

DATED 12 JUNE 2019

(1) CIVIL AVIATION AUTHORITY

**(2) MICHAEL G MEDLICOTT, CATHERINE R STAPLES,
CHRISTOPHER J TINGLE AND PAUL A SMITH**

**IN THEIR CAPACITY AS THE TRUSTEES OF THE
AIR TRAVEL TRUST**

AUTHORISATION DEED

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THIS DEED dated 12 June 2019

BETWEEN:

- (1) THE CIVIL AVIATION AUTHORITY whose address is Aviation House, Gatwick Road, Crawley, Gatwick, RH6 0YR (the **CAA**); and
- (2) MICHAEL G MEDLICOTT, CATHERINE R STAPLES, CHRISTOPHER J TINGLE and PAUL A SMITH, in their capacity as Trustees of the Air Travel Trust (the **ATT**) whose address is Aviation House, Gatwick Road, Crawley, Gatwick, RH6 0YR.

RECITALS

- (A) The CAA has statutory functions relating to the provision of flight accommodation by travel organisers deriving from the Civil Aviation Act 1982 and regulations made under that Act, namely the Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012, as such legislation may be amended from time to time (the **ATOL Regulations**).
- (B) The ATOL scheme is the system by which the CAA:
 - a. monitors compliance with the ATOL Regulations;
 - b. licenses those who require a licence under the terms of the ATOL Regulations (an **ATOL**) in order to make available flight accommodation;
 - c. determines the terms of ATOLs, in part, to protect consumers of flight accommodation; and
 - d. establishes and runs a scheme to protect consumers in the event that a licensed entity (an **ATOL Holder**) fails to fulfil its obligations to consumers,(the **ATOL Scheme**).
- (C) The ATT was established by the Air Travel Trust deed dated 5 January 2004, as amended by deeds of variation dated 4 January 2005, 18 March 2008, 27 April 2012, 18 May 2016, 29 April 2019, and as may be further amended from time to time (the **Trust Deed**).
- (D) The ATT is funded by contributions (**ATOL Protection Contributions** or **APC**) made pursuant to the Civil Aviation (Contributions to the Air Travel Trust) Regulations 2007, as may be amended from time to time (the **ATT Regulations**), which requires ATOL holders to pay a contribution to the ATT for each passenger included in a relevant booking. The ATT funds the consumer protection of the ATOL Scheme. The ATT Payment Policy (as defined below) is a statement by the Trustees of how they are likely to exercise some of their powers and discretions in the Trust Deed to make payments from the trust fund to finance the purposes of the Deed.
- (E) In accordance with the ATOL Scheme, the CAA may require certain ATOL Holders to provide Security in favour of the ATT as a condition of such ATOL holder's ATOL.
- (F) The CAA performs certain administrative functions for the ATT as set out in the ATT-CAA Agreement dated 17 April 2013, as amended from time to time (the **ATT-CAA Agreement**). It is intended that this Deed shall replace the ATT-CAA Agreement, and set out the basis on which such administrative functions are provided by the CAA for the ATT.
- (G) Pursuant to various resolutions and agreements, the ATT currently authorises the CAA to perform certain of its functions and exercise certain of its discretions under the ATT Regulations, the Trust Deed and the ATT Payment Policy. The CAA and ATT have also made certain arrangements with regard to the cost to the CAA of carrying out those functions and exercising those discretions as agent for the ATT. It is intended that this Deed shall replace such agreements and resolutions and set out the basis on which ATT powers are delegated to the CAA.

DEFINITIONS

In this Deed, capitalised terms will have the meaning ascribed to them herein. Capitalised terms not defined herein shall have the respective meanings set forth in either: the Trust Deed; the ATOL Regulations; or the ATT Regulations.

'Accredited Body' means an ATOL holder granted an accreditation as an Accredited Body pursuant to ATOL Regulation 33

'Authorised Functions' means the functions of the ATT that the CAA is authorised by the ATT to perform as agent of the ATT pursuant to Clause 2 of this Deed, as set out at Schedule 1 to this Deed, as such schedule may be updated or replaced from time to time;

'ATOL' means an air travel organiser's licence granted by the CAA under the ATOL Regulations.

'ATT Payment Policy' means the Air Travel Trust Payment Policy dated 6 August 2012 as may be amended, updated or substituted from time to time;

'Consumer Claims' means the cost of payments made to Consumers pursuant to the terms of the Trust Deed, and which are subject to the terms of the ATT Payment Policy, including, but not limited to:

- (a) the cost of repatriating Consumers who booked a flight with an ATOL Holder where that flight has not been provided;
- (b) the cost of providing goods and services for which the failed ATOL Holder has been paid by or on behalf of the Consumer;
- (c) the cost of claims arising by or on behalf of Consumers for losses incurred in respect of payments made to the failed ATOL Holder or for losses or liabilities incurred in consequence of the failure of the ATOL Holder to meet its obligations to the Consumer; and
- (d) costs incurred in considering, administering and meeting the payment of such costs.

'Franchisee' means an ATOL holder that has entered into a Franchise Agreement with the ATT and whose members are granted ATOLs by the CAA pursuant to the CAA's Franchise Policy Statement;

'Security' means a mortgage, charge, pledge or lien or other security interest securing any obligation of any person or other agreement or other arrangement, including guarantees and bonds having a similar effect.

AUTHORISATION

- 2.1 The ATT hereby appoints the CAA as its lawful agent in its name and on its behalf to perform the Authorised Functions set out at Schedule 1 to this Deed, subject always to any conditions set out in Schedule 1, and the CAA hereby accepts such appointment on the terms and subject to the conditions of this Deed.
- 2.2 During the continuation of its appointment pursuant to this Deed the CAA shall, subject to the terms and conditions of its appointment, have the full power, authority and right to do or cause to be done any and all things which it reasonably considers necessary or reasonably incidental to the performance of the Authorised Functions.
- 2.3 The ATT acknowledges and agrees that the CAA may delegate the performance of the Authorised Functions to CAA employees of a specified seniority as set out at Schedule 1 to this Deed. The ATT further acknowledges and agrees that the CAA may purchase professional services from a relevant service provider to perform any of the Authorised Functions, subject always to supervision by the CAA.
- 2.4 The CAA and ATT may update and/or replace Schedule 1 of this Deed by agreement at any time, and such update shall become effective on the date that both the CAA and the ATT evidence their agreement by signing such updated or replacement Schedule.

3 LICENSING

- 3.1 The CAA will consider applications for an initial ATOL and the renewal of and variation of an ATOL in accordance with the terms of the CAA Licensing Procedures Manual.
- 3.2 The CAA will monitor ATOL holders in accordance with the terms of the CAA Licensing Procedures Manual.
- 3.3 The CAA will consider applications for accreditations as an Accredited Body, and the terms on which accreditations will be granted, in accordance with the published document "ATOL Policy & Regulations 2012/01: Requirements for an Application for Accreditation as an Accredited Body", as may be amended, updated or substituted from time to time.
- 3.4 The CAA will consider requests to enter into a Franchise Agreement with the ATT, and the terms of that agreement, in accordance with the CAA's Franchise Policy Statement
- 3.5 The CAA will not make amendments to the CAA Licensing Procedures Manual which may affect the ability of the ATT to obtain insurance, or the terms on which the ATT can obtain insurance, without giving the ATT one month's prior written notice.
- 3.6 The CAA will ensure it is a condition of each ATOL that the ATOL holder acknowledges and consents to disclosure by the CAA to the ATT information regarding the ATOL holder or applicant provided to the CAA by that ATOL holder or applicant and such ATOL holder or applicant's consent to the ATT sharing this information with the ATT's insurers and legal and financial advisers.

4 ATT PAYMENT POLICY

The ATT will maintain the ATT Payment Policy. The ATT will not amend the ATT Payment Policy without first consulting with the CAA.

5 ATOL PROTECTION CONTRIBUTIONS (APC)

- 5.1 The CAA will publish payment periods and rates of contribution, as defined in and required by the ATT Regulations, in its Official Record Series 3.
- 5.2 The CAA will put in place mechanisms for the collection of APC from ATOL holders which, to the best of the CAA's ability, will enable APC to be received by the ATT in accordance with the timescales for payment by the ATOL holders set out in the ATT Regulations.

6 ATOL HOLDER FAILURE

- 6.1 When an ATOL Holder has failed, as defined in the ATOL Regulations, the CAA will immediately, and in any event not later than the end of the next working day sign a Notice of Failure.
- 6.2 As soon as reasonably practicable after the failure of an ATOL Holder and in accordance with the requirements of the ATT's insurance cover the CAA will produce and provide to the ATT an Estimated Expenditure Report (**EER**). The CAA will sign the EER to confirm that the Consumer Claims represent licensable bookings (as defined in the Trust Deed). This report will estimate the extent to which ATT funds will be required in order to meet Consumer Claims, taking into account:
 - 6.2.1 the value, if any, of Security held in respect of the failed ATOL Holder; and
 - 6.2.2 the value of Consumer Claims eligible to be paid by credit card companies under the terms of any applicable agreements with credit card companies or pursuant to Section 75 of the Consumer Credit Act 1974.
- 6.3 The CAA will produce and provide to the ATT updated Expenditure Reports in respect of each failed ATOL Holder on a monthly basis.
- 6.4 The CAA will, as soon as reasonably practicable but in any event no later than 24 months after the failure of an ATOL holder, and once all Consumer Claims have reasonably been considered in accordance with the ATT Payment Policy, produce and provide to the ATT a final Expenditure Report.

- 6.5 Expenditure Reports prepared and signed by the CAA (as described in 6.2 above) will be signed and approved on behalf of the ATT in accordance with the relevant Authorisation. ATT approval of the EER is the means by which expenditure of ATT funds on the failure is approved
- 6.6 The CAA will, as far as possible, take steps to mitigate the ATT's losses following the failure of an ATOL holder. This includes pursuing the recovery of funds due to the ATT as agent for the ATT from entities that have provided Security to the ATT, in accordance with the Authorised Functions.

7 ADMINISTRATIVE AND OTHER FUNCTIONS

- 7.1 The CAA will provide a management and secretarial service for the ATT including ensuring sufficient Trustees meetings are held (a minimum of four times per calendar year) and sufficient business records are kept. The CAA will liaise with ATIPAC as agent of the ATT. The CAA will liaise with the Secretary of State, providing information on behalf of the Trustees when requested by the Secretary of State. The CAA will keep the terms of the Trust Deed under review and negotiate changes necessary to the Deed from time to time. The CAA will engage such staff and professional services and will deploy such systems, including IT systems, as are necessary to properly conduct the financial management of the ATT and for this purpose the CAA will keep all financial records and management accounts as are necessary for the ATT to comply with its statutory obligations, its obligations under the Trust Deed and its contractual obligations to its insurers and bankers.
- 7.2 The obligations in Clause 7.1 above specifically include an obligation that the CAA produce for the ATT:
- 7.2.1 the ATT's annual report and financial statement within 90 days of the ATT's financial year end;
 - 7.2.2 the ATT's management accounts within 15 days of the end of each quarter within a financial year;
 - 7.2.3 an updated financial model as required by the terms of the banking facility arrangements; and
 - 7.2.4 regular reports (being at least every quarter) providing information as to:
 - (a) the amount of APC collected during that period;
 - (b) the amount spent on Consumer Claims; and
 - (c) whether any APC remains unpaid or is overdue.
- 7.3 The CAA will conduct negotiations on behalf of the ATT with the ATT's actual and potential bankers and insurers and seek advice from any professional adviser.
- 7.4 The CAA will provide to the ATT regular reports (being at least every six months) on the state of the tour operator market. Such reports will highlight any potential impact on APC income and any market conditions that could lead to an increased risk of tour operator failure of which the CAA is aware.
- ## **8 CAA OBLIGATIONS TO ASSIST THE ATT IN OBTAINING A BANK CREDIT FACILITY AND/OR INSURANCE**
- 8.1 The CAA will provide the ATT with any information in its possession that the ATT requires:
- 8.1.1 for the purposes of obtaining and maintaining banking credit facilities and complying with its obligations under the terms of any such facility; and
 - 8.1.2 in order to obtain and maintain insurance and comply with its obligations under any such insurance policy.

9 COSTS

The ATT will pay the CAA's costs incurred in acting as the agent of the ATT, of an amount as agreed from time to time between both parties, including (but without limitation) any costs incurred by the CAA pursuant to Clauses 2 to 8 (inclusive) hereof, whether or not the CAA purchases professional services in order to carry out those functions, and including the CAA's costs of monitoring the performance of such service providers.

10 INDEMNITY

10.1 The CAA will indemnify the Trustees and each of them and their respective personal representatives against:

10.1.1 any loss or liability they may incur as a result of any negligence or wilful default on the part of the CAA, its servants or agents arising out of or in connection with the performance of this Deed; and

10.1.2 all actions, claims, demands and expenses arising out of anything done or caused to be done by them in the exercise or purported exercise of the powers vested in them by the Trust Deed (including for the avoidance of doubt, any claim or demand on the Trustees under, or in relation to, any borrowing facility, insurance contract or any derivative transaction in each case entered into by the Trustees from time to time each an "**ATT Financing Arrangement**").

10.2 Without prejudice to Clause 10.1 (but without double counting), if the Trustees do not have sufficient assets available in the Trust Fund to meet their obligations within the time periods required under any ATT Financing Arrangement, the CAA shall promptly and in any event within 20 Business Days of demand by the Trustees, to the extent that the assets of the Trust Fund are not sufficient, make a payment or procure the payment to the Trustees or, if the Trustees so direct, to the lender or counterparty (as applicable) of the relevant ATT Financing Arrangement, so as to indemnify the Trustees, the lender and/or the counterparty (as applicable) for the amount of such shortfall, including all costs, damages, expenses and loss which such lender or counterparty (as applicable) or the Trustees may suffer or incur in the event thereof.

11 PRIOR AUTHORISATIONS AND AGREEMENTS

11.1 The ATT-CAA Agreement dated 17 April 2013 is hereby terminated by agreement of both parties, and both parties hereby agree to waive the required notice period such that the termination shall be effective from the date of this Deed.

11.2 The following resolutions and agreements, previously delegating certain of the Authorised Functions are hereby revoked by the ATT:

11.2.1 ATT resolution dated 28 February 2008; and

11.2.2 delegations agreed at an extraordinary meeting of the Trustees dated 20 July 2016 and recorded in the minutes of such meeting.

11.3 The parties note that the following resolution, previously delegating certain of the Authorised Functions has been or will be revoked by the CAA simultaneously with the coming into force of this Deed:

11.3.1 CAA resolution number 172 dated 18 May 2011.

12 CONFIDENTIALITY

12.1 The ATT will hold all information provided to it by the CAA in strictest confidence provided that it may disclose that information to its insurers (upon receipt of a confidentiality undertaking from its insurers) and its legal and financial advisers and as otherwise required by law.

12.2 The Trustees confirm that they are aware of the impact of the insider dealing offences contained in the Criminal Justice Act 1993 and the Market Abuse Regulation (Regulation 596/2014).

- 12.3 The ATT will declare any interest relevant to the statutory role of the CAA pursuant to the ATOL Regulations to the CAA and at every ATT meeting. Such declarations will be noted in the minutes of the ATT meetings

13 TERMINATION OF THIS DEED

- 13.1 This Deed may be terminated by either party giving not less than three months' notice in writing to the other.
- 13.2 If this Deed is terminated, the parties will remain bound by its terms in respect of any failure of an ATOL Holder that occurs before the date of termination.

14 NOTICES

- 14.1 Any communication in connection with this Deed must be in writing and, unless otherwise stated, may be given in person, by post or by email to:

14.1.1 in the case of the CAA:

*Address: Aviation House, Gatwick Road, Crawley, Gatwick, RH6 0YR
Contact name: ATT Secretary
Email: att.secretariat@caa.co.uk*

14.1.2 in the case of the ATT:

*Address: Aviation House, Gatwick Road, Crawley, Gatwick, RH6 0YR
Contact name: ATT Secretary
Email: att.secretariat@caa.co.uk*

Or, in each case, such other address as a party may notify to the other party in writing.

15 FURTHER ASSURANCES

The Parties to this Deed agree that they shall co-operate fully to do all such further acts and things and execute any further documents as may be necessary or desirable to give full effect to the arrangements contemplated by this Agreement.

16 THIRD PARTIES

A person who is not party to this Deed has no right by virtue of the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms other than Clause 10.2 above by a lender or counterparty (as applicable) in respect of an ATT Financing Arrangement.

17 DEED

It is intended that this Deed takes effect as a deed notwithstanding the fact that a party may only execute this document under hand.

18 JURISDICTION AND GOVERNING LAW

This Deed will be governed by and construed in accordance with the laws of England and the parties submit to the exclusive jurisdiction of the courts of England and Wales over any claim or matter arising under or in connection with it.

19 COUNTERPARTS

This Deed may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed.

THIS DEED has been executed as, and is intended to take effect as, a deed by the parties hereto and is delivered on the date written on the first page of this Deed.