

# **WINDSTAR CRUISES PASSAGE CONTRACT**

**IMPORTANT NOTICE TO PASSENGERS: CRUISE VOUCHERS ARE ISSUED SUBJECT TO THE TERMS AND CONDITIONS ON THIS PAGE AND THE FOLLOWING PAGES. PLEASE READ THIS ENTIRE TICKET CAREFULLY BEFORE ACCEPTING AND COMMENCING TRAVEL. YOUR ATTENTION IS ESPECIALLY DIRECTED TO CLAUSES A.1, A.3, A.4, A.5, A.6, A.7, A.9 AND C.4 BELOW, AND OTHER PROVISIONS, WHICH CONTAIN IMPORTANT LIMITATIONS ON YOUR RIGHT TO ASSERT CLAIMS AGAINST US AND CERTAIN THIRD PARTIES, INCLUDING THE TIMING OF FILING SUIT. FURTHER, ALL DISPUTES AND MATTERS WHATEVER ARISING UNDER, IN CONNECTION WITH OR INCIDENT TO THIS CONTRACT, THE CRUISE OR THE CRUISE PACKAGE INVOLVING CLAIMS FOR INJURY, ILLNESS OR DEATH SHALL BE LITIGATED, IF AT ALL, BEFORE THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE OR, AS TO THOSE LAWSUITS AS TO WHICH THE FEDERAL COURTS OF THE UNITED STATES LACK SUBJECT MATTER JURISDICTION, IN THE COURTS OF KING COUNTY, STATE OF WASHINGTON, U.S.A., TO THE EXCLUSION OF ALL OTHER COURTS. ALL OTHER CLAIMS SHALL BE RESOLVED EXCLUSIVELY BY ARBITRATION AT SEATTLE, WASHINGTON. PASSENGER WAIVES ANY CLASS ACTION RIGHTS.**

THIS DOCUMENT IS A LEGALLY BINDING CONTRACT ("**CONTRACT**") BETWEEN YOU AND US. THIS CONTRACT CONTAINS ALL THE TERMS OF OUR AGREEMENT AND SUPERSEDES ALL OTHER ORAL OR WRITTEN AGREEMENTS, COMMUNICATIONS OR REPRESENTATIONS.

THE WORD "**YOU**" REFERS TO ALL PERSONS TRAVELING UNDER THIS CONTRACT AND PERSONS IN THEIR CARE INCLUDING ANY MINORS, AND THEIR HEIRS, SUCCESSORS IN INTEREST AND PERSONAL REPRESENTATIVES. THE WORDS "**WE**" AND "**US**" REFER TO THE "OWNERS" OF THE "SHIPS" DEFINED BELOW, AND WINDSTAR CRUISES, LLC, A DELAWARE LIMITED LIABILITY COMPANY DOING BUSINESS AS WINDSTAR CRUISES, WHICH ACTS AS THE AGENT OF THE "OWNERS".

THIS CONTRACT ALSO INCLUDES THE CONDITIONS UNDER WHICH WINDSTAR CRUISES BOOKS AIR TRANSPORTATION IF YOU ARE PARTICIPATING IN WINDSTAR CRUISES' HOME CITY AIR PROGRAM. IF ANY OF THESE CONDITIONS DOES NOT MEET WITH YOUR APPROVAL, YOU HAVE THE OPTION OF ARRANGING AIR TRANSPORTATION INDEPENDENTLY IN WHICH EVENT THE AIR ADD-ON AMOUNT PAID TO WINDSTAR CRUISES WILL BE REFUNDED.

## **A. GENERAL PROVISIONS**

### **1. IMPORTANT DEFINITIONS; REFUNDS; THIRD-PARTY BENEFICIARIES:**

(a) "Contract" means this ticket, including information on the front page, these terms and conditions, and any provisions incorporated herein by reference. "**Ship**" refers to the ship that will provide the ocean transportation portion of the Cruise, or any substituted vessel. All of the Ships are registered in the Bahamas and owned by Bahamian companies. "You" and "passenger" means each passenger to or for whom this Ticket Contract has been issued. "**Owner**" refers to each owner of the Ship and each affiliate acting on behalf of Owner; the WIND SPIRIT is owned by Wind Spirit Limited; the WIND STAR is owned by Wind Star Limited; the WIND SURF is owned by Degrees Limited; the STAR BREEZE is owned by Star Breeze Limited; the STAR LEGEND is owned by Star Legend Limited; and the STAR PRIDE is owned by Windstar Pride Limited. Ship ownership and registry are subject to change. "**Cruise**" refers to the specific cruise indicated in this booklet and on your cruise voucher, as it may be modified by us under this Contract, and shall include periods during which you are embarking or disembarking the Ship at any terminal owned or operated by us or are on shore while the Ship is in port. "**Initial Departure**" means the time at which you first begin transit by any means of transport booked by us (including air transportation) for the purpose of taking the Cruise. "**Windstar Cruises Air Package**" refers to air transportation booked for you by us to enable you to travel to and from your Cruise. "**Windstar Land Package**" includes any shore activity before or after the Cruise or ashore during the Cruise arranged for you by us in connection with your Cruise. "**Cruise Package**" means any combination of a Cruise, Windstar Air Package and/or Windstar Land Package.

(b) "**Refund Amount**" refers to that portion of the Cruise Package fare or payment that has actually been received by us. A portion of your fare was retained by or paid to your travel agent to compensate the agent for their services. The Refund Amount does not include the portion of the fare retained by or paid to your agent. You are solely responsible for obtaining the refund of these retained or paid amounts. Any refund to you will be made only in the currency received by us and in the country in which the fare has been paid and subject to any foreign exchange regulations in force in that country.

(c) Certain third parties derive rights and exemptions from liability as a result of this Contract. Specifically, all of our rights, exemptions from liability, defenses and immunities under this Contract (including, but not limited to, those arising under Clauses A.3, A.4, A.5, A.6, A.7, A.9 and C.4) or otherwise under any applicable law will also inure to the benefit of our employees and agents, together with the Ship and the Ship's tenders, operators, managers, charterers, officers, staff, crewmembers, contractors or subcontractors with respect to the Cruise Package, shipbuilders and manufacturers of all component parts. These third parties will have no liability to you, either in contract or in tort, which is greater than or different from ours.

**2. PROVIDING CRUISE, WINDSTAR CRUISES AIR PACKAGE AND WINDSTAR LAND PACKAGE:** In consideration of the receipt in full of the fare and subject to the terms and conditions of this Contract: a) Owner agrees to transport you on the Ship in order to enable you to take the Cruise; and b) as to Windstar Cruises Air Packages, Windstar Cruises, LLC agrees to book the air transportation required at the commencement and conclusion of your Cruise. This Contract is valid only for the Cruise and for the cabin specified in this Cruise Contract booklet/voucher (or any other cabin assigned by us). The person accepting this Contract represents that he/she is authorized by all persons on the same booking to accept and agree to be bound by the terms and conditions of this Contract on their behalf. Although this Contract refers to multiple Owners, only the Owner providing the Cruise shall be liable to you under this Contract and in that case only for the Cruise itself. No Owner shall be liable for services provided or to be provided by any other person or entity. All arrangements made or recommended by us for or by you for any kind of transportation (other than any vessel or conveyance owned or operated by us) before, during or after the Cruise, as well as air arrangements, shore excursions, tours, hotels, restaurants, attractions and other similar activities or services, including all related conveyances, products or facilities, are made by us solely for Passenger's convenience and are at Passenger's risk. The providers, owners and operators of such services, conveyances, products and facilities are independent contractors and are not acting as our subcontractors, agents or representatives. Even though we may collect a fee for, or otherwise profit from, making such arrangements and offers for sale shore excursions, tours, hotels, restaurants, attractions, elements of the Windstar Land Packages that are provided by independent contractors and other similar activities or services taking place off the Ship for a profit, we do not undertake to supervise or control such independent contractors or their employees, nor maintain their conveyances or facilities, and make no representation or warranty, whether express or implied, regarding their suitability or safety. In no event shall Owner be liable for any loss, delay, disappointment, damage, injury, death or other harm whatsoever to passenger which occurs on or off the Ship as a result of any acts, omissions or negligence of any independent contractors or other third parties.

**3. TIME LIMITS FOR NOTICING CLAIMS AND FILING AND SERVICE OF LAWSUITS; LOCATION OF LAWSUITS AND ARBITRATION:** All disputes and matters whatsoever arising under, in connection with or incident to this Contract, the Cruise Package, including without limitation claims against third parties are governed by the following time limits for noticing claims, and filing and service of lawsuits:

(a) **TIME LIMITS.** In any case governed by 46 United States Code Section 30508, which is a United States statute that permits any ship owner to limit the time during which a passenger may file a claim or commence suit against a ship owner, you may not maintain a lawsuit against us, the Owner or the Ship

for loss of life or personal injury, including emotional distress, unless written notice of the claim with all particulars is delivered to us at **WINDSTAR CRUISES, 2101 4<sup>th</sup> AVE., SUITE 210, SEATTLE, WASHINGTON 98121 USA** not later than six (6) months after the day of death or injury, the lawsuit is commenced not later than one (1) year after the day of death or injury, and valid service of the lawsuit on Owner, Windstar Cruises, LLC or the Ship, as applicable, is made within thirty (30) days following the expiration of that one-year period, notwithstanding any provision of law of any state or country to the contrary. For all other claims, not governed by 46 United States Code Section 30508, whether based on contract, tort, statutory, constitutional or other legal rights, including but not limited to alleged violation of civil rights, discrimination, consumer or privacy laws, or for any losses, damages or expenses, relating to or in any way arising out of or connected with this Contract or your Cruise, no matter how described, pleaded or styled, you may not maintain any claim against us, the Owner or the Ship, nor will we, the Owner or the Ship be liable therefor, unless we are provided with written notice of claim within thirty (30) days after conclusion of the Cruise, the arbitration of such claim is commenced in the manner described in paragraph 3(c) below not later than six (6) months after conclusion of the Cruise, and valid notice of arbitration is provided to Owner, the Ship or Windstar Cruises, LLC, as applicable, is made within thirty (30) days following the expiration of that six-month period.

**(b) ALL DISPUTES AND MATTERS WHATEVER ARISING UNDER, IN CONNECTION WITH OR INCIDENT TO THIS CONTRACT, THE CRUISE OR THE CRUISE PACKAGE SHALL BE LITIGATED, IF AT ALL, BEFORE THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE OR, AS TO THOSE LAWSUITS AS TO WHICH THE FEDERAL COURTS OF THE UNITED STATES LACK SUBJECT MATTER JURISDICTION, IN THE COURTS OF KING COUNTY, STATE OF WASHINGTON, U.S.A., TO THE EXCLUSION OF ALL OTHER COURTS.**

**(c) ARBITRATION OF ALL OTHER CLAIMS: ANY AND ALL OTHER DISPUTES, CLAIMS, OR CONTROVERSIES WHATSOEVER, EXCEPT FOR PERSONAL INJURY, ILLNESS OR DEATH OF A PASSENGER, BETWEEN PASSENGER AND CARRIER, SHIP OR TRANSPORT, INCLUDING CLAIMS NOT GOVERNED BY 46 US CODE SECTION 30508 WHETHER BASED ON LOSS OF OR DAMAGE TO BAGGAGE, BREACH OF CONTRACT, MISREPRESENTATION, TORT, STATUTORY, CONSTITUTIONAL OR OTHER LEGAL RIGHTS, INCLUDING BUT NOT LIMITED TO ALLEGED VIOLATION OF CIVIL RIGHTS, DISCRIMINATION, CONSUMER OR PRIVACY LAWS, OR FOR ANY LOSSES, DAMAGES OR EXPENSES, RELATING TO OR IN ANY WAY ARISING OUT OF OR CONNECTED WITH THIS CONTRACT OR PASSENGER'S CRUISE, OR ANY WINDSTAR AIR PACKAGE OR WINDSTAR LAND PACKAGE, NO MATTER HOW DESCRIBED, PLEADED OR STYLED, SHALL BE REFERRED TO AND RESOLVED EXCLUSIVELY BY BINDING ARBITRATION PURSUANT TO THE UNITED NATIONS CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS (NEW YORK 1958), 21 U.S.T. 2517 ("THE CONVENTION") AND THE FEDERAL ARBITRATION ACT, 9 U.S.C. §§ 1, ET SEQ., ("FAA") SOLELY IN SEATTLE, WASHINGTON USA TO THE EXCLUSION OF ANY OTHER FORUM. THE ARBITRATION SHALL BE ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION UNDER ITS COMMERCIAL DISPUTE RESOLUTION RULES AND PROCEDURES, WHICH ARE DEEMED TO BE INCORPORATED HEREIN BY REFERENCE. ANY QUESTION ABOUT THE ARBITRATION ADMINISTRATORS MENTIONED ABOVE MAY BE DIRECTED TO THEM AS FOLLOWS: AMERICAN ARBITRATION ASSOCIATION, 45 E RIVER PARK PLACE W, SUITE 308, FRESNO, CA 93720, (559) 490-1900. NEITHER PARTY WILL HAVE THE RIGHT TO A JURY TRIAL NOR TO ENGAGE IN PREARBITRATION DISCOVERY EXCEPT AS PROVIDED IN THE APPLICABLE ARBITRATION RULES AND HEREIN, OR OTHERWISE TO LITIGATE THE CLAIM IN ANY COURT. THE ARBITRATOR'S DECISION WILL BE FINAL AND BINDING. OTHER RIGHTS THAT PASSENGER OR CARRIER WOULD HAVE IN COURT ALSO MAY NOT BE AVAILABLE IN ARBITRATION. AN AWARD RENDERED BY AN ARBITRATOR MAY BE ENTERED IN ANY COURT HAVING JURISDICTION UNDER THE CONVENTION OR FAA. PASSENGER AND OWNER FURTHER AGREE TO PERMIT THE TAKING OF A DEPOSITION UNDER OATH OF THE PASSENGER ASSERTING THE CLAIM, OR FOR WHOSE BENEFIT THE CLAIM IS ASSERTED, IN ANY SUCH ARBITRATION. IN THE EVENT THIS PROVISION IS DEEMED UNENFORCEABLE BY AN ARBITRATOR OR COURT OF COMPETENT JURISDICTION FOR ANY REASON, THEN AND ONLY THEN THE PROVISIONS OF PARAGRAPH 3(b) ABOVE GOVERNING VENUE AND JURISDICTION SHALL EXCLUSIVELY APPLY TO ANY LAWSUIT INVOLVING CLAIMS DESCRIBED IN THIS PARAGRAPH 3(c).**

**(d) IN THE EVENT OF AN IN REM PROCEEDING AGAINST THE SHIP, PASSENGER HEREBY IRREVOCABLY AGREES THAT THE POSTING OF A LETTER OF UNDERTAKING FROM ANY OF CARRIER'S INSURERS SHALL CONSTITUTE AN ADEQUATE AND APPROPRIATE FORM OF SECURITY FOR THE IMMEDIATE RELEASE OF THE SHIP IN LIEU OF ARREST.**

**(e) In the case of a claim by or on behalf of a minor or legally incompetent person, or in the case of a wrongful death claim, the time periods described above shall begin to run on the earlier of: i) date of appointment of a legal representative for the minor or legally incompetent person, or the decedent's estate (as the case may be); or ii) three (3) years after the day of death or injury, as applicable.**

**(f) CLASS ACTION RELIEF WAIVER: PASSENGER HEREBY AGREES THAT EXCEPT AS PROVIDED IN THE LAST SENTENCE OF THIS PARAGRAPH, PASSENGER MAY BRING CLAIMS AGAINST CARRIER ONLY IN PASSENGER'S INDIVIDUAL CAPACITY. EVEN IF THE APPLICABLE LAW PROVIDES OTHERWISE, PASSENGER AGREES THAT ANY ARBITRATION OR LAWSUIT AGAINST OWNER, SHIP OR TRANSPORT WHATSOEVER SHALL BE LITIGATED BY PASSENGER INDIVIDUALLY AND NOT AS A MEMBER OF ANY CLASS OR AS PART OF A CLASS OR REPRESENTATIVE ACTION, AND PASSENGER EXPRESSLY AGREES TO WAIVE ANY LAW ENTITLING PASSENGER TO PARTICIPATE IN A CLASS ACTION. IF YOUR CLAIM IS SUBJECT TO ARBITRATION AS PROVIDED IN PARAGRAPH 3(c) ABOVE, THE ARBITRATOR SHALL HAVE NO AUTHORITY TO ARBITRATE CLAIMS ON A CLASS ACTION BASIS. YOU AGREE THAT THIS PROVISION SHALL NOT BE SEVERABLE UNDER ANY CIRCUMSTANCES FROM THE ARBITRATION PROVISIONS SET FORTH IN PARAGRAPH 3(c) ABOVE, AND IF FOR ANY REASON THIS CLASS ACTION WAIVER IS UNENFORCEABLE AS TO ANY PARTICULAR CLAIM, THEN AND ONLY THEN SUCH CLAIM SHALL NOT BE SUBJECT TO ARBITRATION.**

#### **4. LIMITATIONS ON LIABILITY; NON-WINDSTAR CRUISES SERVICES:**

**(a) Owner shall not be liable for injury, illness, death, damage, delay or other loss to person or property or any other claim by passenger caused by act of God, force majeure, war, terrorism, civil commotion, labor unrest, strike, acts or interference of government authorities or persons purporting to act with such authority, perils of the sea, fire, ice, theft, supervening criminal acts of other persons (including invitees or other passengers) or other causes beyond Owner's reasonable control, or any act not shown to be proximately caused by Owner's negligence or willful misconduct. The Ship may proceed with or without pilots or tugs at any location in the Master's discretion.**

**(b) We disclaim liability to you under any circumstances for infliction of emotional distress, mental suffering or psychological injury that was not: (i) the result of physical injury to you caused by the negligence or fault of a crewmember or the manager, agent, master, owner or operator of the Ship; (ii) the result of you having been at actual risk of physical injury caused by the negligence or fault of a crewmember or the manager, agent, master, owner or operator of the Ship; or (iii) intentionally inflicted by a crewmember or the manager, agent, master, owner or operator of the Ship. In no event will we be liable to you for consequential damages, including lost revenues or business expectancies, or incidental, exemplary or punitive damages.**

**(c) THIS CONTRACT IS ISSUED AT SEATTLE, WASHINGTON. AS TO ANY CRUISE THAT DOES NOT BEGIN, END OR CALL AT A PORT IN THE UNITED STATES OF AMERICA, AND UNLESS ANY HIGHER LIMITS OF LIABILITY APPLY BY FORCE OF LAW, WE SHALL BE ENTITLED TO ANY AND ALL DAMAGES LIMITATIONS, IMMUNITIES AND RIGHTS APPLICABLE TO US UNDER THE "CONVENTION RELATING TO THE CARRIAGE OF PASSENGERS AND THEIR LUGGAGE BY SEA" OF 1974 AS WELL AS THE "PROTOCOL TO THE CONVENTION RELATING TO THE CARRIAGE OF PASSENGERS AND THEIR LUGGAGE BY SEA" OF 1976 ("ATHENS CONVENTION"). THE ATHENS CONVENTION LIMITS OUR LIABILITY FOR DEATH OR PERSONAL INJURY OF A PASSENGER TO NO MORE THAN 46,666 SPECIAL DRAWING RIGHTS AS DEFINED THEREIN (APPROXIMATELY U.S. \$70,000, WHICH FLUCTUATES DEPENDING ON THE DAILY EXCHANGE RATE AS PUBLISHED IN THE WALL STREET JOURNAL). IN ADDITION, AND ON ALL OTHER CRUISES, ALL THE EXEMPTIONS FROM AND LIMITATIONS OF LIABILITY PROVIDED IN OR**

**AUTHORIZED BY THE LAWS OF THE UNITED STATES SHALL APPLY, INCLUDING TITLE 46 OF THE UNITED STATES CODE, SECTIONS 30501 THROUGH 30509 AND 30511. EXCEPT AS OTHERWISE SET FORTH, THIS CONTRACT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE GENERAL MARITIME LAW OF THE UNITED STATES; TO THE EXTENT SUCH MARITIME LAW IS NOT APPLICABLE, IT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF WASHINGTON (U.S.A.).**

(d) We do not undertake to supervise, nor assume any liability in respect of the acts or omissions of the Ship's barbers, beauticians, casino, masseurs, masseuses or photographers, all of whom are either independent contractors or are employed by independent contractors, and work directly for the passenger when performing their services. As to your Cruise, certain transportation will be provided using equipment owned or operated by us. All other transportation, shore excursions, accommodations and services in the air and on shore, including transport on Windstar Land Packages (referred to as "Non-Windstar Cruises Services") are performed by third parties who are independent contractors, and not by us. By way of example only, Non-Windstar Cruises Services include goods and services provided by shore side physicians, air ambulance, hotels, restaurants, airlines (including the airline(s) used in any Windstar Cruises Air Package), railroads, tour operators (other than us), helicopter operators, amusement park operators, day boat operators, taxis, car services and motor coach operators. As a result, you are assuming the entire risk of utilizing Non-Windstar Cruises Services subject only to whatever terms or arrangements are made by you or on your behalf with the third party furnishing the Non-Windstar Cruises Service. Money received in respect of Non-Windstar Cruises Services by us is received only as an independent contractor, to be paid to the third party (less retained commission, if any). We will not be liable for the refund of this money to you except to the extent retained and not owed by us to a third party providing Non-Windstar Cruises Services.

(e) **MEDICAL CARE:** (i) Availability of Medical Care. Due to the nature of travel by sea and the ports visited, the availability of medical care onboard the Ship and in ports of call may be limited or delayed and medical evacuation may not be possible from the Ship while at sea or from every location to which the Ship sails. (ii) Relationship with Service Providers. To the extent passengers retain the services of medical personnel or independent contractors on or off the Ship, passengers do so at their sole risk. Any medical personnel attending to a passenger on or off the Ship, whether or not arranged or recommended by Owner, are provided or recommended solely for the convenience of the passenger, work directly for and at the instructions and with informed consent of the passenger, and shall not be deemed to be acting under the control or supervision of the Owner, as Owner is not a medical provider. Even though the Owner shall be entitled to charge a fee and earn a profit for arranging such services, all such persons or entities shall be deemed independent contractors and not acting as subcontractors, agents or representatives of Owner. Owner assumes no liability whatsoever for any treatment, failure to treat, diagnosis, misdiagnosis, unavailability of remedies or medications, actual or alleged malpractice, advice, examination or other services provided by such persons or entities. (iii) Payment for Medical or Personal Care Services. Passenger shall pay for all medical care or other personal services requested or required, whether onboard or ashore, including the cost of any emergency medical care, evacuation or transportation incurred by Owner. If passenger is unable to pay and the Owner pays for such expenses, then passenger shall reimburse Owner for those expenses.

(f) You assume all risks for injury, death or loss as a consequence of your use of the Ship's athletic or recreational equipment or as a consequence of criminal conduct or negligence by any third party. Except as otherwise specified in Clause A.4(c) with regard to Cruises that do not begin, end or call at a port in the United States of America, in addition to the limitations of, and exemptions from, liability granted under this Contract, we also retain any and all limitations of, and exemptions from, liability accorded to ship owners by statute or rule of law including, without limitation, those provided for in 46 United States Code Sections 30501 through 30509 and 30511, which are United States statutes limiting the liability of vessel owners.

(g) During your Cruise, we are transporting you and your property only between ports of call. At ports where the Ship is unable to dock, we will arrange for appropriate transportation from the place where the Ship is at anchor to the dock. Persons with mobility impairments should refer to the Setting Sail booklet regarding limitations on our ability to help you go ashore.

## **5. CHANGE IN ITINERARY; CANCELLATION:**

(a) Although we will use commercially reasonable efforts to provide you with the Cruise, situations may occur which require that changes be made. By way of example only, we may adjust itineraries and schedules, delay departures or arrivals, or cancel a Cruise due to casualty, weather, port congestion, difficulty docking, labor problems, medical emergency, the need to render assistance to others, governmental or insurer directives, passenger or employee injury or illness, schedule delays or changes by third parties, repair and maintenance requirements, fuel or other shortages, or damage to the Ship, other means of transportation, roads, tracks, bridges, docks, equipment or machinery. Furthermore, the Master of the Ship may, in his/her sole discretion, elect not to proceed in the ordinary course. Consequently, we cannot guarantee the itinerary of the Cruise (including time of sailing from or arrival at any port or that all ports will, in fact, be called at). We reserve the right to provide you with alternative transportation whenever the Cruise is unable to proceed or be completed in the ordinary course or, in the case of hotels, to substitute facilities in cases where the planned hotel is unavailable due to overbooking or otherwise.

(b) Your safety is very important to us. For safety or other reasons that we believe qualify as good cause, we may, without notice, substitute any suitable ship, ships or other means of transportation, change any date of sailing or travel or cancel any sailing, port of call or the entire Cruise.

(c) If the Cruise is cancelled, we may disembark you at any port, and arrange transport (at our expense, but at your risk) for you and your property to or toward a port or location from which you may return home. The means of conveyance may or may not belong to us and may or may not proceed directly to the desired destination. If a Cruise is cancelled before commencement, you will be entitled, as your exclusive remedy, to receive the applicable Refund Amount less a reasonable allowance for transportation and services already provided to you. The reasonable allowance will be determined on a pro rata basis by taking into account the time missed relative to the scheduled duration of the Cruise.

(d) You acknowledge that many countries have laws that prohibit cruise passengers from permanently disembarking at a port other than the port of final destination. If you do permanently disembark before reaching the final destination, even if due to personal emergency or illness, a fine or penalty may be imposed by the country in which you disembark. In consideration of the fare paid, you hereby agree to pay any such fine or penalty imposed on the Owner or Ship because of your failure to complete the entire Cruise, unless we instructed you to prematurely disembark.

(e) Cancellation Policy:  
Each booking cancelled before one hundred twenty (120) days prior to travel will be subject to a \$50 per person cancellation fee. A full refund (except for the amounts paid for a Cancellation Protection Plan and the \$50 per person fee) will be made for written cancellations received by us at least one hundred twenty one (121) days prior to the date on which you are to commence travel by any mode of transportation booked through us (air, sea, or land). Passengers who cancel after that date for any reason, including medical or family reasons, are subject to the following cancellation schedule:

120-90 days before commencing travel – 15% of gross fare (deposit)  
89-60 days before commencing travel – 35% of gross fare  
59-30 days before commencing travel – 50% of gross fare  
29-0 days before commencing travel – 100% of gross fare

Given that the resale of canceled space will likely result in a lost opportunity to sell other space, these fees are due regardless of resale. We are only responsible for refunding amounts actually received by us. Travel agencies may impose their own cancellation fees. Agency fees of any nature are a matter to be decided on solely by the agency and guests. This Contract, and any Cruise Package are non-transferable. Name changes and departure date changes are considered reservation cancellations/re-bookings and are subject to cancellation fees. Changes require the prior approval of Owners or airlines or Windstar

Land Package providers and may not always be possible. Passengers who purchased the Travel Protection Plan must submit a claim through TripMate to receive refund or credit of cancellation fees as determined by the insurer.

Cancellation by the Passenger after the Cruise, Windstar Air Package or Windstar Land Package has begun, or early disembarkation of the passenger for any reason, including pursuant to any provision of this Contract, shall be without refund, compensation, or liability on the part of the Owner whatsoever. If we received payment via credit card, the refund will be made to that credit card. If we received payment from your travel agent, the refund will be provided back to that travel agent.

**6. AUTHORITY TO DETAIN OR REMOVE PASSENGERS AND SEARCH BAGGAGE:** We may reasonably determine that for your safety, the safety of the Ship or the safety or comfort of other passengers or our employees, you will be denied transportation either before or during the Cruise. By way of example, these would include situations where: a) you are or become in such condition as to be unfit to travel or dangerous or obnoxious to other passengers or employees; or b) you are inadmissible under the immigration or other laws of any country included in the Cruise itinerary or fail at any time to possess required travel documents; or c) you fail to abide by the rules or orders of the Master or other ship's officers, or failure to comply with any policies regarding guests and on board activities. (See: <http://www.windstarcruises.com/Voyage-Plan/FAQs>). If transportation is denied after departure, you and your baggage may be landed or transported to any port or location that we select, without any resulting liability on our part. Soliciting other passengers or carrying on commercial activity on board is prohibited. Owner has a zero tolerance policy with respect to illegal, dangerous or offensive actions, and may report same to authorities. In the interests of safety and security, passengers and their baggage are subject to inspection or monitoring electronically with or without the Passenger's consent or knowledge. Smoking is not permitted in any of the staterooms, suites, or public spaces, including all restaurants and corridors. Smoking is permitted on the outside decks in designated smoking areas only. The Master and crew may in their discretion, search passenger baggage for dangerous or prohibited items and may detain persons or articles posing a threat to other persons, property or the Ship. If Carrier exercises its rights under this Clause A.6, passenger shall have no claim against Carrier whatsoever and Carrier shall have no liability for refund, compensation loss or damages of Passenger, including but not limited to any expenses incurred by Passenger for accommodations or repatriation.

## **7. BAGGAGE:**

(a) We will carry as baggage only your personal effects consisting of wearing apparel, toilet articles and similar items for your wearing, comfort or convenience during the Cruise and not belonging to or intended for use by any other person or for sale. Radioactive materials, controlled substances (other than lawfully obtained prescription drugs), firearms, ammunition, weapons, fireworks and illicit or hazardous materials are strictly prohibited. Passengers are allowed to bring aboard one (1) bottle of wine per person at embarkation and additional wine and beer purchased onshore during the Cruise, which can be consumed in public areas subject to the Ship's prevailing corkage fee. Any hard alcohol purchased onshore during the Cruise and brought onboard must be placed in custody of crew for return to passengers on conclusion of the voyage. For loading and unloading the Ship and other means of transportation, all baggage must be tendered for carriage in securely constructed and locked suitcases or trunks. All baggage must be able to be safely stowed in your cabin on the Ship. The only animals permitted to accompany you are qualified service animals for passengers with disabilities; you are responsible for complying with governmental health, documentation and other requirements as to service animals.

(b) We are not liable for any loss or damage to baggage or property unless caused by our negligence or misconduct. In addition we are not liable for: (1) any loss, damage or delay before baggage comes into our actual custody at the commencement of your Cruise or after baggage leaves our actual custody at the conclusion of your Cruise; (2) any loss, damage or delay while baggage is not in our custody which includes any period during which baggage is in the custody of airlines (including airlines booked as part of a Windstar Cruises Air Package); or (3) damage due to wear, tear or normal usage. For security and legal reasons, baggage is subject to search, and illegal or potentially unsafe property is subject to seizure, both before and during the Cruise.

(c) We do not accept to carry as baggage or assume any liability for any loss of or damage to or delay of trade goods, household goods or furniture, perishable items, medicine, liquor, cash, credit or debit cards, jewelry, gems, gold, silver, precious metals, art, collectibles or similar valuables, securities, financial instruments, records or other valuable or business documents, computers, cellular telephones, cameras, hearing aids, electric wheelchairs, scooters, or other video or electronic equipment, binoculars, film, videotape, computer disks, audio disks, tapes, DVDs or CDs, or other articles specified in 46 U.S. Code Section 30503. These items should not be left unattended about the Ship or your cabin, nor should they be left unattended on other vessels, railcars, taxis or other vehicles or in hotels, nor placed in luggage other than a bag that you carry with you. In addition, we do not assume any liability for any loss of or damage to carry-on baggage on the Ship or on the other means of transportation or in hotels. The Ship and certain hotels may be equipped with cabin or room safes or safe-deposit boxes in the Ship's or hotel's Front Office; using these facilities will not, however, increase our liability as provided in this Contract.

(d) The fare has been established on the basis of our assumption that the total value of your property that you are taking with you on the Cruise (exclusive of the items mentioned in paragraph 7(c) above) will not exceed \$100 (U.S.) or \$600 (U.S.) if you purchase from us the **Travel Cancellation Protection Plan** and **Additional Baggage Protection**. Accordingly, if we, due to any cause whatsoever, are liable for loss or damage to, or delay of, your property, the amount of our aggregate liability will not exceed \$100/\$600 USD (as is applicable) unless you have specified to us the true value of your property and paid before commencement of the Cruise, at the Ship's Front Office or directly to us, 1% of the value in excess of \$100/\$600. In that event, our aggregate liability will be limited to the amount so specified. Whether or not a value in excess of \$100/\$600 has been specified, the limit on liability will be proportionately reduced in any case where less than all of your property is lost, damaged or delayed. Without increasing the above limits: (1) our aggregate liability will never exceed, and all settlements will be made on the basis of, original cost less depreciation; (2) damaged items will be settled on the basis of repair costs; and (3) lost, damaged or delayed baggage must be reported to a Windstar Cruises, LLC representative within 48 hours after discovery and written claim to us must be made within thirty (30) days after conclusion of the Cruise as provided in Clause A.3 above.

**8. PASSENGER LIABILITY IN CERTAIN CASES:** You will be required to reimburse us for all expenses we incur as a result of the need to provide you with medical services, as a result of any misrepresentation made by you, as a result of your detention by immigration, health or port authorities, or as a result of any personal injury or damage caused by your acts or omissions or the acts or omissions of any minor (under age 21) traveling with you. We will have a lien for such expenses on your property that you have taken with you on your Cruise. If due to weather or other unforeseen reasons, flights are adversely impacted or you are otherwise required to spend an additional night in a location, hotel and meal costs are your responsibility.

**9. TRAVEL AGENTS:** Any travel agent you use in connection with your Cruise acts solely for you and is deemed your agent. We are not responsible for any representations made by or for the financial condition or integrity of any such travel agent. In the event that an agent fails to remit to us any monies paid by you to the agent, you remain liable for the fare due us, regardless of whether we demand payment before or after Initial Departure. Any refund made by us to an agent on your behalf is considered, for purposes of this Contract, as being the same as payment to you whether or not the monies are delivered by the agent to you. Receipt of any documents or information by your travel agent, including but not limited to this Contract, shall be deemed to constitute receipt by you.

**10. PASSENGER CONDITION:** There are risks inherent to being aboard the Ship. These include, by way of example, having to evacuate the Ship in case of emergency, having to move about on the Ship during rough seas and lack of access to full medical services. For people who are pregnant, ill or who are mentally or physically disabled or impaired, these risks are more significant. For example: access to all parts of the Ship, other means of transportation or to facilities on shore may be difficult or impossible for some passengers. In addition, medical evacuation during the Cruise, whether at sea, by tender, or by deviating from the scheduled itinerary, may create an increased risk of harm and may not be feasible for a variety of reasons. We reserve the right to determine, in our sole discretion exercised in good faith, whether and when a medical evacuation from the Ship will occur. Passengers agree not to book or embark upon a Cruise if passenger may reach or exceed the 24<sup>th</sup> week of pregnancy during the Cruise. Please note that the Wind Star and Wind Spirit do not have any elevators. For these reasons, we require that if you have any special medical or physical or other requirements, these be brought to our attention

immediately upon receipt of this Contract. In limited situations where you would be unable to satisfy certain specified safety and other criteria, even when provided with appropriate auxiliary aids and services, we reserve the right to refuse permission to participate in all or part of the Cruise.

**11. COMPLIANCE WITH LAWS; MINORS:** Immigration, health and other laws, both in the United States and other countries, may require that you obtain a certain visa, hold a passport or other travel and health documents, be inoculated, obtain parental consent or otherwise obtain documentation prior to entering or returning to a country. It is your responsibility to take all steps as may be required to enable you to comply with these laws. All persons under 21 years of age must be accompanied and supervised by a parent or guardian of at least 25 years of age. Persons under 21 years of age are not permitted to consume alcoholic beverages; parents and guardians are obligated to insure compliance with this requirement.

**12. PERSONAL INFORMATION; AUTHORITY TO USE AND SELL PICTURES, VIDEO IMAGES AND AUDIO RECORDINGS:** Personal information we collect from you, including names, postal and email addresses, date of birth, passport information, credit card and financial account data, telephone numbers and other identification information you provide to us may be used by us or our affiliates for marketing or other business purposes and we may occasionally share some of your information with third parties for such purposes as well. In addition, some governmental and quasi-governmental agencies require or request that we provide them with your personal information. You authorize us to use and/or provide to others your personal information as described above and acknowledge that we do not assume any liability to you for our doing so. We periodically photograph or otherwise film people participating in Cruises for retail, marketing, promotional, publicity and training purposes. Without any requirement that we compensate you or obtain any additional approvals from you, you authorize us to include photographic, video recordings and other visual portrayals of you, as well as voice recordings included, and any drawings, recreations or derivatives thereof, with any videos, in photographs, videos, DVDs or other mediums that we sell at retail or utilize for marketing, promotional, publicity and/or training activities, and to edit or combine such images and recordings. You expressly agree not to sell, convey or use any photograph, video recordings and other visual or audio portrayals of you and/or any other guest in combination with crew or the Ship, or depicting the Ship, its design or equipment or any part thereof whatsoever for any commercial purpose or in any media broadcast or for any other non-private use, without our express written consent. Passengers agree that any personal or sensitive data provided to us may also be used, processed and transferred worldwide, including to the United States, and you hereby grant your consent for such use, processing, and transfer to our corporate headquarters in the United States. In order for you to travel abroad, it may be mandatory (as required by government authorities at the points of departure and/or destination) to disclose and process your personal information for immigration, border control, security and anti-terrorism purposes, or other reasons. We adhere to the principles of the U.S. - EU Safe Harbor Framework with regard to the collection, use and retention of personal information obtained from individuals in the European Union, including notice, choice, onward transfer, security, data integrity, access and enforcement.

**13. WIRELESS SERVICES:** Owner may, but will not be required to, make wireless access to the Internet or access to wireless telephone services ("Wireless Services") available to passengers on board either directly or through a third-party service provider. Passengers agree that use of Wireless Services is at their own risk and that Owner shall not be liable to passengers in any manner for claims, losses or damages resulting therefrom. Passengers' use of Wireless Services onboard is public; privacy of any information sent or received is not guaranteed. Personal data may be available to third-party service providers and Owner is not liable under any circumstances for any lack of privacy or data security while using Wireless Services. All passengers agree that Owner and any third party providing the Wireless Services has the right, but not the obligation to monitor, record, intercept and disclose any transmissions over or using Wireless Services aboard the Ship, and to provide billing, account, or use records, and related information relating to all Wireless Services as it deems appropriate in its sole discretion (for example, in response to lawful process, orders, subpoenas, or warrants, or to protect Owner's rights, passengers or property). More information about the type of Wireless Services available on the Ship can be found at: <http://www.windstarcruises.com/Voyage-Plan/FAQs/#CommunicationAndMailAtSea>.

**14. TRANSFERABILITY; SEVERABILITY:** This Contract cannot be transferred by you. Any additions, deletions or other alterations to, or waivers of any term of, this Contract that are purported to have been made by us and that have not been agreed to in writing by the President of Windstar Cruises, LLC will not be legally binding upon us. Any provision of this Contract which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and the validity and enforceability of the remaining terms and conditions of this Contract will not otherwise be affected, nor will the validity and enforceability of such provisions be affected in any other jurisdiction.

## **B. THE CRUISE**

### **1. ADDITIONS TO FARE; NON-DISCOUNTABLE AMOUNT; TAXES AND SURCHARGES:**

(a) The fare that you paid was determined far in advance of Initial Departure on the basis of then-existing projections of costs. In the event of an increase in costs (including but not limited to fuel, other goods or services, labor, tolls, port, terminal or government charges) above amounts projected (other than as described in paragraph 1(b) below), we have the right to increase the fare at any time up to Initial Departure and to require payment of the additional fare prior to Initial Departure. We have the right to refuse to transport you unless the additional fare is paid. Within seven (7) days after you are notified of the additional fare (but no later than Initial Departure), you may elect to surrender this Contract to us for cancellation, whereupon you will receive the Refund Amount. Cancellation fees do not apply to this type of refund.

(b) Your Cruise fare includes a "Non-Discountable Amount." That portion of the fare is both non-commissionable to travel agents and not subject to reduction in the event of a percentage discount promotion, 2 for 1 promotion or otherwise. In addition to your Cruise fare, you will also be charged an amount for Taxes. That term, as used by us, refers to certain taxes, fees and charges imposed by governmental or quasi-governmental authorities, including port authorities, relating to any aspect of your Cruise or tour. If governmental action results in any element of Taxes exceeding the estimates used by us for purposes of computing the quoted fare amount, we reserve the right to pass through the extra amount to you. Similarly, we reserve the right to impose or pass through to you fuel surcharges, security surcharges or similar incidental surcharges. No right of cancellation exists under any of these circumstances.

**2. PAYMENT OF PORT CHARGES, HEALTH FEES, QUARANTINE AND OTHER CHARGES:** You will pay all port charges, health fees, quarantine dues and similar charges. In case of delay, detention or cancellation by quarantine order, or by a similar order or recommendation of ours or a public agency due to concerns for public health, safety or security, you will bear all risks and expenses incurred due to such action unless we are required by the law of the country concerned to assume such costs.

**3. HOSTILITIES AND OTHER CONDITIONS:** Although unlikely, the Ship may be confronted by actual or threatened war, warlike operations or hostilities, civil commotion, force majeure conditions or similar circumstances. In addition to our right to deal with this situation under our general right to respond to safety concerns, we may also decide that it would be prudent for the Ship to sail with or without lights, omit observance of practices, rules and regulations as to navigation, cargo or others applicable in time of peace, or sail armed or unarmed and with or without convoy. The Ship may visit various ports and countries. Passengers assume responsibility for their own safety and owner does not guarantee safety at any time. Passengers may consult public references such as the US Department of State or US Center for Disease Control advisory websites and severe weather advisory websites for current information.

**4. WINDSTAR CRUISES BROCHURE; CANCELLATION POLICY:** If not already received, you can obtain the Windstar Cruises brochure for the Cruise from your travel agent or us. You should familiarize yourself with the brochure as well as the Setting Sail booklet that we provided you. Please be advised, however, that if the brochure or booklet is inconsistent with this Contract, this Contract will be controlling. Note in particular our cancellation policy which specifies cancellation fees that you will be subject to if this Contract is surrendered for cancellation within certain time periods prior to Initial Departure. Since a cancellation likely means a lost opportunity to sell space on other Cruises, these fees apply regardless of whether your space is resold. You hereby agree that

losses sustained by us in the event of your cancellation would be very difficult or impossible to quantify, and that the fees set forth in our cancellation policy represent a fair and reasonable assessment as liquidated damages.

### **C. WINDSTAR AIR PACKAGE AND LAND PACKAGE**

**1. ARRANGEMENTS BY WINDSTAR CRUISES, LLC:** If you are participating in our Home City Air program, we will arrange for air transportation to the departure point of your Cruise and return air transportation from the termination point of your Cruise to the home city from which you departed. Due to the special fares and capacity controls we have with airlines, we retain the right to select carriers and determine routings. Some routings may involve travel to an airport other than in the city where the Ship embarks or disembarks. In those cases, motor coach transportation to and/or from the Ship will be provided. Flight schedules and/or availability may require overnight hotel accommodations either to join and/or to return from your Cruise.

**2. SCHEDULE CHANGES; AIR DELAYS:** We reserve the right to alter air flights as required by airline schedule changes. If tickets have already been issued, we will adjust your itinerary or air carrier, accordingly. In that event, we may ask you to return your tickets. Should you choose to alter your airline schedule in any way once your tickets have been issued, airline charges which result will be your responsibility. If our assistance is requested in changing airline arrangements within sixty (60) days of departure, an additional administrative charge will be levied in addition to any charges imposed by airlines. If your flights are delayed, refer to our Setting Sail booklet for instructions.

**3. REFUNDS; SEAT ASSIGNMENTS; SPECIAL SERVICES; FARES; LOST TICKETS; BAGGAGE CHARGES:** The maximum refund to you for unused flight coupons will not exceed the air add-on amount paid to us. We cannot make or confirm seat assignments, special meals or other special services. Your travel agent may assist with these arrangements. If, however, airline fuel or other surcharges or additional governmental taxes or levies are imposed, we reserve the right to pass these through to you. Please keep your airline tickets in a safe place. Should they be lost, you will be responsible for their replacement. Each airline has its own baggage allowance policy. You are responsible for any excess baggage charges imposed by airlines.

**4. LIABILITY AND RELATIONSHIP WITH AIRLINES:** We will use commercially reasonable efforts to arrange for your air transportation. If, however, due to any cause beyond our control, we are unable to arrange for air transportation (including, for example, because of capacity controls placed upon us by airlines due to the types of fares under which we book) or the air transportation we arrange is unavailable or otherwise fails to materialize, our sole liability will be limited to refunding the air add-on paid. Our relationship with airlines is that of an independent travel agent. We assume no liability for any acts or omissions of any airline including, without limitation, those involving cancellation of flights, schedule changes, re-routings, damage to or delay or loss of baggage, flight delays, equipment failures, accidents, pilot or other staff shortages, overbooking or computer errors. Accordingly, you will not have any right to claim or recover against us as a consequence of any act or omission of any airline. The liabilities and obligations of an airline to you, and your rights against an airline, are subject to any and all terms and conditions of the airline's ticket and tariffs and any and all governmental laws and regulations bearing upon or otherwise relating to such rights, liabilities and obligations.

**5. LIABILITY AND RELATIONSHIP WITH WINDSTAR LAND PACKAGE PROVIDERS:** If, due to any cause beyond our control, we are unable to arrange for any Windstar Land Package or any desired portion thereof, our sole liability will be limited to refunding the Windstar Land Package add-on paid. Our relationship with providers of Windstar Land Package accommodations or services is that of an independent travel agent. In addition to limitation of liability provided elsewhere in this Contract as to third-party providers, we assume no liability for any acts or omissions of any Windstar Land Package provider or subcontractor including, without limitation, cancellation, damage to or delay or loss of baggage, delays (including any delay in rejoining the Ship or missing the sailing or any flight), equipment failures, accidents, staff shortages, overbooking or computer errors.

### **D. OTHER LEGAL TERMS AND CONDITIONS**

This Contract constitutes the entire agreement of the parties, and supersedes any prior or inconsistent representations or conditions, and representations or statements in any brochure or advertising. This Contract may not be amended, waived or modified in whole or part except in writing signed by both parties' authorized representatives. Owner's waiver or failure to assert any right hereunder in any instance shall not be deemed a waiver of such right or any other right in any other instance. This Contract is effective and binding as of the date issued.

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