

On behalf of the Civil Aviation Authority
Paul Anthony Smith
First Witness Statement
Exhibit: PAS1
Dated: 22 September 2019

No.

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)

IN THE MATTER OF THE LIQUIDATION COMPANIES
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

EXHIBIT PAS1

This is Exhibit marked PAS1 referred to in the Witness Statement of Paul Anthony Smith dated 22 September 2019

Signed...

Paul Smith

PAUL ANTHONY SMITH

Dated...

22/09/2019

DEED OF VARIATION

RELATING TO 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 AND 18 MAY 2016

THIS DEED OF VARIATION is made on 29 April 2019 between:

- (1) The Secretary of State for Transport (the "**Secretary of State**"); and
 - (2) Catherine Ruth Staples, Christopher James Tingle, Paul Anthony Smith and Michael Geoffrey Medicott (the "**Trustees**")
- (together, the "**Parties**")

WHEREAS:

- (A) A fund known as the Air Travel Reserve Fund (the "**Fund**") was established in 1975 to help repatriate and meet claims for losses and liabilities incurred by passengers and customers of failed air travel operators.
- (B) In 1986, the Fund was wound up and its assets were transferred to a trust known as the Air Travel Trust set up pursuant to a Deed dated 28 January 1986 (the "**1986 Deed**") to perform the same function.
- (C) The Secretary of State subsequently declared new trusts under which the same function has been performed by a trust also known as the Air Travel Trust.
- (D) The Air Travel Trust in its current form was established by deed on 5 January 2004, as amended by deeds of variation made on 4 January 2005, 18 March 2008, 27 April 2012 and 18 May 2016 (the "**2004 Deed**").
- (E) The Secretary of State, with the consent of the Trustees, has decided to make further variations to the 2004 Deed pursuant to the terms of Clause 18 thereof, following the making of the Civil Aviation (Air Travel Organisers' Licensing) (Amendment) Regulations 2018 and the Package Travel and Linked Travel Arrangements Regulations 2018, and the Parties are entering into this Deed of Variation for that purpose.

NOW THIS DEED WITNESSETH as follows:

1. The Parties agree that from the date of this Deed of Variation, the 2004 Deed shall be varied so that it reads as set out in the form appended hereto.
2. This Deed of Variation shall be governed by and construed in accordance with the laws of England and Wales.

IN WITNESS WHEREOF this Deed of Variation has been signed and delivered as a deed by the Parties on the date first written above.

EXECUTED AND DELIVERED AS A DEED by)
BARONESS SUGG)
Minister of State)
Department of Transport)
By authority of the Secretary of State for Transport)

In the presence of:

Witness Signature

Witness Name: ...

Witness Address: ...

KINGSWAY, LONDON, W2R 6TE

EXECUTED AND DELIVERED AS A DEED by
Catherine Ruth Staples

)
)
)

In the presence of:

Witness Signature

Witness Name:

Witness Address:

EXECUTED AND DELIVERED AS A DEED by
Michael Geoffrey Medicott

)
)
)

In the presence of:

Witness Signature

Witness Name:

Witness Address:

APPENDIX

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 AND 29 APRIL 2019

WHEREAS:

- (A) A fund known as the Air Travel Reserve Fund (the "**Fund**") was established in 1975 to help repatriate and meet claims for losses and liabilities incurred by passengers and customers of failed air travel operators.
- (B) In 1986, the Fund was wound up and its assets were transferred to a trust known as the Air Travel Trust set up pursuant to a Deed dated 28 January 1986 (the "**1986 Deed**") to perform the same function.
- (C) The Secretary of State subsequently declared new trusts under which the same function has been performed by a trust also known as the Air Travel Trust.
- (D) The Air Travel Trust in its current form was established by deed on 5 January 2004 as amended by deeds of variation on 4 January 2005, 18 March 2008, 27 April 2012 and 18 May 2016 (the "**2004 Deed**")
- (E) The Secretary of State, with the consent of the Trustees (as defined below), has amended the 2004 Deed in accordance with Clause 18 thereof by a deed of variation dated 2019 (the "**Deed of Variation**").
- (F) This deed sets out the terms of the 2004 Deed as varied by the Deed of Variation.

NOW THIS DEED WITNESSETH as follows:

1. THIS deed, being the 2004 Deed as varied by the Deed of Variation, shall **hereafter** be referred to as the "**Deed**".
2. THE parties hereto agree that, notwithstanding any provisions to the contrary set out herein or in any other relevant document:
 - (a) any guarantee relating to borrowings by the Air Travel Trust under the 2004 Deed shall not be affected but shall continue to apply as if the same related to the Air Travel Trust as constituted by this Deed;
 - (b) any other right, privilege, obligation or liability acquired, accrued or incurred under the 2004 Deed shall continue as if acquired, accrued or incurred under this Deed; and
 - (c) any investigation, legal proceeding or remedy in respect of any such **guarantee**, right, privilege, obligation or liability shall not be affected but shall continue to apply as if the same related to the Air Travel Trust as constituted by this Deed
3. THE trust constituted by this Deed shall be known as the "Air Travel Trust" unless and until the Trustees adopt and apply to it (as they are hereby entitled to do) some other name.
4. TERMS defined in the ATT Regulations and the ATOL Regulations (as each term is defined below) shall bear the same meaning when used in this Deed unless otherwise defined herein. The following expressions have the following meanings:

"Act" means the Civil Aviation Act 1982 as amended from time to time,

"Agent" means a person who acts as agent on behalf and with the authority of a disclosed identified principal who is an ATOL holder provided that such person, immediately upon their receipt of any payment for flight accommodation being made available:

- (a) is entitled to supply an ATOL Certificate on behalf of the ATOL holder without reference to the ATOL holder;
- (b) is able to bind the ATOL holder to the contract for flight accommodation, and
- (c) acts in accordance with the terms of a written agency agreement which complies with such requirements as the CAA publishes from time to time;

"air travel organiser" means a person whose activities consist of or include activities in respect of which he is required by virtue of any regulations for the time being in force under Section 71 of the Act to hold an ATOL;

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

"ATOL Certificate" means a document which complies with such requirement as the CAA publishes from time to time;

"ATOL holder" means a person who holds an ATOL;

"ATOL Regulations" means The Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012 as such regulations may be amended, supplemented or replaced from time to time;

"ATT Regulations" means The Civil Aviation (Contributions to the Air Travel Trust) Regulations 2007 as such regulations may be amended, supplemented or replaced from time to time;

"Beneficiary" means a person to whom the Trustees will make a payment of any part of the Trust Fund under their power in Clause 6(2) hereof;

"CAA" means the Civil Aviation Authority;

"CAA Chair" means a Member of the CAA appointed as Chair of the CAA by the Secretary of State under section 2 of the Act;

"certified licensable transaction" means a transaction which the CAA has certified in an Expenditure Report to be a licensable transaction;

"consumer" includes a traveller and means an individual who:

- (a) makes use of flight accommodation for travel in person or provides it to another person who uses that flight accommodation for travel in person; or
- (b) intends to make use of flight accommodation for travel in person or intends to provide it to another person to use that flight accommodation for travel in person; or
- (c) makes use of flight accommodation for travel in person which has been provided to them by a person who is a consumer by reason of sub-paragraph (a) of this definition,

but is not a person who procures flight accommodation in the course of business while acting as the agent of another person who uses that flight accommodation for travel in person;

"Expenditure Report" means a report provided by CAA to the Trustees, in which inter alia, the CAA certifies that the ATOL holder named in the report is a person who is a Failed

ATOL holder or Potential Failed ATOL holder and

- (a) losses, liabilities or expenses have been incurred by or on behalf of consumers as a result of that Failed ATOL holder not fulfilling its obligations under or in connection with transactions that CAA certifies to be licensable transactions as defined in this Deed; and/or
- (b) liabilities or expenses that have been incurred by the Trustees prior to failure of that ATOL holder were in respect of contingency plans for a Potential Failed ATOL holder; and/or
- (c) losses, liabilities or expenses have otherwise been incurred which the Trustees have powers to make payments for under the terms of this Trust Deed;

"Failed ATOL holder" means an ATOL holder, or a person who held an ATOL within the previous 6 months and:

- (a) who, in the opinion of the CAA:
 - (i) has gone into insolvency; or
 - (ii) cannot or will not be able to meet in whole or in part its obligations to its consumers; and/or
 - (iii) will fail to meet in whole or part its obligations to its consumers; and
- (b) in respect of whom the CAA publishes a notice of failure of that ATOL holder in the "Register of Failed ATOL holders" published by the CAA;

Any reference to "Failed ATOL holder" elsewhere in this Deed, including in the other definitions in this clause 4, should be read as to include Failed EEA ATOL holder.

"Failed EEA ATOL holder" means a person who is not an ATOL holder but who is established in an EEA state other than the UK and who held an ATOL on 30 June 2018 which expired on or before 31 January 2020 and:

- (a) who, in the opinion of the CAA:
 - (i) has gone into insolvency; or
 - (ii) cannot or will not be able to meet in whole or in part its obligations to its consumers; and/or
 - (iii) will fail to meet in whole or part its obligations to its consumers; and
- (b) in respect of whom the CAA publishes a notice of failure of that ATOL holder in the "Register of Failed ATOL holders" published by the CAA;

"flight accommodation" means accommodation for the carriage of persons on a flight in any part of the world;

a **"Flight-Plus"** exists when in respect of a booking made on or before 30 June 2018:

- (a) flight accommodation is made available which includes as a minimum:
 - (i) a flight out of the United Kingdom; or
 - (ii) a flight into the United Kingdom where the consumer has commenced the journey in the United Kingdom and departed the United Kingdom using another means of transport; and
- (b) living accommodation outside the United Kingdom or self-drive car hire outside the United Kingdom or both is supplied by any person under or in connection with the contract for such flight accommodation; and
- (c) such living accommodation or self-drive car hire is requested to be booked by or on behalf of the consumer on the same day as the consumer requests to book the flight accommodation, the previous day or the next day; and

- (d) the arrangement covers a period of more than twenty-four hours or includes overnight living accommodation,

PROVIDED THAT:

- (I) where a Flight-Plus exists, any other tourist services will be included in the Flight-Plus if such services:
 - (a) are not ancillary to flight accommodation or living accommodation;
 - (b) account for a significant proportion of the Flight-Plus;
 - (c) were supplied under or in connection with the contract for the flight accommodation; and
 - (d) were requested to be booked by or behalf of the consumer on the same day as the consumer requested to book the flight accommodation, the previous day or the next day; and
- (II) a package is not a Flight-Plus except -
 - (a) where a package does not include flight accommodation, flight accommodation (as described in (a) above) is requested to be booked by or on behalf of the consumer on the same day as the consumer requests to book the package, the previous day or the next day; or
 - (b) where a package does include flight accommodation, living accommodation or self-drive car hire outside the United Kingdom is requested to be booked by or on behalf of the consumer on the same day as the consumer requests to book the package, the previous day or the next day;
- (III) a flight which begins and ends in the United Kingdom does not form part of a Flight-Plus;
- (IV) a Flight-Plus will cease to exist if:
 - (a) the consumer withdraws from the contract for any component of the Flight-Plus; and
 - (b) as a consequence of that withdrawal, the requirements in paragraphs (a), (b) or (c) of this definition are no longer satisfied;

"Flight-Plus arranger" means a person (other than the operator of the relevant aircraft) who, in respect of a booking made on or before 30 June 2018:

- (a) as a principal or agent, makes available flight accommodation in response to a request to book which has been made directly to them by a consumer; and
- (b) has taken or takes any step which is intended to include, facilitate or enable or has the effect of including, facilitating or enabling the inclusion of that flight accommodation as a component of a Flight-Plus;

"Fulfilment Partner" means any third party, including (without limitation) a claims handler, appointed by the Trustees to act on behalf of or at the request of the Air Travel Trust in making arrangements for consumers in accordance with the terms of this Deed;

"licensable transaction" means a "relevant booking" as defined in the ATT Regulations; a relevant booking being 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;

"Member" means a person appointed by the Secretary of State under section 2 of the Act;

"package" means, if booked on or before 30 June 2018, the pre-arranged combination of at least two of the following components when sold or offered for sale at an inclusive price and when the service covers a period of more than twenty-four hours or includes overnight accommodation:

- (a) transport;
- (b) accommodation;
- (c) other tourist services not ancillary to transport or accommodation and accounting for a significant proportion of the package, and
 - (i) the submission of separate accounts for different components shall not cause the arrangements to be other than a package;
 - (ii) the fact that a combination is arranged at the request of the consumer and in accordance with the consumer's specific instructions (whether modified or not) shall not of itself cause it to be treated as other than pre-arranged;

and, if booked after that date, has the same meaning as in regulation 4A of the ATOL Regulations;

"Potential Failed ATOL holder" means an ATOL holder that CAA has **certified** in an Expenditure Report to be an ATOL holder, or a person who held an ATOL within the previous 6 months:

- (a) who, in the opinion of the CAA is at risk of:
 - (i) going into insolvency; or
 - (ii) not being willing or able to meet in whole or in part its obligations to its consumers; and/or
 - (iii) failing to meet in whole or part its obligations to its consumers; and
- (b) in respect of whom there is potential that the CAA may have to consider whether to publish a notice of failure of that ATOL holder in the "Register of Failed ATOL holders" published by the CAA;

"Secretary of State" means the Secretary of State for Transport for the time being;

"Specified Period" means the period beginning on the 5 January 2004 and enduring for twenty-one years thereafter and the said number of years shall be the perpetuity period applicable to this Deed;

"Trustees" means:

- (a) three or more Members appointed as Trustees jointly by the CAA's Chief Executive Officer and CAA Chair;
- (b) one or more employee of the CAA appointed as a Trustee jointly by the CAA's Chief Executive Officer and CAA Chair; and
- (c) such additional persons as may be appointed pursuant to clause 11 hereof, and in the singular means any one of them;

"Trust Fund" means and includes:

- (a) the trust fund and all other assets subject to the trusts declared by the Deed dated 28 January 1986 made between the Secretary of State of the one part and Raymond Colegate CBE, Ian Edward Donovan, Thomas McMillan and Gillian

Mary Eve White of the other part;

- (b) all money investments or other assets hereafter paid or transferred by any person or persons to or into the control of the Trustees and accepted by them as additions to the Trust Fund including (but without limitation) all contributions paid by air travel organisers pursuant to regulations made under section 71A of the Act;
- (c) any property the proceeds of sale whereof are required or directed to be held upon the trusts hereof,
- (d) all other capital assets including any choses in action and capital money which hereafter by any means become or are made subject to the trusts hereof, and
- (e) the investments property and other assets from time to time representing the foregoing items or any part or parts thereof.

5. THE Trustees shall hold the Trust Fund and the income thereof during the Specified Period upon the trusts and with and subject to the powers and provisions hereinafter declared and contained. The primary purpose of the Trust Fund (without limitation) is the provision of compensation for losses incurred or suffered by consumers and others who suffer losses or incur costs as a result of the provision to consumers of compensation or compensating services, in each case as a result of a Failed ATOL holder not fulfilling its obligations in relation to certified licensable transactions (whether being part of a package, a Flight-Plus or otherwise).

6. THE Trustees shall have the following powers which are exercisable if and as the Trustees (or two or more of them in accordance with clause 12) in their absolute discretion should see fit (and, where relevant, whether before or after a relevant consumer has departed on the outward leg of the relevant journey on the date of failure of the applicable ATOL holder):

- (1) power from time to time during the Specified Period to accumulate the whole or any part of the income and capital of the Trust Fund by investing the same and the resulting income thereof in any investments authorised in accordance with this Deed and adding the accumulations to the capital of the Trust Fund;
- (2) power (subject where relevant to clause 7 hereof) at any time or times during the Specified Period to pay or apply the whole or any part of the Trust Fund and of any income thereof (without making any distinction between capital and income);
 - (a) to or for the benefit of any consumer in respect of any of the following:
 - (i) any loss which, in the opinion of the Trustees, has been incurred by or on behalf of such consumer in respect of any payment made by or on behalf of the consumer to a Failed ATOL holder or to the Agent of a Failed ATOL holder under or with a view to entering into a certified licensable transaction; or
 - (ii) any loss or liability which, in the opinion of the Trustees has been incurred by or on behalf of such consumer in consequence of a breach by the Failed ATOL holder or of the Agent of the Failed ATOL holder of any of their relevant obligations towards the consumer under or in connection with a certified licensable transaction;
 - (b) in order to relieve loss occasioned to consumers by the failure of an ATOL holder by providing flight accommodation or other means of transport for consumers in substitution for flight accommodation which a Failed ATOL holder was to provide or was to arrange to be provided in accordance with his obligations under or in connection with any certified licensable transaction;
 - (c) in order to relieve loss occasioned to consumers by the failure of an ATOL

holder by providing living accommodation, car hire, transfers, food, movement of baggage, funds to meet relevant incidental **expenses** and any other tourist services which are purchased by a consumer as either part of a package with a certified licensable transaction or a Flight-Plus with a certified licensable transaction, in substitution for any of the foregoing which a Failed ATOL holder was to provide or was to **arrange** to be provided in accordance with its obligations under or in connection with the relevant certified licensable transaction and, in addition, by providing living accommodation and funds to meet incidental expenses **occasioned** to consumers by the failure of an ATOL holder;

- (d) to or for the benefit of any Fulfilment Partner who arranges for the provision of any of the services listed in clauses 6(2) (a) (b) and (c) in order to put such Fulfilment Partner in funds either to provide the relevant **services** itself or to pay the service providers for the provision of the relevant **services** (whether before or after the Fulfilment Partner has incurred such costs);
- (e) to or for the benefit of any Fulfilment Partner in order to pay for any fees charged by or to the Fulfilment Partner for the provision of its arranging services to the Air Travel Trust,
- (f) to Flight-Plus arrangers which have made the flight accommodation element of a Flight-Plus available as Agent for another ATOL holder and that other ATOL holder has become a Failed ATOL holder, by way of a contribution to the cost incurred by such Flight-Plus arranger in making suitable alternative arrangements for the relevant consumers and/or refunding and/or compensating the relevant consumers as **required** by the terms of that Flight-Plus arranger's ATOL (pursuant to the ATOL Regulations);
- (g) to third parties in settlement of any claim or class of claim pursued by any such third party against the Air Travel Trust, any Trustee (in his or her capacity as such) or otherwise in relation to the Trust Fund or this Deed, such settlements to be made at the sole discretion of the Trustees,
- (h) to suppliers of services, including (without limitation) professional services and aviation services in respect of contingency plans for a **Potential Failed** ATOL holder, whether or not that ATOL holder in fact subsequently fails and whether or not in consequence of making that payment a **person** may also benefit who is not a consumer having a certified licensable transaction;
- (i) to meet the cost of ancillary services or professional fees relating to the purposes of this Trust, including (without limitation) the administrative needs and promotion of the ATOL protection provided by the Air Travel Trust, the promotion of the ATOL protection provided by the ATOL Certificate and/or the education of consumers and/or the public about the ATOL protection provided by the Air Travel Trust, including but not limited to any retainer fees charged by external call centres and social media providers (and subsequent fees charged for call handling) whether or not those services are in fact ultimately required to be delivered by the Trustees;
- (j) in meeting any expenses incurred in relation to making **payments** out of the Trust Fund and/or setting up and administering a scheme for the exercise of the powers in (a) to (i) above whether those expenses were incurred by the Trustees or by any agent acting on their behalf; and
- (k) in meeting any administration fee charged in accordance with clause 10(17) hereof.

7. IN relation to the powers set out in clause 6(2) (other than clauses 6(2)(g)(i) and (j)) hereof:

- (1) the powers may only be exercised if:
 - (a) a Failed ATOL holder held an ATOL at the time of booking by or on behalf of a consumer or at any time in the three months prior to the time of booking. For these purposes, the time of booking means the time when a payment was first made by or on behalf of a consumer to the air travel organiser under or in contemplation of entering into a certified licensable transaction; or
 - (b) the CAA has certified in an Expenditure Report that expenses have been reasonably incurred in respect of a Potential Failed ATOL holder;
- (2) although the Trustees are entitled to apply all or any part of the Trust Fund for the purposes set out in clause 6(2) where a bond or other security has been provided by or on behalf of the Failed ATOL holder in accordance with any regulations made under Section 71 of the Act, then the ultimate burden in respect of payments made under clause 6(2) shall be borne by the money received pursuant to such bond or security; and
- (3) for the avoidance of doubt it is hereby declared that the Trustees may exercise any of the said powers in respect of claims arising from or in connection with any defaults occurring before 5 January 2004.

8. IN default of and subject to any exercise of the power in clause 6(2) hereof and to the extent that the trusts hereby declared shall not validly take effect and subject to clause 16 hereof, the Trustees shall hold the capital and income of the Trust Fund upon trust for such persons and purposes in such shares and upon such conditions as the Secretary of State shall by Order made before the end of the Specified Period direct and, in default of such an Order, for the Secretary of State.

9.

- (1) The Trustees shall have power to effect or concur in effecting any transaction concerning or affecting the trusts and powers contained in this Deed or any part of the Trust Fund or any other property whatsoever if the Trustees think the transaction is beneficial for such trusts and powers as if the Trustees were a sole absolute beneficial owner of the Trust Fund. Without prejudice to the generality of the foregoing, "transaction" includes any sale, exchange, assurance, grant, lease, surrender, reconveyance, release, reservation or other disposition and any purchase or other acquisition and any covenant, contract, licence, option or right, pre-emption and any compromise, partition, insurance guarantee or indemnity or any other dealing or arrangement including the delegation of any of the Trustees' powers under this Deed; "effect" has the meaning appropriate to the particular transaction and references to "property" include references to restrictions and burdens affecting property.
- (2) For the avoidance of doubt insofar as any obligation to pay any money or monies arises pursuant to a transaction which the Trustees effect or concur in effecting pursuant to sub-paragraph (1) of this clause 9, the Trustees shall be entitled to make such payment or payments from the Trust Fund and nothing in clause 7(2) hereof shall affect this entitlement.

10. WITHOUT prejudice to the generality of clause 9 hereof, the Trustees shall have and may exercise at any time or times the following powers:

- (1) power to borrow or to lend money for any purpose connected with the trusts and powers hereof whether with or without giving or receiving security;
- (2) power in connection with the investment and changing of investments of trust money:
 - (a) to obtain and pay for the advice of such broker or other persons as the

Trustees may think fit; and

- (b) to employ any banking or merchant banking company or firm or other person or persons to manage such investments and to delegate to such manager or managers all or any of the duties or powers of the Trustees in respect of the investments or changing of investments of trust money;
- (3) power to appoint any one or more of the Trustees to be the agents of the Trustees for the purpose of operating any bank or building society account of the Trustees or for the purpose of collecting any income of or managing or administering any property (in any part of the world) comprised in the Trust Fund or for any other purpose for which the Trustees may appoint agents;
- (4) power (without prejudice to the jurisdiction of the Court) to decide what money or property represents income and what represents capital and how as between the capital and income of the Trust Fund any expenses or costs shall be borne or provided;
- (5) power to enter into any arrangement or contract notwithstanding that the person or persons with whom or on whose behalf the arrangement or contract is made are or include one or more of the Trustees or an ATOL holder;
- (6) power to make such rules and regulations and policy statements dealing with the management, administration, payment, application or distribution of the Trust Fund or any part thereof and with matters connected therewith as the Trustees from time to time may think fit and from time to time revoke and replace all or any such rules or regulations or policy statements;
- (7) power to appoint, engage or retain such persons including without limitation, solicitors, accountants, brokers or any other agents as the Trustees may think fit or convenient to transact any business required to be done (including the receipt and payment of money) and any act in connection with such management, administration as is referred to in sub-clause (9) of this clause 10, payment, application or distribution and (pursuant to the general power for that purpose conferred by sub-clause (6) of this clause 10) to make amend revoke and replace rules and regulations for the purpose of defining the functions and powers of any such persons and power also (if the Trustees think fit) to pay an honorarium fee or salary to and the expenses of any persons even if the Trustees could transact that business by their own employees or personally;
- (8) power to make payment for the purpose of seeking professional advice in respect of the circumstances of potential as well as actual failures of ATOL holders; whether or not in consequence of making that payment a person may also benefit who is not a consumer having a certified licensable transaction.
- (9) in addition to all statutory powers of delegation, power to delegate all or any of the trusts powers and duties, and discretions vested in the Trustees hereunder for any period or periods (which may be renewed from time to time) or such terms as the Trustees think fit to any person or persons, and may grant powers of sub-delegation, and upon such terms (including the remuneration and the payment of the expenses of the delegatee or delegates and including provision for the delegates if more than one to exercise any such power or duty either jointly or jointly and severally) as the Trustees think fit (without being liable for the acts or defaults of any such delegatee) and to revoke or modify any such delegation or conditions or terms. For the avoidance of doubt, where the Trustees delegate the power contained in clause 6(2) hereof, references in clause 6(2) to the opinion of the Trustees shall be construed as also being a reference to the opinion of a delegatee or delegates where relevant;
- (10) power to enter into any arrangement or transaction or to make any payment with a view to keeping the business of a Failed ATOL holder in operation for such period as the Trustees think fit with a view to providing or assisting in the provision of the carriage which the Failed ATOL holder was to provide or was to arrange to be provided in accordance with its obligations under any certified licensable transaction

and/or with a view to minimising potential losses, liabilities and expenses of the types referred to in clause 6(2) hereof;

- (11) power to appoint such persons as the Trustees may think fit or convenient to act in connection with such management or administration and (pursuant to the general power for that purpose conferred by sub-clause (6) of this clause 10) to make, amend, revoke and replace policies and/or contracts for the purpose of defining the functions and powers of any such persons and power also (if the Trustees think fit) to pay an honorarium fee or salary to and the expenses of any persons;
- (12) power to delegate from time to time to any such persons all or any of the powers and duties of the Trustees hereunder;
- (13) power to insure the Trust Fund against claims for payments arising as a result of the inability of one or more ATOL holders to meet their financial commitments or for sharing with insurers the burden of payment of such claims;
- (14) power to issue or grant any mortgage, charge lien or other security over all of any part of the property or assets of the Air Travel Trust (whether present or future) including without limitation the Trust Fund, and also by such means to secure and guarantee the performance by the Trustees of any obligation undertaken by them;
- (15) power to undertake interest rate and currency swaps, options, swap option contracts or other financial instruments including hedging agreements and derivatives of any kind;
- (16) power to bring, defend or fund legal proceedings in relation to the Trust Fund or to any other matter concerning the trusts and powers set out in this Deed or their administration including (but without prejudice to the generality of the above) the power to fund litigation, to enforce any bond or other security provided to the CAA or the Trustees or the Air Travel Trust by any air travel organiser; and
- (17) power to charge beneficiaries an administration fee in relation to the making of payments to them hereunder and to set-off such administration fee from the relevant payment to a beneficiary.

11. THE statutory provisions about the appointment retirement and discharge of trustees shall apply to the trusts hereof subject to the following provisions of this clause 11:

- (1) upon a Trustee retiring from or otherwise vacating any office or employment of the CAA referred to in subsection (a) or (b) of the definition of Trustees and subject to the provisions of that clause the Trustee who until retirement or otherwise held the relevant Office of the CAA shall automatically cease to be a Trustee hereof and the CAA Chair and CAA CEO shall jointly appoint another Trustee provided that in the event of a delay in the appointment the remaining Trustees can act notwithstanding a vacancy in their number;
- (2) upon a Trustee being appointed pursuant to clause 11(1) above the remaining Trustees and the person who has ceased to be a Trustee shall take all steps as are necessary to vest the Trust Fund in the remaining Trustees and the new Trustee jointly subject to the terms hereof;
- (3) the Secretary of State may by deed appoint up to a maximum of 3 trustees in addition to the persons referred to in the definition of Trustees;
- (4) upon a person becoming a Trustee in accordance with the provisions hereof, the other Trustees shall have power to vest the Trust Fund in the new Trustee so that thereafter:
 - (a) the new Trustee shall have all the same powers and discretions as are hereby conferred on the Trustees in relation to the Trust Fund and the income thereof; and
 - (b) subject to paragraph (a) of this sub-clause all property held by such new Trustees and all property retained by the Trustees shall remain subject to

the same trusts powers and provisions as if no new Trustees had been appointed;

- (5) a person shall immediately cease to be a Trustee in any of the following circumstances:
- (a) such person is, or is deemed for the purposes of any applicable law to be, unable to pay its debts as they fall due or insolvent;
 - (b) such person admits its inability to pay its debts as they fall due;
 - (c) such person suspends making payments on any of its debts or announces an intention to do so;
 - (d) such person commits an act of bankruptcy;
 - (e) by reason of actual or anticipated financial difficulties, such person begins negotiations with any creditor for the rescheduling or restructuring of any of its indebtedness;
 - (f) any of such person's indebtedness is subject to a moratorium;
 - (g) a certificate is issued for the summary administration of such person's estate;
 - (h) such person enters into any composition, scheme, individual voluntary arrangement or other arrangement with its creditors or has an interim order made in relation to him or her;
 - (i) a bankruptcy order is made or such person is otherwise adjudicated bankrupt (which includes any order made in relation to the Air Travel Trust under Part 64.2 of the Civil Procedure Rules);
 - (j) a receiver, receiver and manager, judicial manager, trustee in bankruptcy, nominee, supervisor, official manager or similar person is appointed in respect of it or any of its assets;
 - (k) any step is taken which could result in any of the events referred to in sub-paragraphs (g) to (l) above or a statutory demand is served on such person with respect to any of the matters referred to in sub-paragraphs (g) to (l) above which is not discharged within fourteen days; or
 - (l) any other analogous step or procedure is taken in any jurisdiction

12. ANY act or decision by two or more of the Trustees shall have the same force and effect as if it were the act or decision of all of them, provided that:

- (a) all Trustees have been notified and not raised any objection; or
- (b) the act or decision is one in respect of which all the Trustees have agreed that at least two or more of them have the authority of the others to act.

13. THE Trustees may in the execution of any of the trusts of this Deed or in the exercise of any of the powers given to them by this Deed or by law sell property or lend money to or buy property or borrow money from or carry out any other transaction with the trustees of any other trust or the executors or administrators of any estate notwithstanding that the Trustees or any of them are or is the same person as those trustees, executors or administrators or any of them and where the Trustees are the same persons as those trustees, executors or administrators the transaction shall be binding on all persons then or thereafter interested under this Deed though effected and evidenced only by an entry in the accounts of the Trustees.

14. IN the professed execution of the trusts and powers hereof no Trustee shall be liable for any loss to the Trust Fund arising by reason of anything done or caused by them to be done in

the exercise or purported exercise of the powers vested in them herein or by reason of the negligence or fraud of any agent employed by him or by any other Trustee hereof (although the employment of such agent was not strictly necessary or expedient) or by reason of any mistake or omission made in good faith by any Trustee hereof or by reason of any failure to comply with any duty of care applicable to him or by reason of any other matter or thing except wilful and individual fraud or wrongdoing on the part of the Trustee who is sought to be made liable.

- 15. NO** decision of or exercise of a power by the Trustees shall be invalidated or questioned on the ground that the Trustees or any of them had a direct or indirect interest in such decision or in the exercise of the power, including membership of, or employment by, the CAA.
- 16. WITHOUT** prejudice to all indemnities conferred upon the Trustees generally by law the Trust Fund will indemnify the Trustees and each of them and their respective personal representatives against all actions, claims, demands, costs and expenses arising or incurred by them as a result of anything done by them in the exercise or purported exercise of the powers vested in them herein.
- 17. THE** Trustees shall keep proper accounts and proper records in relation to accounts and shall prepare in respect of each period of account a statement of accounts in such form as the Secretary of State may direct and shall arrange for the accounts to be audited in such manner as the Secretary of State may direct and shall make to the Secretary of State within a period to be specified by him at the end of each period of account a report on the performance of their functions during that period and to include in that report a copy of the statement of accounts prepared in respect of that period in accordance with this clause 17 and any report made by the auditors on the statement or on the accounts. In this clause 17 "period of account" means the period beginning on the date hereof or, if later, the date on which the latest variation hereof was made and ending on the subsequent 31st March, and thereafter each subsequent period of twelve months beginning on 1st April and ending on the 31st March.
- 18. THE** trusts, powers and provisions of this Deed may at any time or times be varied or terminated by Deed during the Specified Period by the Secretary of State who may in his complete discretion direct the Trustees to dispose of the Trust Fund as he thinks fit.
- 19. THE** Secretary of State may, but shall not be obliged to, give the Trustees guidance on their exercise of their powers under this Deed and the Trustees shall have regard to that guidance, but shall not be obliged to follow it. The Trustees shall comply with any obligations they have agreed to in relation to government spending controls.