

Guidance Note 10

Advice for Accountants

1 Introduction

- 1.1 This Guidance Note contains advice for accountants acting for ATOL holders and applicants. It provides a brief overview of the ATOL system and a description of the framework within which accountants provide confirmations to the CAA.

2 Reporting Definitions

- 2.1 Unless otherwise indicated, the terms in this Guidance Note have the same meaning as those terms in:

- a) the ATOL Regulations 2012 (as defined below);
- b) the ATT Regulations (as defined below);
- c) the ATT Deed (as defined below);
- d) the ATOL holder's Licence document; and
- e) ATOL Standard Terms of an Air Travel Organisers' Licence.

Those terms together with other terms specific to this Guidance Note are set out below:

'accountant' means (in the case of ATOL holders that require an audit of their annual accounts for CAA purposes¹) the auditor that has issued an audit report on the ATOL holder's statutory accounts, unless otherwise agreed by the CAA or (in all other cases) a suitably qualified accountant engaged by the ATOL holder to report on information provided by the ATOL holder to the CAA;

'Accredited Body' means an ATOL holder accredited by the CAA as an Accredited Body under ATOL Regulation 33 of the ATOL Regulations 2012;

'Accredited Body member' means a member who operates under the umbrella of an ATOL holder, who holds an accredited body accreditation, without the need for their own ATOL. Where a member of an accredited body makes available flight accommodation, the accredited body is liable to the consumer to the same extent as if it were the member;

'Airline Ticket Agent' means a person appointed by an aircraft operator as its agent to make available flight accommodation on a flight operated by that aircraft operator. An airline ticket agent must, immediately on receipt of any payment for the flight accommodation supply a confirmed ticket to a person who is present or in the case of a person who is not present by email or other equivalent electronic means or by post. Under the ATOL Regulations 2012 an Airline Ticket Agent is exempt from the need to hold an ATOL. This includes any person who makes available flight accommodation to a consumer where that person is authorised by the relevant airline to do so in accordance with IATA rules and subject to a confirmed ticket being issued to the

¹This is in reference to CAA's requirement for audited accounts as part of the ATOL application process.

consumer and the statement that the flight is sold as Agent of the Airline(s) named on the ticket and is not protected under the ATOL. Annex 4 provides details of what sales should or should not be included as licensable;

'APC' means ATOL Protection Contribution;

'ATOL' means Air Travel Organiser's Licence granted by the CAA;

'ATOL Certificate' means a document which complies with any requirement as to the form and content of an ATOL certificate which have been published by the CAA under ATOL Regulation 19;

'ATOL holder' means a person who holds an Air Travel Organisers' Licence granted by the CAA under the ATOL Regulations;

'ATOL holder failure' means an ATOL holder has failed if the CAA holds a reasonable belief that: the ATOL holder is insolvent; or that the ATOL holder cannot or will not be able to meet its obligations to its customers; or will fail to meet in whole or part its obligations to its customers; and an authorised signatory of the CAA has signed a 'Notice of ATOL holder's failure' in respect of that ATOL holder and has placed a copy of that 'Notice' on the CAA's Register of Failed ATOL holders [available on the ATOL website];

'ATOL Regulations 2012' means the Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012;

'ATOL to ATOL Sale' means making available flight accommodation to another ATOL holder other than in circumstances where the other ATOL holder is the ATOL holder's agent. Licensable transactions constituting seats sold to another ATOL holder (whether as a Flight-Only sale or as part of a package) for resale under the buying ATOL holder's licence;

'ATT' means Air Travel Trust;

'ATT Regulations' means the Civil Aviation (Contributions to the Air Travel Trust) Regulations 2007 (as amended);

'AST' means ATOL Standard Terms;

'confirmed ticket' means a document or information which gives to every person specified in the document or information access to the flight specified in the document or information without the need for any further payment but otherwise subject to its terms and conditions;

'consumer' means a person who either makes use of flight accommodation for travel in person or who, without accepting any payment, provides it to another person who uses that flight accommodation for travel in person;

'departed passenger' means passengers that have actually departed on the first leg of their Flight-Only, flight inclusive package or Flight-Plus, or in the case of ATOL to ATOL sales, seats sold to the buying ATOL holder, on flights that have departed;

'flight accommodation' means accommodation for the carriage of a person on a flight by an aircraft (whether or not registered in the UK) in any part of the world;

'Flight-Only provider' means a person who as a principal or agent makes available flight accommodation only;

'Flight-Plus arranger' means a person (other than the operator of the relevant aircraft) who as principal or agent, makes available flight accommodation in response to a request to book which has been made directly to them by a consumer, as a component of Flight-Plus, under ATOL Regulation 25 of the ATOL Regulations 2012. Part 3 of the

ATOL Regulations 2012 is the regulations for Flight-Plus and is written in full in Annex 3;

'Flight-Plus' means flight accommodation plus living accommodation or self drive car hire outside of the U.K, under ATOL Regulation 24 of the ATOL Regulations 2012;

'Franchisee' means the holder of a Franchise that operates under the ATOL Scheme, in agreement with Air Travel Trust;

'Franchise Member ATOL holder' means the holder of an ATOL who is a member of a body that has entered into a Franchise Agreement with the Air Travel Trust;

'gross invoice value' means monies received or expected to be received from a consumer before the first sector of their journey is due to commence;

'group' means a parent company and its subsidiaries (as defined in Companies Act 2006 – Section 1159) or where the CAA's financial assessment covers more than one ATOL holder (Please note in the specific circumstances of calculating accountants' liability caps (see Annex 2));

'IATA' means International Air Transport Association;

'licence' means an Air Travel Organiser's Licence granted by the CAA;

'Licensable revenue' means 'revenue' arising from 'Licensable transactions';

'Licensable transaction' means an offer made by a customer (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 i.e. Flight-Only, flight inclusive packages or Flight-Plus;

'package' means 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 his specific instructions (whether modified or not) shall not of itself cause it to be treated as other than pre-arranged.

[This definition of a "package" is in identical terms to that contained in regulation 2 of the Package Travel, Package Holidays and Package Tours Regulations 1992 (Regulation 2(1)).]

'passenger' means a person due to travel under the terms of a licensable transaction, excluding a child below the age of two on the date of return back to the UK who is not allocated a separate seat before boarding the aircraft; or seats sold to another ATOL holder (whether as a Flight-Only sale or part of a package);

'payment period' means a period of a quarter or (as the case may be) of a calendar month determined by the CAA to be applicable to a class of ATOL holder, or to an ATOL holder, in accordance with Regulation 6 of the ATT Regulations;

'Public' means the Public category and its' sub categories of Flight-Only, flight inclusive packages or Flight-Plus on a licence which covers Licensable transactions constituting sales to consumers;

'related party' means a person who has links with the ATOL holder through common shareholders, directors, partners or where there are significant levels of trading or financial links. Related to the ATOL holder shall be interpreted accordingly;

'revenue' means gross invoice value unless specified otherwise;

'reporting period' means a period of a quarter or (as the case may be) of a calendar month or annual determined by the CAA to be applicable to a class of ATOL holder, or to a particular ATOL holder;

'Small Business ATOL holder' ('SBA') means a person who holds a Small Business ATOL, as defined in the ATT Regulations;

'Third party' means arrangements for a licence with third parties, which covers the ABTA-ATOL Joint Administration Scheme, the Accredited Body arrangements and either the franchise $\leq 1,000$ passengers or $> 1,000$ passenger, which constitute sales to consumers;

'Trade licence' means a licence that only allows sales to other ATOL holders and not to consumers and therefore only has the ATOL to ATOL category;

3 Background – The ATOL Scheme

- 3.1 The ATOL Scheme is a statutory system covering most travel providers who sell air travel. Its purpose is to protect the public from losing money or being stranded abroad because the travel provider that they have booked to travel with fails.
- 3.2 The Consumer Protection Group (CPG) of the Civil Aviation Authority (CAA) carries out the function of granting, renewing and administration of Licences, which involves fitness and financial assessments and ongoing monitoring of ATOL holders.
- 3.3 If an ATOL holder fails, claims for refunds or repatriation costs of its customers are met by the Air Travel Trust Fund (ATTF). The ATTF is funded by the ATOL Protection Contribution (APC) payable by ATOL holders for each passenger booking air travel. Some ATOL holders are also required to provide a bond, which would be used first, that is before the ATTF, to meet customer claims.
- 3.4 Licences are valid for a period of no more than one year, to either 31 March or 30 September, generally determined by an ATOL holder's financial year end. Licences have limits in terms of passengers and related revenue on a departure date basis and by category of business. ATOL holders are required to report on various data related to a Licence as the level of business being undertaken has an impact on the number of passengers disrupted by a failure and the cost to the bond and/or ATTF of protecting those customers.
- 3.5 ATOL Reform came into effect on 30 April 2012. This means that the sale of flight inclusive holidays that previously appeared to be holiday packages but were not licensable are now captured by the ATOL Regulations 2012 as Flight-Plus. Public sales will now include flight inclusive packages, Flight-Only and Flight-Plus sales.
- 3.6 The exact definition and requirements for Flight-Plus and Flight-Plus arrangers is set out in full in ATOL Regulation 24 and Part 3 of the ATOL Regulations 2012 on Flight-Plus is given in full in Annex 3 of this document. There are a number of examples on the ATOL website <http://www.atol.org.uk/reform>. Key points to note include:

- Flight-Plus is a flight sold with accommodation and/or car hire. However, other elements sold with the Flight-Plus that form a significant part of the holiday must also be included in the arrangement. ‘Significant other’ is contained in the European Package Travel Directive² (PTD), Article 2, ‘other tourist services not ancillary to transport or accommodation and accounting for a significant proportion of the package’. Please refer to question 8 of the BIS PTR Q&A Guidance for Organisers and Retailers using the following weblink <http://www.bis.gov.uk/files/file35634.pdf>
- *‘Other tourist services’ would form a significant proportion of the package if their presence or absence determined its nature and therefore influenced its purchase. To be significant its presence would have to an influencing factor in the reason for the (holiday) package.*
- The flight and accommodation and/or car hire must be requested on the same day, the previous day or the next day, but it does not matter which the customer requests first.
- The trip must be over 24 hours in duration or include an overnight stay.
- If a firm sells another ATOL holder’s flight inclusive package and then adds separate overseas car hire or accommodation, this is also classed as a Flight-Plus, which the firm will be required to protect under its licence.
- The flight must have its outbound leg departing from the UK, except where the arrangement includes travel departing the UK by another method such as ferry, coach or rail, in addition to an overseas flight.

Please note that the requirement to hold an ATOL to sell flight inclusive packages and some Flight-Only under ATOL remains.

Exceptions to Flight-Plus

UK Domestic flights and holidays do not require protection under Flight-Plus.

Obligations under Flight-Plus

Flight-Plus arrangers will have obligations to their customers if a supplier fails. The Flight-Plus arranger will be required to replace that part of the holiday or provide a refund for the whole arrangement to the customer

- 3.7 In addition Airline Ticket Agents will replace the Ticket Provider category and an Accredited Body will be able to umbrella its’ members under its’ own ATOL.
- 3.8 General information on the ATOL scheme can be found on the website using the following link www.atol.org.uk. [Annex 4 provides guidance in terms of what constitutes ‘licensable’ passengers and revenue]. If you have any doubt about whether or not your client has properly reported and categorised his licensable or non-licensable business, please contact the CAA for advice. We shall try to help, and our aim is to get the returns right rather than to penalise your client for errors.
- 3.9 The advice in this Guidance Note does not apply to confirmations requested by the CAA in respect of airlines.

² The Package Travel Directive (PTD) came into effect in 1990 and was introduced into UK law through the Package Travel Regulations (PTR) in 1992.

4 Licensing Criteria

- 4.1 The ATOL Regulations 2012 specify that the CAA shall either grant or refuse an application for a licence based on three criteria; all persons involved in the ownership or control of a travel provider must be considered fit and competent persons [the ATOL holder's Accountable Person has to be acceptable to CAA]; and the travel provider has sufficient financial resources to meet its obligations.
- 4.2 The full criteria on 'Fitness' and 'Finance' are set out in an ATOL Policy, which is available on the ATOL website.

5 The Licensing Process

- 5.1 The ATOL Regulations determine that all licences are subject to a set of published ATOL Standard Terms or 'AST'.
- 5.2 A licence can have limits under the Public category which covers sales to consumers and/or under the ATOL to ATOL category which covers sales to other ATOL holders.
- 5.3 A licence is renewable annually on either 31 March or 30 September. ATOL holders are notified four months prior to the renewal date of the need to submit a renewal application form. All licence renewals are subject to:
- 5.3.1 the provision of the renewal application form and fees; and
- 5.3.2 latest audited accounts [not required for SBAs] and other requested information; and
- 5.3.3 satisfying the notified specific CAA renewal offer requirements.
- 5.4 To summarise the changes to the Franchise arrangements there will be Franchisees operating under the ATOL Scheme, who will in turn have their own members called 'Franchise member ATOL holders'.
- 5.5 There are now 2 Franchisee categories, those whose members are limited to $\leq 1,000$ passengers and those whose members can have either $\leq 1,000$ or $> 1,000$ passengers. The previously exclusive TTA franchise arrangements will now fall into the 2nd category of members who can have either \leq or $> 1,000$ passengers.
- 5.6 The Franchise member ATOL holders report either monthly or quarterly to their franchisee body who in turn report to the CAA, quarterly for $> 1,000$ and six monthly for $\leq 1,000$, or they report direct to the CAA quarterly. Franchisee bodies will collect and pay the APC for their member sales.

Category 1 Franchise member ATOL holders	Category 2 Franchise member ATOL holders
limited to $\leq 1,000$ pax	can have either \leq or $> 1,000$ pax (dependant on Franchisee arrangement with ATT)
Reports quarterly to CAA direct	N/a
OR	
Reports quarterly to Franchisee – who in turn reports six monthly to CAA.	Reports monthly to Franchisee who in turn reports quarterly to CAA

- 5.7 The arrangement for an Accredited Body and its members is similar to how a Tour Operator and an agent would operate with the tour operator and Accredited Body

accepting liability for the licensable sales of the agents or members respectively. An Accredited Body's Public Licensable sales will include all member Licensable sales. All Accredited Body members are expected to utilise the central on-line reservation systems of the Accredited Body to which they are a member. A system check forms part of the audit check by the CAA prior to an Accreditation being given. The membership agreement between an Accredited Body and its' members also includes the term that the member is not permitted to sell outside of this agreement. The full Schedule of Accredited Body Standard Terms under ATOL Regulation 48 can be found in the Official Record Series 3, Air Travel Organisers' Licensing.

Information

- 5.8 The application form, whether for an initial licence or a licence renewal, requests information in respect of a travel provider, confirming ownership and control details, a listing of shareholders, directors, proprietors, partners etc. It also requests details about the business carried out, both licensable and non-licensable, and projections for the level of limits an applicant requires for a licence including from 30 April 2012 a breakdown of the sub categories of Public sales (Flight-Only, flight inclusive packages and Flight-Plus). It is important that the CAA is able to understand and measure the risks associated with the business and businesses it is licensing.
- 5.9 In addition it requests information about associated businesses or related parties and whether the ATOL holder has provided or expects to provide any guarantees or security.
- 5.10 For applicants or holders of a standard (i.e. non SBA) licence the CAA requires them to provide a copy of the latest signed audited accounts which have been prepared for the members as a body pursuant to the requirements of the Companies Acts. For those applicants or ATOL holders operating as sole proprietors or partnerships, the CAA accepts signed certified accounts. A breakdown of any 'other debtors' or 'prepayments' is specifically required but more detailed information on any items in the accounts may be requested.
- 5.11 For licences with large Licence Limits and in some other cases, the CAA may request additional financial information including, but not limited to, budgets and projections, management accounts, and details about available financial facilities.
- 5.12 The above information forms the basis for granting a licence. The assessment in terms of fitness and finance is dependent upon an ATOL holder conducting the agreed level of business. The CAA therefore requires ATOL holders to report on various data related to a Licence in order to be satisfied that an ATOL holder is still meeting those criteria.

6 Reporting – ATOL Holders

- 6.1 ATOL holders with larger limits are required to report on the passenger numbers or revenue or both, on a booking date, or departure date basis or both, and from 30 April 2012 the applicant is required to provide a breakdown of the Public sales sub categories for revenue and passengers. This information forms a critical part of the financial assessment when granting a licence and is a determining factor in terms of cost to the ATTF in the event of failure.

ATOL Protection Contribution

- 6.1.1 The APC is payable by an ATOL holder for each passenger booked. The 'Payment Period' for an ATOL holder depends on the type and size of a licence. This can be

either monthly, quarterly or annually. The APC must be paid within six weeks of the end of the appointed Payment Period.

- 6.1.2 All ATOL holders are required to report passenger bookings accordingly and to also report on the revenue in respect of those bookings.
- 6.1.3 Information on the ATOL Payment Contribution (APC) is set out in the ATOL Standard Terms section of the Official Record Series 3 – Air Travel Organisers’ Licensing, which can be found using the following web link: <http://www.caa.co.uk/docs/33/ORS3.pdf>

Passenger Information on a Departure Date Basis

- 6.1.4 ATOL holders are licensed on the basis of passengers departing in a licence period and the licence document sets the authorised limits for revenue and the associated numbers of passengers for departures during the licence period. Standard Licence Limits for both revenue and passenger numbers are broken down by category and calendar quarter but SBAs have an annual limit of number of passengers only. Although the Licence Limits can be varied, an ATOL holder must trade within the agreed limits.
- 6.1.5 In order for the CAA to monitor licence levels and ensure ATOL holders are operating within their agreed limits it is necessary for ATOL holders to report on passengers departed and the revenue in respect of those passengers. The reporting periods for this information would be the same as the Payment Period for APC in most cases.
- 6.1.6 For Accredited Bodies in respect of Licence Limits of Public sales their limit will include all member Licensable sales. All Accredited Body members are expected to utilise the on-line reservation systems of the Accredited Body to which they are a member.

Forward Booking Information

- 6.1.7 On a monthly basis, larger ATOL holders are also required to provide information in respect of all bookings held, i.e. all forward bookings held for travel in future, including any reported passengers actually booked in previous months or quarters which have yet to depart. This booking information needs to be broken down on the basis of when the passengers are due to depart. All other standard ATOL holders are required to provide this information on a quarterly basis without the breakdown of passengers due to depart. This forward-looking data allows the CAA to monitor whether authorised Licence Limits are realistic and to establish a risk profile in terms of customers’ monies held and customers abroad. SBA holders are not required to provide forward booking information.

Reports – ATOL Holders

- 6.2 Reporting requirements for each type of ATOL holder are described in Section 1 of the Official Record Series 3, ‘ATOL Standard Terms for Air Travel Organisers’ Licensing’.
- 6.3 The tables below summarise the requirements and form numbers for standard ATOL holders and SBAs.

Size and Type of licence	Reporting period	Report due date	Passengers booked		Total forward pax booked		Passengers departed		CPG ATOL Form No
			Pax	Rev	Pax	Rev	Pax	Rev	
Standard ≥£5million revenue	Monthly	14 days from month end	√	√	√	√	√	√	3022
Standard >500pax & ≤£5million revenue	Quarterly	14 days from quarter end	√	√	√	√	√	√	3021
SBA <500 pax	Annual	14 days from licence period end	√	√			√	√	3020
ATOL to ATOL sales	Quarterly	14 days from quarter end					√		3021

6.4 In addition to standard ATOL holders and SBA holders, there are ATOL holders (known as Franchise Member ATOL holders) who are members of a Franchisee operating under the ATOL scheme.

6.5 The following table summarises the reporting requirements for Franchise Member ATOL holders³ either direct to the CAA or to the Franchisee who in turn reports to the CAA, quarterly for >1,000 pax or six monthly for ≤1,000.

Size and Type of licence	Reporting period	Report due date	Passengers booked		Total forward pax booked		Passengers departed		CPG ATOL Form No
			Pax	Rev	Pax	Rev	Pax	Rev	
Franchise member ATOL holder > 1,000 pax	Monthly/ Quarterly To Franchisee	Monthly/ 14 days from quarter end	√	√			√	√	n/a
Franchise member ATOL holder > 1,000 pax	Quarterly To CAA	14 days from quarter end	√	√			√	√	3021
Franchise member ATOL holder ≤ 1,000 pax	Quarterly To Franchisee Or	14 days from quarter end	√	n/a			n/a	n/a	3021
Franchise member ATOL holder ≤ 1,000 pax	Quarterly To CAA	14 days from quarter end	√	n/a			n/a	n/a	3021

7 The Role of Accountants

Risk Assessment

7.1 It is important that the CAA is satisfied that an ATOL holder is trading within the limits of its licence and in line with information provided to the CAA. This is fundamental in terms of whether to licence the travel provider and the terms and conditions that will apply to it. These key licensing decisions have a direct impact on the cost to the ATTF in the event of failure.

7.2 Under the reports outlined in Section 6 above, ATOL holders are required to provide specific information in terms of business conducted under the licence. These reports

³ Refer to paragraph 5.7.

may indicate an ATOL holder is overtrading or give cause for concern that there may be overtrading.

- 7.3 The ATOL Standard Terms for Licences give the CAA right of access to an ATOL holder's business systems and for relevant requested information to be provided. However the CAA requires an ATOL holder to provide independent confirmation from its accountant on the information submitted by an ATOL holder in its reports to the CAA. The Reports to be provided by the accountant are outlined below in Section 8.

Duty of Care

- 7.4 The CAA relies on the accountants' confirmations of an ATOL holder's figures for the reasons outlined above and it therefore expects those providing them to acknowledge they owe a duty of care when providing such confirmations to the CAA and the Air Travel Trust. In order to put this in a standard framework the CAA has developed, with the ICAEW, Standard Terms of Engagement for accountants to undertake this work for ATOL holders in a way satisfactory to the CAA and the ATT. These are set out in the ICAEW Technical Release TECH07/12AAF and in Annex 1 to this Guidance Note. These Terms of Engagement require the accountant to acknowledge the existence of a Duty of Care to the CAA and the ATT.

Liability Cap

- 7.5 The CAA also accepts however that the liability of accountants for any breach of that Duty of Care will not be unlimited. The CAA has agreed the accountants' liability can be capped in accordance with the Terms of Engagement set out in Annex 1 and the CAA's capping formula, referred to in ICAEW Technical Release TECH07/12AAF, is set out in Annex 2. The level of cap will generally be determined with reference to the size of a particular ATOL holder's Licence Limit under the Public category.
- 7.6 The scale set out (and summarised in the table) in Annex 2 is calculated based on 15% of the ATOL holder's Public revenue Licence Limit or the actual bond, whichever is the greater. Previously the liability cap had been based on the level of bond for which historical rates had been 15% of licensable turnover; the obligation on most ATOL holders to provide bonds was removed following the introduction of the APC.
- 7.7 The liability cap calculation method and full details are set out in Annex 2.

8 Reporting – Accountants' Reports

- 8.1 It is for individual accountants to decide whether they wish to enter into the Terms of Engagement, which have been developed with ICAEW, or to continue with separate terms to which the CAA is not a party. However whether they do so or not the CAA will still expect the reports on the relevant forms [see Tables below] to be provided to it without any disclaimer as to duty of care. The inclusion of such disclaimers significantly weakens the confidence the CAA can place on the information provided, and where these are included in reports provided by accountants, the CAA will ask for additional comfort from the ATOL holder concerned. This may be in the form of a bond or additional capital, or both. In addition the CAA may be unable to grant or renew a Licence without an independent and unqualified report.
- 8.2 Travel providers have a mix of business, and accountants will need to understand clearly the difference between licensable business, which is covered by the licence and by returns, and non-licensable activity. The accountant also needs to recognise and understand the different categories of licensable business, Public, and its sub categories Flight-Only, flight inclusive package or Flight-Plus, and ATOL to ATOL. Guidance on these licensable categories and which revenue should be counted is in Annex 4 to this Guidance Note.

- 8.3 The CAA requires an accountant to sign the Accountants' Report based on the relevant information submitted on the form by the ATOL holder, for the reporting periods terminating during an ATOL holder's last financial period. The completed forms should be submitted to the CAA within six months of the Financial Year End or by the licence renewal date whichever is the earlier.
- 8.4 The following table summarises the forms for accountants' reports on passenger information for bookings and departures, under the ICAEW Terms of Engagement developed with CAA.

**Accountants' reports under the ICAEW Terms of Engagement developed with CAA
CPG ATOL Form Nos.**

Size and Type of licence	Passengers Booked		Passengers Departed		
	Passenger Numbers	Revenue	Passenger Numbers	Revenue	Airline Ticket Agent Revenue
Standard	3030	n/a	3031	3032	3039
SBA ≤500 pax	3035	n/a	3036	3037	3039
Standard Trade (seat sales)	n/a	n/a	3031	n/a	n/a
SBA Trade (seat sales)	n/a	n/a	3036	n/a	n/a
Trade Licence (seat sales)	n/a	n/a	3031	n/a	n/a
Franchise member ATOL holder >1,000 pax	3030	n/a	3031	3032	n/a
Franchise member ATOL holder ≤1,000 pax	3030	n/a	n/a	n/a	n/a

- 8.5 The table below is the summary for accountants' reports on passenger information for bookings and departures where the accountants have not entered into the ICAEW Terms of Engagement.

Accountants' reports – CPG ATOL Form Nos.						
Size and Type of licence	Passengers Booked			Passengers Departed		Airline Ticket Agent Revenue
	Passenger Numbers	Revenue	Passenger Numbers	Revenue		
Standard	3040	n/a	3041	3042	3049	
SBA ≤500 pax	3045	n/a	3046	3047	3049	
Standard Trade (seat sales)	n/a	n/a	3041	n/a	n/a	
SBA Trade (seat sales)	n/a	n/a	3046	n/a	n/a	
Trade Licence (seat sales)	n/a	n/a	3041	n/a	n/a	
Franchise member AH >1,000 pax	3040	n/a	3041	3042	n/a	
Franchise member AH ≤1,000 pax	3040	n/a	n/a	n/a	n/a	

9 General factual confirmations

- 9.1 The CAA bases its view of an ATOL holder's and applicant's finances on its audited accounts, which the CAA acknowledges have been prepared for its members as a body pursuant to the requirements of the Companies Acts. It may also ask accountants to report on specific matters directly to the CAA. For example, if it requires new finance to be injected into an ATOL holder in order to grant or renew a licence it will ask for an accountants' report that the cash has been received by the ATOL holder. It may be unable to grant or renew a licence without an independent and unqualified report.

10 Ring fence confirmations

- 10.1 When looking at the financial position of an ATOL holder or applicant, which is part of a group, the CAA will normally make its assessment on the financial position of the group as a whole. In some cases, the financial position of the group is unable to meet the CAA's criteria and the CAA is asked to consider an ATOL holder on a stand-alone basis. In order to do this the CAA needs to consider if an ATOL holder is operating independently and therefore request that the accountants report that no financial guarantees have been given by the ATOL holder in favour of any group companies, and that all trading was transacted on commercial terms with all balances settled monthly. Further guidance on ring fence confirmations is given in the ATOL Policy paper on Groups and Bonds, which can be located on the ATOL website using the links given at the end of this document.

11 Effective date

- 11.1 The ATOL Regulations 2012 came into effect as at 30 April 2012. From that date an ATOL holder had to protect Flight-Plus under its ATOL. Additionally some bookings that had previously been non licensable if transacted on a “ticket provider” basis would now need to be protected under the ATOL, unless these transactions met the criteria of acting as an “airline ticket agent”.
- 11.2 From 30 April 2012 all reports submitted under the ATOL Standard Terms must identify separately licensable passengers and revenues for the three sub categories Flight-Only, Flight-Plus and flight inclusive packages that make up the Public sales category on the licence. Under ATOL Standard Terms, ATOL holder’s systems must be able to separately identify the bookings in each of the three sub categories by number of passengers and the gross invoice value and ATOL holder’s reports post 30 April 2012 will need to include the breakdown by sub category within the total Public sales category. Reports will need to include a ‘Nil’ if there were no bookings in any of the three sub categories of Public sales. Therefore ATOL holders will need to have systems capable of separating out the Total Public sales into the three sub categories.
- 11.3 Under the ATOL Regulations 2012 each ATOL holder has to have an Accountable Person who is acceptable to the CAA. This person is required to have the authority to ensure that the ATOL holder complies with the Regulations and the ATOL Standard Terms. The Accountable Person will need to be a director of the company, sole proprietor, or partner in a partnership. All reports that must be completed by an ATOL holder must be signed by the ATOL holder’s Accountable Person.
- 11.4 All accountants’ reports need to be submitted between four and six months of the financial year end depending on the financial year end (see below).
- 11.5 *Transitional arrangements*
- 11.5.1 All standard ATOL holders report their booking information on either a monthly or quarterly basis. As of 30 April 2012 the reports submitted by the ATOL holder must show a breakdown by the three sub categories, Flight-Only, Flight-Plus and flight inclusive packages, of the Public sales licence category.
- 11.5.2 The monthly reporters will provide the first 3 way breakdown on their reports for the month of May 2012. The quarterly reporters will take account of and show the bookings information for the months of May 2012 and June 2012 in their quarterly report for the quarter ending 30 June 2012. Therefore the quarterly reports from ATOL holders for the quarter to 30 June 2012 will be the first to show the sub category breakdown. This quarterly report will only include the sub category breakdown for two of the three months of the quarter. The first accounting period which will therefore require auditor reports confirming the breakdown will be those with a financial year end of 30 June 2012.
- 11.5.3 So it will not be until the accounting period of financial year end of 30 June 2013 that all figures on the reports will be broken down between the three sub categories. In the transition period reports based on business up to 31 March 2012 will continue to report on the current form. All reports for business after 31 March 2012 will be reported on a new form, which allows for the necessary breakdowns.
- 11.5.4 SBA ATOLs and Franchise member ATOL holders authorised for up to 1,000 passengers report information on a booking date basis or departure date basis for the licence period annually and the reports are required by 14 days after the licence period end date. The auditor would confirm these figures next year when the particular licence period falls within the relevant financial year end.

11.5.5 The ATOL period to 30 September 2012 and the period to 31 March 2013 will be the only periods bridging 30 April 2012 the introduction date for the 2012 Regulations. The new form with the three way breakdown can be used for these two periods and for subsequent periods.

11.5.6 The table below summarises these reporting requirements during the transitional period.

Licence Pe- riod End	Financial Year End	ATOL holder reports sub categories [month]	Auditor Re- ports – Public Sales – No b/down by sub category [Quarters]	Auditor Re- ports – Public Sales – Par- tial b/down by sub category [Quarters]	Auditor Re- ports – Public Sales – Full 3- way b/down by sub category [Quarters]
30 September 2012	30-4-2012		4 Qtrs		
	31-5-2012	1 month	4 Qtrs		
31 March 2013	30-6-2012	2 months	3 Qtrs	1 Qtr	
	31-7-2012	3 months	3 Qtrs	1 Qtr	
	31-8-2012	4 months	3 Qtrs	1 Qtr	
	30-9-2012	5 months	2 Qtrs	1 Qtr	1 Qtr
	31-10-2012	6 months	2 Qtrs	1 Qtr	1 Qtr
30 September 2013	30-11-2012	7 months	2 Qtrs	1 Qtr	1 Qtr
	31-12-2012	8 months	1 Qtr	1 Qtr	2 Qtrs
	31-1-2013	9 months	1Qtr	1 Qtr	2 Qtrs
	28-2-2013	10 months	1Qtr	1 Qtr	2 Qtrs
	31-3-2013	11 months		1 Qtr	3 Qtrs
	30-4-2013	12 months		1 Qtr	3 Qtrs
31 March 2014	31-5-2013			1 Qtr	3 Qtrs
	30-6-2013			Nil	4 Qtrs
	31-7-2013			Nil	4 Qtrs
	31-8-2013			Nil	4 Qtrs
	30-9-2013			Nil	4 Qtrs
	31-10-2013			Nil	4 Qtrs
	30-11-2013			Nil	4 Qtrs

- 12 The deadline for submission of accountants' reports is the earlier of:
- a) the expiry of a six month period after the ATOL holders financial year end; or
 - b) its licence renewal date.
- 12.1 ATOL holders with financial year-ends between December and May will have a September renewal date with a six month deadline for submission except for April and May financial year ends, where the ATOL renewal date of the subsequent September falls before the expiry of the six month deadline for submission. Those with financial year-ends between June and November will have a March renewal date with a six month deadline for submission except for October and November financial year ends, where the ATOL renewal date of the subsequent March falls before the expiry of the six month deadline for submission.
- 12.2 The reporting accountants should check with the ATOL holder, and if necessary with the CAA, to ensure that the correct split between reporting under the old and new regimes has been applied
- 12.3 Guidance Note 10 dated May 2009 and ICAEW's Technical Release (AAF 02/09) will be withdrawn at the conclusion of the transitional period. Please note the arrangements for the liability cap are provided in Annex 2.

13 Queries

- 13.1 We are glad to help with queries. You may telephone your client's normal contact by dialling the direct number or for a general query you may telephone us on 020 7453 6700.

Annex 1

Model engagement terms⁴ (these model terms were issued in October 2012)

The following are the CAA pre-agreed terms of engagement of Accountants by ATOL holders to prepare reports required by the CAA in connection with the Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012 and the Civil Aviation (Contributions to the Air Travel Trust) Regulations 2007 (as amended).

A contract between an ATOL holder, its Accountants, the CAA on its own behalf and as agent for the Trustees of the Air Travel Trust on these terms is formed when the air travel ATOL holder and the Accountants sign and submit to the CAA a Report as set out in Clause 3 herein.

In these terms of engagement:

“CAA” refers to the Civil Aviation Authority;

“ATT” refers to the Air Travel Trust;

“the ATOL holder” refers to the air travel organiser that is required to submit a Report to the CAA;

“the Accountants” refers to the ATOL holder’s accountant as defined in the CAA’s Guidance Note 10

1 Introduction

The ATOL holder is required to submit to the CAA Reports as set out in Clause 3 below that are signed by their Accountants to provide independent assurance on the information provided. These terms of engagement set out the basis on which the Accountants will sign the Report.

2 The ATOL holder’s responsibilities

2.1 The ATOL holder is responsible for producing the information set out in the Reports, maintaining proper records complying with the terms of the CAA’s ATOL Standard Terms and providing relevant financial information to the CAA on a monthly, quarterly and annual basis in accordance with the requirements of the ATOL Standard Terms. The ATOL holder is responsible for ensuring that the non-financial records are reconcilable to the financial records.

2.2 The management of the ATOL holder will make available to the Accountants all records, correspondence, information and explanations that the Accountants consider necessary to enable the Accountants to perform the Accountants’ work.

⁴These model terms do not cover any reports requested by CAA in connection with lapsed licences and the release of bonds, sub-ordinated loans, guarantees and redemption of preference shares (see Appendix 1 to the ICAEW Technical Release TECH07/12AAF).

- 2.3 The ATOL holder, the CAA and the ATT accept that the ability of the Accountants to perform their work effectively depends upon the ATOL holder providing full and free access to the financial and other records and the ATOL holder shall procure that any such records held by a third party are made available to the Accountants.
- 2.4 The Accountants accept that, whether or not the ATOL holder meets its obligations, the Accountants remain under an obligation to the CAA and the ATT to perform their work with reasonable care. The failure by the ATOL holder to meet its obligations may cause the Accountants to qualify their report or be unable to provide a report.

3 Scope of the Accountants' Work

- 3.1 The ATOL holder will provide the Accountants with such information, explanations and documentation that the Accountants consider necessary to carry out their responsibilities. The Accountants will seek written representations from management in relation to matters for which independent corroboration is not available. The Accountants will also seek confirmation that any significant matters of which the Accountants should be aware have been brought to the Accountants' attention.
- 3.2 The Accountants will perform the following work in relation to the Reports required by the CAA⁵:
- 3.2.1 Accountants' Report: Licensable Revenue on a departure date basis: The Accountants will perform the suggested work procedures set out in Appendix 4(a) of Technical Release TECH07/12AAF issued by the Institute of Chartered Accountants in England and Wales ("the Release") on both an annual and 4 calendar quarters basis and subject to any adverse findings will produce a Revenue report in the form set out in Appendix 5(a)(i) and 5(a)(ii) of the Release;
- 3.2.2 Airline Ticket Agent Report: The Accountants will perform the suggested work procedures set out in Appendix 4 (b) of Technical Release TECH07/12AAF issued by the Institute of Chartered Accountants in England and Wales and subject to any adverse findings will produce a report in the form set out in Appendix 5(b) of the Release;
- 3.2.3 Accountants' Report: Public Licensable passenger numbers on a booking date basis: The Accountants will perform the suggested work procedures set out in Appendix 4 (c) of Technical Release TECH07/12AAF issued by the Institute of Chartered Accountants in England and Wales on both an annual and 4 calendar quarters basis and subject to any adverse findings will produce a report in the form set out in Appendix 5(c)(i) and 5(c)(ii) of the Release;
- 3.2.4 Annual Accountants' Report: Passenger numbers on a departure date basis: The Accountants will perform the suggested work procedures set out in Appendix 4 (d) of Technical Release TECH07/12AAF issued by the Institute of Chartered Accountants in England and Wales on both an annual and 4 calendar quarters basis and subject to

⁵The following reports will be required for each category of ATOL holder and accountants should amend the terms of reference for each engagement accordingly:

- a) Standard ATOL holders - 3.2.1 to 3.2.4 above;
- b) SBAs – 3.2.1 to 3.2.4 above;
- c) Trade licences – 3.2.4 above;
- d) Franchise Member ATOL holders > 1,000 pax – 3.2.1 and 3.2.3 to 3.2.4 above;
- e) Franchise Member ATOL holders ≤ 1,000 pax – 3.2.1 and 3.2.3 to 3.2.4 above;
- f) Other Reports outlined under 3.2.5 and 3.2.6 will only be requested in specific circumstances.

any adverse findings will produce a report in the form set out in Appendix 5(d)(i) and 5(d)(ii) of the Release;

- 3.2.5 Factual Confirmations Report: The Accountants will perform the suggested procedures set out in Appendix 4(e) of the Technical Release TECH07/12AAF on request by the CAA and subject to any adverse findings will produce a Factual Confirmations report in the form set out in Appendix 5(e) of the Release;
- 3.2.6 Ring Fencing Report: The Accountants will perform the suggested work procedures set out in Appendix 4(f) of the Technical Release TECH07/12AAF on request by the CAA and subject to any adverse findings will produce a Ring Fencing report in the form set out in Appendix 5(f) of the Release.
- 3.3 The Accountants will not subject the information provided by the ATOL holder to checking or verification except to the extent expressly stated. While the Accountants will perform their work with reasonable skill and care and will report any misstatements, frauds or errors that are revealed by enquiries within the scope of the engagement, the Accountants' work should not be relied upon to disclose all misstatements, fraud or errors that might exist.

4 Form of the Accountants' Report

4.1 The Accountants' Reports are prepared on the following bases:

- 4.1.1 The Accountants' Reports are prepared solely for the confidential use of the ATOL holder and the CAA and solely for the purpose of submission to the CAA in connection with the CAA's requirements in connection with the ATOL holder's Air Travel Organiser's Licence. They may not be relied upon by the ATOL holder or the CAA for any other purpose except as provided in 4.1.2 below;
- 4.1.2 The CAA may disclose the Reports to the ATT in connection with any actual or potential liability to the ATT that may arise out of the business conducted by the ATOL holder, and the ATT will be entitled to rely on them subject to the terms of this agreement. The ATT may share the Accountants' Reports and/or the information contained in the Accountants' Reports with;
- the ATT's insurers in accordance with the ATT obligations under its contract of insurance; and
 - the ATT's own statutory auditors and legal advisors;

and the Accountants do not object to such disclosure provided that the ATT's insurers and the ATT's own statutory auditors and legal advisors agree for the benefit of the Accountants (and the CAA produces evidence of such agreement if and when requested by the Accountants) that:

- a) the Reports prepared by the Accountants are designed to meet the agreed requirements of the CAA, the ATT and the ATOL holder only;
- b) the Reports are not to be regarded as suitable to be used or relied on by any party wishing to acquire any rights against the Accountants other than the CAA, the ATT and the ATOL holder in accordance with this agreement;
- c) the Accountants do not assume any responsibility in respect of their work performed for the CAA, the ATT and the ATOL holder or the Reports, or any judgments, conclusions, opinions, or findings that the Accountants may have formed or made, to any party except the CAA, the ATT and the ATOL holder in accordance with this agreement;

- d) to the fullest extent permitted by law the Accountants accept no liability in respect of any such matters to any party except the CAA, the ATT and the ATOL holder in accordance with this agreement;
 - e) should any party except the CAA, the ATT or the ATOL holder choose to rely on the work performed by the Accountants or the Reports, that party will do so at its own risk; and that
 - f) the Reports are to remain confidential in the hands of the ATT's insurers and the ATT's own statutory auditors and legal advisors.
- 4.1.3 Neither the ATOL holder, the CAA nor the ATT may rely on any oral or draft reports the Accountants provide. The Accountants accept responsibility to the ATOL holder, the CAA and the ATT for the Accountants' final signed reports only;
- 4.1.4 Except as provided for in clause 4.1.2 above and clause 4.1.5 below, the Accountants' Reports must not be recited or referred to in whole or in part in any other document (including, without limitation, any publication issued by the CAA);
- 4.1.5 Subject to clause 4.1.2 above and except to the extent required by court order, law or regulation or to assist in the resolution of any court proceedings, the Accountants' Reports must not be made available, copied or recited to any other person (including, without limitation, any person who may use or refer to any of the CAA's publications);
- 4.1.6 The Accountants, their partners and staff neither owe nor accept any duty to any person other than the ATOL holder, the CAA or the ATT in accordance with this agreement (including, without limitation, any person who may use or refer to any of the CAA's Publications) and shall not be liable for any loss, damage or expense of whatsoever nature which is caused by their reliance on representations in the Accountants' Reports.

5 Liability Provisions

- 5.1 The Accountants will perform the engagement with reasonable skill and care and acknowledge that they will be liable to the ATOL holder, the CAA and the ATT for losses, damages, costs or expenses ("losses") caused by their breach of contract, negligence, or dishonesty or fraud or other deliberate breach of duty, subject to the following provisions:
- 5.1.1 The Accountants will not be so liable if such losses are due to the provision of false, misleading or incomplete information or documentation or due to the acts or omissions of any person other than the Accountants, except where, on the basis of the enquiries normally undertaken by Accountants within the scope set out in these terms of engagement, it would have been reasonable for the Accountants to discover such defects;
 - 5.1.2 The Accountants accept liability without limit for the consequences of their own fraud and for any other liability which it is not permitted by law to limit or exclude;
 - 5.1.3 Subject to the previous paragraph (5.1.2), the total aggregate liability of the Accountants whether in contract, tort (including negligence) or otherwise, to the CAA, the ATT and the ATOL holder, for any losses suffered by the CAA, the ATT, or the ATOL holder arising from or in connection with the work which is the subject of these terms (including any addition or variation to the work), shall not exceed an amount to be agreed between the parties by separate written agreement or, in the absence of such agreement, calculated in accordance with the CAA's capping formula published in CAA's Guidance Note 10 dated October 2012 ("the Liability Cap"),⁶

⁶The CAA's Guidance Note 10, issued October 2012, is available on the CAA's website www.atol.org.uk. Individual

In accepting an Accountants report prepared under an engagement in these terms the CAA and the ATT and the ATOL holder agree that their respective claims against the Accountant shall be dealt with in accordance with the following priority. In the event of successful claims against the Accountants by more than one of the CAA, the ATT and the ATOL holder, the CAA and the ATT shall be entitled to recover their loss in priority to the ATOL holder subject always to the maximum Liability Cap. The Accountants shall notify the CAA if a claim is commenced by the ATOL holder against the Accountants but the Accountants are not party to the separately agreed priority set out in the preceding sentence. Nothing in this paragraph will affect the validity or operation of clause 5.1.5 below;

- 5.1.4 The Accountants' liability arising after the application of the other provisions of this clause 5 (above and below) shall in aggregate be limited to that proportion of the total losses, after taking into account contributory negligence (if any), which is just and equitable having regard to the extent of the responsibility of the Accountants for the losses, and the extent of responsibility of any other person ("Other Person");

In order to calculate the proportionate share of the Accountants' liability, no account shall be taken of any matter affecting the possibility of recovering compensation from any Other Person, including the Other Person having ceased to exist, having ceased to be liable, having an agreed limit on its liability or for other reasons being unable to pay, and full account shall be taken of the Other Person's responsibility even if that Other Person is not a party or witness to any relevant proceedings;

- 5.1.5 The allocation of the Liability Cap between the CAA, the ATT and the ATOL holder shall be entirely a matter for the CAA, the ATT and the ATOL holder, who will be under no obligation to inform the Accountant of it. If (for whatever reason) no such allocation is agreed, none of the CAA, the ATT and the ATOL holder will dispute the validity, enforceability or operation of the Liability Cap on the grounds that no such allocation is agreed.

- 5.2 This paragraph 5.2 shall not apply to any claim that might be brought against the Accountants separately by the ATOL holder. The CAA and the ATT agree that neither the CAA nor the ATT will bring any legal proceedings against the Accountants arising out of or in connection with this agreement or the services to be provided thereunder unless the ATT has suffered a loss as a result of the Accountants' breach of contract or their negligence arising from the provision of the services and: (i) a failure of the ATOL holder has occurred⁷; (ii) the loss to the Air Travel Trust Fund (ATTF) exceeds 15% of the ATOL holder's Public revenue Licence Limit, or the total of the actual bond, whichever is the greater; and (iii) the CAA and/or the ATT have taken reasonable steps⁸ to recover the loss from the ATOL holder or any guarantees provided to the CAA or the ATT by the principals of the ATOL holder or any other appropriate third

firms of accountants need to consider whether or not to accept the CAA's offered capping formula or negotiate a liability cap with the CAA by separate agreement. Such consideration will take into account, inter alia, whether the limitation is appropriate to the scope of the engagement, the fees generated, their assessment of risks in undertaking the work and their internal risk management policies. Where firms consider that they are unable to accept the formula, they may wish to negotiate their own individual capping arrangements with the CAA.

⁷A failure of the ATOL holder will occur if an authorised signatory of the CAA has signed a Notice of ATOL holder failure in respect of that ATOL holder and has placed a copy of that Notice on the CAA's Register of Failed ATOL holders.

⁸Reasonable steps are either: the institution of legal proceedings where it is consistent with the ATT fiduciary duties and/or the CAA function and duties; or formal claim in any insolvency.

parties. In the event that such conditions are satisfied, the CAA and the ATT further agree that the Accountants' liability shall, subject always to the Liability Cap referred to in clause 5.1.3 above, be limited to that proportion of the ATTF's loss that is in excess of 15% of the ATOL holder's Public revenue Licence Limit or actual bond, whichever is the greater. Please see footnotes 5 and 6 below for definitions in respect of failure of the ATOL holder and reasonable steps. In the event that conditions (i) and (iii) are satisfied but condition (ii) is not, such that the loss to the ATTF does not exceed the 15% threshold stated in (ii) and there is no bond, the Accountants' liability to the ATT and/or to the CAA shall be limited (on the basis stated above) to £250,000.

- 5.3 The ATOL holder, the CAA and the ATT agree that they will not bring any claims or proceedings against any individual partners, members, directors or employees of the Accountants. This clause is intended to benefit such partners, members, directors and employees who may enforce this clause pursuant to the Contracts (Rights of Third Parties) Act 1999 (the "Act"). Notwithstanding any benefits or rights conferred by this agreement on any third party by virtue of the Act, the parties to this agreement may agree to vary or rescind this agreement without any third party's consent. Other than as expressly provided in these terms, the Act is excluded.
- 5.4 Any claims, whether in contract, negligence or otherwise, must be formally commenced within two years after the party bringing the claim becomes aware (or ought reasonably to have become aware) of the facts which give rise to the action and in any event no later than four years after any alleged breach of contract, negligence or other cause of action. This expressly overrides any statutory provision which would otherwise apply. In the event that the CAA and/or the ATT delay commencing a claim against the Accountants in order to comply with their obligations under clause 5.2 to take reasonable steps to recover loss from the ATOL holder and any guarantors, time will be deemed to have stopped running for the purposes of this clause 5.4 for the period that the CAA and/or the ATT are taking such reasonable steps.
- 5.5 The services provided by the Accountants under this agreement are separate from and unrelated to the Accountants' audit work on the financial statements of the ATOL holder for the purposes of the Companies Act 1985 or the Companies Act 2006 as appropriate (the "statutory audit work"). The Accountants' obligations under this agreement are entirely separate from the statutory audit work for the ATOL holder. Nothing in this agreement should be taken to and shall not add to or vary or extend in any way or on any basis any duty of care the Accountants may have in its capacity as auditor of the ATOL holder's financial statements, nor to create any obligations or liabilities on the Accountants regarding the Accountants' statutory audit which would not otherwise exist.

6 Fees

The Accountants' fees, together with VAT and out of pocket expenses, will be agreed with and billed to the ATOL holder, who will be responsible for the payment of such fees. Neither the CAA nor the ATT is liable to pay the Accountants' fees.

7 Quality of Service

The Accountants will investigate all complaints. The CAA, the ATT and the ATOL holder have the right to take any complaint up with the Institute of Chartered Accountants in England and Wales ("the ICAEW"). The CAA, the ATT and the ATOL holder may obtain an explanation of the mechanisms that operate in respect of a complaint to the ICAEW at www.icaew.co.uk/complaints or by writing to the ICAEW. To contact the ICAEW write to the Professional Standards Office, Metropolitan House, 321 Avebury Boulevard, Milton Keynes, MK9 2FZ

8 Providing Services to Other Parties

The Accountants will not be prevented or restricted by virtue of the Accountants' relationship with the ATOL holder, the CAA and the ATT, including anything in these terms of engagement, from providing services to other clients. The Accountants' standard internal procedures are designed to ensure that confidential information communicated to the Accountants during the course of an assignment will be maintained confidentially.

9 Applicable law and jurisdiction

9.1 This agreement shall be governed by, and interpreted and construed in accordance with English law.

9.2 The ATOL holder, the CAA, the ATT and the Accountants irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute (including claims for set-off and counterclaims) which may arise in connection with the validity, effect, interpretation or performance of, or the legal relationship established by this agreement or otherwise arising in connection with this agreement.

10 Alteration to Terms

All additions, amendments and variations to these terms of engagement shall be binding only if in writing and signed by the duly authorised representatives of the parties. These terms supersede any previous agreements and representations between the parties in respect of the scope of the Accountants' work and the Accountants' Report or the obligations of any of the parties relating thereto (whether oral or written) and, together with the matters included in the letter confirming terms of engagement, represent the entire understanding between the parties.

11 Termination

11.1 This agreement may be terminated by a party at any time by giving not less than 30 days notice to each of the other parties.

11.2 This agreement may be terminated by a party by notice with immediate effect if another party is unable to pay its debts or has a receiver, administrator, administrative receiver or liquidator (or in each case, the equivalent in another jurisdiction) appointed or calls a meeting of its creditors or ceases for any reason to carry on business or if in the reasonable opinion of the party wishing to terminate any of these events appear likely.

11.3 Notices must be in writing and delivered by hand or sent by registered post, in each case to the registered office of each party to this agreement, save that a notice will be validly delivered to the ATT if it is sent to the CAA. Any notice sent by post will be deemed to have been delivered 3 business days after sending.

Annex 2

Capping Formula of Accountants' Liability

- 1 The total aggregate liability of the Accountants whether in contract, tort (including negligence) or otherwise, to the CAA, the ATT and an ATOL holder, arising from or in connection with the work which is the subject of these terms (including any addition or variation to the work), shall not exceed an amount as determined by the following formula ("the Liability Cap").
- 2 The Liability Cap calculation method is set out below:

The level of Liability Cap that will apply is dependent on the size of a particular ATOL holder's licensable revenue. For standard licences the Liability Cap will be calculated based on 15% of the Public revenue Licence Limit of the particular ATOL holder or the actual bond provided by the ATOL holder, whichever is the greater, and applied to the bands in the table below at 2.1. The relevant Public revenue Licence Limit will be the Public revenue Licence Limit for the licence period in which the last financial year or period being reported on ends. The relevant bond will be the bond in place in the licence period in which the last financial year or period being reported on ends. If that licence is granted for a period of less than four calendar quarters, the calculation will be based on that Licence Limit, plus additional consecutive quarters taken from the most recent ATOL application form. Therefore there must be four quarters of licensable revenue when the 15% is applied.

There are some standard licences that have both the Public and the ATOL to ATOL category. The ATOL to ATOL category on the licence specifies seat numbers only and no revenue figure, and therefore the Liability Cap for work performed in respect of ATOL holders will be calculated based solely on the relevant Public revenue Licence Limit or actual bond as set out in the paragraph above.

SBA Licences only have a Licence Limit for passenger numbers up to 500 and no revenue figure. Franchise member ATOL holder' licences \leq 1,000 pax only have a Licence Limit for passenger numbers up to 1,000 and no revenue figure. Therefore the Liability Cap for work performed in respect of either of these ATOL holders will be £250,000.

The Franchise member ATOL holder' licences for more than 1,000 passenger bookings have a Licence Limit for Public revenue. The Liability Cap for these licences will be calculated based on 15% of the Public revenue and the table set out in paragraph 2.1 below should be read accordingly to calculate the Liability Cap.

Trade licences only have the ATOL to ATOL category on the licence which specifies seat numbers only and no revenue figure. Therefore the Liability Cap for work performed in respect of these ATOL holders will be £250,000.

2.1 The table below summaries the Limit of Accountants' Liability.

The Liability Cap for work performed in respect of SBA licences, Franchise member ATOL holder' licences \leq 1,000 pax and Trade licences will be £250,000 in each case.

Box (a) – For Standard licences, and Franchise member ATOL holder' licences > 1,000 passengers, where 15% of the ATOL holder's Public Revenue Licence Limit (as defined above) or the actual bond, whichever is the greater is:	Limit of Accountants' Liability
\leq £0.25 million	£0.25m
> £0.25m but \leq £0.5 million	£0.5m
> £0.5m but \leq £5 million	100% of the amount calculated in box (a)
> £5m but \leq £15 million	£5m plus 50% of the amount calculated in box (a) that is over and above £5m, up to a limit of £10m.
> £15m but \leq £100 million	£10m
> £100m but \leq £200 million	£20m
More than £200 million	£20m – However the CAA retains the right to individual negotiations for a higher liability cap for ATOL holders in this bracket.

2.2 De minimis

Where the following conditions are satisfied:

- a failure of the ATOL holder has occurred;
- there is no bond;
- the CAA and/or the ATT have taken reasonable steps to recover the loss from the ATOL holder or any guarantees provided to the CAA or the ATT by the principals of the ATOL holder or any other appropriate third party;
- the loss to the ATTF does not exceed 15% of the ATOL holder's Public revenue Licence Limit;

the Accountants' liability to the ATT and/or to the CAA shall be limited (on the basis stated above) to £250,000.

2.3 The Liability Cap in the Case of Groups

Where an accountant is engaged to report on one or more ATOL holders within a group, the aggregate Public Revenue Licence Limit (as set out in paragraph 2 above), for all ATOL holders on which it reports shall be used as the basis for which the liability cap is calculated.

Annex 3

[Extract from 'The Civil Aviation Authority (Air Travel Organisers' Licensing) Regulations 2012']

PART 3

REGULATION OF FLIGHT-PLUS

Definition of a Flight-Plus

24.—(1) Subject to paragraphs (3), (4) and (5), a Flight-Plus exists when paragraphs (a) to (d) are satisfied—

(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 requested to be booked and 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;

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

(2) 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 on behalf of the consumer on the same day as the consumer requested to book the flight accommodation, the previous day or the next day.

(3) A package is not a Flight-Plus except—

(a) where a package does not include flight accommodation, flight accommodation (as described in paragraph (1)(a)) 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.

(4) A flight which begins and ends in the United Kingdom does not form part of a Flight-Plus.

(5) 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 paragraph (1) are no longer satisfied.

Definition of Flight-Plus arranger

25. A Flight-Plus arranger means a person (other than the operator of the relevant aircraft) who— (a) as a principal or an 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.

Obligations of a Flight-Plus arranger to provide alternative flight accommodation, living accommodation and self-drive car hire prior to departure

26.—(1) It is a term of any ATOL that—

(a) subject to regulation 30, where before the intended departure, the Flight-Plus arranger becomes aware that flight accommodation, living accommodation, self-drive car hire or any combination of these forming part of a Flight-Plus will not be provided, the Flight-Plus arranger must make suitable alternative arrangements, at no extra cost to the consumer, for alternative flight accommodation, living accommodation, or self-drive car

hire, as appropriate; and

(b) if it is impossible to make alternative arrangements as described in sub-paragraph (a) or the arrangements offered are not accepted by the consumer for good reasons, the Flight-Plus arranger must refund to the consumer the amount paid by the consumer, on their own behalf or on another consumer's behalf, for all of the flight accommodation, living accommodation, self drive car hire and other tourist services forming part of the Flight-Plus.

(2) For the purposes of this Part, flight accommodation which forms part of a Flight-Plus will not be provided if either no flight accommodation is provided or if, having regard to the dates, times and points of departure and return, the alternative flight accommodation offered under paragraph (1) or regulation 27 varies significantly from that contracted for.

Obligations of a Flight-Plus arranger to provide alternative flight accommodation, living accommodation and self-drive car hire after departure

27. It is a term of any ATOL that—

(a) subject to regulation 30, where after departure, the Flight-Plus arranger becomes aware that flight accommodation which forms part of a Flight-Plus will not be provided, the Flight-Plus arranger must provide the consumer, at no extra cost, with suitable alternative transport back to the place of departure, or to another return-point to which the consumer has agreed;

(b) where after departure, the Flight-Plus arranger becomes aware that living accommodation or car hire which forms part of a Flight-Plus will not be provided, the Flight-Plus arranger must provide the consumer, at no extra cost, with suitable alternative living accommodation or self-drive car hire, as appropriate; and

(c) if it is impossible to make arrangements in accordance with paragraph (a) or (b) or the arrangements offered are not accepted by the consumer for good reasons, the Flight-Plus arranger must refund to the consumer the amount paid by the consumer, on their own behalf or on another consumer's behalf, for all of the unused flight accommodation, living accommodation, self-drive car hire and other tourist services forming part of the Flight-Plus.

Extent of compensation to be provided for flight accommodation, living accommodation and self-drive car hire

28. It is a term of any ATOL that—

(a) subject to regulation 30, where suitable alternative flight accommodation, living accommodation or self-drive car hire is provided under regulation 26 or 27, the Flight-Plus arranger must, where appropriate, compensate the consumer for the difference between the flight accommodation, living accommodation and self-drive car hire offered as part of the Flight-Plus and the flight accommodation, living accommodation and selfdrive car hire supplied; and

(b) the compensation to be provided must include any incidental expenses reasonably incurred by the consumer including but not limited to additional living accommodation expenses.

Obligations of a Flight-Plus arranger to provide a refund for tourist services other than flight accommodation, living accommodation and self-drive car hire

29. It is a term of any ATOL that, subject to regulation 30, in the case of the non-provision of any tourist service forming part of a Flight-Plus other than flight accommodation, living accommodation or self-drive car hire, the Flight-Plus arranger is liable to refund to the consumer the amount paid by the consumer, on their own behalf or on another consumer's behalf, for that tourist service.

Limitation of obligations of Flight-Plus arranger

30. A Flight-Plus arranger is not liable to the consumer under regulations 26 to 29 for the provision of flight accommodation, living accommodation or self-drive car hire forming part of a Flight-Plus or to provide a refund in relation to any other tourist service forming part of a Flight-Plus except where the reason for the non-availability of the flight accommodation, living accommodation or self-drive car hire or the non-provision of the other tourist service forming part of the Flight-Plus is—

(a) the insolvency of any person concerned with its provision; or

(b) the failure of the ATOL holder who made available the flight accommodation.

Annex 4

Guidance on whether transactions for Passengers & Revenue are “Licensable”.

In broad terms, an ATOL is required when a travel provider sells Flight-Only, flight inclusive packages or Flight-Plus as a principal. Under the ATOL Regulations 2012, ATOL protection has been extended to include Flight-Plus, the elements of which can be transacted by an ATOL holder as either principal or as agent. See also section below ‘Which sales should not be counted as licensable’.

An ATOL is not required for sales made as an agent for other ATOL holders, providing that these sales are documented correctly and not sold as Flight-Plus. When payment is made for such agent bookings the consumer must immediately receive an ATOL Certificate (and for a package a Confirmation document within 3 days of payment). In addition an ATOL is not required for a Flight-Only booking where the travel provider is an airline ticket agent and a confirmed ticket is issued as soon as that agent accepts payment or where the ticket is sold on a credit basis.

Guidance on what constitutes a package sale was issued by BERR in January 2008. <http://www.berr.gov.uk/files/file43845.pdf> (The government department BERR has now been superceded into BIS).

Sales of flight inclusive packages and Flights-Only, or Flight-Plus for which a confirmed ticket is not issued immediately at the time of payment, have to be sold under a Licence and must be covered by ATOL holder’s Reports.

The definition of ‘licensable transaction’ means an offer made by a customer (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 the air travel organiser is required to hold an ATOL, i.e. Flight-Only, flight inclusive packages or Flight-Plus.

ATOL Certificate

ATOL Certificates come into effect from 1 October 2012. An ATOL certificate should always state whether the sale is a Flight-Only, flight inclusive package or a Flight-Plus arrangement, which services have been paid for, whether in full or part, which are ATOL protected and which ATOL holder’s licence is protecting those services. The form and content of an ATOL certificate are described in Regulation 19 (with form examples).

Accredited Bodies

The arrangement for an Accredited Body and its members is similar to how a Tour Operator and an agent would operate with the tour operator and Accredited Body accepting liability for the licensable sales of the agents or members respectively. An Accredited Body’s Public Licensable sales will include all member Licensable sales. All Accredited Body members are expected to utilise the central on-line reservation systems of the Accredited Body to which they are a member. The membership agreement between an Accredited Body and its’ members also includes the term that the member is not permitted to sell outside of this agreement. The full Schedule of Accredited Body Standard Terms under ATOL Regulation 48 can be found in the Official Record Series 3, Air Travel Organisers’ Licensing.

Which passengers should be counted as licensable?

Licensable business is divided into two categories. These are:

- **Public - (sub categories – Flight-Only, flight inclusive packages or Flight-Plus) sold to consumers**

This covers packages and Flight-Plus based on either scheduled or charter flights, and Flight-Only sales for which a confirmed ticket is not issued immediately;

- **ATOL to ATOL – sales to other ATOL holders for resale under the buying ATOL holder’s licence**

The buying ATOL holder usually sells on to the consumer. The business covered is normally air seats but occasionally flight inclusive packages may also be sold in this way. The selling ATOL holder must check that the buyer holds an ATOL and that the buyer’s Licence Limit is sufficient to sell to passengers the seats it is buying. The Confirmation Invoice issued by the seller must make clear that the sale is ATOL to ATOL and that the seat will be sold to the public under the buyer’s licence. For reporting purposes CAA is only concerned with the ATOL to ATOL sales to unrelated ATOL holders [referred to as “external” seat sales] and not ATOL to ATOL sales to other ATOL holders in the same Group [referred to as “internal” seat sales].

What should be included in licensable revenue?

“Licensable revenue” is the income that arises from the licensable passengers described above and is only reported on for the Public sales category, including sub categories. It is the gross invoice value arising from the passengers in the relevant period - that is, the total sum they paid or are due to pay for their flights or holidays. It will therefore include the selling price of the flight or flights provided, plus any of the following that form part of the same combination:

- the selling price of any items that constitute part of the same package holiday - hotel accommodation and meals, self-catering apartment or car hire;
- ancillary items like excursions or cruises, ski or sports tuition, entrance fees or hire of specialist equipment, provided that these are included in the same sale as the flight or holiday, as opposed to purchased later;
- any taxes, duties or surcharges added on to the basic price quoted;
- agent’s commission - even though this will usually have been deducted from the cash amount transmitted by the agent to the ATOL holder; and
- insurance, where this is sold by the ATOL holder rather than by an agent.

When are passengers and revenue counted?

A relevant ‘booking’ means a booking made by a consumer to purchase flight accommodation for one or more persons on a flight; and which is accepted by an ATOL holder and constitutes an activity in respect of which that ATOL holder is required to hold a licence. For the purpose of the bookings reports [monthly, quarterly or annual] revenue and passengers are taken as occurring when the ATOL holder contracts with the customer (with or without part or full payment) for a licensable booking under their own licence.

For the purpose of the departed passengers report, revenue is taken as occurring when the passenger departs on the first leg of their Flight-Only, flight inclusive package or Flight-Plus. If a passenger has his outbound flight during one quarter, then the price he pays counts as revenue for that quarter, even though he may have paid in the previous quarter or his return journey may be in the next.

Which sales should not be counted as licensable?

- any sales that do not include air travel;
- flight only sales transacted on an ‘airline ticket agent’ basis, where the ATOL holder has written agreement with the aircraft operator which allows the ATOL holder to issue a confirmed ticket. The ATOL holder must issue the confirmed ticket immediately in exchange for payment, [in broad terms to qualify as a confirmed ticket it would mean that the airline

would carry regardless of having received payment.] For sales on this basis the ticket issuer must declare that they have advised the consumer that there is no ATOL protection. The ATOL holder cannot act on the basis of 'airline ticket agent' where the flight is a component of a package or Flight-Plus;

- From 30 April 2012 an exemption came into force which exempts any flight only or Flight-Plus sales to corporate clients (customers). The exemption does not apply where the corporate client will make the flight available to another person and will accept payment in relation to it. The exemption applies to sales to entities incorporated by statute and also a range of government and quasi governmental bodies; [For a full list of bodies refer to Exemption 05/2012 in the CAA's Official Record Series 3 published on 8 May 2012.] The exemption does not apply if the corporate customer is an ATOL holder or where the sale is a package.
- Flight only sales where the customer only pays after the flight(s) have been completed. Such arrangements can occur for some 'business house sales' which are on credit terms.
- "retail" sales, where the ATOL holder sells another ATOL holder's product as an agent for the other ATOL holder, usually for a commission. The ATOL holder should have a written agency agreement with the other ATOL holder. These retail sales would be in respect of Flight-Only or flight inclusive packages. An ATOL holder who acts as another's agent must provide an ATOL Certificate to the customer at the time of payment. The ATOL holder would either produce the ATOL Certificate on behalf of the other ATOL holder or the other ATOL holder would produce the ATOL Certificate and make this available to the ATOL holder to pass onto the customer.

If you have any doubt about whether or not your client has properly reported and categorised his licensable or non-licensable business, please contact the CAA for advice. We shall try to help, and our aim is to get the returns right rather than to penalise your client for errors.

Annex 5

The following list provides web links and contact details for ATOL holders and new applicants.

CAA	http://www.caa.co.uk
Consumer Protection Group	020 7453 6700
ATOL Advice	advice@caa.co.uk
New Applicants Advice	020 7453 6361
Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012	http://www.dft.gov.uk/publications/civil-aviation-air-travel-organisers-licensing/
ATOL Licensing and Forms	http://www.caa.co.uk/default.aspx?catid=1092
ATOL Policy and Regulations	http://www.caa.co.uk/default.aspx?catid=1038&pagetype=90&pageid=6227
Official Record Series 3	http://www.caa.co.uk/docs/33/ORS3.pdf
ATOL Policy paper on Groups	http://www.caa.co.uk/docs/33/CPG_ATOL_GN_18.PDF
The Package Travel, Package Holidays and Package Tours Regulations 1992	http://www.legislation.gov.uk/ukxi/1992/3288/contents/made
BERR - What is a package? A guidance note for travel organisers	http://www.berr.gov.uk/files/file43845.pdf
BIS - The Package Travel Regulations Travel Questions and Answer Guidance for Organisers and Retailers	http://www.bis.gov.uk/files/file35634.pdf
ICAEW	http://www.icaew.com/