

THIS AGREEMENT is made the day of

BETWEEN:

1. **[NAME of ATOL Holder]** a company incorporated in England and Wales under company number [] and whose registered office is at [ADDRESS] (“the Company”); and
2. **[NAME of Adviser]** of [ADDRESS] (“the Adviser”)

(together referred to as “the Parties”.)

RECITALS

- (1) The Company is an ATOL holder who makes available flight accommodation to consumers.
- (2) The Adviser is in the business of [description of business].
- (3) In accordance with the Company’s ATOL Standard Terms, the Adviser has been retained and instructed by the Civil Aviation Authority of Aviation House, Beehive Ringroad, Crawley, West Sussex RH6 0YR (“the CAA”) to provide advice to the CAA on matters relating to the Company or the Company’s groups and/or prepare, or assist the CAA in the preparation of, a report (or reports) on the Company or the Company’s group on any matter the CAA determines is required in order for the CAA to determine whether to grant, renew, vary or continue the Company’s Air Travel Organisers’ Licence (“ATOL”) or the ATOLs of any companies in the Company’s group (the “CAA’s Instructions”).
- (4) To enable the Adviser to carry out the CAA’s Instructions, the Company will disclose Confidential Information to the Adviser.
- (5) The Parties recognise that the unauthorised disclosure or use of the Confidential Information could cause the Company commercial harm. Therefore, the Parties intend

to enter into this Agreement to regulate how such Confidential Information is to be treated whilst in the possession or control of the Adviser.

NOW IT IS AGREED as follows:-

1. Definitions

In this Agreement, the following words are to have the following meanings:-

1.1 'Confidential Information' means:

1.1.1 all information of whatever kind or nature, relating to the Company or companies in the Company's group whether imparted orally (including any note or record of the disclosure), in writing or electronically, and whether directly or indirectly disclosed to the Adviser by the CAA, the Company or anyone in connection with the CAA's Instructions and whether before, on or after the date of this Agreement; and

1.1.2 the fact that the Adviser is carrying out the CAA's Instructions.

1.2 'CAA's Instructions' has the meaning given in Recital (3) above.

2. Obligations of the Adviser

The Adviser undertakes to:

2.1 subject to clause 2.4, receive and keep the Confidential Information secret and confidential at all times and not disclose such Confidential Information to any third party;

2.2 take all necessary precautions to ensure that such undertaking is enforced and is enforceable, and take such action as to ensure that patentability is not destroyed through making information available to the public, for instance, by written or oral description;

- 2.3 use the Confidential Information in whole or in part only for the CAA's Instructions, and upon termination of this Agreement, it shall not use the Confidential Information for any purpose;
- 2.4 only disclose the Confidential Information under binding obligations of confidence (which it undertakes to enforce and for which it is legally responsible) to those of its subsidiaries, employees, sub-contractors, seconded staff, officers, agents, consultants, collaborators, insurers and reinsurers, as need to have access thereto wholly necessarily and exclusively for the purposes of the CAA's Instructions whose identity the Adviser shall provide to the Company at the Company's request, and on the conditions that such people shall have:
 - 2.4.1 been informed of the Company's interest in the Confidential Information and the terms of this Agreement; and
 - 2.4.2 been instructed to treat the Confidential Information as secret and confidential in accordance with the provisions of this Agreement.
- 2.5 be responsible for ensuring that such persons identified in Clause 2.4 comply with the provisions of this Agreement.
- 2.6 Other than in respect of the CAA's Instructions, not, make any commercial use of or make any commercial gain from the Confidential Information or seek to obtain any protection of the intellectual property contained in the Confidential Information;
- 2.7 promptly notify the Company if it becomes aware that any of the Confidential Information falls within the provisions of Clause 3.

3. Limitation of the Adviser's Obligations

Clause 2 shall not apply to Confidential Information which:

- 3.1 was known to the Adviser prior to its communication by the Company, whether direct or through the CAA, (as evidenced by the Adviser's records); or

- 3.2 is or becomes in the public domain except by any default or fault of the Adviser or any person acquiring it from the Adviser; or
- 3.3 becomes known to the Adviser by the action of another person not in breach of any obligation of confidentiality owed to the Company; or
- 3.4 is required to be disclosed by the Adviser by applicable law or regulation, provided that the Adviser agrees (a) to notify the Company in writing as soon as possible upon becoming aware of any such requirement (save to the extent that such notification is restricted by applicable law or regulation) and to provide a certificate from the Adviser's legal advisers confirming the necessity of the disclosure; and (b) to consult with the Company as to the timing and manner of such disclosure.

4. Return of Confidential Information

- 4.1 The Adviser shall keep a record of the Confidential Information provided to it, along with its location and the persons, if any, holding the same.
- 4.2 Subject to Clause 4.3 below upon termination of this Agreement, in the event that the Adviser is in breach of any of the conditions of this Agreement, and at any other time on the written request of the Company, the Adviser will immediately return the Confidential Information and any copies of it made by or in the possession of or under the control of the Adviser pursuant to this Agreement, and make no further use or disclosure of any of the Confidential Information.
- 4.3 The provisions of clause 4.2 will not apply to the extent that the Company or the Adviser are required to retain any such Confidential Information by any applicable law, rule or regulation or by any competent judicial, governmental, supervisory or regulatory body.

5. Limitation of Transferred Rights

- 5.1 The Adviser acknowledges and agrees that the property and copyright in Confidential Information disclosed to it by the Company, including any documents, files and any other items containing any Confidential Information, belong to the Company.
- 5.2 This Agreement neither prejudices nor limits the rights of the Company in respect of any intellectual property in the Confidential Information.
- 5.3 The Adviser may not assign or transfer any rights or obligations under this Agreement without the prior written consent of the Company.
- 5.4 This Agreement is not to be construed to grant the Adviser any licence or rights in respect of the Confidential Information.

6. General

- 6.1 It is acknowledged and agreed that:
- 6.1.1 Any breach of this Agreement could cause injury to the Company and damages would not be an adequate remedy. In the event of a breach or threatened breach by the Adviser, the Company shall be entitled to injunctive relief in any court of competent jurisdiction, and the Adviser shall reimburse the Company for any costs, claims, demands or liabilities arising directly or indirectly out of a breach of this Agreement. Nothing contained in this Agreement shall be construed as prohibiting the Company from pursuing any other remedies available to them for a breach or threatened breach.
- 6.1.2 The Adviser is acting in relation to the CAA's Instructions as principal and not as agent or broker for or in concert with any other person.
- 6.1.3 Each provision of this Agreement (including each undertaking and each part of it) shall be construed separately and independently from each other

provision, and if any such provision or undertaking shall prove to be unenforceable or illegal, the remaining provisions and undertaking shall continue in full force and effect.

6.1.4 The obligations contained in this Agreement are continuing and, for example, shall survive (a) the termination of any discussions between the CAA, the Company and the Adviser; and (b) the Company ceasing to hold an ATOL (if applicable) .

7. Notices

All notices required to be served pursuant to this Agreement are to be made in writing and served by first class post to the address at the head of this Agreement. Service will be deemed to have been made 2 days after posting.

8. Law and Disputes

The validity, construction and performance of this Agreement are to be governed by English law. Any dispute arising under or in connection with this Agreement is to be subject to the exclusive jurisdiction of the English courts to which the Parties to this Agreement submit.

9. Third Parties

This Agreement does not create any right enforceable by any person who is not a party to it ("Third Party") under the Contracts (Rights of Third Parties) Act 1999, but this clause does not affect any right or remedy of a Third Party which exists or is available apart from that Act.

AGREED by the Parties through their authorised signatories:-

For and on behalf of:

[the Company]

Signature:

Print Name:

Job Title:

Date:

For and on behalf of

[Adviser]

Signature:

Print Name:

Job Title:

Date: