

## **DER TOURISTIK UK AGENCY AGREEMENT**

Agreement made 30/05/2019 between:-

- (1) DER Touristik UK Limited of Touristik House, One Dorking Office Park, Dorking, Surrey RH10 1HJ ("Operator")
- (2) The Agent referred to in Schedule 1

### **BACKGROUND**

- 1.1 The Operator is the holder of ATOL No 0132 and must comply with ATOL Regulations and ATOL Standard Terms.
- 1.2 The Operator is also a member of ABTA Ltd and must comply with the ABTA Code of Conduct.
- 1.3 The purpose of this Agreement is to appoint the Agent as the Operator's agent pursuant to Regulations 12 and 22 of ATOL Regulations, to comply with ATOL Standard Term 1.4. in respect of all Licensable Transactions and to generally regulate their relationship.

### **START DATE**

2. This Agreement will take effect from 30/05/2019 or, if later, the date on which the Agent first seeks to confirm a Booking with the Operator.

### **DEFINITIONS AND INTERPRETATION**

- 3.1 In this Agreement, the following words have the following meanings:-
  - (1) "ABTA" means ABTA Ltd, the trade association;
  - (2) "ABTA Requirements" means the requirements, rules and codes of ABTA;
  - (3) "Agent" means the travel agency specified in Schedule 1 including all current and future branches and trading addresses (unless otherwise specified by the Operator at any time);
  - (4) "Agreement" means this agreement including all schedules, additions and amendments except in Schedule 4 where Agreement means the agreement set out in Schedule 4;
  - (5) "Applicable Laws" means all applicable laws, regulations, rules, codes of practice and other legal requirements including, without limitation, ABTA Requirements, ATOL Requirements, Data Protection Legislation and PT Regulations;
  - (6) "ATOL" means an Air Travel Organiser's Licence;
  - (7) "ATOL Protected Products" means the flight inclusive packages and flight only arrangements which the Operator sells and offers for sale as principal and which will be protected by the Operator's ATOL and, where the context requires, any of them;
  - (8) "ATOL Related Information" means the information which must be provided to consumers in accordance with ATOL Standard Term 1;
  - (9) "ATOL Requirements" means ATOL Regulations, all other legislation which relates to or affects the sale or advertising of flight accommodation by the Agent or the Operator, ATOL Standard Terms (including without limitation, the ATOL Related Information) and all other requirements of the CAA as applicable and varied from time to time;
  - (10) "ATOL Regulations" mean the Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012 (Statutory Instrument 2012 No 1017) as amended;
  - (11) "ATOL Standard Terms" means the ATOL standard terms published by the CAA in the CAA's Official Record Series 3 as varied from time to time and "ATOL Standard Term" and "AST" means any particular such term or terms as specified;
  - (12) "Balance Due Date" means the date on or by which the full cost of the Product must be paid to the Operator under its applicable booking conditions;
  - (13) "Booking(s)" means any booking(s) of any Product(s) made by any Customer(s) with the Operator through the Agent;

- (14) "CAA" means the Civil Aviation Authority;
- (15) "Consumer" has the meaning specified in regulation 4 of ATOL Regulations;
- (16) "Customer(s)" means the person(s), or any of them as the context requires, who purchase any Product(s) or on whose behalf any Product(s) is purchased. In respect of any ATOL Protected Products, Customer(s) means the consumer as defined by regulation 4 of ATOL Regulations;
- (17) "Data Protection Legislation" means the Data Protection Act 1998, the Data Protection Act 2018 and the EU General Data Protection Regulation (EU Reg 2016/679);
- (18) "Failure of the Operator" has the same meaning, in respect of the Operator, as that specified in regulation 23 of ATOL Regulations in relation to "failure of an ATOL holder" and "Failed", "Fails" and "Fail" in respect of the Operator, shall be construed accordingly;
- (19) "in writing" means, unless otherwise specified, by post, facsimile, e-mail (providing the Agent contacts the Operator using such e-mail address(es) as the Operator has notified the Agent in writing as the applicable one for such communications) and/or any other method agreed or notified by the Operator in writing;
- (20) "Late Booking" means any Booking which is made on or after Balance Due Date;
- (21) "Lead Customer" means the Customer who makes the Booking and/or any substitute for that person;
- (22) "Licensable Transaction" means an offer made by a Consumer (or their agent) to purchase flight accommodation (whether as a flight only or as part of a flight inclusive package) for one or more persons on a flight which is accepted by the Operator and constitutes an activity in respect of which the Operator is required to hold an ATOL in accordance with ATOL Regulations;
- (23) "Mandated Agency Terms" means the schedule of agency terms which the Operator is required by ATOL Regulations and ATOL Standard Terms to include in any agency agreement with its agents which applies to ATOL Protected Products as specifically set out in AST 1.4 and any variation of the same by the CAA, the current version of which appear in Schedule 4;
- (24) "package" means a combination of travel services which constitute a package in accordance with the PT Regulations;
- (25) "Principal Agency Agreement" means any agreement or agreements between the parties which applies to the sale or offering for sale of any travel related services or products of the Operator by the Agent as agent for the Operator;
- (26) "Product(s)" means the inclusive holiday arrangements, ATOL Protected Products, transportation, accommodation, car hire, transfers and all other products and services of whatever nature as the Agent is from time to time asked to sell on the Operator's behalf as agent for the Operator;
- (27) "PT Regulations" mean the Package Travel and Linked Travel Arrangements Regulations 2018.

3.2 All terms of this Agreement which have a defined meaning in ATOL Regulations have the same meaning in this Agreement.

3.3 Words denoting the singular include the plural and vice versa, words denoting any gender include any other gender and references to clauses, sub-clauses and schedules are, unless otherwise stated, to clauses and sub-clauses of and schedules to this Agreement. References to any person(s) include, where the context requires and permits, natural persons, incorporated and unincorporated bodies, associations, firms and partnerships. The headings in this Agreement are for reference purposes only.

#### APPOINTMENT OF THE AGENT

- 4.1 Subject to clause 4.2, the Operator appoints the Agent to be its non exclusive retail agent to sell and market the Products within the United Kingdom.
- 4.2 In respect of ATOL Protected Products, the Operator appoints the Agent to be its non exclusive agent for an ATOL holder for the purpose of and in accordance with regulation 12 of ATOL Regulations to sell and market those ATOL Protected Products within the United Kingdom to Customers.
- 4.3 This Agreement replaces any existing agreement between the parties (which is terminated as a result) except in respect of Products (other than ATOL Protected Products) which were booked by the Agent prior to this

Agreement coming into effect to which any previous arrangement will continue to apply. For the avoidance of doubt, this Agreement will apply to all ATOL Protected Products including those which were booked prior to this Agreement taking effect.

#### ATOL PROTECTED PRODUCTS

- 5.1 The Mandated Agency Terms form part of this Agreement and apply to the sale and offering for sale of all ATOL Protected Products by the Agent.
- 5.2 The Agent's authority to act as the Operator's agent in accordance with clause 4.2 is subject to and conditional on the Agent's compliance with the terms of this Agreement (including, in particular but without limitation, the Mandated Agency Terms) and with the requirements of regulation 12 of ATOL Regulations and with Standard Terms 1.1 to 1.13 inclusive.
- 5.3 Subject to the Agent complying with the terms of this Agreement, the Operator authorises the Agent to accept payment from the Customer(s) of the amount due to the Operator in respect of each Licensable Transaction and, on receipt of the applicable payment, to confirm that a contract between that the Operator and the Customer(s) concerned has come into existence in respect of that Licensable Transaction providing that, prior to the Agent doing so, the Operator has specifically confirmed to the Agent in writing or by such other method as is acceptable to the Operator in relation to that particular Licensable Transaction that the Operator is in a position to confirm it.
- 5.4 Subject to clause 5.3, the Operator authorises the Agent to supply an ATOL Certificate in respect of each Licensable Transaction following receipt of the first payment from the Customer(s) concerned without prior reference to the Operator. The Agent must provide the ATOL Certificate to the Lead Customer in accordance with Agency Term 6.1 of the Mandated Agency Terms and regulation 17 of ATOL Regulations.
- 5.5 In order to comply with clause 5.4, the Agent must, immediately it is in a position to confirm the Booking to the Customers and as directed by the Operator, either accurately provide the Operator with all information required to enable the Operator to issue an ATOL Certificate for the Customers or accurately complete the applicable CAA approved ATOL Certificate template to enable the Agent to issue an ATOL Certificate for the Customers.
- 5.6 The Agent undertakes not to accept any payment from any Customer(s) in respect of a Licensable Transaction without complying with the requirements of clause 5.4.
- 5.7 For the avoidance of doubt, this clause 5 applies only to ATOL Protected Products and not to any other Products. Without limitation, the Agent does not have any authority to confirm the existence of a contract between the Customer and the Operator unless such authority is provided by the Operator's booking conditions or is otherwise confirmed by the Operator in writing. In either case, any such authority is subject to the Agent complying with all relevant terms of this Agreement.

#### FINANCIAL PROTECTION

- 6.1 All Products are sold by the Operator as principal unless the Operator otherwise advises the Agent in writing in relation to any particular Product(s).
- 6.2 All ATOL Protected Products are financially protected by the Operator's ATOL.
- 6.3 All Products other than ATOL Protected Products which constitute a package are financially protected by the Operator's membership of ABTA.
- 6.4 All Products other than ATOL Protected Products which do not constitute a package are NOT financially protected.

#### DUTIES OF THE AGENT

7. The Agent agrees (at its own expense) to:-
  - (1) Use its reasonable endeavours to promote and sell the Products in accordance with this Agreement, giving the Operator at least as great a recommendation and exposure to potential Customers as it does other tour operators;
  - (2) Sell the Products at the prices advertised in the Operator's brochures or otherwise advertised or advised by the Operator in writing (the most recently advertised or advised price being applied). Regardless of any discount or incentive scheme which may be offered by the Agent, pay the Operator all amounts received from Customers net only of the Agent's agreed commission and associated VAT (for VAT registered agents);
  - (3) Ensure that it complies with all Applicable Laws and that all its staff are familiar with these to the extent the work they do is affected by them;

- (4) Ensure that all details relating to the chosen Product, the booking and any other conditions and relevant general information set out in the Operator's brochure or elsewhere are drawn to every Customer's attention before any Booking is taken;
- (5) Ensure that all information required by the PT Regulations and for ATOL Protected Products, ATOL Requirements, to be given to any Customer or potential Customer is so given and at the time and in the form required by the PT Regulations and ATOL Requirements. For the avoidance of doubt and without limitation, this requires compliance by the Agent as the relevant person with the information duties imposed by regulations 5, 6 and 7 of the PT Regulations by the provision to the prospective Customer of all information required to be given to the traveller before a contract is concluded. The Agent must ensure that it has a proper system in place for the provision of this information and that this is kept to at all times. ;
- (6) Obtain from the Lead Customer the appropriate minimum deposit or if the Booking is a Late Booking, full payment, for all persons named on the Booking prior to or at the same time as confirming any Booking;
- (7) Take all Bookings (whether provisional or confirmed) in accordance with the Operator's booking procedure as notified by the Operator from time to time;
- (8) Notify the Operator immediately in writing and keep a full clear written note of any special request made by a Customer. Advise any Customer making one that all special requests are subject to availability and cannot be guaranteed unless the request is a special requirement which the Operator specifically accepts in writing (which will be confirmed on the confirmation invoice issued by the Operator where applicable).
- (9) Immediately notify the Operator prior to accepting the Booking (firstly by telephone and confirmed in writing) and keep a full clear written note of any reduced mobility, disability or medical condition advised by any Customer or prospective Customer (of which full details must be obtained and passed onto the Operator at the time). Where relevant, draw to the attention of the Customer or prospective Customer the information provided by the Operator in its brochure, on its website or elsewhere as to the general suitability of the selected Product for someone with reduced mobility but emphasise that this is a general indication only as suitability depends on the specific restrictions and capabilities of the individual concerned;
- (10) Notify Customers immediately of any corrections, alterations (whether or not significant) or other information advised to it by the Operator by any means concerning any Product(s) whether so advised before or after the Product(s) concerned is booked. Where any such information is notified verbally, confirm in writing to the Customer(s) concerned as soon as possible. In the event of any alteration or proposed alteration of the terms of the contract between the Operator and the Customer or of the cancellation of any Booking, the Agent shall immediately pass on all communications received from the Operator which are intended for the Customer and vice versa;
- (11) Give Customers an accurate, clear and complete picture of the Products. Not to make any representations, verbally or in writing, to any Customer which are in addition or different to those contained in the Operator's applicable brochure, website and/or advertising material or which are contrary to corrections or alterations previously advised by the Operator unless authorised to do so by the Operator in writing;
- (12) Forward the Operator's own confirmation invoice and any other documents concerning the Product(s) booked (including in particular insurance and travel documents) to the Lead Customer immediately upon receipt by e-mail, post or in person. The Agent must pass any confirmation invoice which relates to any ATOL Protected Products to the Lead Customer in accordance with Agency Term 6.2 in Schedule 4;
- (13) Keep on file at least one copy of the Operator's current brochure(s);
- (14) Notify the Operator of any complaint concerning any Product (including any complaint or query raised by Trading Standards or any regulatory or trade body) immediately on receipt. Immediately forward to the Operator or to the Lead Customer, as applicable, all correspondence, documents and other communications of any description received from either which is intended for the other;
- (15) Promptly send to the Lead Customer all refunds received from or authorised by the Operator;
- (16) Allow the Operator and its authorised officers, employees and agents access to all premises owned, occupied or controlled by the Agent and to all files and records of any description (however and wherever stored or kept and including electronically held files and records) relating to any Booking(s) and/or to any monies paid or which may have been paid in respect of any Booking(s) at any time, during normal working hours or outside these hours on the Operator giving the Agent reasonable notice (which may be no notice in circumstances where the Operator considers the circumstances to be exceptional);
- (17) Inform the Operator in writing within 24 hours in the event that it ceases to be a member of ABTA or to hold any ATOL or other form of financial protection for payments made by Customers held by it at the date of this



Agreement or subsequently obtained or becomes aware of any reason(s) or circumstance(s) which may or will result in the cessation of such membership or the holding of such ATOL or financial protection or becomes aware of any fact(s) or circumstance(s) which has or may have any impact on such membership and/or on the holding of such ATOL or financial protection (including by way of example and not by way of limitation the fact it has reached or is about to reach the limit of its authorised seat sales for ATOL purposes);

- (18) Only to appoint any sub-agents in accordance with Agency Term 10 of the Mandated Agency Terms;
- (19) Where the Agent is a member of ABTA, comply in every respect with the applicable current rules and Code of Conduct of ABTA;
- (20) Not to sell the Products or to act otherwise than strictly in accordance with this Agreement.

#### WEBSITES

- 8. Providing the Operator has agreed in writing in advance to the Agent doing so, the Agent may refer to or feature the Products on its own website. The Agent must ensure it obtains the Operator's prior approval of all information and material relating to the Products placed on its website and that all such information and material is accurate, clear and complete. The Agent must ensure that its website complies with the PT Regulations, ATOL Regulations and all other applicable legislation and that reference to the Operator's ABTA and ATOL numbers (clearly identified as the Operator's), booking conditions and any other information required by the Operator prominently appear on every page referring or featuring any Products.

#### DUTIES OF THE OPERATOR

- 9. The Operator agrees to:-
  - (1) Ensure that it complies with all Applicable Laws;
  - (2) Ensure that it provides the Agent with all information required by the PT Regulations to be given to any Customer or potential Customer at any time in whatever form the Operator considers appropriate except where such information is already known by the Agent;
  - (3) Keep the Agent promptly informed of any changes to prices and of any significant (in the Operator's opinion) changes to any brochure and/or other materials supplied to the Agent and of any changes to or cancellation of any Product by whatever means the Operator considers appropriate;
  - (4) Comply in every respect with the applicable current rules and Code of Conduct of ABTA.

#### INDEMNITY

- 10. Each party agrees to keep the other indemnified against and for the full amount of all claims, liabilities, demands, damages, costs (including legal costs), expenses and all other sums of whatever nature which that other party reasonably incurs or becomes liable for as a result of the act(s) and/or omission(s) of the party at fault committed in breach of and/or outside the scope of this Agreement or otherwise without the authority of the other party. This indemnity will continue to apply after this Agreement comes to an end for whatever reason. For the avoidance of doubt, the Operator shall be entitled to deduct any sums owed by the Agent pursuant to this clause from any payment due to the Agent under this Agreement or any other agreement between the parties.

#### CUSTOMER INSURANCE

- 11. The Agent must ensure that all Customers have or take out suitable and adequate personal travel insurance (including cover for cancellation charges plus 24 hour emergency medical assistance and cover for medical expenses and medical repatriation). Except where the Operator agrees in writing, the Agent must not accept any Booking unless satisfied that all Customers on that Booking have such insurance.

#### AMENDMENTS AND CANCELLATIONS

- 12. The Agent must ensure that all requests by any Customer to change and/or cancel any Booking are made in writing and signed by the Lead Customer.
- 13. Immediately on receipt of any request to make any change to any provisional or confirmed Booking, the Agent must telephone the Operator's administration department or follow such other procedure as the Operator may advise from time to time. Where the Operator is able to meet the request in whole or part, the Agent must immediately obtain payment (where the Booking is a confirmed one) of the applicable amendment fee and any other costs and charges advised by the Operator from the Customer. If unable to do so for any reason, the Agent must immediately advise the Operator.

14. In the event of cancellation, the Agent must inform the Lead Customer of any obligation to pay cancellation charges. The Agent must further immediately inform the Operator first by telephone and then in writing that the particular Customer has cancelled. Where any Customer other than the Lead Customer wishes to cancel and so notifies the Agent in writing, the Agent may accept that notice as effective but only so as to cancel that Customer's place on the Booking and not that of any other person. The Agent agrees to collect payment of any additional consequential charges payable by the remainder of the persons named on the Booking in the event of part cancellation.
15. In the case of whole or part cancellation the Operator will forward to the Agent a cancellation invoice together with any applicable refund both of which the Agent must immediately forward to the Lead Customer.

#### PAYMENTS RECEIVED BY THE AGENT

16. Save for ATOL Protected Products, all monies received by the Agent from any Customer for any Product will be held by the Agent on express trust for the Operator at all times. Monies received from any Customer(s) for any ATOL Protected Products will be held by the Agent in accordance with Agency Term 5 of the Mandated Agency Terms. The Agent must, however, only collect monies from Customers in accordance with this Agreement and once a provisional or confirmed Booking has been made with the Operator.
17. Subject to Agency Term 5 of the Mandated Agency Terms but regardless of any provision to the contrary in this Agreement (including any schedule(s)) or any other agreement between the parties, the Operator (or its liquidator, administrator or receiver as appropriate in the event of the Operator being the affected party) shall be entitled to immediate payment of all sums held by the Agent on its behalf on any of the events specified below occurring:-
  - (1) on an order being made or an effective resolution being passed for the administration or the winding up of either party other than for the purpose(s) of reorganisation, reconstruction or amalgamation only without insolvency or on either party entering into a binding legal arrangement to pay its creditors less than the full amount due to them; or
  - (2) on either party becoming bankrupt or insolvent or having a receiving order made against it; or
  - (3) on either party suspending, ceasing or threatening to suspend or cease to carry on its business other than for the purpose(s) of reorganisation, reconstruction or amalgamation only without insolvency or being unable or unwilling without good reason to pay its valid debts as they fall due or on the appointment of any administrative or other receiver; or
  - (4) Where the other party is a member of ABTA, on that other party ceasing to be a member of ABTA.
18. Payment of all monies due to the Operator from the Agent must be made in accordance with Schedule 2.
19. Except where otherwise agreed, the Operator will only issue tickets or other vouchers after receipt in cleared funds of the full amount due to it for the Product(s) in question.
20. The Operator may require the Agent to make payment of monies due to it by any reasonable method as the Operator may from time to time specify (including by way of example and not by way of limitation, direct debit from the Agent's bank account). The Operator is entitled to change the said method on giving the Agent not less than 28 days notice in writing unless otherwise agreed. The Agent agrees to provide full co-operation to enable the Operator to effect any chosen method of payment including, by way of example and not by way of limitation, completing and signing any bank forms or other paperwork required by the Operator.
21. For the avoidance of doubt, any and all charges arising as a result of payment of any amount due to the Operator from the Customer by credit or charge card or by any other method shall be borne exclusively by the Agent.

#### COLLECTION OF MONIES BY THE AGENT

22. The Agent is responsible for the collection of all deposits, full payments, insurance premiums, balances, cancellation charges and other monies of any description due to the Operator from any Customer.
23. If the Agent has been unable to collect any balance due by Balance Due Date, the Agent must immediately send the Lead Customer a letter by first class recorded delivery post demanding payment within 7 days. If payment is not received within this time the Agent must immediately notify the Operator first by telephone and then in writing and provide evidence that the appropriate letter was sent.
24. The Agent is personally liable to the Operator for monies it should have but failed to collect from Customers in the following circumstances:-
  - (i) deposits where the Agent has confirmed the Booking;

- (ii) the applicable fee, costs and charges payable on amendment where an amendment request has been confirmed by the Agent;
- (iii) the total price where the Agent has confirmed a Late Booking.

#### COMMISSION

- 25. The Agent will become entitled to commission on a Booking immediately following receipt of the Operator's confirmation invoice at the rate specified in Schedule 3 or such other rate as is agreed in writing on all items shown on such invoice except for levies or taxes raised by any government or public authority and any items which the Operator and the Agent have agreed will not be subject to the payment of commission. The Agent will, however, only be entitled to deduct the commission due to it from the balance of the price when received from the Customer unless otherwise agreed with the Operator.
- 26. If a Booking is cancelled (either by the Customer or by the Operator cancelling following payment default by the Customer), the Agent will be entitled to commission at the above rate on the applicable cancellation charges provided the Agent has collected them. Any commission paid to the Agent in excess of this amount must immediately be repaid to the Operator and the Agent will have no entitlement to any greater amount.
- 27. The Agent is also entitled to commission at the above rate on amendment fees collected from Customers for amendments confirmed by the Operator.
- 28. The Agent's entitlement to commission will lapse (and if already paid must be repaid) in the event of the Operator having to cancel any confirmed Product or any Customer cancelling a confirmed Product due to the Operator making a significant change (as defined in the Operator's applicable booking conditions), in either case as a result of unusual and unforeseeable circumstances beyond the Operator's control, the consequences of which could not have been avoided even with all due care.

#### VAT

- 29. The Agent must inform the Operator immediately of any changes that occur in the Agent's VAT registration number or liability to register or de-register for VAT. The Agent is entitled, where applicable, to add VAT to its commission provided a proper VAT invoice is delivered to the Operator or such other procedure as may be agreed with the Operator is complied with. Where requested by the Operator to do so, the Agent agrees to enter into an HMRC approved Self-Billing VAT Agreement.

#### DURATION AND TERMINATION

- 30. This Agreement will take effect from the start date specified in clause 2 and continue in force indefinitely until terminated:-
  - (i) subject to clause 30(ii), immediately on the party not at fault notifying the other in writing in the event of the other party failing to perform or breaching or continuing to breach any of its obligations under this Agreement within 14 days (or such longer time as may be agreed) of being told in writing of the particular breach and required to remedy it within that time; or
  - (ii) immediately on the Operator giving the Agent notice in writing in the event of the Agent committing any material irremediable breach(es) of this Agreement or any breach(es) which in the reasonable opinion of the Operator actually or potentially significantly prejudices the Operator's position in any respect or committing any further breach(es) of this Agreement of the same or similar nature to any previous breach(es) of which the Operator has previously notified the Agent; or
  - (iii) by either party giving the other at least 28 days written notice of termination; or
  - (iv) immediately by either party giving written notice to the other on the happening of any of the events set out in clause 17; or
  - (v) immediately on the Operator giving the Agent notice in writing in the event of the actual or threatened cessation, termination or withdrawal of the Agent's membership of ABTA or of any form of financial protection by which payments made by customers of the Agent generally are financially protected by the Agent or the revocation or refusal by the CAA to renew any ATOL held by the Agent.

#### CONSEQUENCES OF TERMINATION

- 31. In the event of termination, the Agent will immediately hand over to the Operator the conduct of existing Bookings taken by it on behalf of the Operator together with all relevant booking and other forms, correspondence, files, memoranda, brochures and other publicity material. The Agent will immediately give written notice to the

Customers concerned and pay any monies held by it on the Operator's behalf to the Operator. However, where termination is effected by either party under Clause 30(iii), the Agent may continue to handle Bookings taken by it on behalf of the Operator prior to the effective date of termination until the conclusion of those Product(s).

32. Termination of this Agreement will not affect the rights of either party in existence prior to the effective date of termination with the exception of the amount of commission payable to the Agent in respect of Bookings handed over to the Operator. The full amount of commission otherwise due shall not be payable in respect of such Bookings and shall be subject to negotiation.
33. The termination of this Agreement on whatever basis and for whatever reason shall not affect clauses 10 (Indemnity), 16-21 (Payments received by the Agent), 34-36 (Data Protection) and 41 (Confidentiality) which shall continue in full force and effect.

#### DATA PROTECTION

34. The Agent and the Operator agree and acknowledge that for the purposes of the Data Protection Legislation, the Operator is the data controller and the Agent is the data processor of any personal data (as defined by the Data Protection Legislation) relating to any Customers or prospective Customers (Personal Data) including without limitation, the names and contact details of Customers, passport details, details of any disability, medical condition, reduced mobility or other health related issue and any special requests such as dietary requirements or restrictions which disclose or may disclose any health related issue or the Customer's religious beliefs.
35. The Agent agrees that it will:-
- (i) at all times comply with the Data Protection Legislation in relation to its obligations as a data processor;
  - (ii) only process Personal Data to the extent and in the manner as is necessary for the purpose of this Agreement and otherwise fulfilling its contractual obligations to the Operator in relation to the Customers concerned or otherwise in accordance with the Operator's written instructions ("Authorised Purpose") and not for any other purpose;
  - (iii) not collect any Personal Data from Customers for any reason except as specifically authorised by the Operator in writing;
  - (iv) keep complete and accurate records of all processing of Personal Data it carries out and allow the Operator and the Operator's designated auditor to inspect and audit such records and its compliance with the requirements of this clause 35 during normal working hours on giving the Agent reasonable advance notice in writing;
  - (v) ensure it has a written contract with any third party to whom any Personal Data is or may be disclosed incorporating terms which are substantially similar to those contained in this clause 35 in relation to all Personal Data made available to any third party including, without limitation, the requirement only to process the same for the Authorised Purpose (as between the Operator and the Agent, the Agent shall however remain fully liable for all acts or omissions of any such third party in relation to compliance with this clause 35);
  - (vi) ensure that it has in place and maintains appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
  - (vii) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
  - (viii) assist the Operator in responding to any Personal Data related request and in ensuring compliance with the Operator's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - (ix) notify the Operator without undue delay on becoming aware of any breach of this clause 35 by any person;
  - (x) promptly comply with any request from the Operator to amend, transfer or delete any Personal Data; and
  - (xi) at the written direction of the Operator, delete or return Personal Data and all copies thereof to the Operator on termination of this Agreement unless specifically required by the Data Protection Legislation to store the Personal Data.
36. The Operator may, at any time on giving the Agent not less than 30 days' notice, revise clause 35 by replacing it in whole or part with any applicable controller to processor standard clauses or similar terms recommended or required by any UK or other regulatory body or forming part of an applicable certification scheme.



### THIRD PARTY RIGHTS

37. The parties hereby exclude any rights that any other party may have in relation to this Agreement under the Contract (Rights of Third Parties) Act 1999.

### VARIATION

38. Except where otherwise agreed, the Operator will be entitled to add to and/or amend this Agreement by giving the Agent not less than 28 days notice in writing. The notified addition(s) and/or amendment(s) will automatically take effect on the first occasion after 28 days on which the Agent seeks to confirm a Booking with the Operator.

### NOTICES

39. Any notice given under this Agreement must be given in writing and sent by fax or pre paid first class recorded or special delivery post or delivered by hand to the other party's registered or principal office. If sent by fax or hand delivered, the notice(s) will be deemed served at the moment of delivery if delivered during the hours of 9am and 5.30pm on any day Monday to Friday other than English bank or other public holidays ("Business Day"). If delivered outside such hours, it will be deemed served when such hours next resume. If sent by post, it will be deemed served on the second Business Day after posting.

### ASSIGNMENT

40. Neither party may assign its rights or obligations under this Agreement without the prior written consent of the other, such consent not to be unreasonably withheld in the event of a proposed assignment to a subsidiary, associated or holding company.

### CONFIDENTIALITY

41. Save for the fact that the Agent is the appointed agent of the Operator for the purposes set out in this Agreement, neither party shall disclose or permit the disclosure of the terms of this Agreement to any third party without the written consent of the other unless required to do so by law or for the purposes of meeting the requirements of any regulatory body or for accountancy or tax purposes or for the purposes of seeking legal advice.

### WAIVER AND SEVERABILITY

42. No waiver of any breach shall be a waiver of any subsequent breach of this Agreement. Any failure to enforce or agreement not to enforce any rights under this Agreement shall not affect the rights of the party not at fault on any later occasion. If at any time any provision(s) of this Agreement is or becomes invalid, void, illegal or unenforceable in any respect, such provision shall be deemed severed from this Agreement but the validity, legality and enforceability of the remaining provisions of this Agreement shall continue in full force and effect and shall not be affected or impaired in any way as a result.

### PROPER LAW AND JURISDICTION

43. This Agreement is governed by English law. The parties agree that any dispute between them will be dealt with by the Courts of England and Wales only except where proceedings are brought against the Operator in any other jurisdiction in relation to any Product sold by the Agent. In this case the Operator is entitled to make the Agent a party to those proceedings.

*Amy Roullier*

.....  
Signed by an authorised representative  
on behalf of the Operator

Full Name: Amy Roullier .....

Position: Trade Sales Senior Executive

.....  
Signed by an authorised representative  
on behalf of the Agent

Full Name: .....

Position: .....

## Schedule 1

### Details of the Agent

Full Incorporated Name, Registered Company Number and Trading Name(s): .....

Trading Address: .....

ABTA or other Membership Number: .....

Head Office Address: .....

Registered Office of Agent: .....

## Schedule 2

### DER Touristik UK Automated Banking System

Immediately on the coming into effect of a contract between the Operator and the Customer, the Agent will pay all monies then held by the Agent to the Operator through the DER Touristik UK Automated Banking system (KAB). The Agent will further pay all monies subsequently received from the Customer to the Operator immediately on receipt as per the KAB schedule. KAB information is available on the Kuoni agents' website.

## Schedule 3

### Standard Rate of Commission

The Agent will become entitled to commission on a Booking immediately following receipt of the Operator's confirmation invoice of 10% or such other rate as is agreed in writing on all items shown on such invoice except for levies or taxes raised by any government or public authority and any items which the Operator and the Agent have agreed will not be subject to the payment of commission. The Agent will, however, only be entitled to deduct the commission due to it from the balance of the price when received from the Customer unless otherwise agreed with the Operator. This Agreement will be supplemented by a commercial terms agreement where appropriate.

## Schedule 4

### Mandated Agency Terms applicable to Licensable Transactions

**AGREEMENT BETWEEN THE AGENT AND DER TOURISTIK UK LIMITED ATOL NUMBER 0132 APPOINTING THE AGENT AS DER TOURISTIK UK LIMITED'S AGENT PURSUANT TO ATOL REGULATIONS 12 AND 22 ON THE DATE STATED ABOVE**

### Definitions

The definitions used in this agreement have the same meaning as those used in the ATOL Regulations 2012 (as amended).

Additionally "Licensable Transaction" means an offer made by a consumer (or their agent) to purchase flight accommodation for one or more persons on a flight which is accepted by an air travel organiser and constitutes an activity in respect of which that air travel organiser is required to hold an ATOL.

### Duration of Agreement

Agency Terms 3, 5, 8 9 and 13 remain binding on the agent even if the principal ATOL holder has failed.

### Extent of obligations

The obligations of all parties to this agreement extend only to the parties' conduct in respect of licensable transactions.

### Priority of Agency terms published by the CAA

Pursuant to AST2.2 and Agency Term 1 no agency term negotiated between the principal ATOL holder and the agent may contradict or purport to contradict the CAA's mandated terms and any that do so will be void.

## **Agency Term 1**

By making available flight accommodation to consumers in the capacity of an agent, in accordance with ATOL Regulations 9, 10 and 12, the agent is deemed to have agreed to the terms of the written agreement between the principal ATOL holder and its agent.

The terms of the agency agreement include terms mandated by the CAA to be agreed between principal ATOL holders and agents for principal ATOL holders making available flight accommodation as agents of that principal ATOL holder.

Principal ATOL holders and agents cannot agree, whether in writing, by conduct or otherwise, any terms which contradict, or purport to contradict the terms mandated by the CAA. The agent must keep a copy of this agency agreement for the period it is in force and for 12 months after it expires or is terminated.

## **Agency Term 2.1**

Agents must comply with all the terms of ATOL Standard Term 1 as if they applied directly to the agent and any requirements to set out the principal ATOL holder's name and number should be read as requirements to set out the agent's principal's name and ATOL number.

For the avoidance of doubt, agents are not permitted to use the ATOL logo without the permission of the CAA.

(a)

## **Agency Term 2.2**

The agent must at all times identify the selling, protecting principal ATOL holder on all publicity material (including websites and brochures) that identify a flight or flight inclusive package which the agent is holding out it can make available to consumers.

## **Agency Term 2.3**

Where the agent produces a receipt for money paid by a consumer, the agent must identify which part of that money is protected by the principal ATOL holder's ATOL and which, if any, is not.

## **Agency Term 3**

The agent will, if requested by the CAA, report to the principal ATOL holder the unique reference number of each ATOL Certificate supplied by it, along with the corresponding ATOL holder's reference number, where it acts as agent for the principal ATOL holder and where the transaction with the consumer was a Flight-Only or a package. If requested to do so by the CAA at any time, and including after the failure of the principal ATOL holder, the agent will provide this information to the CAA.

## **Agency Term 4**

The agent will provide any information requested by the principal ATOL holder necessary to enable the principal ATOL holder to comply with ATOL Standard Terms or with any term of its ATOL.

## **Agency Term 5**

Any payment received by the agent from consumers, for services owed by the principal ATOL holder to the consumer, is received and held by the agent on behalf of and for the benefit of the Trustees of the Air Travel Trust but subject to the agent's right and obligation to make payment to the principal ATOL holder for so long as the principal ATOL holder does not fail. If the principal ATOL holder fails the agent confirms it will continue to hold consumer payments on behalf of the Trustees of the Air Travel Trust and without any right or obligation to pay the same to the principal ATOL holder.

## **Agency Term 6.1**

Where an agent makes available flight accommodation as the agent of a principal ATOL holder, the agent must ensure an ATOL Certificate is supplied to the consumer immediately and in accordance with ATOL Regulation 17, regardless of whether the ATOL Certificate is produced by the principal ATOL holder or produced by the agent on behalf of the principal ATOL holder.

However, if an agent organises a package which includes that flight accommodation, the agent must immediately supply a package ATOL Certificate to the consumer in the agent's own name.

## **Agency Term 6.2**

Where an agent makes available a package as agent of the principal ATOL holder, the agent must additionally obtain a Confirmation (see AST 1.11) from the ATOL holder and, once obtained, pass it immediately to the consumer by the method set out below.

Where the agent receives any revised Confirmation from the principal ATOL holder, it will immediately pass it to the consumer by the method set out below.

**Note:** The method for the supply of a Confirmation means:

- a) in the case of a consumer who is present at the time the agent receives the Confirmation, immediately handing it to that consumer or sending it to that consumer by electronic communication;
- b) in the case of a consumer who is not present at the time the agent receives the Confirmation, immediately sending to that consumer by electronic communication or by post.

#### **Agency Term 7**

When accepting payments in respect of transactions the agent would need an ATOL to transact if the agent were not the agent of the principal ATOL holder, agents may only accept payment from consumers as defined in the ATOL Regulations 2012.

#### **Agency Term 8**

Immediately upon the failure of the principal ATOL holder, the agent will provide the CAA with information on:

- a) money paid to it by consumers, in respect of services to be provided for future travel by the principal ATOL holder to consumers; and
- b) the ATOL Certificate unique reference numbers issued by that agent which apply to the failed ATOL holder, in a form acceptable to the CAA.

#### **Agency Term 9**

The rights of the CAA and the Trustees of the Air Travel Trust to enforce any obligations under this agreement on either party are not excluded. For the avoidance of doubt, they may be enforced by the CAA and the Trustees of the Air Travel Trust.

#### **Agency Term 10**

The agent may appoint a sub-agent to perform its obligations as the ATOL holder's agent and to bind the principal ATOL holder into obligations with consumers or buying ATOL holders. However, the agent may only do so if it enters the ATOL holder into a written agency agreement that contains all the rights and obligations in the agreement that are required by the CAA and published in the CAA's Official Record Series 3. Any sub-agent of the agent that does not have the benefit of a written agency agreement with the ATOL holder is not authorised to act on the ATOL holder's behalf. As a consequence the agent will be responsible to the consumer (or buying ATOL holder) for any acts or omissions of the sub-agent.

**Note:** In these circumstances, as well as the agent being liable to the consumer as a principal, both the 'agent' and 'sub-agent' would be acting in breach of the ATOL Regulations 2012.

#### **Agency Term 11**

If a new or revised Schedule of Agency Terms is published by the CAA in its Official Record Series 3 those new or revised terms will immediately take effect and must be included in the terms of the agency agreement between the principal ATOL holder and the agent within 3 calendar months of the publication date.

#### **Agency Term 12**

If the principal ATOL holder fails to comply with its obligations to a consumer and by reason thereof the agent incurs a liability or obligation to the consumer, the agent shall be indemnified by the principal ATOL holder against all consequences following from such a failure.

#### **Agency Term 13**

If requested by the CAA the agent will provide any information regarding the principal ATOL holder referred to in AST 4 which it holds to the CAA on demand.



