

Vacations-Hawaii

AIR CHARTER - PARTICIPANT'S TOUR CONTRACT

The participant acknowledges receiving, reading, and agreeing to the terms and conditions set forth below covering the charter to be operated by Vacations-Hawaii. Please read this agreement and sign it. Otherwise, Department of Transportation regulations prevent us from carrying you, and we may not accept your payment. No employee or Travel Agent has the authority to change this agreement.

**RESPONSIBILITY: Vacations-Hawaii, 1585 Kapiolani Blvd., Suite 900, Honolulu, Hawaii 96814, is the principal responsible for arranging and providing all of the services and accommodations offered in connection with this charter**, provided, however, that in the absence of Vacations-Hawaii's negligence, Vacations-Hawaii is not responsible for personal injury or property damage caused by the air carrier, hotel or other suppliers of any of the services being offered in connection with the charter.

**AIRLINE/AIRCRAFT:** The flight(s) will be performed by Omni Air International, Inc., utilizing B757-200 aircraft with 194 seats or B767-200 with 218 seats. The air carrier may substitute comparable aircraft, if necessary. Vacations-Hawaii reserves the right to substitute another carrier and/or to make stops en route.

**CHECKED BAGGAGE FEES:** For charter flights occurring on or after January 1, 2012, in addition to the tour price, participants must pay a fee for the transportation of each piece of checked baggage on each segment of a participant's flight. If a participant's baggage exceeds Vacations-Hawaii's maximum size and/or weight limits, additional baggage fees will apply. All applicable baggage fees are described fully in the attached tour itinerary form. Certain exceptions may apply to First Class passengers and Emerald B Connected Cardholders.

**BAGGAGE LIABILITY:** Liability for lost or damaged baggage is limited by the airline to a total of \$3,400.00 per passenger for all checked baggage.

**TOUR CONTRACT:** The tour itinerary, name and location of hotels, length of stay at each hotel, and other ground accommodations and services, including the price and payment schedule, are set forth on the attached tour itinerary form, which is a part of this contract. Tour prices, including but not limited to the price of the airfare and any applicable fuel surcharge, baggage fees and government-imposed taxes, may be increased up to the time of payment in full. After payment in full, the price will only be increased if the amount of any applicable government-imposed tax is increased or if any new government-imposed tax is levied and such increase or new tax becomes effective between time of payment in full and your date of travel. Such increase will be limited to the difference in the amount collected at time of payment for such tax and the amount of that tax in effect on your date of travel.

**MAJOR CHANGES/CANCELLATION BY VACATIONS-HAWAII:** Vacations-Hawaii may cancel or change the particular charter or charters due to inadequate participation or for any other reason. A "major change" is defined on the back of this contract. If Vacations-Hawaii learns of a major change ten (10) or more days before the scheduled departure, it will notify you within seven (7) days after first learning of it, but in any event at least ten (10) days before departure. If Vacations-Hawaii learns of a major change less than ten (10) days before the departure, it will notify you as soon as possible. **Within seven (7) days of receiving a pre-departure notification of a major change but in no event later than departure, you may cancel and a full refund will be made to you within fourteen (14) days after canceling. Upon receiving post-departure notification of a major change, you may reject the substitution or change and be sent, within fourteen (14) days after the return date listed on the attached itinerary, a refund of the portion of your payment allocable to the accommodations or transportation not provided.**

In the event of a cancellation by Vacations-Hawaii, Vacations-Hawaii will notify you within seven (7) days of the cancellation but at least ten (10) days before the scheduled departure. **Vacations-Hawaii may not cancel the charter or charters less than ten (10) days before the scheduled departure date, except for circumstances that make it physically impossible for it to perform the charter trip**, in which case Vacations-Hawaii will notify you as soon as possible. If Vacations-Hawaii cancels the particular charter or charters, it will make a full refund to you within fourteen (14) days after the cancellation.

**CANCELLATION OF PARTICIPATION FOR MAKING FALSE/MISLEADING STATEMENTS:** If you purchase a charter package that does not include hotel accommodations based on a representation that you are separately reserving hotel accommodations at a property owned by Boyd Gaming Corporation, Vacations-Hawaii reserves the right, at any time, to verify whether you have made such a hotel reservation and to

cancel your charter reservation if you are found not to have already made such a hotel reservation. If Vacations-Hawaii cancels your reservation pursuant to this provision, you will be entitled to no refund.

**CANCELLATION OF PARTICIPATION DUE TO OTHER CAUSES:** Vacations Hawaii may cancel any tour participant's participation in a particular charter or charters at any time due to any of the following: (1) whenever such action is necessary to comply with any government regulation, directive, or request; (2) if the participant refuses to permit the search of his or her person or property for explosives or a dangerous weapon or article; (3) if the participant refuses to produce identification that reflects the same full name information displayed on their participant's tour contract; (4) if a participant fails or refuses to comply with the rules, regulations, and conditions of carriage of the aircraft operator; (5) when cancellation may be necessary for a participant's safety or the safety of other tour participants in the event that a participant: (a) displays disorderly, abusive, or violent behavior (other than that involving a qualified disabled passenger whose appearance or involuntary behavior may offend, annoy, or inconvenience other tour participants or crew members); (b) is barefoot; (c) is unable or unwilling to sit in an aircraft seat with the seat-belt fastened; (d) appears intoxicated or under the influence of drugs (other than a qualified disabled individual whose appearance or involuntary behavior may make them appear to be intoxicated or under the influence of drugs); (e) has a malodorous condition (other than individuals qualifying as disabled); (f) attempts to interfere with any Vacations Hawaii personnel or member of the aircraft operator's flight crew in the performance of their duties; (g) is seriously ill and fails to provide a physician's written permission to participate in the tour; (h) is both blind and deaf and unaccompanied, unless such participant is able to communicate with Vacations Hawaii and/or aircraft operator representatives by physical, mechanical, electronic, or other means; (i) requires unusual or unreasonable assistance or medical treatment during the tour, unless such participant is accompanied by another tour participant capable of providing the necessary assistance or medical treatment; (j) is unwilling or unable to comply with no-smoking requirements; and (k) has a mental disability that renders them unable to comprehend or respond to safety-related instructions, unless such participant is accompanied by another participant; or (l) is known to have a communicable disease or infection which has been determined, by the U.S. Surgeon General, the Center for Disease Control, or other federal public health authority knowledgeable about the disease or infection, to be transmissible to other persons in the normal course of the tour. If, however, the participant with the communicable disease or infection presents a medical certificate giving approval to travel and stating any conditions for travel, Vacations Hawaii shall allow the participant to participate in the tour unless it is not feasible to implement the conditions set forth in the medical certificate as necessary to prevent the transmission of the disease or infection to other persons in the normal course of the tour. Vacations Hawaii is not liable for its cancellation of any participant's tour contract in accordance with the terms of this paragraph, but will, at the request of the participant, refund the amount of any unused portion of the tour price in accordance with its refund policies. Vacations Hawaii will not be responsible for compensatory or punitive damages and refund will be a participant's exclusive remedy.

**INSURANCE:** Trip cancellation, health, and accident insurance is available. If you would like Vacations-Hawaii to furnish details to you, please check this space. \_\_\_\_\_

**FINANCIAL SECURITY: All checks and money orders must be made payable to the Vacations-Hawaii Escrow Account. First Hawaiian Bank, or to the travel agent who has sold you this contract, in which case the travel agent must make the check or money order payable to the Vacations-Hawaii Escrow Account, First Hawaiian Bank.** Your payments will be held in a client trust account at First Hawaiian Bank, 2411 South King Street, Honolulu, Hawaii 96826, until travel is completed.

First Hawaiian Bank, 2411 South King Street, Honolulu, Hawaii 96826, has issued a security agreement to protect the charter participants' funds. First Hawaiian Bank will be released from all liability under the security agreement to you unless you file a claim with Vacations-Hawaii or First Hawaiian Bank within sixty (60) days after termination of the charter. Termination means the date of arrival (or intended date of arrival) of the return flight.

**FAILURE TO CHECK IN/BOARD AIRCRAFT:** Neither Vacations-Hawaii nor Omni Air International, Inc. will be responsible or liable for the transportation of passengers who fail to report at the specified check-in point at the airport one (1) hour prior to the scheduled departure time of the flight or who are, through no fault of Omni Air International, Inc. or Vacations-Hawaii, not aboard the aircraft at the time of departure.

**CANCELLATIONS/CHANGES BY YOU: If you cancel your reservation, your right to receive a refund is limited,** as described below. Any refund due to you will be sent within 14 days of the cancellation or substitution of a new tour participant, as applicable.

1. You will be given a full refund if you cancel this contract before you sign it and you paid for your reservation by credit card.
2. You will be given a full refund, less a \$25 per person service fee, if: (a) you provide a substitute tour participant for your reservation before canceling, (b) Vacations-Hawaii is able to resell your canceled reservation (as evidenced by a full manifest for the flight), or (c) you or your companion decease before the departure. Your "companion" is the person who is your confirmed scheduled roommate during the tour.
3. You will be given a full refund, less a \$75 per person service fee, if you cancel your reservation more than twenty-one (21) days before departure.
4. Other cancellations or changes are not permitted, and no refund will be provided.

**FLIGHT SCHEDULE CHANGE:** Any change in itinerary, delay, or cancellation by the airline will not be the responsibility of Vacations-Hawaii.

**INTER-ISLAND CONNECTIONS:** Any intra-Hawaii air transportation you may purchase, whether from Vacations-Hawaii or a third party, is not a part of the charter transportation Vacations-Hawaii and Omni Air International are providing. The terms and conditions on which such inter-island travel will be provided are not governed by this charter tour contract but by the Contract of Carriage of the air carrier that will operate the inter-island flight(s). Any such inter-island transportation purchased from Vacations-Hawaii is sold by Vacations-Hawaii solely as the agent for the carrier(s) operating the inter-island flight(s), and Vacations-Hawaii has no obligation or responsibility to passengers for the performance of those flights. Passengers purchasing inter-island travel are solely responsible for making connections between those flights and the charter flights, and Vacations-Hawaii assumes no responsibility or obligation to passengers who may miss connections for any reason, including any delay in the performance or cancellation of the charter flights.

**RELOCATION:** Unusual situations may occur in which case the hotel identified on the itinerary may not be able to provide accommodations as agreed upon. Should such an event occur, Vacations-Hawaii reserves the right to provide comparable accommodations at another hotel.

**NOTICE:**

1. Air seats and hotel rooms are valid only for the travelers indicated on the charter documents. Vacations-Hawaii and Omni Air International, Inc. may require positive identification of the traveler's identity at any time.
2. Unauthorized passengers or unregistered hotel guests may be denied service or subject to criminal trespass or other charges applicable under law.
3. Vacations-Hawaii will bear no responsibility or liability for persons violating airline or hotel policies.
4. Meal coupons are for hotel guests only. Guests must be twenty-one (21) years of age. Coupons are non-transferable and not redeemable for cash. Coupons are void if detached. One coupon book per person.

**RIGHTS AND REMEDIES:** The rights and remedies described in this contract, including the procedures for major changes, are in addition to other rights and remedies available under applicable law. However, Vacations-Hawaii conditions any refund to you on your waiver of additional remedies.

**DECLARATION:** I have read the tour participant contract and hereby consent to accept all terms and conditions set forth. (One participant may sign for additional passengers traveling together).

Signature: \_\_\_\_\_, 20\_\_\_\_\_

Print Name: \_\_\_\_\_

As used in this agreement, the term "Major Change" means:

- (1) A change in the departure or return date shown in the operator-participant contract (or, if the contract states alternative dates, the date designated to the participant by the charter operator in accordance with 14 CFR §380.33a(b)), unless the change resulted from a flight delay. In any event, however, a date change that the operator knows of more than 2 days before the scheduled flight date, and any delay of more than 48 hours, will be considered a major change;

- (2) A change in the origin or destination city shown in the operator-participant contract for any flight leg (or, if the contract states alternative cities, the city designated to the participant by the operator in accordance with 14 CFR §380.33a(b)), unless the change affects only the order in which cities named in a tour package are visited;
- (3) A substitution of any hotel that is not named in the operator-participant contract; or
- (4) A price increase to the participant that occurs 10 or more days before departure and results in an aggregate price increase of more than 10 percent.

# Consumer's Rights

(Chapter 468L, Hawaii Revised Statutes)

As a consumer, you have the following rights regarding the purchase of travel and travel related services from travel agencies registered in Hawaii.

The right to be informed by the travel agency, prior to the purchase of travel services from the travel agency, of any limitations, conditions, events, circumstances, or other business or commercial factors which may affect the availability of the travel services and your ability to obtain a refund of monies paid for the travel services.

The right to rely on any promises, guarantees, representations, or information provided by the travel agency, regarding travel services. These include, but are not limited to: 1) the availability of travel services offered or sold by the travel agency; 2) the conditions for obtaining a refund of monies paid for the travel services; and 3) the nature or quality of the travel services provided.

The right to have the travel agency fulfill any term or condition of the contract for travel services between you and the travel agency, whether the term or condition was made in writing or otherwise by the travel agency.

The right to have the travel agency fulfill any promises, guarantees, or representations made by the travel agency regarding travel services, whether the promises, guarantees, or representations are made by the travel agency in written or verbal form.

The right to be informed of any conditions upon which the contract between the travel promoter and the entity providing the transportation or related services may be cancelled, and the respective rights and obligations of all parties in the event of cancellation.

The right to obtain the ticket or other similar documentation for travel services from the travel agency, upon making payment in full to the travel agency.

The right to a refund within 14 calendar days from the date the refund is requested of all monies paid to the travel agency for travel services which are not performed in accordance with the contract for travel services. However, the travel agency may withhold any amounts for cancellation fees previously disclosed to you, and any amounts held by the ultimate provider of the travel services, or by a representative that the ultimate provider required the travel agency to contract with.

The right to bring legal action against any travel agency that violates these rights.

(Taken from the Hawaii State Department of Commerce and Consumer Affairs, DCCA Form #1, September 1991)