DEDICATED TO HELPING BUSINESS ACHIEVE ITS HIGHEST GOALS.

NBAA

NBAA BEST PRACTICES FOR AIR CHARTER BROKERING

Compiled by the NBAA Domestic Operations Committee

NBAA BEST PRACTICES FOR AIR CHARTER BROKERING

INTRODUCTION

NBAA recognizes the value-added role brokers can play in arranging air transportation on qualified business aircraft. Air charter brokering is a significant vehicle to connect qualified suppliers of air transportation with qualified customers – so significant that the air charter broker industry is now specifically regulated by the U.S. Department of Transportation (DOT).

This "NBAA Best Practices for Air Charter Brokering" publication addresses the role air charter brokers play in the Part 135 on-demand air charter industry (aircraft with 30 or fewer seats), discusses the applicable federal regulations, and identifies best practices to be applied throughout the air charter brokering industry. It also provides information that will help air charter brokers in conducting their business. Throughout this document, the term "customer" represents the end user who is seeking air transportation (i.e., the person or entity that is the purchaser of the transportation).

NBAA urges all air charter brokers offering services to U.S. customers to follow the DOT regulations and the best practices discussed below. The regulations comprise Part 295, Air Charter Brokers, of Title 14 of the Code of Federal Regulations and are readily available at ecfr.gov (enter 14 CFR Part 295 in the search box).

WHAT IS AN AIR CHARTER BROKER?

DOT regulations define an air charter broker as "a person or entity that, as an indirect air carrier, foreign indirect air carrier, or a bona fide agent, holds out, sells, or arranges single entity charter air transportation using a direct air carrier." 14 CFR § 295.5(b) (Part 295). Air charter brokers link a prospective customer with an air carrier licensed by the Federal Aviation Administration (FAA), under Part 135 of the Federal Aviation Regulations (FARs), to carry passengers in exchange for compensation (direct air carriers or DAC). Part 295 defines a direct air carrier as "a U.S. or foreign air carrier that provides or offers to provide air transportation and that has control over the operational functions performed in providing that transportation." No matter how the DAC is defined, it is the air charter broker's responsibility to ensure that any DAC it selects is properly certificated. This obligation and these terms are discussed in greater detail below.

Air charter brokers often specialize (e.g., air ambulance, long-range or large-cabin aircraft) and may also provide access to other services such as ground transportation, hotel bookings and special arrangements. There also are air charter brokers who focus on certain types of customers (e.g., sports teams, speakers' bureaus, or medical flights), types of equipment (e.g., business aircraft, airliners, helicopters), and/or specific types of flights (e.g., passenger, cargo, air ambulance). Additionally, direct air carriers may act as an air charter broker on behalf of their customers to obtain charter transportation from other direct air carriers.

NBAA urges direct air carriers that engage in such brokering to confirm they are acting within the scope of their DOT and FAA authority (e.g., a direct air carrier registered with DOT as an air taxi is not offering or holding out an aircraft designed for more than 60 seats). Direct air carriers should disclose to their customers when they broker flights, as the customer should know in advance who will be the direct air carrier for the flight(s). All such operators are governed by Part 298 of the DOT regulations, Exemptions for Air Taxi and Commuter Air Carrier Operations, which incorporates portions of Part 295 to require Part 135 direct air carriers, when acting as brokers, to make certain broker-oriented disclosures to customers; see 14 CFR §§ 298.80 and 298.90(b)(11).

In the air charter industry, there are three broker categories recognized by the DOT regulations:

Agent of the Customer

Air charter brokers who represent the customer are considered an agent for the customer. The customer directly engages the air charter broker, who, in turn, seeks out an appropriate direct air carrier who can provide the requested flights or services for the customer. It is important to note that here, the customer – not the air charter broker – charters the aircraft, even if the air charter broker has been authorized to sign the charter contract on the customer's behalf. The air charter broker's contract with the customer should clearly and explicitly describe the relationship of the parties, including that the air charter broker is acting as an agent of the customer.

Agent of the Direct Air Carrier

Air charter brokers who serve as a marketing arm for one or more direct air carriers, act as an agent of the direct air carrier. The air charter broker should have an agency agreement with the direct air carrier which, among other things, defines how the air charter broker will be compensated. Air charter brokers acting as agents for direct air carriers may be contacted by air charter brokers acting as agents

of customers; if this happens, the customer's agent should disclose the double brokering arrangement to its customer.

Indirect Air Carrier

When an air charter broker, for its own account, engages a direct air carrier to provide the air charter broker with air transportation and resells that air transportation to its customer, the air charter broker is acting as an indirect air carrier (IAC) – that is, as a principal in its own right rather than as an agent (Part 295 defines IAC as "a person or entity that, as a principal, holds out, sells, or arranges air transportation and separately contracts with direct air carriers and/or foreign direct air carriers."). In that situation the air charter broker contracts directly but separately with the direct air carrier and the customer. Until 2019, an air charter broker wishing to act as an IAC had to obtain authorization for each flight under the DOT's public charter regulations (14 CFR Part 380). But when Part 295 took effect in 2019, DOT included blanket authority for air charter brokers to act as IACs for single-entity charter flights so long as the air charter broker complies with requirements found in Part 295. Single entity charter is defined in Part 295 as "a charter for the entire capacity of the aircraft, the cost of which is borne by the customer and not directly or indirectly by individual passengers, except when individual passengers self-aggregate to form a single entity for flights to be operated using small aircraft." For DOT purposes, "small aircraft" means any aircraft originally designed to have a maximum passenger capacity of 60 seats or fewer or a maximum payload capacity of 18,000 pounds or less, according to 14 CFR § 295.5(k). This includes considerably more types and models of aircraft than the FAA definition of "small aircraft," i.e., aircraft not exceeding 12,500 pounds maximum certificated takeoff weight, according to 14 CFR § 1.1.

Note that an air charter broker is not required to conduct business in only one of the three categories. An air charter broker may choose to operate under one category uniformly or could use different categories for different customers. For example, a broker might choose to act as an IAC in the case of a well-established repeat customer but act as an agent for a new customer who is not as well known. Crucially, however, in each case, Part 295 requires that the air charter broker's role – the capacity in which it is acting – be clearly disclosed to the customer before the latter contracts for a flight.

REGULATORY REQUIREMENTS AND BEST PRACTICES

The following summarizes regulatory requirements and best practices for air charter brokering at federal, state and local levels.

Federal Government

Several federal agencies play a role in the regulation of the air charter industry, directly affecting direct air carriers and air charter brokers. In addition to the DOT, these agencies include the Transportation Security Administration (TSA), the Internal Revenue Service (IRS), and the FAA.

The TSA regulates various passenger and cargo charter flights, and Part 135 direct air carriers have TSA-approved security programs. Air charter brokers should know which security requirements will be in effect for a given flight in order to appropriately prepare customer(s). These security requirements can differ depending on the direct air carrier's TSA-approved security program, the type and size of aircraft, and its area of operations.

Transportation by air is subject to federal excise taxes (FET), and air charter brokers may be primarily or secondarily responsible and liable for the collection and remittance of such taxes to the IRS. The IRS conducts FET audits to ensure proper collection and remittance and has included air charter brokers in its audits from time to time. The "NBAA Federal Excise Tax Handbook" describes air transportation and fuel excise taxes in detail. That document is available to NBAA members on the association's website at nbaa.org/taxes.

Air charter brokers should be very familiar with a range of FAA operational regulations and restrictions. These include air carrier certification requirements for direct air carriers, flight crew duty and rest restrictions, and the need for the direct air carrier to maintain exclusive operational control over its flights.

Specific requirements imposed on air charter brokers by Part 295 of the DOT regulations:

As discussed above, air charter brokers may act as an agent of the customer, an agent of the direct air carrier, or as an IAC without being individually licensed or certificated by the FAA or the DOT. Note however, in the case of air charter brokers acting as agents, compliance with Part 295 is equally mandatory as for those acting as IACs. Key points of these rules and regulations may be summarized as follows:

- Solicitation materials (including websites and smartphone applications), print advertising, verbal and written correspondence, contractual documentation, and word-of- mouth communication, must not create the false impression that the air charter broker is a direct air carrier (i.e., it is not an FAA-licensed Part 135 operator). For example, air charter brokers should avoid the use of possessive phrases such as "our fleet," "our charters," "our charter service," "our aircraft," "our crews," or "we operate a fleet of" as the DOT has determined that such language may create, in the mind of a consumer, the impression that the air charter broker is a direct air carrier, even if such language is qualified by footnotes or other disclaimers. False or misleading representations are fertile ground for DOT enforcement action and have resulted, on multiple

occasions in penalties assessed against air charter brokers.

- In addition to avoiding any false or misleading representations, air charter brokers must affirmatively disclose to customers the air charter broker's role in contracting for air transportation – specifically, is the broker acting as an agent for the customer, an agent for the air carrier, or as a principal, and thus an IAC? Disclosure of the air charter broker's status must be made before the customer contracts for any flight or series of flights.

- Air charter brokers must make two additional disclosures before entering into a contract with a customer for any flight or series of flights. The customer must be advised of (1) the corporate name and any other name (such as a d/b/a) of the direct air carrier in operational control of the flight(s), and (2) whether the air charter broker carries liability insurance covering the customer, passengers and property on the flight and if so, the monetary limits of that insurance. In the event the direct air carrier's name or other information is not known at the time a contract is entered into, or if there is a change, up-to-date information must be provided to the customer within a reasonable time so that the customer can decide whether to proceed based upon the updated information. The customer's alternative would be to reject the change, cancel the trip, and receive a full refund.

- Upon request by a customer, air charter brokers must make additional disclosures concerning any corporate or business relationship between the air charter broker and a direct air carrier, the total cost of the air transportation including applicable taxes and fees, and the actual or estimated amount of any charges payable from the customer to a third party. Should there be a change, the updated information must be disclosed to the customer within a reasonable time as described above.

- It is incumbent upon the air charter broker to exercise due diligence when arranging air transportation. For example, an air charter broker must ensure it contracts with and places customers on properly licensed direct air carriers. Similarly, if the air charter broker is advertising that charter customers will be placed on safety-audited charter flights (e.g., "Wyvern-audited," "ARG/US approved"), the air charter broker must ensure that the direct air carrier has met the applicable standards. In short, the air charter broker must ensure all information provided to a customer is accurate and must advise the customer of any changes.

State and Local Government

State and local government oversight of air charter brokers varies from state to state, county to county and even city to city. Some states have seller-of-travel laws and travel business licensing or registration requirements while others have none. It is beyond the scope of this document to describe all state and local governmental requirements. However, air charter brokers should, at a minimum, investigate seller-of-travel laws, business licensing, registration and insurance requirements, and state sales and income tax regulations and provide proof of compliance to a customer, upon request. Air charter brokers must comply with all state and local laws, including, as applicable, seller-of-travel laws of the various states in which the air charter broker does business.

BEST PRACTICES FOR ALL BROKER CATEGORIES

The following provides a template of best practices for air charter brokers to consider. In addition, customers who use the services of an air charter broker also may consider these points when selecting air charter brokers, as this may help customers gauge the expertise and determine if the air charter broker has the knowledge and skills to meet the needs and expectations of the customer.

- Understand and comply with the applicable federal requirements, i.e., Part 295 of the DOT regulations.

- Obtain all necessary state and local business licenses and/or registrations.

- Have a full understanding of the various facets of the charter industry and the role air charter brokers play on behalf of their customers.

- Be familiar with the business aviation industry. (NBAA's website and other resources provide an excellent introduction to issues related to business aircraft ownership and operations. These resources provide a solid basis of information for air charter brokers who might not have a business aviation background.)

Be knowledgeable regarding the types of aircraft used in business aviation and, in particular, the types of aircraft that might be requested by customers:

- **Piston vs. Turboprop vs. Turbojet**: Which type of aircraft is the right one for a particular flight or mission? For instance, a large cabin turbojet aircraft would seldom be ideal for a one-passenger flight of an hour's duration to a small or remote airport.

- **Aircraft Manufacturers, Makes, Models**: A given aircraft might be less expensive per hour but could take longer for the flight and cost the customer more in the long run.

- **Seating Capacities and Limitations**: As one example, an eight-passenger aircraft does not always mean the aircraft has eight full-sized seats that comfortably accommodate adults. One of the seats certified for

takeoff on business aircraft is sometimes a "belted potty." How would the customer react to that if all eight seats were to be filled on a given flight?

- **Range Capability of Aircraft**: (generally presented in nautical miles; 1 nm = 1.15 statute miles). Aircraft design inherently entails trade-offs. Often a trade-off is made between the flight range and the payload capacity (passengers and baggage) of the aircraft. An aircraft with a 1,200 nm range might satisfy that with two passengers and luggage, but not with six passengers and luggage. In the latter example a fuel stop might be required, adding time and expense to the trip.
- Be aware there are government regulations and policies directly regulating direct air carriers and air charter brokers, including those implemented by the DOT, FAA, TSA, IRS and other applicable agencies – including U.S. Customs and Border Protection, U.S. Immigration, and foreign authorities in the case of international flights.
- Know that the air charter broker cannot influence operational decisions that only the direct air carrier can make. There are strict operational control regulations and policies that the FAA enforces, and the direct air carrier must follow.
- Stay abreast of regulatory changes and industry trends by attending industry seminars and through professional industry memberships.
- In every transaction, be clear upfront as to whether the air charter broker represents the customer as its agent, represents the direct air carrier as its agent, or acts as an IAC and thus a principal.
- Air charter brokers should be aware of insurance policies that may be available to protect their interest and their customer's interest in the charter transaction and transportation, including insurance maintained by the direct air carrier.
- Carry "errors and omissions" insurance in an adequate amount. Errors and omissions insurance may provide the broker valuable protection in the event a dispute arises between the broker and the direct air carrier or customer. For example, if, as an air charter broker, an error is made (such as informing the direct air carrier of the wrong airport location/code), the policy could cover the costs associated with relocating the aircraft to the proper airport. The policy premiums vary. An insurance broker can help determine the appropriate type and amount of insurance and the terms and conditions of the coverage. Discuss with the insurance broker the types of flights typically arranged (e.g., domestic or international) and the typical size/seating capacity of the aircraft (e.g., six-seat turboprop versus 14-passenger or larger turbojet), as those and other factors may influence the proper coverage.

Perform proper due diligence on all direct air carriers you will/may use, including the following:

- Establish a process to screen direct air carriers before you place charter customers on a flight with a particular operator. Decide in advance which direct air carriers would be a suitable match for your customers, based on safety audits, insurance coverages/limits, customer service audits, aircraft options, etc. The "NBAA Aircraft Charter Consumer Guide," available at nbaa.org/charterguide, lists a series of questions designed for pre-screening direct air carriers.
- Obtain and review reports from independent third-party safety auditors for operator, aircraft and crew.
- Verify the direct air carrier has a current Part 135 operating certificate. Obtain a copy of this air carrier certificate by requesting it from the direct air carrier and check the certificate number with the FAA list available at https://www.faa.gov/about/officeorg/headquartersoffices/avs/faa-certificated-aircraft-operators-legal-part-135-holders.
- Check for any FAA enforcement actions against the direct air carrier or any of its crew members. If using a safety auditor, you can obtain that information from the auditor. Otherwise, it's possible to request accident, incident and enforcement action information from the FAA Flight Standards District Office (FSDO) that oversees the direct air carrier, although responses may be unavailable or delayed. The FAA FSDO page is www.faa.gov/about/office_org/field_offices/fsdo.
- Know which aircraft tail numbers (also referred to as N numbers) are on the direct air carrier's "D085." Paragraph D085 is one of many operations specifications ("ops specs") issued to a direct air carrier by the FAA. The D085 is the method used by the FAA to track which aircraft a direct air carrier is authorized to operate. The direct air carrier should be willing to provide you with a copy of its D085. If a particular tail number does not appear on the produced D085, do not book the customer on that aircraft until the true operator of that aircraft is identified, and a determination is made as to whether the operator is an appropriate direct air carrier that meets your pre-screening standards. Each direct air carrier's authorized aircraft are also shown on the list available at https://www.faa.gov/about/officeorg/headquartersoffices/avs/faa-certificated-aircraft-operators-legal-part-135-holders, however it is important to note that the FAA normally updates this list only on a monthly basis.
- Verify type ratings and qualifications/training of

assigned flight crew. Obtain that information directly from the direct air carrier. If using a safety auditor service, it can provide the information. Evaluate if flight crew total time, or time per aircraft type, meet minimum expectations of the customer.

- Verify that the direct air carrier has economic operating authority from the DOT by having the direct air carrier provide an up-to-date copy of its DOT Air Taxi Registration (also known as a Part 298 Registration or a Form 4507 Registration).

- Verify that the liability insurance carried by the operator on each potential aircraft is adequate – that is, having liability limits at least equal to industry standards as determined by a qualified insurance broker – and confirm the direct air carrier can and will add the customer and the broker as additional insureds on that policy. While the DOT Air Carrier Economic Authority website includes minimum insurance requirements for direct air carrier, be aware those requirements are well below industry standards.

- Ensure that all agreements with the customer, the direct air carrier and/or any other vendor are in writing and, as necessary, prepared and/or reviewed by qualified legal counsel.

- Determine and memorialize in writing, which entity (the direct air carrier or the air charter broker) is the appropriate entity to collect and remit the applicable FET to the IRS for the air transportation. Bear in mind that FET applies to the entire price for air transportation paid by the customer, as distinguished from the net amount received by the air charter broker or potentially, by the direct air carrier.

- Obtain "day of flight" contact information for the customer and lead passenger (if different than the customer) so that you can get in touch with them directly in case issues arise during the trip.

Perform proper due diligence on all customers/passengers, including the following:

- Obtain the customer's information, including individual name, business name, addresses and other contact information.

- Obtain and provide all passenger information that the direct air carrier will need to conduct security-related vetting in advance of the flight.

- Be alert to factors or indications that a flight might not be legitimate and express any concerns you may have to the direct air carrier. For example, an international trip request that comes in during the middle of the night for one adult and one child might be legitimate (e.g., immediate lift needed due to a family emergency), or it could be a kidnapping. Similarly, be wary of any requests to pay the pilots in cash for a flight, as that would be a very unusual arrangement and might be an indication of illicit activities.

- Establish that the customer is financially qualified to book a charter flight through prepayment or a pre-established credit application process. Note that in accordance with contractual arrangements, the air charter broker may be responsible for payment if the customer defaults.

ADDITIONAL BEST PRACTICES FOR AGENT OF THE CUSTOMER

In addition to the best practices listed above, an air charter broker acting as an agent for the customer should adhere to the following:.

- Recognize that the air charter broker's role in the transaction is to work as agent for the customer to locate availability on a qualified charter aircraft for a proposed flight, and, if authorized by the customer, contract for such flight in the customer's name and on its behalf.

- Prior to booking any flight or soliciting bids, execute an agency agreement in writing with the customer clearly establishing the terms and conditions of the broker's relationship with the customer including the following:

- General terms and conditions of the agency relationship between the air charter broker and the customer, such as purpose of agreement, its period of effectiveness, and ability of either party to terminate the agency relationship.

- Full disclosure of any conflicts of interest. For instance, any pre-existing relationship or affiliation with a particular direct air carrier, including an agency relationship or a preferred vendor arrangement, should be disclosed at the outset.

- Representations as to what portions of the charter contract with the direct air carrier will be disclosed to the customer, including, among others, the charter price.

- Any special requirements for each flight requested by the customer, including insurance provisions, aircraft requirements, crew requirements, etc.

- Confirmation that the air charter broker will provide the customer with the option to pre-approve any direct air carrier or flight prior to the execution of a charter contract and, upon such pre-approval, that the broker will be authorized to sign such charter contract in the customer's name and on its behalf and thereby bind the customer to such contract.

Identify the customer's needs in order to best match available aircraft with mission requirements. Basic preliminary information required to determine potential aircraft are, among other things:

- Date(s) of flight(s)
- Number of passengers
- City destination(s)
- Preferred cabin amenities
- Special requests/needs
- Request for certain aircraft type or size

- Identify the ideal aircraft that would fit the mission's requirements. Verify through resources such as Business & Commercial Aviation magazine's "Operations Planning Handbook" or "Purchase Planning Handbook," or "Jane's All the World's Aircraft."
- Solicit and evaluate detailed competitive quotes for the customer's flight request.
- Evaluate available aircraft options and make recommendations to the customer based upon specific aircraft availability, customer preferences, cabin amenities, crew member qualifications and price. Price is only one component of the considerations to be evaluated. Air charter brokers should be wary of direct air carriers who propose pricing significantly lower than their competitors and should investigate the reasoning behind that lower pricing. NBAA is aware (as is the FAA) that illegal charter operations exist and that these companies typically do not incur the same safety and regulatory compliance costs as legitimate Part 135 operators. An air charter broker should be certain it is not arranging a flight with an illegal direct air carrier. Following these best practices will help prevent such a mistake.
- Provide your customer with an unbiased selection of aircraft from multiple direct air carrier fleets.
- As agent for the customer, it is not an industry best practice for an air charter broker to pre-sell a flight to the customer and then locate a direct air carrier to perform the flight.
- To provide value-added service, you may make recommendations as to which option is the best for the customer's particular needs for the specific trip. Provide access to the best aircraft/crew available for a particular mission and negotiate the best value option for the customer's needs to earn repeat customer business.
- Air charter brokers earn customer loyalty by providing exemplary value-added service. Payment for their service is typically earned by applying expertise in the context of the customer's needs, securing a discounted price from the direct air carrier, and charging the customer a retail price. This method of compensation is permissible, but it is recommended that the air charter broker be transparent with the customer regarding costs, fees, and compensation.
- Re-confirm aircraft availability for the customer's flight (i.e., in some cases the direct air carrier must obtain a third-party aircraft owner's approval before booking the specific flight).

Finalize a written contract with the direct air carrier which should include, among other things, the following:

- Aircraft make and model
- Aircraft tail number
- Departure and arrival airports, number of passengers, scheduled time of departure, estimated time en-route, and estimated time of arrival
- Cost of each leg of the flight (firm or estimate) and payment terms
- Clear notification of any charges that are not included in the cost of flight
- Identification of funds held in a separate account (if a deposit is required)
- Cancellation policy, including policy for refund of deposits
- Insurance, maintenance and crew provisions
- Procedure used for collecting and remitting taxes and any government fees to the appropriate agency(ies)

- Know what insurance (and in what amounts) the direct air carrier carries. Request and obtain a certificate of insurance naming customer and air charter broker as additional insureds.
- Prior to the flight's departure, provide the customer with a flight confirmation showing tail number; direct air carrier name, including FAA Air Carrier Certificate number; and crew names. Ideally, this information would be provided upon booking the flight if the information is known at that time.
- Any changes to the above arrangements must be communicated to the customer without delay upon the air charter broker's learning of the change.
- Note: If there are changes that are unacceptable to

the customer (e.g., crew that does not meet desired minimum flight hours, change to aircraft equipment not ideal for the mission or the flight), the customer should have the option to opt out of the flight and make other arrangements without penalty.

- Act as liaison to facilitate arrangement of all non-flight trip details and changes (e.g., ground transportation logistics).
- During the flight, stay in close contact with the charter customer's "day of flight contact" and the direct air carrier (or its flight crew, as appropriate) to facilitate any flight changes as well as to anticipate and help resolve any issues that may arise during the flight. The air charter broker also should "flight follow" the aircraft, if possible, with the customer's representatives (as directed).
- After the flight, verify the accuracy of all charges, facilitate the final collection of funds from the customer, remit payment to the direct air carrier and to government authorities as necessary, and follow up with the customer.
- Air charter brokers who collect federal excise tax (i.e., segment fees, percentage tax and international passenger taxes) should have knowledge of applicable IRS regulations, keep clear records in accordance with federal and state regulations for record retention and remit payments to IRS collection authorities as required. For more information, review the "NBAA Federal Excise Tax Handbook."
- As discussed, all advertising must be clear that the air charter broker is not the direct air carrier. Also, any price representations made by an air charter broker may be subject to DOT price advertising rules. The primary advertising rule enforced by the DOT is its full price rule, found at 14 CFR § 399.84. DOT's enforcement policy interpretations of that rule are available at https://www.transportation.gov/airconsumer/advertising.

ADDITIONAL BEST PRACTICES FOR AGENT OF THE DIRECT AIR CARRIER

In addition to the general best practices listed above, a air charter broker acting as an agent for the direct air carrier should adhere to the following:

- As an agent for the direct air carrier, the air charter broker is typically an independent outside sales consultant paid by the direct air carrier in the form of a percentage commission or other compensation arrangement. As agent of the direct air carrier, the air charter broker cannot represent both the customer and the direct air carrier.
- Establish an agency agreement in writing with the direct air carrier before soliciting customers, which includes the terms and conditions of the agency relationship including the commission and any other compensation terms. In so doing, obtain the advice of qualified legal counsel as necessary.
- The air charter broker, in its capacity as the direct air carrier's agent and if so authorized, should then enter into a carrier-approved charter agreement with the customer that gives specifics of the particular flight or series of flights, such as:
  - Aircraft type, capacity and tail number
  - Aircraft charter rate
  - Clear notification of any charges that are not included in the quoted or estimated cost
  - Payment terms
    - If a deposit is required, funds should be held in a dedicated account
    - Cancellation policy, including policy for refund of deposits
    - Insurance, maintenance and crew provisions
    - Procedure used for collecting and remitting taxes to the appropriate agency
    - Other terms and conditions
- Advertising must be clear that the air charter broker is not the direct air carrier. Also, any representations made by such an agent may be subject to DOT price advertising rules. The primary advertising rule enforced by the DOT is its full price rule, found at 14 CFR § 399.84. DOT's enforcement policy interpretations of that rule are available at https://www.transportation.gov/airconsumer/advertising.

ADDITIONAL BEST PRACTICES FOR BROKER AS INDIRECT AIR CARRIER

If acting as an IAC, an air charter broker must hold the necessary authority from the DOT. Note however, this does not require an application or other request to the DOT; instead, the necessary authority is conferred automatically, provided the broker complies with Part 295, Air Charter Brokers, of the DOT regulations as discussed in this publication.

It is crucial to understand that in acting as an IAC, an air charter broker acts as a principal in the transaction – not as an agent acting on behalf of the customer or the direct air carrier. The air charter broker charters the flight(s) from the direct air carrier and resells the flight(s) to its customer. Under this arrangement the air charter broker assumes responsibility to the customer for furnishing the transportation. Indeed, from a regulatory standpoint, the essential

difference between an IAC (including an air charter broker acting as an IAC) and a direct air carrier is that the latter is licensed to and does physically operate aircraft, whereas an IAC hires the services of an authorized direct air carrier to operate aircraft on the IAC's behalf.

Given the above, a broker-IAC's contract with its customer should be substantially similar to a direct air carrier's charter contract; see Terms and Conditions heading below. Moreover, the contract terms and conditions should be at least as favorable to the broker-IAC as the operating direct air carrier's terms and conditions are favorable to the direct air carrier. For example, if the direct air carrier's contract with the broker-IAC provides for, say, a 50% cancellation penalty if the charter is canceled by the air charter broker less than 72 hours in advance, the air charter broker's contract with the customer should contain a provision no less favorable.

Air charter brokers acting as IACs must comply with all applicable DOT regulations, particularly the Part 295 rules summarized above. And it is highly recommended that such air charter brokers comply with the general best practices listed above.

Broker-IAC advertising should name the direct air carrier when known but also should be clear that the broker is not a direct air carrier. Also, any representations made by a broker-IAC may be subject to DOT price advertising rules. The primary advertising rule enforced by the DOT is its full price rule, found at 14 CFR § 399.84. DOT's enforcement policy interpretations of that rule are available at https://www.transportation.gov/airconsumer/advertising.

TERMS AND CONDITIONS

Whether acting as an agent or as a principal under an IAC contract with the customer, an air charter broker should obtain written terms and conditions from the direct air carrier as the details of the flight are finalized and provide those to the customer. The terms and conditions will vary from direct air carrier to direct air carrier and typically are provided with the charter quote. Be aware of any limitations a direct air carrier may impose (e.g., cancellation fees, baggage liability, smoking or pet policies). Following are common terms and conditions found in charter contracts:

- **Pricing and Availability**: What is/is not included in the price; minimum daily requirements; changes of itinerary or aircraft; trip confirmation procedures. Insist on compliance with applicable DOT, FAA, and other laws, rules and regulations.
- **Cancellation Policy and Fees**: Penalties and timing for voluntary cancellation of a trip may vary if, for example, a trip is domestic or international.
- **Payment Terms**: When payment of deposit and/or final payment is due and penalties for late payment. (Typically, direct air carriers require full payment in advance of a flight and bill afterwards for charges not included in the quote, such as catering and other fees.)
- **Safety and Security Requirements**: TSA security requirements and the related obligations of the customer (e.g., photo identification, prohibited items, passenger conduct).
- **Carriage of Minors**: Any requirements related to carrying unaccompanied children. Requirements for parental permissions for transporting minors in international travel.
- **Charter Broker Relationship**: Disclosure of relationship (or lack thereof) with a charter broker(s).
- **Taxes**: Responsibility to collect/remit FET and other applicable taxes and fees.
- Not all direct air carriers include all of the above provisions. Air charter brokers must fully understand each set of terms and conditions received from a direct air carrier. NBAA recommends air charter brokers have qualified aviation legal counsel review terms and conditions that may be unfamiliar, controversial, or not understood.

AVIATION INSURANCE CONSIDERATIONS

The direct air carrier is required to carry aviation insurance. Minimal amounts of coverage (which are below industry standards) are set by the DOT, and the direct air carrier ordinarily carries larger amounts of insurance (typically, full

hull value of the aircraft and liability insurance ranging from several million to tens of millions to hundreds of millions of dollars, depending on the direct air carrier and aircraft type and capacity). Liability coverages between $50 million and $100 million are typical for turbojet aircraft depending on size of aircraft and needs of aircraft owners, operators and customers. For smaller aircraft, such as turboprops and pistons, insurance limits are more typically in the $3 million to $25 million range.

In many cases, it is possible to add the customer, the air charter broker, or both to the direct air carrier's insurance as additional insureds. NBAA recommends that at a minimum the customer be added as an additional insured; it is prudent to add the air charter broker as well. This can be done quickly (typically within a business day) and there is ordinarily no additional cost. It is also possible for the charter broker and/or the customer to purchase a non-owned aircraft supplemental insurance policy.

Each air charter broker should evaluate what level of insurance coverage is necessary for its business model and provide adequate protection for its needs. Prices for coverage may vary and some insurance companies may not offer such a policy for air charter brokers. Be aware of the various options for your business.

The NBAA Tax Committee's Aviation Insurance Working Group has numerous articles and resources related to aviation insurance matters of importance to air charter brokers. These articles are accessible at nbaa.org/taxes.

National Business Aviation Association
1200 G Street NW, Suite 1100
Washington, DC 20005
nbaa.org
(202) 783-9250 | info@nbaa.org

July 2024

ABOUT NBAA

Founded in 1947 and based in Washington, DC, the National Business Aviation Association (NBAA) is the leading organization for companies that rely on general aviation aircraft to help make their businesses more efficient, productive and successful. Contact NBAA at 800-FYI-NBAA or info@nbaa.org. Not a member? Join today by visiting **nbaa.org/join**.

ACKNOWLEDGMENTS

This resource was prepared for the National Business Aviation Association Domestic Operations Committee (DOC) by the Part 135 Subcommittee and the NBAA Tax Committee. The guide was compiled by Melanie Hight Viau (OpenAir) co-chair of the Part 135 Subcommittee with inputs from Aaron A. Goerlich (Garofalo Goerlich Hainbach PC), Amanda Applegate (Soar Aviation), James LeBrun (Greenberg Traurig, LPP), Nel Stubbs (JSSI Consulting), Melissa L. Stanley (Barbera & Watkins, LLC), Ellen Urell (Wallgreens), and Lori McGee (Jetstream Aviation Law, P.A.), with inputs from several other amazing professionals in the business aviation community.