives, servants, auxiliaries, successors and assigns, and any other person (including the Operator and any owner, lessee or financier of the Aircraft) (the "Indemnitees") against, any direct or indirect damage (including reasonable attorneys' fees): [i] which the Client (or any auxiliary thereof), any Passenger (or any auxiliary thereof) or any Passenger's animal or baggage may cause to any Indemnitee, to the Aircraft (including its exterior and interior parts) or to any other asset in connection with the flight(s); [ii] which may result out of or in connection with any Passenger's improper conduct during embarkation, disembarkation or onboard the Aircraft or during any ground transportation (or other Additional Service); [iii] which may result out of or in connection with any breach by the Client or any Passenger of the Flight Agreement, the Charter Agreement or any other agreement; or [iv] which may result out of or in connection with any breach by the Client or any Passenger of any applicable laws, regulations, orders, demands and travel requirements (including immigration and customs regulations) or of the Operator's rules and instructions pertaining thereto.

Without prejudice to the generality of the foregoing: [i] the Client and the Passengers accept full responsibility for the cleaning and/or the repairing of the Aircraft cabin if damages take place during the flight(s), or if for whatever reason the cabin is not left at the end of the flight(s) in the same condition that it was found at the beginning thereof; [ii] the Client and the Passengers shall pay to BIRDY on demand any costs incurred by BIRDY and/or the Operator in returning or transporting (or arranging the same, in the case of BIRDY) any Passenger to the point of origin of the flight(s) or to any other point pursuant to the direction of any competent authority in any country to, from or over which the Aircraft is flown; [iii] the Client shall be liable for, and shall indemnify and hold the Indemnitees harmless against any claim of any kind whatsoever from any Passenger or any related third party; and [iv] the Client shall be liable for, and shall indemnify and hold the Indemnitees harmless against, any claim of any kind whatsoever from the Operator or any related third party.

Personal Data

BIRDY collects and utilizes Client's personal information according to BIRDY's Privacy Policy (the "Privacy Policy") that is incorporated in full by this reference and available at birdy.aero/legal.

The Client hereby confirms that it has read the Privacy Policy and expressly agrees to all terms thereof. The Client further confirms that it will submit the Privacy Policy to all Passengers and that it will cause them to read it and to expressly agree to all terms thereof.

Without prejudice to the generality of the foregoing: [i] the Client hereby expressly authorizes, and confirms that the Passengers will expressly authorize BIRDY to collect and transfer the Passenger name record (PNR) data, including the Client's name (as person providing the information and making the booking) and the Passengers' names, genders, addresses, dates and places of birth, passport details (nationality, number, and date of expiry), contact phone numbers, the date of booking, the travel itinerary, information concerning baggage, and any changes to the foregoing ("PNR Data"), to the Client, to the Operator and to any service providers (whether directly or through the Operator) such as airport operators, handling agents, insurance companies, hotels or other companies, to the extent such transfer is necessary for the performance of the flight(s) and/or the provision of any Additional Services;

[ii] authorities of certain countries may require that the Operator transfers to them specific travel data related to the Passengers and the Passengers' journey for security and immigration purposes. The Client hereby expressly authorizes, and confirms that the Passengers will expressly authorize, BIRDY and the Operator to transfer to these authorities any required PNR Data;

[iii] the Client acknowledges and expressly agrees, and confirms that the Passengers will acknowledge and expressly agree, that PNR Data may have to be transferred to countries where the data protection level is not equivalent to that provided in the Client's and/or the Passengers' home country; [iv] the Client further expressly authorizes, and confirms that the Passengers will expressly authorize, BIRDY to collect information on the preferences and tastes of the Client and the Passengers (including inflight services specific requests) in order to improve the quality of the service rendered to the Client and the Passengers (BIRDY may in particular communicate such information to any future carrier of the Client and/or the Passengers); [v] BIRDY does not assume liability for any breach of any data protection regulation by the Operator and/or any other person or authority to which BIRDY and/or the Operator may transfer personal data of the Client and/or the Passengers. The Client and the Passengers hereby waive any and all claims and remedies against BIRDY.

Confidentiality

The terms and conditions of this Contract are confidential, and each party and its agents shall not disclose such terms or conditions to any other person, except: [i] as may be required by law or legal process; [ii] as may be appropriate to obtain advice from its legal or financial advisors; [iii] as may be required to permit any person rendering services to such party in connection with this Contract to render such services; [iv] as may be required to permit such party to perform its obligations or exercise its rights under this Contract or [v] as may be required to permit such party to pursue all available remedies for a breach of this Contract by the other party.

Assignment and variation

No variation of this Contract shall be effective unless agreed in writing by BIRDY, and the Client shall not be entitled to assign the Flight Agreement to any person without BIRDY's prior written consent.

The Client shall make sure all Passengers (as defined below) comply with the terms of the Flight Agreement. The Client shall be personally liable for compliance with the terms of the Flight Agreement even if it only acts as an intermediary and/or as agent for an end client (in such case, the end client shall be jointly and severally liable with the Client).

Governing Law and Jurisdiction

The Flight Agreement shall be governed by and construed in accordance with the laws of France, excluding its conflict of law provisions. Any dispute, controversy, or claim arising out of, or in connection with, the Flight Agreement, including the validity, invalidity, breach, or termination hereof, shall be submitted to the exclusive jurisdiction of the courts of Basse-Terre, France, to which the parties hereby irrevocably agree to be submitted.

The foregoing shall not prevent BIRDY to sue the Client and/or the Passengers before any other competent court.

Construction

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