

Deed of Indemnity from an individual to the ATT Trustees

Overtrading Indemnity – Standard ATOL (or franchise member licensed for more than 1,000 passengers)

This Form can be completed online before printing off and signing where required.

<p>A. OBLIGATIONS OF INDEMNIFIER</p> <p>Name of Indemnifier</p> <p>1. I, <i>Title Forename Surname</i></p> <p>(hereinafter called 'the Indemnifier'), whose address for service of notices and documents by the CAA in respect of this Deed of Indemnity is:</p> <p>Home address of Indemnifier</p> <p>..... Postcode:</p> <p>Telephone: Fax Number:</p> <p>Email address:</p> <p>and whose designated alternative address for service of notices and documents by the CAA in respect of this Deed of Indemnity is:</p> <p>(Please insert the name and address of a qualified solicitor or accountant here. This solicitor or accountant may be the same person who witnesses your signature in Section J of this form. The address must be in the United Kingdom and must not be the same address as your address above).</p> <p>..... <i>Title Forename Surname</i></p> <p>Profession:</p> <p>Full address:</p> <p>..... Postcode:</p> <p>Telephone: Fax:</p> <p>Email address:</p> <p>in consideration of the grant, renewal, variation, continuance or otherwise by CAA of Air Travel Organiser's Licence Number* held by or to be granted to: <i>ATOL Number</i></p> <p>..... Full Name of Applicant or ATOL holder (hereinafter called 'the ATOL holder'), hereby covenants with and guarantees to the ATT Trustees as follows:</p>
--

* By executing this document you agree that an employee or Member of the CAA may insert the number of the Air Travel Organiser's Licence assigned by the CAA to the Applicant, at a later date.

A. OBLIGATIONS OF INDEMNIFIER (Continued)

I shall indemnify the ATT Trustees in respect of all sums expended and all costs and expenses incurred by the ATT Trustees (or any agent) arising from, consequent on or in relation to, the failure of the ATOL holder pursuant to the powers vested in the ATT Trustees under the ATT Deed and the terms of the ATT Payment Policy as amended or substituted from time to time; and

I shall, on the ATT Trustees' demand (given on their behalf by the CAA), unconditionally and as primary obligor pay to the ATT Trustees such sum or sums as are stated in the demand and the demand shall be conclusive evidence (except for manifest error or fraud) as to the sums so expended and the costs and expenses so incurred being due and payable as a liquidated demand,

provided that:

- (a) there has been a Failure of the ATOL holder;
- (b) on the date on which the ATOL holder failed, this Deed of Indemnity is in force;
- (c) the CAA has made demand under any bonds provided by or in respect of the ATOL holder in favour of the ATT Trustees, whether the bonds or any of them were provided as a condition of grant, renewal, variation, continuance or otherwise, of a licence in the name of the ATOL holder; and
- (d) the ATOL holder has overtraded or was overtrading.

The ATT Trustees will account to the Indemnifier for the proceeds of the bonds referred to in Clause 1(c) above.

2. The ATOL holder has overtraded (or was overtrading) if it exceeded the limits in its ATOL in:

- (a) the quarter in which it failed;
- (b) the quarter preceding that in which it failed; or
- (c) the three quarters succeeding that in which it failed.

3. The ATOL holder has also overtraded if, after it has ceased to hold an ATOL:

- (a) it provides carriage (except, with the consent of the CAA, to customers returning to their point of origin) pursuant to a licensable transaction; or
- (b) it accepts any payment either with a view to entering into a licensable transaction or in respect of a licensable transaction already entered into.

B. PERIOD OF INDEMNITY

- (a) This Deed of Indemnity shall remain in force until it is cancelled in accordance with Clause (b) or (d).
- (b) (i) Subject to sub-clause (b)(ii) and (iii) this Deed of Indemnity may be cancelled by the Indemnifier by the giving to the CAA of not less than three months' written notice, alternatively by agreement between the Indemnifier and the CAA;
(ii) On and after the date the ATOL holder has failed, no such notice as referred to in sub-clause (b)(i) above may be served and any purported service shall be null and void;
(iii) If there is a Failure of the ATOL holder during the period of notice given by the Indemnifier under sub-clause (b)(i), the notice shall be null and void and shall not cancel this Deed of Indemnity.
- (c) Subject only to Clause (d) below, any delay, forbearance or failure of the ATT Trustees in endeavouring to obtain payment or any delay in taking steps to enforce the obligations under this Deed of Indemnity shall not release or in any way lessen or affect the liability of the Indemnifier.
- (d) If neither a claim nor an intention to claim under this Deed of Indemnity has been served on the Indemnifier by the CAA on behalf of the ATT Trustees within twelve months after the date of failure, the obligations of the Indemnifier under this Deed of Indemnity shall cease and this Deed of Indemnity shall be cancelled.

C. NOTICES SERVED BY THE CAA

All notices and documents which are required to be given or served under the terms of this Deed of Indemnity by the CAA, including any demand under Clause 1, shall be in writing and shall be sent to the address of the Indemnifier set out in Clause 1 of this Deed of Indemnity or such other address as appears to the CAA to be the Indemnifier's usual place of residence in the United Kingdom or at the CAA's sole discretion to the designated alternative address for service above. Service of any document or notice may be effected by being delivered personally or by first class pre-paid letter or e-mail. Any notice or document shall be deemed to have been duly served and received, depending on mode of service, as follows:

- (a) if delivered by hand, when delivered;
- (b) if sent by first class post, forty-eight (48) hours after posting;
- (c) if sent by e-mail, the time and date shown in the sender's electronically generated 'message delivered' notice.

D. NOTICES SERVED BY THE INDEMNIFIER

All notices and documents that are required to be given or served under the terms of this Deed of Indemnity by the Indemnifier shall be in writing and sent by recorded delivery or registered post or hand delivered (in the case of hand delivery, delivery must be between the hours of 9am and 5pm on a weekday) to the CAA at: Consumer & Markets Group, 11 Westferry Circus, Canary Wharf, London E14 4HD.

No notice or document shall be treated for any purpose whatsoever as served unless written confirmation of receipt has been obtained from an employee or Member of the CAA either at the moment of delivery or subsequently.

E. THE CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999

A person who is not a party to this Deed of Indemnity has no right by virtue of the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of it.

F. GOVERNING LAW AND JURISDICTION

This Deed of Indemnity shall be governed and construed in accordance with English law and the parties hereto accept the exclusive jurisdiction of the courts of England and Wales.

G. INDEPENDENT LEGAL ADVICE

You are strongly advised to take independent legal advice from a solicitor before signing this Deed of Indemnity.

H. DEFINITIONS

In this Deed the following terms and expressions have the following meanings:

'Accredited body' has the same meaning as in the ATOL Regulations;

'Air travel organiser' means a person whose activities consist of or include activities in respect of which that person is required to hold an ATOL under the ATOL Regulations;

'ATOL' has the same meaning as in the ATOL Regulations;

'ATOL holder' means the person identified as the 'Applicant or ATOL holder' in this Deed of Indemnity whether or not that person held an ATOL on the date this Deed of Indemnity was entered into or continues to hold an ATOL on the date of failure of the ATOL holder;

'ATOL Regulations' means the Civil Aviation (Air Travel Organisers' Licensing) Regulations for the time being in force under section 71 of the Civil Aviation Act 1982 (as amended from time to time);

'ATT' means the Air Travel Trust constituted by the ATT Deed;

H. DEFINITIONS (Continued)

'**ATT Deed**' means the Trust Deed dated 5 January 2004 made between the Secretary of State and the persons described in it as being the original Trustees as amended, supplemented or substituted from time to time;

'**ATT Payment Policy**' means the policy for payments from the Air Travel Trust under the ATT Deed published by the ATT Trustees from time to time;

'**ATT Trustees**' means such persons who may from time to time be the trustees of the ATT under the ATT Deed;

'**CAA**' means the Civil Aviation Authority.

'**Consumer**' has the same meaning as in the ATOL Regulations;

'**Demand**' means a demand in writing signed by an authorised signatory of the CAA as agent for the ATT Trustees;

'**Failure of an ATOL holder**' has the same meaning as in the ATOL Regulations and any reference in this Deed to

'**failure of the ATOL holder**' shall be construed accordingly:

'**Flight accommodation**' has the same meaning as in the ATOL Regulations;

'**Indemnifier**' in the event of there being more than one Indemnifier in respect of the ATOL holder, any obligation on the part of the Indemnifier shall take effect as a joint and several obligation with each such Indemnifier.

'**licensable transaction**' means an offer:

- (a) made by a consumer to purchase flight accommodation for one or more persons on a flight; and
- (b) which is accepted by:
 - (i) an air travel organiser; or
 - (ii) where an ATOL is held by an accredited body, a member of that accredited body,

and constitutes an activity in respect of which that organiser or accredited body is required to hold an ATOL.

'**Notice of ATOL holder failure**' means a notice of the Failure of an ATOL holder published by the CAA in the CAA's Register of Failed ATOL Holders pursuant to the ATOL Regulations.

J. SIGNED AND DELIVERED AS A DEED BY:

.....
Name of the Indemnifier *Signature of the Indemnifier*

on this
Date (dd/mm/yyyy)

in the presence of:
Name of Witness *Signature of Witness*

Note: The witness must be a qualified accountant or solicitor.

Accountant or solicitor's address:
.....

County: Postcode:

Date:





Guide for completion of a Deed of Indemnity by an individual to the ATT Trustees (CMG Forms 3001 and 3002)

Background

The CAA requires a Deed of Indemnity from New Applicants and where the ATOL has been held for less than 4 years. In the event of a change of ownership and/or control of an ATOL then the CAA will require new Deeds of Indemnity from relevant persons. The Deeds may also be required if the CAA has concerns with an ATOL holder complying with terms of its ATOL.

The CAA usually requires Deeds from at least two persons who in the view of the CAA are in a position of control of the ATOL. These Deeds are usually required from directors, company secretaries, sole proprietors or partners. However the CAA may require Deeds of Indemnity from non-executive directors, shareholders or others if it believes that they have significant influence on the trading of the ATOL.

The document is an indemnity from a person in control of the ATOL which indemnifies the ATT against loss arising from failure of the ATOL holder where the ATOL holder has overtraded (or was overtrading) at time of failure.

Completion of form

The person required to provide the Deed of Indemnity is the person named at the top of the document at Point 1 and that person is “the Indemnifier” in respect of the Deed. The person must then complete details of his/her personal address. The Indemnifier must then enter an alternative address for service of notices and documents. This alternative address for service of notices and documents must be that of a solicitor or accountant. This could be the same solicitor or accountant as the one who witnesses the indemnifier’s signature in Section J but need not be. Any reference to a solicitor or accountant in the document should be taken as qualified solicitor or accountant. The solicitor or accountant cannot be a relation of the Indemnifier.

The solicitor or accountant providing the alternative address for service of notices and documents is doing just that providing an alternative address and is not the indemnifier.

The first page of the document should be read as follows :

I, John Smith, whose address for service of notices and documents by the CAA in respect of this Deed of Indemnity is [**home address**] and whose designated alternative address for service of notices and documents by the CAA in respect of this Deed of Indemnity is [**alternative address of solicitor or accountant**], in consideration of the grant, renewal, variation, continuance or otherwise of CAA of ATOL number [XXXX] held or to be granted to:

XXXXX LTD (“the ATOL holder”), hereby covenants with and guarantees to the ATT Trustees as follows:

The next 3 pages contain the Obligations of the Indemnifier and terms and definitions of the indemnity.

Section J needs to be signed by the Indemnifier and the Indemnifier’s signature has to be witnessed by a qualified accountant or solicitor who should sign, and also stamp the form with the firm’s stamp. If the firm does not have a stamp, the solicitor or accountant should still sign the form but in addition the CAA will require the solicitor or accountant to confirm he or she has witnessed the indemnifier’s signature in a letter on headed notepaper.