



# Public Charter Operator-Participant Agreement

## I. General

This Operator-Participant Agreement (the "Agreement") sets forth the terms and conditions under which JetSmarter Inc. ("JetSmarter"), whose principal place of business located at 500 E. Broward Blvd., 19th Floor, Fort Lauderdale, FL, 33394 in return for payment of the amount indicated as the total charter price, agrees to provide to each participant (the "Participant", "Passenger", "Customer") participation in a charter flight (the "Charter Flight"). The US Department of Transportation requires all passengers to accept and sign the terms of the Operator Participant Agreement at the time of payment. The price of your trip, dates of the outbound and return flights, origin and destination cities, and other conditions, are as specified in the applicable Operator itinerary and/or your accepted reservation, and are incorporated herein by reference. Unless otherwise specified, the price includes only air transportation. JetSmarter reserves the right to charge peak travel surcharge fees, the amount of which will be determined based on demand and supply availability ("Peak Travel Surcharge"). Peak Travel Surcharge will be disclosed in the itinerary and displayed in the application prior to booking. In addition, JetSmarter reserves the right to charge a fee for seats on public charter flights that are created at the request of JetSmarter customers ("Create Your Own Shuttle"). The price of seats on Create Your Own Shuttles will be displayed in the application and will be made available prior to booking.

## II. Responsibility

JetSmarter, as the principal, is responsible to the Participant for arranging and providing public charter air transportation. However, in the absence of negligence on the part of JetSmarter, neither JetSmarter, nor its officers, directors, agents, servants, employees, or principals assume responsibility for, and the Participant agrees to release, relieve and hold harmless JetSmarter and its officers, directors, agents, servants, employees, and principals from any claim, action, cause of action, injury, losses or damages arising from: the actions or omissions of third-party contractors supplying services; missed connections; missed ground transportation or car rental expenses; lost or stolen items or baggage, damage, delay of baggage or other property; costs or expenses arising out of injury, accident or death;

quarantine; disturbances; governmental restrictions or regulations; inconveniences; loss of enjoyments; loss of pay or business opportunity; disappointment; mechanical breakdown; airport closure; air traffic control restrictions; government action; strike or lockouts; war, terrorism; weather, acts of God, force majeure, or other factors or causes beyond JetSmarter's control.

### III. Passenger Rules of Conduct

JetSmarter requires all Passengers to strictly adhere to the following rules of conduct in order to ensure a safe, friendly and respectful experience on flights arranged by JetSmarter and at events organized or sponsored by JetSmarter. These rules are not intended to restrict the rights of anyone, but rather to ensure that all Passengers, as well as JetSmarter and aircraft operator personnel, can expect to be safe and treated with dignity and respect at all times. If any Passenger engages in conduct that JetSmarter considers improper, offensive or likely to risk endangering the safety of other Passengers or JetSmarter or aircraft operator personnel, then such Passenger may be reprimanded and/or denied transportation. All determinations will be made in the sole discretion of JetSmarter's management in cooperation with the operator of the Charter Flight ("Operator").

In addition, if the conduct of a Passenger endangers the aircraft or any passenger or property while on board; obstructs or hinders the crew in the performance of their duties; fails to comply with any instruction of the crew, including, but not limited to, smoking in any form (including electronic cigarettes, vaporizers and similar devices) or use of drugs or alcohol; involves the use of any offensive, threatening, abusive or insulting words towards the crew or JetSmarter personnel; or involves behavior which causes discomfort, inconvenience, damage or injury to the crew or JetSmarter personnel, then the crew may take such measures as it deems necessary to prevent continuation of such conduct, including restraint. A Passenger may be disembarked and refused onward carriage at any point and may be prosecuted for offenses committed on board the aircraft.

The following rules of conduct will be strictly enforced.

1. In accordance with FAA rules and regulations, JetSmarter prohibits its Passengers from consuming any alcoholic beverages on board any flight that are not provided in the minibar located on the aircraft or served by a cabin server. Passengers shall not bring alcohol on board the aircraft for consumption during a flight.
2. JetSmarter has zero tolerance for transportation or use of narcotics and other controlled substances, such as drugs and drug paraphernalia, regardless of whether certain substances may be considered legal in any states.
3. The crew reserves the right to deny boarding to any passenger who appears intoxicated. Any passenger who is denied boarding because he or she is intoxicated will not be entitled to a refund or alternative transportation.

4. Each passenger can transport not more than \$50,000 (or foreign equivalent) cash on any shared flight. Passengers will be denied boarding if any of them are in possession of more than \$50,000 (or foreign equivalent) cash.
5. Passengers must be respectful of other Passengers and of JetSmarter and aircraft operator personnel.
6. JetSmarter has zero tolerance for any type of harassment or offensive behavior, including, but not limited to:
  1. any kind of verbal or physical abuse, including abuse of JetSmarter employees and representatives;
  2. any form of discrimination;
  3. the use of profane language, gestures, insults or similar behavior;
  4. unwanted solicitation;
  5. loud or boisterous behavior; or
  6. creating strife, conflict or divisiveness within the JetSmarter community.
7. Passengers must observe proper etiquette on flights arranged by JetSmarter and at events organized or sponsored by JetSmarter.
8. Passengers must maintain appropriate hygiene on flights. If someone's hygiene is offensive to a reasonable passenger, then it would violate JetSmarter's rules of conduct.
9. While JetSmarter does not have a specific dress code on flights, Passengers must wear appropriate attire. Shoes must be worn at all times. Sexually suggestive and other offensive clothing is prohibited.
10. Passengers must not cause damage to any aircraft or to amenities on any aircraft.
11. Passengers shall respect the privacy rights of other Passengers. No photos or videos may be taken of another passenger or shared on social media without the prior consent of such passenger.
12. Passengers have no authority to instruct aircraft crew in their job performance and duties.
13. Passengers must strictly adhere to all policies, procedures, rules and regulations of the aircraft operators.

JetSmarter, in collaboration with crew members, will strictly enforce these rules of conduct. If a Passenger violates any of the rules outlined above or other Terms and Conditions, Operator shall have a right to deny boarding to such Passenger, in which case, cancellation fees listed below will apply. Passengers are responsible for the conduct of their guests. JetSmarter shall not be responsible for alternative transportation if a Passenger is denied boarding due to the violation of any of the rules above.

## IV. Charter Price

The quoted charter price includes charter air transportation for the Charter Flight and all applicable taxes. Fares are subject to availability at the time of booking and are subject to change until booking is completed. The Passenger is responsible for all incidental expenses incurred during the Charter Flight.

## V. Cancellations, Changes of Dates and Refunds

Please note that the following cancellation penalties will apply to purchases of seats on an existing flight, unless otherwise specified in a valid written agreement between Customer and JetSmarter.

### **Members of the \*Signature, Family, or Individual Tiers, and Guests of Signature or \*\*Sophisticated Members:**

- (i) cancellation fee of the greater of \$1,000 or one-hundred percent (100%) of the subtotal price (i.e., no refund) for cancellations within twenty-four (24) hours of the flight departure;
- (ii) a cancellation fee of fifty percent (50%) of the subtotal price for cancellations made between 24 hours and 7 days prior to the flight departure;
- (iii) a cancellation fee of twenty-five percent (25%) of the subtotal price for cancellations made more than 7 days prior to the flight departure;
- (iv) a cancellation fee of the greater of \$1,000 or one hundred percent (100%) of the subtotal price (i.e., no refund) for no shows, failures to arrive at least 30 minutes prior to boarding in possession of valid government issued identification or violation of any terms and conditions of this agreement that result in denial of boarding.

### **Members of the Sophisticated Tier:**

- (i) free seat cancellation up to twenty-four (24) hours prior to departure;
- (ii) a cancellation fee of the greater of \$1,000 or the full purchase price of an additional seat on the reserved route for cancellations made within twenty-four (24) hours of the flight departure;
- (iii) a cancellation fee of the greater of \$1,000 or one hundred percent (100%) of the subtotal price (i.e., no refund) for no shows, failures to arrive at least 30 minutes prior to boarding in possession of valid government issued identification or violation of any terms and conditions of this agreement that result in denial of boarding.

### **Non-Member Customers:**

- (i) a cancellation fee of fifty percent (50%) of the subtotal price for cancellations made between 24 hours and 7 days prior to the flight departure;
- (ii) a cancellation fee of the greater of \$1,000 or one hundred percent (100%) of the subtotal price (i.e., no refund) for cancellations made within 24 hours prior to the flight departure;
- (iii) a cancellation fee of the greater of \$1,000 or one hundred percent (100%) of the subtotal price (i.e., no refund) for no shows, failures to arrive at least 30 minutes prior to boarding in

possession of valid government issued identification or violation of any terms and conditions of this agreement that result in denial of boarding.

Participants agree and acknowledge that even if the flight that they booked was complimentary or booked using credits or other non-monetary currency, they will be liable to pay the Cancellation Fee. The Cancellation Fee will not apply if Passenger's seat on a cancelled flight is occupied by a substitute participant. Passenger agrees that JetSmarter shall have a right to charge the Cancellation Fee to Passenger's payment method on file or retain the Cancellation Fee from the ticket price. In the event Passenger's payment method on file is declined, Passenger shall provide an alternative payment method immediately.

**\*\*Please note that as a Sophisticated Member, you may cancel your first booked seat up to 24 hours prior to flight departure without penalty. If you cancel your first booked seat within 24 hours of departure, the cancellation policies detailed above will apply.**

The above cancellation policies do not apply to Rebate Seats, One-Way Charter Deals, and seats on Shared Charters, which are non-refundable.

JetSmarter reserves the right to change or withdraw a Charter Flight at its discretion, subject to the provisions in this Agreement regarding major changes or cancellations. Any refunds will be made within 14 days after such cancellation.

## **VI. Transportation of Pets and Service Animals**

Passengers are not allowed to transport pets on Charter Flights. Only service animals will be permitted on board Charter Flights. Passengers shall notify JetSmarter as soon as possible, but not less than 48 hours prior to the flight departure time if they or their invitees will be bringing a service animal onboard a Charter Flight. Unauthorized transportation of pets will result in a \$1,000 fine and cleaning fees that will be charged to Passenger's payment method on file. If a Passenger violates the pet policy outlined in this paragraph, Passenger agrees to pay the fine and the cleaning fees.

## **VII. Baggage and Consent to Search of Baggage and Person**

Passengers are allowed to transport one small carry-on size suitcase or soft bag in accordance with the size and weight restrictions indicated on Passenger's boarding instructions for the Charter Flight. Such baggage will be stored in the luggage compartment. In addition, Passengers are allowed to bring one small personal item (9"x10"x17"), such as a briefcase or a purse, that can be safely stowed in the cabin area for take-off and landing. Operator reserves the right to refuse to accept baggage that does not comply with the size and weight limitations described above.

Operator will refuse to accept the following articles for transportation: (a) firearms and ammunition; (b) any flammable material or liquid in stowed baggage or otherwise; (c) live animals, except service animals as defined by the Americans with Disabilities Act; and (d) any article designated as hazardous material ("hazmat") or listed in the ICAO Technical Instruction for the Safe Transport of Dangerous Goods by Air (collectively, the "Prohibited Items"). If, notwithstanding this provision, Passenger boards the aircraft with a Prohibited Item, Operator might be required to return an aircraft to the passenger loading area and remove the Prohibited Item and the passenger. In such an event, neither JetSmarter nor Operator would not be responsible for the transportation of the Prohibited Items, associated fines, additional cost or delays that could be incurred.

For your safety and the safety of the flight, all luggage, including carry-on luggage and personal items, and Passengers will be subject to search. In addition, by purchasing this flight, you agree that you are responsible to verify your documentation and provide the necessary information to conduct a criminal and other background searches via the JetSmarter application prior to the flight. If you fail to do so, JetSmarter and Operator reserve the right to deny you boarding. By confirming the invoice for your flight, you consent to the requirements of this Section VIII.

## **VII. Liability**

JetSmarter assumes no liability for any items left by a passenger in the passenger compartment of the aircraft. Neither JetSmarter nor Operator are liable under any circumstances for loss or damage to any items inadequately packaged or overstuffed or loss or damage of any items packed in the baggage. JetSmarter or Operator are not responsible for any damage to the luggage and specifically are not liable for superficial damage to luggage arising from normal wear and tear of ordinary handling, including scratches, scuffs, punctures, stains and marks.

The Participant agrees to indemnify and reimburse JetSmarter for any and all costs and expenses incurred as a result of damage and excess wear and tear to the aircraft interior and/or exterior determined to be caused by the Participant. If the Participant incurs any such charges, Participant's payment method on file with JetSmarter shall be charged upon completion of the flight.

## **IX. Check-in and Identification**

All passengers must arrive at least thirty (30) minutes prior to the scheduled departure time and check-in no less than twenty (20) minutes prior to the scheduled departure. Neither JetSmarter nor Operator shall be responsible or liable for the transportation of passengers who fail to report to the designated boarding point at the airport of departure at least twenty (20) minutes prior to the time scheduled for departure. **YOU MUST PRESENT ORIGINAL VALID**

GOVERNMENT-ISSUED PHOTO IDENTIFICATION TO CLEAR THE SECURITY CHECKPOINT AND BEFORE BOARDING; SUCH IDENTITY DOCUMENT SHOULD MATCH YOUR NAME AS IT APPEARS ON THE PASSENGER RESERVATION LIST. FAILURE TO PROVIDE THIS TYPE OF IDENTIFICATION COULD LEAD TO DELAY IN BOARDING OR TO DENIAL OF BOARDING, SO PLEASE BE SURE TO HAVE SUCH IDENTIFICATION (SUCH AS A DRIVER'S LICENSE) READY WHEN YOU CHECK-IN. Any Passenger that exhibits disruptive behavior will not be allowed to board, or will be removed from the aircraft.

## **X. Air Transportation**

This Charter Flight is a JetSmarter Inc. Public Charter are operated by Tailwind Air, LLC ("Operator"). JetSmarter reserves the right to substitute scheduled air service when necessary at no additional cost and at comparable times, and does not guarantee aircraft type or capacity. JetSmarter will make every diligent and reasonable effort to notify all Participants in the event of a schedule change. No refunds or compensation will be given for changes in aircraft type or for substitution of service to a scheduled air carrier.

## **XI. Major Changes**

If JetSmarter makes major changes prior to departure, the Participant shall have the right to cancel the reservation on the Charter Flight and receive a full refund. The following are major changes: (1) a change in the origin or destination city of a Charter Flight; (2) a change in the departure or return date of a Charter Flight of greater than 48 hours; or (3) a Charter Flight price increase of more than 10% occurring ten or more days before departure of the Charter Flight. In no event may JetSmarter increase the Charter Flight price less than ten days prior to departure of the Charter Flight. If a major change must be made in a Charter Flight, JetSmarter will exercise all reasonable commercial diligence to notify the Passenger within seven days after first being notified of such major change, but in any event at least ten days before scheduled departure of the Charter Flight. If a major change occurs less than ten days before the scheduled departure of a Charter Flight, JetSmarter will notify the Passenger as soon as possible. Within seven days after receiving notification of a major change, but in no event later than departure, the Passenger may cancel such Passenger's reservation with JetSmarter and will receive a full refund within 14 days after such cancellation. If a major change occurs after departure of the Charter Flight which the Passenger is unwilling to accept, JetSmarter will refund to the Passenger, within 14 days after the scheduled return date of the Charter Flight, that portion of the price for such Charter Flight that applies to the services not accepted. JetSmarter has no right to cancel a Charter Flight less than ten (10) days before the scheduled departure date, except for circumstances that make it physically impossible to perform the Charter Flight or causes beyond its control. If that occurs, JetSmarter will notify Passengers as soon as possible, but not later than the scheduled departure date. If the Charter Flight is cancelled less than (10) days before departure, a refund will be made to the Passengers within fourteen (14) days of such notification.



## **XII. Security Agreement**

Participant's payments are protected in part by the Public Charter Operator's Surety Trust Agreement held by Level One Bank ("Securer") with its principal place of business located at 32991 Hamilton Court, Farmington Hill, Michigan 48334. Unless Participant files a qualified claim with JetSmarter, or if JetSmarter is not available, with the Securer, within 60 days after the completion of the Charter Flight (or in the case of cancellation, the intended date of Participant's Charter Flight arrival), the Securer will be released from all liability to Participant under the Trust Agreement. If there is no return flight in Participant's itinerary, completion means the date or intended date of departure of the last flight in Participant's itinerary.

## **XII. Insurance**

It is the sole responsibility of the Operator to maintain aviation liability insurance coverage, and it is the sole responsibility of the independent provider of goods or services to maintain liability insurance coverage. Passenger understands and agrees that JetSmarter is not liable for any claims arising out of or in connection with the services of the Operator, any of its partners and affiliates, or any third-party provider of goods or services. Trip cancellation, health, and accident insurance is available for purchase by all passengers. Details of this insurance will be sent to you upon request.

JetSmarter maintains non-owned aircraft liability insurance in an aggregate amount of \$50,000,000, personal injury coverage of \$25,000,000 per occurrence and in the aggregate, and \$10,000 in coverage for each passenger's personal effects.

## **XIV. Release to Use Picture and Voice**

Passenger authorizes JetSmarter, its subsidiaries, sister and parent companies, licensees, successors and assigns, to use Passenger's (1) picture, including photographic, motion picture, and electronic (video) images; and (2) voice, including sound and video recordings created while Passenger is utilizing the Services of JetSmarter. Passenger hereby grants JetSmarter, its subsidiaries, sister and parent companies, licensees, successors and assigns, the right to use, publish, and reproduce, for all purposes, Passenger's name, picture(s) of Passenger in film or electronic (video) form, silhouettes and other reproductions of Passenger's likeness, sound and video recordings of Passenger's voice, and printed and electronic copies of the information described above in any and all media including, without limitation, cable and broadcast television and Internet, and for exhibition, distribution, promotion, advertising, sale, press conferences, meetings, hearings, educational purposes, and in brochures and other print media. This permission extends to all languages, media, formats and markets now known or hereafter devised whether in the United States or abroad. The permission shall continue forever. Passenger acknowledges and understands that he, she, or it may not enjoin any exploitation of the activities as described above.



Passenger further grants JetSmarter, its subsidiaries, parent and sister companies, licensees, successors and assigns all right, title, and interest in all finished pictures, negatives, reproductions, and copies of any original print, and further grants JetSmarter, its subsidiaries, licensees, successors and assigns the right to give, sell, transfer, and exhibit any print in copies or facsimiles thereof, for marketing, communications, or advertising purposes, as it deems fit in its sole discretion.

Passenger hereby waives the right to receive any payment for granting this release and waives the right to receive any payment for JetSmarter's, its subsidiaries, licensees, successors and assigns use of any of the material described above for any purpose authorized by this release. Passenger also waives any right to inspect or approve finished photographs, audio, video, multimedia, or advertising recordings and copy or printed matter or computer-generated scanned image and other electronic media that may be used in conjunction therewith and further waives any right to approve the eventual use that it might be applied. Passenger acknowledges that he or she has read the foregoing and fully understands and agrees to the contents thereof.

## **XV. Limitation of Liability and Miscellaneous**

JetSmarter does not own or operate any aircraft on which the flights are performed and does not carry any aircraft liability insurance. Passenger understands and agrees that JetSmarter is not liable for any injury, damage, loss, expense, including without limitation, any indirect, special, incidental, consequential, exemplary or punitive damages of any kind, or any other irregularity caused by the defect of any aircraft or conveyance, or the negligence of any company or person engaged in conveying the passenger, or carrying out the arrangements for Passenger's trip, or by accident, delay, flight schedule, change, cancellation, sickness, weather, strikes, war, quarantine or any similar cause.

The rights and remedies made available under this Agreement are in addition to any of the rights and remedies available under Florida law. The acceptance by a Participant of a refund, or alternative travel arrangements, as provided in this Agreement shall constitute a full and final settlement and release of all other claims or remedies against JetSmarter. By executing this Agreement, the Participant specifically acknowledges and consents to all conditions set forth herein. This Agreement contains the entire agreement between the parties and completely supersedes any prior agreements or representations of JetSmarter, verbal or in writing. This Agreement can be amended only in writing in a document signed by both parties. Any oral representation or modifications shall have no force or effect. Florida law shall govern this Agreement. Any claim against JetSmarter must be presented in writing within sixty (60) days of the date of the return flight of a Charter Flight, and JetSmarter shall have no obligations or liabilities for any claims presented after such sixty (60) day period. JetSmarter Inc. is registered with the State of Florida as a Seller of Travel. Registration No. ST40661.

## XVI. Governing Law and Dispute Resolution

This Agreement and all the rights of the parties hereunder shall be governed by, construed and enforced in accordance with the laws of the State of Florida without reference to the conflict of law principles of any jurisdiction. Any claim or dispute between the parties and/or against any officer, director, agent, employee, successor, or assign of the other, whether related to this Agreement, any of the Terms and Conditions, or the relationship or rights or obligations contemplated herein, including the validity of this clause, shall be resolved exclusively by binding arbitration by the American Arbitration Association by a sole arbitrator under the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes then in effect, which are deemed to be incorporated herein by reference. The place of arbitration shall be Broward County, Florida. The existence and content of the arbitration proceedings and any rulings or award shall be kept confidential except: (i) to the extent that disclosure may be required of a party to fulfill a legal duty, protect or pursue a legal right, or enforce or challenge an award in bona fide legal proceedings before a state court or other judicial authority, or (ii) with the written consent of all parties. Notwithstanding anything to the contrary, either party may disclose matters relating to the arbitration or the arbitration proceedings where necessary for the preparation or presentation of a claim or defense in such arbitration.

Arbitration shall proceed solely on an individual basis without the right for any claims to be arbitrated on a class action basis or on bases involving claims brought in a purported representative capacity on behalf of others. The arbitrator's authority to resolve and make written awards is limited to claims between Passenger and JetSmarter alone. Claims may not be joined or consolidated unless agreed to in writing by all parties. No arbitration award or decision will have any preclusive effect as to issues or claims in any dispute with anyone who is not a named party to the arbitration. Notwithstanding any other provision in these terms and conditions and without waiving either party's right of appeal, if any portion of this "class action waiver and other restrictions" provision is deemed invalid or unenforceable, then the remaining portions of the arbitration provision shall remain in full force and effect.

## XVII. Notices

All communication should be sent to JetSmarter, ATTN: CUSTOMER CARE, at the address shown in Paragraph 1 above, or by email to [concierge@jetsmarter.com](mailto:concierge@jetsmarter.com). Notices to JetSmarter are effective upon actual receipt by JetSmarter.\

## XVIII. Privacy of Passenger Data

JetSmarter collects and utilizes Passenger information according to the Privacy Policy that is incorporated in full by this reference and available at <https://docs.flyxo.com/jetsmarter-legal/general/privacy-policy.html>. JetSmarter may use Passenger information to check the

credit of Passenger in connection with its invoice collection efforts or to check the credit of Passenger and perform criminal and other background searches of Passenger in connection with evaluating whether to accept Passenger's business. For more information about JetSmarter's use of your data, please contact [GDPR@JetSmarter.com](mailto:GDPR@JetSmarter.com).

## **XIX. Electronic Signature**

By purchasing a flight or confirming an invoice or flight itinerary through the JetSmarter mobile application, the JetSmarter software, and JetSmarter's website or through an aviation specialist and selecting the "I Accept" button, the Participant accepts and agrees to this Agreement electronically. The Participant agrees that their electronic signature is the legal equivalent of their manual signature and that they will be legally bound by this Agreement.