

# ATT / CAA Agreement

## ATT CAA AGREEMENT

THIS AGREEMENT is made the 17<sup>th</sup> day of April 2013

### BETWEEN:

- (1) **The Civil Aviation Authority** (the "CAA") whose address is CAA House, 45-59 Kingsway, London, WC2B 6TE; and
- (2) **Catherine Ruth Staples, Christine Jesnick, Roger Philip Mountford and Richard Trevor Relton Jackson, together the Trustees of the Air Travel Trust**, (the "ATT") whose address is CAA House, 45-59 Kingsway, London, WC2B 6TE

### WHEREAS:

- (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 amended (the "**ATOL Regulations**").
- (b) The **ATOL scheme** is the system by which the CAA:
  - (i) monitors compliance with the ATOL Regulations
  - (ii) licences those who need a Licence (also referred to as "an ATOL") in order to make available flight accommodation
  - (iii) determines the terms of ATOLs, in part, to protect consumers of flight accommodation and
  - (iv) establishes and runs a scheme to protect consumers in the event that the ATOL holder fails to fulfil its obligations to its customers.
- (c) The ATT was established by a Trust Deed dated 5 January 2004 (as amended) (the "**Trust Deed**"). The objectives of the ATT are set out in the Trust Deed.
- (d) The ATT is funded by ATOL Protection Contributions which, under the Civil Aviation (Contributions to the Air Travel Trust) Regulations 2007 as amended (the "**ATT Regulations**"), ATOL holders must pay a contribution to the ATT for each passenger included in a relevant booking.
- (e) Further, in accordance with the ATOL scheme the CAA makes it a condition for some ATOL holders to provide Security in favour of the ATT, for a value determined by the CAA.
- (f) The CAA performs certain administrative functions for the ATT. Where an ATOL holder fails, the CAA acts as agent of the ATT in exercising the ATT's powers to repatriate consumers and to meet claims for losses incurred as a result of the failure. In this respect, the CAA acts in accordance with the terms of any bond or similar security (where applicable), the Trust Deed, the Air Travel Trust Payment Policy (the "**ATT Payment Policy**") and this Agreement.
- (g) The costs referred to in sub-paragraph (f) above and the CAA's costs of acting as the agent of the ATT can be paid using the whole or any part of the funds of the ATT. However, if the failed ATOL holder had provided some form of Security, the primary liability in respect of such costs shall be borne by the funds held as Security and the

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funds shall only be released from being held as Security after the reimbursement of the ATT of such sums as were paid from other parts of the funds of the ATT.

### NOW IT IS HEREBY AGREED AS FOLLOWS:

#### **1. Definitions**

Unless otherwise stated terms in this document will have the same meaning as those terms in

- (a) the Trust Deed;
- (b) the ATOL Regulations;
- (c) the ATT Regulations.

**APC** means ATOL Protection Contributions and is the contributions payable by ATOL holders in accordance with the ATT Regulations.

**ATT Contributions** has the meaning defined in paragraph 6.2(f) of the Trust Deed and paragraph 3.1 of the ATT Payment Policy

**Consumer Claims** means the cost of payments made to Consumers pursuant to paragraph 6(2)(a) – (c) of the Trust Deed, which is subject to the policy set out in the ATT Payment Policy including:

- (a) The cost of repatriating consumers who booked a flight with an ATOL holder where that flight has not been provided; and/or
- (b) The cost of providing goods and services for which the failed ATOL holder has been paid by or on behalf of the consumer but for which the supplier has not been paid by the ATOL holder; and/or
- (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 (a) - (c) above.

**“Licences”** has the meaning defined in clause 2

**“Security”** has the meaning defined in clause 5

#### **2. The granting and monitoring of ATOLs, franchises and accreditations as accredited bodies (collectively referred to as “Licences”) by the CAA**

- 2.1 The CAA will consider applications for an initial Licence and the renewal of and variation of a Licence in accordance with the terms of the CAA Licensing Procedures Manual.
- 2.2. The CAA will monitor ATOL holders in accordance with the terms of the CAA Licensing Procedures Manual.
- 2.3. The CAA will not make amendments to the CAA Licensing Procedures Manual which may affect the ability of, or the terms on which, the ATT can obtain insurance without giving the ATT one month’s prior written notice.

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- 2.4. The CAA will use its best endeavours to obtain ATOL holders' consent to disclose to the ATT information on the ATOL holder provided to the CAA by the ATOL holder and the ATOL holders' consent to the ATT sharing this information with the ATT's insurers and ATT's legal and financial advisers. The CAA will inform the ATT as soon as is reasonably practicable if an ATOL holder or applicant withholds or withdraws that consent.

### **3. Air Travel Trust Payment Policy**

- 3.1. The ATT will maintain an Air Travel Trust Payment Policy. The ATT will not amend that Policy without first consulting with the CAA.

### **4. ATOL Protection Contributions**

- 4.1. 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.
- 4.2. The CAA, as agent for the ATT, 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.
- 4.3. Where an ATOL holder pays APC to the CAA, the CAA collects this APC as agent for the ATT.
- 4.4. Where an ATOL holder fails to pay APC when due in accordance with the terms of the ATT Regulations, the CAA may, as agent for the ATT, institute and pursue recovery proceedings and the ATT will either provide the CAA with funds to do so or reimburse the CAA the cost of doing so.
- 4.5. If the CAA considers that an ATOL holder is entitled to reimbursement of APC under Regulation 10 of the ATT Regulations, the CAA may, as agent for the ATT, reimburse that ATOL holder from the ATT's funds in accordance with the terms of the relevant delegated authority set out in an ATT resolution. Otherwise, the ATT will when requested by the CAA provide the CAA with the necessary funds to do so.
- 4.6. If the CAA believes that an offence has been committed under Regulation 18 of the ATT Regulations, the CAA will consider a prosecution in accordance with the Code for Crown Prosecutors.

### **5. Bonds or similar security**

- 5.1. The CAA may make it a condition of granting an ATOL that the ATOL holder provide a bond (in the CAA's published form), a guarantee or some other form of security in favour of the ATT (collectively referred to as "**Security**"). The ATT hereby appoints the CAA as its agent to enter into such arrangements on the ATT's behalf provided that the CAA ensures that any such arrangements are signed only by employees who are authorised by the CAA Board to do so.
- 5.2. If a person responsible for providing Security fails to comply with its obligations under the terms of that Security, the CAA will attempt to recover the unpaid amounts as agent for the ATT and the ATT will provide the CAA with funds to do so.

## **6. ATOL holder failure**

- 6.1 When an ATOL holder has failed, as defined in the Trust Deed, the CAA will immediately (at the latest by the end of the next working day) notify the ATT in writing.
- 6.2 If the failed ATOL holder had provided a bond in favour of the ATT, the CAA will, at the latest by the end of the third working day after the date of the ATOL holder's failure, if it is believed there will be Consumer Claims, in accordance with the terms of the bond, make formal demand that the person responsible for providing the bond make payment to the ATT in accordance with the obligations under the terms of the bond.
- 6.3 If the failed ATOL holder has provided any Security (other than that detailed in clause 6.2) in favour of the ATT, the CAA will, at an appropriate time, if it is believed there will be Consumer Claims, in accordance with the terms of that Security, make formal demand that the person responsible for providing the Security make payment to the ATT in accordance with the obligations under the terms of the Security.
- 6.4 As soon as reasonably practical after the failure of an ATOL holder, the CAA will produce and provide to the ATT an *Estimated Expenditure Report*. This report will estimate the extent to which ATT funds will be required in order to meet Consumer Claims taking into account
- the amount, if any, of Security due in respect of the failed ATOL holder and
  - the value of Consumer Claims that will be due to be paid by credit card companies under the terms of any applicable Credit Card Agreements.

Where the CAA deems it necessary or the ATT requires one, the CAA will produce and provide to the ATT an *Updated Estimated Expenditure Report*.

- 6.5 The CAA will, as soon as reasonably practical after 12 months following 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*.
- 6.6 The ATT hereby appoints the CAA to be its agent in considering and paying, where applicable, Consumer Claims, ATT Contributions and payments to fulfilment partners, in accordance with the terms of any Security, the Trust Deed, the ATT Payment Policy and this Agreement. The CAA may further delegate this function or any part of this function to a third party or parties. The CAA may make payments directly from the ATT in accordance with the terms of any ATT resolution delegating that authority. For payments from the ATT that exceed the terms of any ATT resolution, the ATT will in an appropriate and timely manner authorise the CAA to draw from the ATT.
- 6.7 If the CAA delegates its function or any part thereof to a third party (as provided for by Clause 6.6 of this Agreement), the CAA will monitor that third party's performance and will report to the ATT on their performance from time to time or when so requested by the ATT.

## **7. Post failure recoveries**

- 7.1 If the ATT is a creditor of a failed ATOL holder the CAA will register the ATT as a creditor in any insolvency proceedings and may represent the ATT at any creditors' meetings, as agent for the ATT.

7.2 The CAA will, as agent for the ATT, take any reasonable steps necessary to recover any other amounts due to the ATT under any contract relating to a failed ATOL holder when such recovery is required by the ATT under the terms of any contract of insurance or banking facility arrangement into which the ATT has entered.

**8. Administrative functions**

8.1 In addition to the other functions set out in this Agreement, the CAA, as agent for the ATT, will engage such staff and will deploy such 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.

8.2 The obligations in Clause 8.1 above specifically include an obligation that the CAA produce for the ATT:-

- (a) Annual Report and Financial Statements within 90 days of the ATT's financial year end;
- (b) Management accounts within 15 days of the end of each quarter within a financial year;
- (c) An updated financial model as required by the terms of the banking facility arrangements;
- (d) Regular reports (being at least every quarter) providing information as to
  - (i) the amount of APC collected during that period,
  - (ii) the amount spent on Consumer Claims, and
  - (iii) whether any APC remains unpaid or is overdue.

8.3 If the CAA or the ATT deems it necessary, 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. The ATT agrees to pay the CAA's costs of conducting these negotiations and of seeking that advice.

8.4 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.

**9. CAA obligations to assist the ATT in obtaining a Bank Credit Facility and/or Insurance**

9.1 Where the CAA has consent from ATOL holders to do so the CAA will provide the ATT with any information in its possession that the ATT requires:

- (a) for the purposes of obtaining and maintaining banking credit facilities and complying with its obligations under the terms of any such facility;
- (b) in order to obtain and maintain insurance and comply with its obligations under any such insurance policy.

**10. Costs**

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- 10.1 The ATT will pay the CAA's costs incurred in acting as the agent of the ATT including (but without limitation) any costs incurred by the CAA pursuant to Clauses 4 to 9 (inclusive) hereof and whether or not the CAA delegates those functions. In addition, where it delegates those functions the ATT will pay the CAA's costs of monitoring the performance of the delegatee(s).

### **11. Indemnity**

- 11.1 The CAA will indemnify the Trustees and each of them and their respective personal representatives against
- (a) any loss or liability they may incur as a result of any negligence or willful default on the part of the CAA, its servants or agents arising out of or in connection with the performance of this agreement; and
  - (b) 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 or any derivative transaction in each case entered into by the Trustees from time to time (each an "ATT Financing Arrangement").
- 11.2 Without prejudice to Clause 11.1 (but without double counting), if the Trustees do not have sufficient assets of the Trust available 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.

### **12. Confidentiality Agreement**

- 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. The Trustees confirm that they are aware of the impact of the insider dealing offences contained in the Criminal Justice Act 1993.

### **13. Termination of this Agreement**

- 13.1 This Agreement may be terminated by either party giving not less than three months' notice in writing to the other.
- 13.2 If this Agreement 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. Revocation of other Agreements**

- 14.1 The agreement between the ATT and the CAA dated 18 March 2008 is hereby revoked by both parties.

### **15. General**

#### **The Contracts (Rights of Third Parties) Act 1999**

- 15.1 A person who is not party to this Agreement has no right by virtue of the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms other than Clause 11.2

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above by a lender or counterparty (as applicable) in respect of an ATT Financing Arrangement.

Jurisdiction And Governing Law

15.2 This Agreement 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.

**IN WITNESS WHEREOF** this Agreement is made the day and year first above mentioned.

**EXECUTED** for and on behalf of the  
**Civil Aviation Authority**

Name *Kate Staples*

Witness *[Signature]*  
SERENA LIM  
SOLICITOR

CAA HOUSE  
45-59 KINGSWAY  
LONDON WC2B 6TE

**EXECUTED** for and on behalf of the  
**Trustees of the Air Travel Trust**

Name *Rimoldi*

Witness *[Signature]*  
SERENA LIM  
SOLICITOR

CAA HOUSE  
45-59 KINGSWAY  
LONDON WC2B 6TE

**EXECUTED** for and on behalf of the  
**Trustees of the Air Travel Trust**

Name *[Signature]*

Witness *[Signature]*  
SERENA LIM  
SOLICITOR

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