

# Deed of Undertaking from a company or individual to the ATT Trustees (Single ATOL Holder)

This Deed of Undertaking is made on

Day	Month	Year

Name, Address of Obligor in the UK for service of notices and proceedings

By:

Of:

Postcode:

Email address:

Facsimile Number:

Company registration number:  (if applicable)

(hereinafter “**the Obligor**”) of the first part: and

the Civil Aviation Authority of Aviation House, Beehive Ringroad, Crawley, West Sussex RH6 0YR (hereinafter “**the CAA**”) as agent for and on behalf of Jonathan Anton Spence and Tracey Kathleen Martin, and in their capacity as the trustees of the Air Travel Trust and whose address is the same as the CAA’s, (hereinafter “**the ATT Trustees**”) of the second part.

## Undertaking by the Obligor to pay the Amount to the ATT Trustees

The Obligor shall within five working days of service of a Demand on the Obligor pay or transfer funds equal to the amount stated in the Demand to the ATT Trustees, such payment to be made to the Trustees of the Air Travel Trust account in accordance with the bank details specified in the Demand made by the ATT Trustees or the CAA (as its agent).

The Obligor’s maximum liability pursuant to this undertaking is:

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This undertaking is made in respect of the following person:

(hereinafter called “**the ATOL holder**”)

If the ATOL holder is a company insert the registered name of the company, including Limited or Plc, as applicable.

Company registration number:

ATOL number:

(if not yet known the Obligor hereby agrees that the CAA will insert the ATOL holder’s ATOL number, once known, post execution of this Deed)

- A. Whereas the CAA may refuse an application for an ATOL or a variation to an ATOL or may revoke, suspend or vary an ATOL in exercise of its powers under the ATOL Regulations, if it is not satisfied that the resources of any person to whom it grants an ATOL and the financial arrangements made by that person are and remain adequate for discharging its actual and potential obligations in respect of the activities in which it is or may be expected to be engaged under an ATOL.
- B. Whereas the ATT Trustees (through the agency of the CAA and pursuant to the ATT Deed) administer a fund (known as the Air Travel Trust Fund) for the relief of any loss in respect of any payment made by or on behalf of any Consumer to a failed ATOL holder or to an agent of the failed ATOL holder under or with a view to entering into a licensable transaction (as such term is defined in the ATT Deed) and for the relief of loss and liability occasioned to Consumers of failed ATOL holders in consequence of the failure of the ATOL holder to provide flight accommodation, living accommodation, car hire and other facilities and tourist services which the failed ATOL holder was to provide or arrange to provide in accordance with its obligations under or in connection with such a licensable transaction and to make payments to fulfilment partners for the provision of such services to such Consumers and may incur costs and expenses in providing or procuring the provision of such flight accommodation, living accommodation and other facilities and tourist services and relieving such losses and liabilities.
- C. Whereas the CAA has indicated that it could not be satisfied that an ATOL should be granted to the ATOL holder or be renewed or varied as applied for by the ATOL holder or has indicated that the ATOL held by the ATOL holder should be revoked, suspended or varied under the ATOL Regulations unless, inter alia, the Obligor gave or continued to give the following separate undertakings in this Deed to the ATT Trustees.
- D. Whereas the ATOL holder has requested the Obligor to enter into the Deed of Undertaking for this purpose.

Now therefore the Obligor hereby irrevocably undertakes to the ATT Trustees and the parties agree as follows:-

### Definitions and Interpretation

1. In this Deed the following expressions (in bold) shall have the following meanings:
  - 1.1. **Amount** means the sum which the Obligor is required to pay to the ATT Trustees under this Deed (not exceeding the Obligor's maximum liability under this Deed) if a Demand is served on it;
  - 1.2. an **ATOL** and an **ATOL holder** have the same meanings as in the ATOL Regulations;
  - 1.3. **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);
  - 1.4. **ATT** means the Air Travel Trust constituted by the ATT Deed;
  - 1.5. **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;
  - 1.6. **ATT Payment Policy** means the policy for payments from the ATT under the ATT Deed published by the ATT Trustees from time to time;

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- 1.7. **ATT Trustees** means the trustees for the time being of the ATT including any Replacement ATT Trustee;
  - 1.8. **Consumer** has the same meaning as in the ATOL Regulations;
  - 1.9. **Demand** means a demand in writing signed by an authorised signatory of the CAA (as agent for the ATT Trustees) stating the Amount;
  - 1.10. **Failure of an ATOL holder** has the same meaning as in the ATOL Regulations and any reference in this Deed to the failure of the ATOL holder shall be construed accordingly;
  - 1.11. **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 when there has been a Failure of an ATOL holder
  - 1.12. **Replacement ATT Trustee** means any person who replaces an existing ATT Trustee or who is appointed to act as an ATT Trustee in addition to any other ATT Trustees pursuant to the ATT Deed; and
  - 1.13. **Working Day** means any week day other than Saturdays, Sundays, Christmas Day, Good Friday or any bank holiday under the Banking and Financial Dealings Act 1971.
2. In this Deed:
- a) the use of the singular includes the plural and vice versa;
  - b) unless the contrary intention appears, a reference to a document is a reference to that document as amended, supplemented or novated from time to time;
  - c) a person includes any individual, company, corporation, unincorporated association or body, organisation or entity;
  - d) any reference to a notice means a written notice; and
  - e) any reference to legislation means the legislation as amended or consolidated from time to time.

### **Commencement Date and Remaining in Force**

3. The Deed of Undertaking will take effect from the date hereof.
4. The Deed of Undertaking will remain in force until the earliest of:
  - a) the date it is released by the ATT Trustees in writing at their absolute discretion;
  - b) the extinguishment of the Obligor's liability following payment of the Amount; or
  - c) the expiry of 6 months following the Obligor giving notice to the ATT Trustees, care of the CAA, except that (i) no such notice will be effective if a Notice of ATOL holder failure is published in respect of the ATOL holder by the CAA in the CAA's Register of Failed ATOL holders prior to the expiry of such 6 month period; and (ii) no such notice may be given after the date of such publication of a Notice of ATOL holder failure in respect of the ATOL holder.

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**Limited recourse against the ATT Trustees, release of ATT Trustees' liabilities and replacement of ATT Trustees**

5. The ATT Trustees enter into the Deed of Undertaking only in their capacities as trustees of the ATT. The recourse of the Obligor to the ATT Trustees or any of them under the Deed of Undertaking is limited to an amount equal to the aggregate value of the assets comprised in the ATT from time to time. The Obligor has no recourse to any assets of any ATT Trustee held either:
  - a) as a trustee or co-trustee of any trust other than the ATT; or
  - b) by that ATT Trustee in his or her personal capacity.
6. An ATT Trustee shall be released from his or her liabilities under this Deed forthwith upon the death of that trustee or upon the resignation or removal of that trustee as a trustee of the ATT.
7. Subject to Clause 5 and Clause 6 the obligations of the ATT Trustees under this Deed are joint and several.

**Service of a Demand and a notice**

8. The CAA may serve a Demand on the Obligor at any time if the CAA has published a Notice of ATOL holder failure in respect of the ATOL holder in the CAA's Register of Failed ATOL Holders.
9. A Demand will be deemed to have been served once it has been sent by the CAA to the Obligor by one of the methods to one of the places set out in this Clause.
10. A Demand may be served by means of post, hand delivery, email or facsimile transmission to (i) the address in the United Kingdom or facsimile or email address that the Obligor has notified to the CAA in this Deed of Undertaking for such purposes or (ii) to the Obligor's registered office address or to its usual place of business in the United Kingdom or (iii) to such address and by such means as the CAA thinks in its reasonable opinion fit.
11. Any notice to be served by the Obligor under Clause 4 c) must be served by one of the methods specified in Clause 10 on the CAA at the following address:

The Air Travel Trustees:

Address: 11 Westferry Circus, Canary Wharf, London E14 4HD;

Email addresses: [Airtraveltrust@caa.co.uk](mailto:Airtraveltrust@caa.co.uk)

**Undertaking by the Obligor to pay the Amount to the ATT**

12. The Obligor shall within 5 working days of service of a Demand pay the Amount to the ATT Trustees, such payment to be made in accordance with the bank details specified in the Demand made by the ATT Trustees or the CAA (as its agent).

**Demand deemed conclusive**

13. The sum stated in a Demand as comprising the Amount shall be conclusive evidence as to such sum being due and payable except in the case of manifest error or fraud.

**ATT Trustees' Obligations**

14. Where the CAA has issued a Demand and the ATT Trustees have received payment in full of the Amount payable pursuant to such Demand from the Obligor, the ATT Trustees will place on interest bearing deposit any part of that Amount which they do not then require for the purposes referred to in Clause 15.
15. The ATT Trustees shall use the Amount, and any interest received thereon for the purpose of achieving any object of any power vested in the ATT Trustees under the ATT Deed in accordance

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with the ATT Payment Policy arising from or consequent on or in relation to the failure of the ATOL holder.

16. When in the reasonable opinion of the ATT Trustees such objects have been achieved, the ATT Trustees will:
- a) repay to the Obligor, or another person nominated to the ATT Trustees in writing by the Obligor, an amount equal to such part of the Amount and any interest earned thereon (net of tax, charges, expenses and other similar costs) that has not been used, expended or spent for such purpose; and
  - b) provide to the Obligor a written statement of expenditure in relation to any part of the Amount and any interest earned thereon (net of tax, charges, expenses and other similar costs) that has been so used, provided always that the amounts the ATT Trustees have expended within the scope of Clause 15 are subject to the ATT Trustees' absolute discretion.
17. Nothing in this Deed and no action taken by the parties under this Deed shall create any trust over any part of the Amount or over any interest earned on it in favour of the Obligor or constitute the ATT Trustees or the CAA as a trustee for the Obligor or the Obligor as trustee for either the ATT Trustees, the CAA or any Consumer in respect of any such money.

### **General Provisions**

18. In this Deed the CAA acts as the agent of the ATT Trustees and all notices and rights of the ATT Trustees under this Deed may be given and exercised by the CAA on their behalf until further notice to the contrary is given to the Obligor.
19. The Obligor shall not by paying any sum payable hereunder or any part thereof or by incurring any liability hereunder or by any other means or on any other ground claim any set-off or counter claim or reimbursement against the ATOL holder.
20. Apart from a Replacement ATT Trustee and the ATOL holder (in respect of Clause 19 only), a person who is not a party to this Deed has no right by virtue of the Contracts (Rights of Third Parties) Act 1999 to enforce this Deed.
21. This Deed shall be governed by and construed in accordance with the laws of England and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales over any claim, matter or dispute arising under or in connection with it.

22.

Execution if Obligor is a Company <sup>1</sup>

**IN WITNESS** whereof the Obligor has executed this Agreement as its Deed and the CAA has executed this Deed on behalf of the ATT Trustees the day month and year first above written

Signed as a deed on behalf of:

Obligor:

Registered Company Number:

And delivered in the presence of the following persons authorised in that behalf:

*Director of the Obligor*

Name:

Signature:  Date:

*Director/ Secretary of the Obligor*

Name:

Signature:  Date:

Execution if Obligor is an individual

**IN WITNESS** whereof the Obligor has executed this Agreement as a Deed and the CAA has executed this Deed on behalf of the ATT Trustees the day month and year first above written

Signed as a Deed:

Name of Obligor:

In the presence of (signature)

<sup>1</sup> If the Obligor is a foreign registered company or other entity, evidence of due authority of the signatories to bind the Obligor should be provided to the ATT Trustees before formal completion of the Deed.

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Name of Witness:

Address:

Postcode:

Executed for and on behalf of the ATT Trustees, by an Authorised Signatory of the CAA as agent for the ATT Trustees:

Signature of an Authorised Signatory of the CAA as agent for the ATT Trustees

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Name of Authorised Signatory of the CAA as agent for the ATT Trustees

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