



AGREEMENT TO CHARTER AIRCRAFT CAPACITY

This Agreement is made as of this (Date)

BETWEEN **Servicios Integrales de Aviación S.A. de C.V. (FlyMex)** corporation duly incorporates under the laws of the United States of Mexico having its headquarters at **Calle 3 Lote 22 Toluca International Airport, San Pedro Tototltepec, Toluca, Estado de Mexico** herein represented by its duly authorized representative Lic. Virginia Brondo Romero. **AND** (Company) _____ a corporation duly incorporated under the laws of _____ with address at (Address) _____ and herein represented by its duly authorized representative (Full Name) _____

Herein referred to as the **Charterer**).

WHEREAS the Carrier is duly licensed by the appropriate aviation authorities to operate international commercial air service involving the transport of persons and goods according to the itinerary attached on Quote.
WHEREAS the Charterer is a charter broker acting as an agent brand on behalf of its client and wishes to charter an Aircraft operated by the Carrier, on behalf of its client, for the purposes of performing and marketing the series of flights described in Quote attached hereto.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS in this Agreement:

1. **"Aircraft"** means any type of aircraft operated by the Carrier, including, but not limited to A109E in case of failure of the aircraft, the Carrier will provide the service on similar aircraft, with no additional cost for the charterer, subject to prior notification to charterer of any substitute aircraft.
2. **"Aviation Authority"** means any person who shall from time to time be vested with the control and supervision of, or have jurisdiction over, the registration, airworthiness, operation or other matters relating to civil aviation in Mexico or any other applicable country, including without limitation the destination country as well as the countries over which an Aircraft has to fly for the purpose of this Agreement;
3. **"Business day"** means a day on which the banks in, **the USA** are open for the transaction of business of the type required by this Agreement;
4. **"Deposit"** means the amount in Dollars referred to in Section 4 of this Agreement and set out in Appendix A hereto attached required by the Carrier to guarantee the Charterer's performance of its obligations under this Agreement;
5. **"Dollars"** and the sign "\$" each mean the lawful **currency of United States**, unless otherwise specified;
6. **"Effective Date"** means the date of signature by the parties of this Agreement;
7. **"In-Flight Services"** means meals and wine, soft beverages, coffee, tea and water, audio entertainment service, featured films, earphones and bar service, are not included on these particular flights;
8. **"Taxes and Fees"** means and includes in respect of the flights described in Appendix A, without limitation, all present or future taxes, license and documentation fees, goods and services taxes, levies, fiscal charges, imposts, duties, fees, assessments, surcharges, conditions or other charges of whatever nature and however arising which are imposed, assessed, charged, levied, withheld, deducted, demanded or otherwise applied pursuant to applicable law or regulation by the appropriate governments and Aviation Authorities, together with all interest thereon and penalties or similar liabilities with respect thereto, but excluding taxes based on the Carrier's income and capital from this Agreement, the whole as set out in the tax grid provided by the Carrier to the Charterer;
9. **"Total Aircraft Cost"** means the price stated in the formal quote previously sent, Hereinafter referred to as the "Annex A".

2. TERM

The terms and provisions of this Agreement shall be effective from the Effective Date until the day when the flight is completed.

3. CHARTERED CAPACITY

Subject to Section 5 hereof, the Charterer charters from the Carrier and the Carrier provides to the Charterer, the Aircraft, along with In-Flight Services, as set out in Appendix A attached hereto.

4. TOTAL ROTATION PRICE AND DEPOSIT

Subject to Section 5 and 15 of this Agreement, the Charterer shall pay to the Carrier the Total Rotation Price in respect of all rotations covered by this Agreement as set out in Appendix A attached hereto, plus Taxes and Fees. Upon execution of this Agreement, the Charterer agrees to pay to the Carrier a Deposit in the amount set out in Appendix A. The Deposit shall be in the form wire transfer, should be submitted at least 48 hours before departure.

5. CONDITIONS OF PAYMENT

The Charterer agrees to pay in full to the Carrier, at least seven (7) calendar days prior to each departure date, the Total Rotation Price set out in Appendix A in respect of the concerned flight. Taxes and Fees shall be paid to the Carrier within seven (7) days following the concerned flight.

All payments of the Total Rotation Price plus Taxes and Fees and any other amounts to be paid by the Charterer hereunder shall be paid in US Dollars,

By certified check payable to the Carrier; in the following accounts
For payment from Abroad: BBVA, 5075 WESTHEIMER ST. 3rd FL. HOUSTON TX 77056, USA.
Account 2515779844. ABBA: 113010547. SWIFT: CPASUS44.

Whenever any payment hereunder falls due on a day which is not a Business Day, the due date thereof shall be the next Business Day; provided that, if such next Business Day would fall in the next month, the due date shall be the immediately preceding Business Day.

6. TAXES AND FEES

The Charterer agrees to pay all Taxes and Fees with regard to a departure at the period specified in Section 6.2 hereof.

The Charterer will collect the applicable Taxes and Fees from passengers and remit them to the Carrier who shall further remit them to the appropriate authorities in accordance with applicable law. The Carrier will accept payment from the Charterer in US dollars of all Taxes and Fees invoiced to the Carrier in foreign currency.

In calculating the Aircraft Price, the Carrier has assumed an average fuel price in 3.5 US Dollars per US gallon (the "Assumed Average Fuel Price"). At the end of each month, the Carrier will do a reconciliation of the Assumed Average Fuel Price versus the actual average fuel price incurred during the month for the flights operated on behalf of the Charterer (the "Actual Average Fuel Price"). If the Assumed Average Fuel Price is greater than the Actual Average Fuel Price, then the Carrier will issue a credit note to the Charterer in respect of the difference. If, on the contrary, the Assumed Average Fuel Price is lower than the Actual Average Fuel Price, then the Carrier will issue to the Charterer an adjustment invoice for the difference, along with copies of all invoices used to determine the Actual Average Fuel Price.

7. SALES TO A THIRD PARTY

Notwithstanding any provision of this Agreement, the Carrier hereby acknowledges that the Charterer has the right to resell or otherwise transfer any seat on the flights hereunder to travel agencies and tour operators irrespective of whether they are affiliated to the Charterer.

8. ADVERTISING

The Charterer may not use the name or logo of the Carrier, the name, logo, any photograph, video or film containing an image of the Carrier's Aircraft, nor any trade name or trademark of the Carrier in any of the Charterer's advertising material in connection with the flights covered by this Agreement, without the prior consent of the Carrier, which shall not be withheld unreasonably. This provision applies particularly to any third party to whom the Charterer may have sold seats contracted pursuant to this Agreement.

9. BAGGAGE

The Carrier will carry, without additional charge, checked baggage up to a weight limit as specified by the Carrier's policy, which may change from time to time with prior written notice. Excess baggage charges will be assessed to each passenger according to the Carrier's applicable tariff.

10. TICKETS, PASSENGER/SALES INFORMATION

1. The Charterer undertakes to use either ticket stock furnished by the Carrier or approved by the latter. In the event the Charterer elects to use Carrier tickets, such Charterer shall be responsible to provide the Carrier with thirty (30) days advance notice should additional tickets be required.
2. The Charterer undertakes, upon request, to submit to the Carrier, on a weekly basis, commencing no less than ninety (90) days prior to the commencement of the flight program, an updated and detailed statement of sales with respect to the entire program.
3. The Charterer agrees to submit to the Carrier daily from the start of the selling period of a flight program, all new and modified Passenger Name Records ("PNR"), according to the specifications provided by the Carrier. All PNR will be transmitted electronically in a format suitable to the Carrier's system.
4. The Charterer agrees to send the flight manifests to the Carrier at least 72 hours before flight departure.

11. CARRIER'S REPRESENTATIONS

The Carrier hereby represents and warrants to the Charterer that the following representations and warranties will remain true and correct throughout this Agreement:

1. The Carrier is duly organized, validly existing and in good standing under the laws of Mexico;
 - a. The Aircraft used for the operations hereunder shall be maintained and operated in a safe and airworthy condition;
 - i. For each flight hereunder, the Aircraft shall at all times comply with and be operated in accordance with all laws, rules and regulations of any governmental body to which the Aircraft may be subject;
 - ii. The Carrier shall provide sufficient personnel who are duly qualified flight crew and cabin crew, along with duly qualified maintenance and other personnel required to operate and maintain the Aircraft on the flight schedules set forth in Appendix A of this Agreement
2. For each flight hereunder, the Carrier shall provide all the personnel, services and facilities normally associated with the flights;
3. The Carrier shall comply with the provisions of any insurance policy applicable to the Aircraft as well as its obligations under Section 12 of this Agreement
4. The Carrier shall maintain and keep in force and check all required licenses and permits, including without limitation, the certificate of airworthiness and all licenses required by law
5. The execution of this Agreement by the Carrier does not contravene any other agreement or obligation to which the Carrier is subject.
6. Where required under law, the Carrier protects advance payments from charterers against the Carrier's failure to operate a flight in accordance with the requirements of applicable air transportation regulations. Should the Carrier fail to operate a flight in cases where such protection is in place as required under law, the Charterer will claim under the applicable financial guarantee with respect to the non-performance of air transportation and will use the amount received pursuant to such financial guarantee for the payment of replacement air transportation or to refund proposed passengers either directly or through the appropriate travel agencies, tour operators or provincial authority.
7. Consents and Approvals", this agreement is conditioned on the Carrier's timely receipt consents and approvals of any government authority of any government authority and landing facilities required to operate the flights. The Carrier shall use commercially reasonable efforts to obtain all required consents and approvals but, shall not have any liability other than the return of any payments received if any consent or approval is not obtained in time for the operation of the contracted flight.
8. "Governing Convention Clause", all flights under this agreement for the limitations of liability of passengers shall be governed by the unification of certain rules for the international carriage by air of passengers signed at Montreal on 28th May 1999. These terms shall be in addition to the terms and conditions of carriage of the carrier which shall be made available to the charterer.

12. INSURANCE

1. The Carrier undertakes to maintain in effect at its own cost throughout this Agreement, with respect to the Aircraft, insurance covering third party liability, bodily injury and property damage, passenger legal liability and cargo legal liability for a combined single limit of not less than \$100,000,000 USD for any one occurrence. The Carrier further undertakes to name the Charterer, its clients and its officers, directors, employees, agents and any third party travel agents and tour operators to whom the Charterer resells seats onboard the Aircraft as additional insured for their respective rights and interests due to liability arising out of the Carrier's operations. The Carrier shall provide the Charterer, and any third party travel agency or tour operator as may be applicable, with a certificate of insurance evidencing such inclusion.

13. EVENTS OF DEFAULT AND TERMINATION

1. Each of the following events shall constitute an Event of Default:
 - a. Failure on the part of the Charterer to pay any Total Rotation Price and any other amount payable by the Charterer hereunder within five (5) Business Days after such payment has not been made when due and payable;

- b. Failure by the Carrier to operate a flight hereunder or to comply with either Section 12 or 13 of this Agreement, and such failure is not remedied within twenty-four (24) hours after receiving written notice from the Charterer of such failure;
- c. Either party failing to perform or observe any other covenant, condition or provision of this Agreement and such failure is not remedied within seven calendar days after receiving notice from the non-defaulting party of such failure to perform;
- d. Either party voluntarily suspending all or substantially all of its business operations;
- e. Either party instituting proceedings to be adjudicated a bankrupt or insolvent, to be wound-up, consenting to the institution of bankruptcy, insolvency, liquidation, debt protection or winding-up proceedings against either party, filing a petition, answer or consent seeking dissolution or winding-up under any bankruptcy, insolvency or analogous laws, or if any such proceedings are commenced in respect of either party and are not being contested in good faith (and with the result of such contestation being to suspend any adverse effect of such proceeding on the rights of the other party hereunder) within five (5) calendar days after such party becomes aware thereof or if either party consents to the filing of any such petition or to the appointment of a receiver over its business and assets generally or makes a general assignment for the benefit of creditors;
- f. If an encumbrancer, secured party, receiver (or other similar representative) or sheriff (or other similar officer) seizes or takes possession of any material assets of either party;
- g. The suspension of payments by either party, the failure to pay its debts generally or admitting in writing its inability to pay its debts generally as they become due; or
- h. The cancellation or termination of any license, consent, permit or authorization, or the failure to renew the foregoing, required in connection with the performance of either party's obligations under this Agreement.

2. Upon the occurrence of an Event of Default, the non-defaulting party shall have the cumulative right, in addition to any other right under this Agreement and by law, to:

- a. Enforce this Agreement and be indemnified in accordance with Section 16.1 hereof; or
- b. Terminate this Agreement without liability to the non-defaulting party, upon simple notice without any further formalities, whereupon all rights of the defaulting party under this Agreement shall cease, the non-defaulting party being entitled, without limitation to
 - i. All amounts due and owing to the non-defaulting party hereunder;
 - ii. The costs and expenses incurred by the non-defaulting party in connection with the exercise of its powers and remedies under this Agreement;
 - iii. Any direct damages incurred by the non-defaulting party in connection with an Event of Default;
 - iv. Set-off any amount due by the non-defaulting party with any sum owed to the defaulting party.

14. FORCE MAJEURE

1. Neither party shall be liable for any delay or failure in the performance of any obligation under this Agreement due to any cause beyond its control, including without limitation, acts of God, acts of government, civil war or disobedience, fires, floods, explosions, earthquakes, serious accidents, epidemics, quarantine restrictions, strikes, lock outs or other labor disputes, embargos, riots, insurrections, war, acts of the public enemy or damage or destruction to the Carriers Aircraft or facilities and equipment due to any cause beyond its reasonable control. Furthermore, the Carrier shall not be liable to any passenger for landing at a destination other than contracted for, or for failure to stop at any contracted intermediate airport, or for any flight interruption, delay or cancellation caused by a force majeure event. Under circumstances of a force majeure event, the Carrier shall refund to the Charterer any amount which has been paid minus any administrative, operative and taxes with proper documentation to the Carrier for any non-operated flight.
2. In the event of a *Force Majeure*, the Charterer will be entitled, at its sole discretion, to:
 - a. cancel one or several of the flight rotations described in Appendix A in the understanding that the Charterer will be monitoring the situation with a view to resume performance as soon as the *Force Majeure* is removed; or, should the *Force Majeure* last or be expected to last for a period that the Charterer considers, at its discretion, as being commercially unacceptable
 - b. Terminate this Agreement by written notice effective immediately, without liability.

15. INDEMNIFICATION

1. The Carrier will indemnify and keep indemnified, hold harmless and defend the Charterer and its employees, agents, directors, officers, subcontractors and representatives from and against any and all liabilities, costs, losses, damages, claims, demands, suits, judgments, actions and expenses whatsoever and howsoever arising wholly or partly out of or in connection with this Agreement and/or its operation of the Aircraft under this Agreement, save to the extent directly attributable to the Gross negligence or willful misconduct of the Charterer, its employees, directors, officers, subcontractors or representatives.
2. Charter and liability shall hereby indemnify and hold the Carrier free and harmless from and against any and all losses, expenses, costs, damages, demands and claims arising, directly from the gross negligence or willful misconduct of the Charterer.
3. The indemnification provisions of this clause shall survive the termination of this Agreement.
4. The Carrier shall be liable for any delay, injury or death suffered, incurred or in respect of any passenger or any other person carried or to be carried on the Aircraft, or any loss, damage, destruction or delay of or to any cargo, baggage, personal effects or mail carried or to be carried by the Aircraft under this Agreement and the Carrier shall indemnify and hold the Charterer its officers, directors, employees and agents harmless in respect of all liability, costs, claims, demands, suits, judgments or actions including all costs and expenses of any defense unless caused by willful misconduct or gross negligence of the Charterer.
5. The Carrier shall be liable for any loss or damage to property or any injury or death of any person not carried by the Aircraft caused by an occurrence arising out of or incidental to the possession, use, maintenance or operation of the Aircraft under this Agreement the Carrier shall indemnify and hold the Charterer its officers, directors, employees and agents harmless accordingly in respect of all liability, costs, claims, demands, suits, judgments or actions including all costs and expenses of any defense except when such loss or damage is caused by willful misconduct or gross negligence of the Charterer.

16. GOVERNING LAW

1. This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by **The Laws of The United Mexican States**. There shall be no application of any conflict of laws rules inconsistent with this Section. Each of the parties irrevocably submits to the jurisdiction of **Mexico City's** courts sitting in and over any action or proceeding arising out of or relating to this Agreement and the parties irrevocably agree that all claims in respect of such action or proceeding may be heard and determined in such office.

17. MISCELLANEOUS

1. **Entire Agreement.** This Agreement, including any Appendix thereto, represents the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and shall supersede all prior agreements made by any party, whether written or oral. This Agreement may only be modified by writings signed by an authorized representative of all parties.
2. **No Waiver.** No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision whether or not similar, nor shall any waiver constitute a continuing waiver. Further, no waiver shall be binding unless executed in writing by the party making such waiver.
3. **Severability.** Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions hereof and such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
4. **No Agency.** Neither anything herein contained nor shall any act of the parties be deemed or construed by the parties or by a third person to create the relationship of mandatary, agent, partnership, joint venture or any association between the parties.



5. **Carrier's Tariff.** This Agreement is subject to the terms and conditions of the Carrier's tariff. To the extent that the terms and conditions of this Agreement conflict or are inconsistent with the Carrier's tariff, the terms and conditions of this Agreement shall govern and prevail to the extent of such conflict or inconsistency.
6. **Confidentiality.** The Charterer and the Carrier undertake to maintain strict confidentiality regarding the terms and conditions of this Agreement, including all financial, business and operational information relating to either party. Access to the content of this Agreement shall be limited to senior management personnel of both parties. Neither party will disclose any such Confidential Information to any third party except where such disclosure is necessary to fulfill obligations under this Agreement or where the parties may agree otherwise in writing. Furthermore, the exchange or transfer of personal information between the parties pursuant to this Agreement shall be expressly subject to the provisions and safeguards outlined in any applicable legislation and/or corporate privacy policies adopted and implemented by the parties in this respect. A copy of any such corporate policy shall be made available to the other party upon request.
7. **Assignment.** Neither party may assign this Agreement without the prior written consent of the other party. This Agreement shall be binding upon the parties hereto, their successors and their assignees.
8. **Time of the Essence.** Time is of the essence with respect to the performance by the Carrier and the Charterer of their obligations hereunder.
9. **Counterpart Executions.** This Agreement may be executed in one or more counterparts; each of which when so executed and delivered shall be deemed to be an original, but all such counterparts together shall constitute one and the same agreement. This Agreement may be executed and delivered by facsimile, which when so executed and delivered shall constitute a binding agreement.
10. **Notices.** All notices required or permitted by this Agreement to be given to each of the parties shall be in writing and shall be delivered by personal service, facsimile or email to the party receiving the notice at such party's address and to its representative as first written above. Notices hereunder shall be deemed to be given upon such personal delivery, on the first Business Day after being faxed or upon receipt of the email by the party to whom the notice is addressed. For greater clarity, any notice received by a party after 5:00 p.m. Eastern Time of any given day will be deemed to be given the next calendar day, unless required to be given on a Business Day, in which case it will be deemed to be given on the next Business Day.
11. **Language.** The parties have expressly required that this Agreement and all documents relating hereto be drafted in English. *Les parties acceptent que ce contrat et tous les documents qui s'y rattachent soient rédigés dans la langue anglaise seulement.*

18. CANCELLATION FEES

Subject to Section 15.1 of this Agreement, in the event that the Charterer cancels the flight, the Charterer shall pay to the Carrier the following cancellation fees, with the date of cancellation being the date on which the Carrier receives written notice of cancellation of a flight from the Charterer: Charges can be made against the deposit.

- a) More than seven (7) calendar days prior to the scheduled date of departure of a flight or flights, zero percent (0%) of the Total Rotation Price related to the said cancelled flight(s);
- b) Less than seven (7) in advance prior to the scheduled date of departure of a flight or flights (15%) fifteen percent of the Total Rotation Price related to the said cancelled flight(s);
- c) Less than a five (5) days in advance to the scheduled date of departure of a flight or flights (50%) fifty percent of the Total Rotation Price related to the said cancelled flight(s)
- d) From three (3) calendar days prior to the schedule date of departure of flight a 100% percent of the total price, with no reimbursement.

*All payments from cancellation fees will be reimbursed in the form of credit memos for future operations on the carrier's aircraft according to their corresponding values based on this list. These credit memos are subjected to expiration dates.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement on **(Date)** _____.

The Carrier:

By: **Servicios Integrales de Aviación, S.A. de C.V. (Flymex)**

Name: **VIRGINIA BRONDO ROMERO**

Title: **Attorney in Law** _____

The Charterer:

By: **Company** _____

Representative _____

Signature

All flights under this Agreement for the limitations of liability of passengers shall be governed by the unification of certain rules for the international carriage by air of passengers signed at Montreal on 28th May 1999. These terms shall be in addition to the terms and conditions of carriage of the carrier which shall be made available to the charterer