COMMONWEALTH OF PUERTO RICO

Puerto Rico Tourism Company

San Juan, Puerto Rico

DEPARTMENT OF STATE

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Approved: Hon. Kenneth D. McClintock
Secretary of State

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CHARTER FLIGHTS AIR INCENTIVE PROGRAM REGULATION

COMMONWEALTH OF PUERTO RICO
PUERTO RICO TOURISM COMPANY

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CHARTER FLIGHTS AIR INCENTIVE PROGRAM REGULATION

CHARTER 1 - GENERAL PROVISIONS

Section 1.1 – Legal Authority

This regulation is promulgated pursuant to the Charter Flights Air Incentive Program at the Rafael Hernández Airport in Aguadilla Act No. 67 of May 22, 2008; the Organic Act of the Puerto Rico Tourism Company, Act No. 10 of June 18, 1970, as amended; and pursuant to the Uniform Administrative Proceedings Act, Act No. 170 of August 12, 1988, as amended; the Board of Directors of the Puerto Rico Tourism Company hereby approves and promulgates the following Charter Flights Air Incentive Program Regulation of the Puerto Rico Tourism Company.

Section 1.2 - Short Title

This Act shall be known as the "Charter Flights Air Incentive Program at the Rafael Hernández Airport in Aguadilla Act."

Section 1.3 – Definitions

The following terms shall have the meanings that are attributed to them below, except where expressly stated, or unless the context clearly indicates otherwise:

1. **Charter flights** – Commercially hiring an aircraft for temporary or outside normal schedule use for a particular customer or tourist between specified destinations and period of time. The ticket sales for charters flights are not available through a General Reservation System, nor has published schedules in the Official Airline

Guide. Sales are arranged through holiday companies or wholesalers that lease or own the aircraft that is to be operated. For this Regulation the charter ticket sales package shall include at least a three (3) day stay and vacation related activities. The economics of these flights suggest that they operate on the basis of near 100% seat occupancy to be financially viable but there is no requirements in this incentive program for a 100% load factor to be achieved.

2. **Charter Operator** - shall mean a Charter Flight Company or a legally organized corporation that operates Charter Flights that use the Rafael Hernández Airport in Aguadilla as its destination, in accordance with the terms of this Regulation.
3. **Company** – refers to the Puerto Rico Tourism Company, a public corporation organized and existing under the Commonwealth of Puerto Rico's Act No. 10, encated on June 18, 1970, as amended.
4. **Endorsed lodging or hotel** - shall mean any building, any part of it, or any group of buildings, approved by the Puerto Rico Tourism Company, devoted properly and in good faith to provide lodging for pay to transient guests; it shall consist of not less than fifteen (15) guest rooms. Its facilities shall be operated under the sanitary and efficient conditions and standards accepted by the Puerto Rico Tourist Company.
5. **Paradores** - shall mean any hostelry or inn operating under the program sponsored by the Puerto Rico Tourism Company for the establishment of a network of lodging units throughout the Commonwealth of Puerto Rico, in coordination with, and under the supervision of Paradores Puertorriqueños, Inc.,

a subsidiary corporation of the Puerto Rico Tourism Company. Said hostelries shall comply with the provisions of the Minimum Requirements for Puerto Rican Paradores Regulations, promulgated, established and administered by the Puerto Rico Tourism Company.

6. **Porta del Sol** – Tourist Destination created under Act No. 158 of December 20, 2005, for the purpose of promoting the tourism industry on the west part of Puerto Rico. Porta del Sol - Puerto Rico, includes the following municipalities: Aguada, Aguadilla, Añasco, Cabo Rojo, Guánica, Isabela, Hormigueros, Las Marías, Lajas, Maricao, Mayagüez, Moca, Rincón, Sabana Grande, San Germán, San Sebastián y Quebradillas.
7. **Puerto Rico Ports Authority** – refers to a public corporation organized and existing under the Puerto Rico Ports Authority Act, Act No. 125 of May 7, 1942, as amended, that owns and operates the Port of San Juan.
8. **Scheduled Services** – comprise those flights which are sold commercially by certified air Carriers to the travelling public, are published on the carrier's website and/or through other industry mediums such as global distribution systems and internet portals, and operate on a regular basis and sold to the general public as scheduled flights.

Section 1.4 – General Purposes

This Regulation is promulgated with the purpose of establishing all the rules and norms related to the Charter Flights Air Incentive Program at the Rafael Hernández Airport in Aguadilla Act.

This Regulation should be construed and interpreted within the framework and scope of powers, ends and objectives of the Company in order to develop, promote and increase the visit of charter flights to Porta del Sol. Is also for the purpose of fixing an incentives plan directed to stimulating the arrival of charter flights to said airport, to increase the number of visitors, to promote the stay of visitors in the Paradores and endorsed lodgings located at the Porta del Sol, a Puerto Rico Tourist Destination, and to provide an economic boost to this important tourist sector of Puerto Rico.

The main purposes pursued by the Government of Puerto through the adoption of incentives for the charter flights industry in the Rafael Hernández Airport are the following:

a. To increase the hotel occupancy in the Paradores and lodgings located at the Porta del Sol-Puerto Rico Tourist Destinations endorsed by the Company;
b. To increase the number of passengers in the Rafael Hernández Airport in Aguadilla;
c. To promote consumption and investment in the region's economy;
d. Generate and increase benefits to be received by the different economic sectors of Puerto Rico; and
e. Offer equal incentives to all operators of charter flights in order to maximize the promotion of Puerto Rico as the Porta del Sol, Puerto Rico Tourist Destination.

Section 1.5 – Scope and Applicability

This regulation shall apply to all the procedures for requesting and granting an incentive to all those CHARTER OPERATORS that use the Rafael Hernández Airport in Aguadilla and within the authority and competence of the Company.

Section 1.6 Rules of Interpretation

The provisions of this Regulation shall be liberally interpreted in order to allow the Company to carry out its duties and to ensure that all the objectives of the Charter Flights Air Incentive Program at the Rafael Hernández Airport in Aguadilla Act and this Regulation are achieved.

Section 1.7 – Terms of Effectiveness and Applicability

This Regulation shall enter into effect once it has been duly filed at the Department of State of the Commonwealth of Puerto Rico and authorized by the Governor of the Commonwealth of Puerto Rico, pursuant to Section 2.13 of the Uniform Administrative Proceedings Act, Act No. 170 of August 12, 1988, as amended.

CHAPTER 2 – REQUIREMENTS AND CONDITIONS FOR THE INCENTIVES GRANT

Section 2.1 – Minimum Requirements

Any CHARTER OPERATOR interested in obtaining an incentive pursuant to the Special Funds for the Charter Flights Air Incentive Program at the Rafael Hernández Airport in Aguadilla Act, shall be required:

a. that seventy five (75%) percent of the passengers in the charter flight have reservations of not less than a three (3)-night stay in any of the Paradores or endorsed lodgings located at Porta del Sol.

b. Shall operate flights for a minimum of six consecutive months and shall offer at least one round trip flight weekly.

c. Include at least six Paradores and endorsed lodgings as part of their Program.

d. Service shall be non-stop between Rafael Hernández Airport in Aguadilla and any point on a route not already being served such as for purpose of illustration but not limited to, Orlando-Aguadilla.

Section 2.2 - Request for Incentives Grants

a. Revenue guarantee parameters - Revenue guarantee available for Aguadilla charter operations will amount to 10% of airlines break-even revenues based on standard industry costs of flight operations applicable to the route of operation and excluding any aircraft positioning costs (dead leg, ferry flights. The actual operating costs will depend upon the aircraft type being utilized and the charter operations costs of operation but for purposes of clarity the standard industry cost per available seat mile will be in the range of 09-12 cents.

b. Any CHARTER OPERATOR interested in obtaining an incentive pursuant to the Special Funds for the Charter Flights Air Incentive Program at the Rafael Hernández Airport in Aguadilla Act, shall designate an authorized

official that will act on behalf of the CHARTER OPERATOR to request, coordinate and foresee the faithful performance of this Regulation.

c. The eligible CHARTER OPERATOR shall file an initial application with the Company through that authorized official. The form of such initial application will be submitted to the Company at least ninety (90) days before the starting operation date. The Company shall reply within thirty calendar days of the receipt of the application proposal.

d. The proposal will include the following information:

1. Airline Corporate name;
2. Required permit evidence from Federal Aviation Administration and the Ports Authority;
3. Viability analysis of proposed service including operational costs, estimated load factors and break even estimates;
4. Details on the route to be served, type of aircraft, number of seats, proposed frequency and schedule.
5. Period of service;
6. Paradores and endorsed lodging list included in the Program;
7. Marketing Program draft which will include cost estimates for the Program, allocated share of total costs.

e. Will require the identity information of the CHARTER OPERATOR and its authorized official, the corporate resolution that entitles such

representation, the certifications and authorizations and any other relevant information for the full compliance of the purposes of this Regulation.

The Executive Director of the Company or its authorized representative shall evaluate any invoice and supporting documentation submitted by the CHARTER OPERATOR and shall approve the same for timely upon the terms of this Regulation.

Section 2.3 – Entity Obligations under the Marketing Efforts

The Company has agreed to disburse up to $10 per inbound seat operated by CHARTER OPERATOR, to cooperate with the marketing campaign designed solely by CHARTER OPERATOR, as set forth herein, and to raise awareness of Puerto Rico as a tourist destination in the Caribbean by promoting direct flights to Aguadilla, Puerto Rico and by promoting CHARTER OPERATOR Vacations' Puerto Rico Packages.

Due to the Public Policy one hundred percent (100%) of the marketing efforts shall be in areas of the charter program origin outside of Puerto Rico.

Under this Regulation, CHARTER OPERATOR agrees to the following:

a. Utilize funds received for the purposes established in the approved marketing plan.

b. Must include the Company's logo in all Program campaigns. This is in an effort to accomplish brand recognition. The Company logo must not be altered in any way.

c. The ads used in the above mentioned marketing campaign must include the name of Puerto Rico and must mention Porta del Sol or a CHARTER

OPERATOR Vacations Puerto Rico vacation destination. The Puerto Rico destination shall always be emphasized.

d. Submit all promotional materials, advertising, and media schedules to the Company for approval in a format that includes the name of the activity and/or the publication, a brief description (i.e., size and color), dates scheduled, including both week and month, frequency or number of insertions and cost of each.

e. Pay for all production expenses incurred in connection with the campaign including but not limited to costs for printing, photography, typesetting, and engravings.

f. Allow that the Company representatives verify at any time the use given to the funds disbursed. The Company shall have the right to examine CHARTER OPERATOR billing and records related to the use of the Funds for up to three (3) years after the termination of this Agreement.

g. Submit a written final report to the Company, in a prompt manner at the end of the Marketing Plan, which details the achievements, the expenses incurred, and the use given to the Funds, accompanied with supporting documents which corroborate the expenses and evidence that the funds were used as provided in the Agreement. If CHARTER OPERATOR requires additional time to provide the report or documentation, CHARTER OPERATOR shall notify and request in writing and extension disclosing

justifiable reasons for the tardiness. The Company reserves the right to deny such request if the reasons are not justifiable.

Any CHARTER OPERATOR applying for an incentive according to this Regulation shall certify in its initial application its intention to develop with the Company a marketing plan or strategy for the promotion of Porta del Sol as a tourist destination.

The above mentioned marketing plan or strategy shall be executed in writing by the CHARTER OPERATOR no later than sixty (60) calendar days after the filing of the initial application for the incentive grant.

CHAPTER 3 –INVOICING AND REPORTING

The Company shall grant the CHARTER OPERATOR the incentives provided in this Chapter if the CHARTER OPERATOR complies with the Requirements.

In order to properly produce all the disbursements provided for in this Regulation, the request for any incentive payment shall be submitted by the CHARTER OPERATOR to the Company by an original invoice requesting the payment with the supporting documentation required by this Regulation. Such invoices shall be certified and signed in original by the authorized official of the CHARTER OPERATOR.

Section 3.1 - Revenue Guarantees and Cost Abatements

a. CHARTER OPERATOR shall be eligible to receive the revenue guarantee at the end of the Guaranteed Period upon the compliance of the agreed service schedule.

b. Following the execution of this Agreement, on a monthly basis beginning no later than sixty (60) days prior to the start of the Guarantee Period, CHARTER OPERATOR shall provide the Company with a report on the status of passenger bookings on each guaranteed period Flight.

c. On or before the last calendar day of each month during the Guarantee Period, CHARTER OPERATOR shall provide the Company with a statement setting forth, for each Scheduled Flight during the immediately preceding month, the following data for Rafael Hernández Airport:

- Number of revenue passengers flown;
- Passenger Revenues received by the charter operation for each Scheduled Flight;
- The variance between Passenger Revenues received and the Minimum Revenues for Scheduled Flights operated; and
- Summary of passengers and Passenger Revenues carried, broken down by actual origin and destination market, including both local as well as connecting passengers where applicable.
- Paradores and endorsed lodging booking reports.

d. These figures shall be provided for the prior month and, on an aggregate basis, for all Charter Flights operated to date.

e. For each city pair of the Charter Service, if Passenger Revenues exceed Minimum Revenues in the Guarantee Period, then no payment by the

Company will be due to CHARTER OPERATOR for such city pair's Charter Service.

f. If Minimum Revenues exceed Passenger Revenues in the Guarantee Period for one or more of the city pairs included in the Charter Service, then the Company shall remit the difference for each applicable city pair to CHARTER OPERATOR within forty-five (45) days of receipt of CHARTER OPERATOR operational report. Upon reasonable written notice, the Company, at its expense, shall have the right to inspect, at CHARTER OPERATOR offices during normal business hours, CHARTER OPERATOR books and records as they are related to the determination of Passenger Revenue on the Charter Service for the sole purpose of ensuring that, in determining the amount of Passenger Revenue. CHARTER OPERATOR calculation of Charter Flights operated, Passenger Revenues and Minimum Revenues in the operational report may be reviewed by the Company within thirty (30) days of its receipt, after which such report shall be binding and conclusive on the Company, absent manifest error.

g. The Company recognizes that there is an inherent financial risk for an airline starting a new route. Therefore, the Company is willing to assume some of the risk, through a revenue guarantee, in order to induce CHARTER OPERATOR to provide the air service.

h. The Company and CHARTER OPERATOR does not have the right to cancel individual services based on advance bookings or for any other reason. In the event an individual Charter Flight does not operate due to a force majeure event (e.g. strike, war, act of terrorism or act of God), the number of Charter Flights, and thus the Minimum Revenue requirement for the Guarantee Period of such Charter Flight, shall be reduced appropriately.

Revenue Adjustment.

In the event that CHARTER OPERATOR notifies the Company of a Material Cost Circumstance, CHARTER OPERATOR may request a renegotiation of the amounts of Minimum Revenues. If, within ten (10) business days of such request, negotiations do not result in the establishment of revised Minimum Revenues amounts reasonably acceptable to CHARTER OPERATOR, which shall not in any event exceed ten percent (10%) of the then-current Minimum Revenues amounts, CHARTER OPERATOR may terminate this Agreement upon five (5) days' written notice to the Company, at which time all of CHARTER OPERATOR'S obligations under this Agreement shall cease.

Section 3.2 - Marketing and Promotion

a. The CHARTER OPERATOR shall supply originals receipts and evidence of expenses made with the corresponding backups or tear sheets. If receipts are related to promotional transmissions, newspapers, magazines, e-marketing, the CHARTER OPERATOR shall also submit copies of the originals media invoices and copies of corresponding

promotions. Dates on tear sheets, backups, screenshots or any type of proof of performance must match the dates these efforts were scheduled on the media schedule.

b. If the marketing campaign or the media Program is cancelled for any reason, CHARTER OPERATOR will reimburse the Company the Contribution. Deducting the costs, if any, already accrued or incurred by CHARTER OPERATOR up to the date of the cancellation. In this event, CHARTER OPERATOR must provide the Company with a reasonably sufficient accounting of the costs incurred by CHARTER OPERATOR, including copies of books and records related thereto. The Company has the right of a total reimbursement of the contribution if within 30 days from the date of the cancellation, CHARTER OPERATOR has not presented reasonable evidence of the costs or if the cancellation of the marketing campaign is due to CHARTER OPERATOR's gross negligence.

SECTION 3.3 – Airport Fees

a. The Company agrees that it shall reimburse CHARTER OPERATOR for 50% of airport fees applicable for the duration of the Agreement. CHARTER OPERATOR agrees that the Company will reimburse the above mentioned amount only when CHARTER OPERATOR submits to the Company evidence of the expenses as described in Section 6 of this Agreement.

b. On a monthly basis CHARTER OPERATOR shall submit to the Company an invoice for the request of the reimbursement. In order for a payment to be reimbursed to the CHARTER OPERATOR it shall submit to the Company certified evidence of payment of the applicable fees from the Ports Authority.

CHAPTER 4 - RECONSIDERATION

Section 4.1 Reconsideration Process

a. Any CHARTER OPERATOR adversely affected by a determination of the Executive Director of the Company pursuant to this Regulation, may file a petition for reconsideration before the Executive Director of the Company within a period of twenty (20) calendar days from the date of the notice of the determination. Said petition should be signed by the CHARTER FLIGHT's authorized official or by its legal representation and shall, if applicable, request an evidentiary hearing.

b. The Company shall, within fifteen (15) calendar days of the filing of said petition, consider any motion filed in accordance with the above paragraph. If the Company rejects said petition or if it does not act with respect to the same within fifteen (15) calendar days of its filing, the statute of limitation to request a judicial review pursuant to Chapter IV of the Uniform Administrative Proceedings Act, Act No. 170 of August 12, 1988, as amended, shall commence from the date when said denial is

notified or from the expiration of the fifteen (15) calendar days, as the case may be.

c. If the Company makes any determination with respect to the petition for reconsideration, the period for requesting a judicial review pursuant to Chapter IV of the Uniform Administrative Proceedings Act, Act No. 170 of August 12, 1988, as amended, shall commence to be counted from the date in which a copy of the notice of the resolution of the Company definitively resolving the motion for reconsideration is filed in the records.

d. Said resolution shall be issued and filed in the records within ninety (90) calendar days following the filing of the petition for reconsideration. If the Company accepts the motion for reconsideration but fails to take any action with respect to the motion within the ninety (90) calendar days from its filing, it shall lose jurisdiction over the same and the period to request judicial review shall commence to be counted from the expiration of said ninety-day period, unless the Company, for just cause and within those ninety (90) calendar days, extends the period to resolve to a period that shall not exceed thirty (30) additional calendar days.

CHAPTER 5 – MISCELLANOUS PROVISIONS

Section 5.1 No transfer

The incentives granted by this Regulation are not transferable.

Section 5.2 Notices

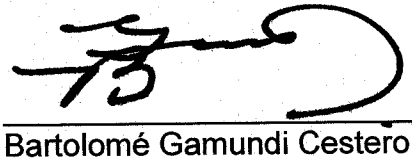
All notices pertaining to this Regulation shall be in writing and shall be transmitted either by personal hand delivery or through the facilities of the United States Postal Service.

Section 5.3 Civil Actions

The Company will be entitled to demand the return of any incentive grant obtained or disbursed in violation of the provisions of this Regulation. Any amount recovered under this Section will be returned to the fund created by the Charter Flights Air Incentive Program at the Rafael Hernández Airport in Aguadilla Act.

Section 5.4 Severability

If any provision of this Regulation is declared unconstitutional or illegal by a court of competent jurisdiction, said determination shall not affect nor invalidate the rest of the Regulation, but its effect shall be limited to the part, section, paragraph, subsection.



Bartolomé Gamundi Cestero
President
Board of Directors
Puerto Rico Tourism Company
Secretary Economic Development
and Commerce Department