



## AGENCY SALES COMMERCIAL TERMS

### 1. Definitions

1.1 The following expressions shall have the following meanings:

“ADM”	means Agency Debit Memorandum, which is issued by the Airlines to the Agent for booking and ticketing violations, including underpayment on ticket sales, details of which are set out on VS Flying Hub;
“Agent”	shall have the meaning set out in the ASA;
“Agency Sales Commercial Terms”	means these terms and conditions, available and accessible at <a href="http://www.vsflyinghub.com/commercialterms">www.vsflyinghub.com/commercialterms</a> ;
“Airline” or “Airlines”	shall have the meaning set out in the ASA;
“Applicable Route”	means a route operated by an Airline from time to time;
“ASA”	means the Agency Sales Agreement (incorporating these Agency Sales Commercial Terms), including all schedules attached thereto, entered into between the Agent and the Airline(s);
“ATOL”	means an Air Travel Organisers Licence granted by the Civil Aviation Authority pursuant to the Civil Aviation (Air Travel Organiser's Licensing) Regulations 1995;
“Baseline”	means the minimum Flown Revenue that the Agent must achieve before any Sales Incentive is paid by the Airlines, as set out in Schedule 1;
“Branch”	means one or more of the Agent’s ticketing or booking locations designated by the Agent, as set out in Schedule 2;
“BSP”	means the IATA Billing and Settlement Procedures;
“Confidential Information”	means all confidential information (however recorded or preserved) disclosed by a party or its Representatives to the other party or parties and its or their Representatives, whether before or after the Effective Date, in connection with the Sales Incentives, including but not limited to:

- (a) the existence and terms of the ASA;
- (b) any data which is disclosed in a manner clearly indicating it is of a confidential nature or which by its nature or in the circumstances in which it was disclosed, is clearly confidential; and
- (c) without limiting the generality of the foregoing, specifically includes information and material relating to each party's business, past or present customers, discounts, processes, business plans or financial information.

“Delta”	shall have the meaning as set out in the ASA;
“Effective Date”	means the date of the ASA;
“Flown Revenue”	means the total audited ticket value less all applicable commissions, overrides, taxes and fees as defined in Schedule 1.
“GDS”	means Global Distribution System, which is a computerised system (containing information about schedules, availability, fares and related services) through which reservations can be made and/or tickets issued, and which make some or all of these facilities available to subscribers;
“IATA”	means the International Air Transport Association;
“IATA Agency Agreement”	means the IATA Passenger Sales Agency Agreement(s) in effect between the Agent and each Airline;
“Insolvency Event”	means the occurrence of any of the following events: <ul style="list-style-type: none"> <li>(a) a party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;</li> <li>(b) a party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business;</li> <li>(c) a party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the ASA has been placed in jeopardy;</li> </ul>

"Losses"	means all liabilities, costs, charges, damages, expenses, actions, proceedings, claims, demands and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses);
"Marketing Plan"	means the marketing plan (if any) agreed between the Agent and an Airline or the Airlines, as set out in Schedule 3.
"MSP"	means the minimum selling price, as set by the Airline for any particular net fare;
"Net Fare"	means a standard discount fare, which is a confidential and private tariff distributed by an Airline to the Agent;
"O&D"	means the Origin and Destination of all connecting legs on a ticket; either a connection time in excess of 24 hours or returning to a previously visited city on the itinerary will result in the commencement of a new O&D within that ticket;
"Passive Bookings"	means a booking made on an Agent's GDS which has not been confirmed with an Airline's internal reservation system;
"PNR"	shall have the meaning given to it by IATA;
"Published Fare"	means an Airline's fare as published with IATA from time to time;
"Qualifying Sale"	means tickets sold by the Agent for an Applicable Route;
"Representative(s)"	means, in relation to a party, its employees, directors, officers, representatives, advisers, joint ventures partners, subcontractors and Sub Agents;
"Sales Incentive"	means the incentive(s) set out in Schedule 1;
"Sub-Agent"	means a third party agent of the Agent making a booking through the Agent on services operated by the Airlines;
"Virgin Atlantic"	shall have the meaning set out in the ASA;
"VS Flying Hub"	means the Virgin Atlantic web portal containing standard conditions which the Agent is subject to and which may be amended by Virgin Atlantic from time to time.

In these Agency Sales Commercial Terms (unless the context otherwise requires):

- 1.2 any reference to a schedule is to a schedule to the ASA;
- 1.3 any references to the plural indicates the singular and vice versa;
- 1.4 any references to one gender includes all genders;
- 1.5 any references to a person includes natural persons, corporate bodies, partnerships, firms, unincorporated bodies and all legal persons whatsoever;
- 1.6 headings are given for convenience only and shall not affect interpretation;
- 1.7 any reference to any document (including the ASA) includes that document as from time to time varied, updated, amended, supplemented or novated;
- 1.8 reference to any statute or statutory provision includes a reference to that statute or statutory provision as amended, extended or re-enacted from time to time; and
- 1.9 the word "including" shall be deemed to read "including without limitation".

## **2. Authority of Agent**

- 2.1 Each Airline, pursuant to the IATA Agency Agreement, has appointed the Agent as its authorised, non-exclusive agent to market, promote and sell such Airline's air transportation services and related products in the Territory in accordance with the terms and conditions set out in the IATA Agency Agreement and the ASA. Nothing in the ASA shall circumvent or affect any respective rights or remedies a party may have under the IATA Agency Agreement to which it is a party.
- 2.2 The Agent shall not have any power, right or authority to bind the Airlines, except as expressly set out in the ASA, the IATA Agency Agreement or as otherwise permitted in writing by the applicable Airline.

## **3. Variable terms, Conditions and Rates**

- 3.1 The Agent acknowledges and agrees that Virgin Atlantic and Delta are entitled, each at its sole discretion, to offer certain sales incentives to Agent from time to time in addition to those set out in the ASA, the terms of which will be automatically incorporated into and subject to the terms of the ASA upon written (including by e-mail) acceptance by the Agent.
- 3.2 The Airlines may from time to time notify the Agent of updates or amendments to the Agency Sales Commercial Terms, which shall supersede any prior versions and shall be deemed to be incorporated into the ASA from the date of notification. If the Agent does not agree to the updates or amendments it may (as its sole and exclusive remedy) terminate the ASA upon written notice to the Airlines.

## **4. Net Fare Sales**

- 4.1 The Airlines will from time to time, at their sole discretion, make available Net Fares to the Agent by inputting them live into the GDS. These Net Fares must be

sold in compliance with the terms and conditions of the applicable Net Fare, as set out in the GDS.

- 4.2 The Agent shall not offer or sell to customers inclusive tour rates for the purposes of flight only bookings. Any breach of this term shall be regarded as an irremediable material breach of the ASA entitling either or both Airlines to terminate the ASA in accordance with clause 14.
- 4.3 Taxes, fees, charges and surcharges may change from time to time and shall be inputted live by the Airlines into the GDS.
- 4.4 Taxes, fees and charges can be imposed and/or increased by a government body or other authority after the date the ticket is issued. If there is such an imposition of, or increase in, a tax, fee or charge, the Agent is responsible for notifying the customer, collecting the outstanding monies and remitting such sums to the Airlines in accordance with the ASA and the IATA Agency Agreement (except where collecting the additional amounts would be contrary to applicable laws). If Agent fails to remit such additional payments, the Airlines shall issue ADMs as appropriate.
- 4.5 Net Fares advertised or displayed must not be below the MSP or perceived MSP. The Agent shall not include value added offers perceived as cash or an increased saving i.e. discount vouchers, promo codes, free insurance, car hire etc in the advertising, unless agreed by the applicable Airline.
- 4.6 The Agent must not use any part of the Net Fare margin to price favourably in the market and the end consumer must not be sold a fare below the MSP.

## **5. Sales Incentive and Marketing**

- 5.1 The Airlines agree to make available to the Agent the Sales Incentive for Qualifying Sales for the period stipulated in Schedule 1 (or subsequent schedules issued in accordance with clause 3).
- 5.2 The Airlines shall provide the Agent with a revised Sales Incentive each year on or around the anniversary of the Effective Date by supplying the Agent with a revised Schedule 1.
- 5.3 The parties agree to adhere to the Marketing Plan. The Airlines may provide the Agent with a revised or new Marketing Plan each year on or around the anniversary of the Effective Date and the parties agree to follow that plan.
- 5.4 The Agent shall promote, publicise and advertise the Airlines' respective services and any brochures or other marketing material (online or offline) and shall make reasonably prominent references to the Airlines. Any such printed or displayed material which includes an Airline's logo, trade mark or trade name shall be in accordance with the guidelines which are provided by the applicable Airline from time to time. In any event, all promotional material on which any such logos, trade marks or trade names are to be used must be submitted to the applicable Airline prior to publication for written approval at such Airlines' absolute discretion.

## **6. Obligations of the Agent**

- 6.1 The Agent represents, warrants and undertakes that:

- (a) it has registered with VS Flying Hub and it has read and understood all the terms set out in the ASA;
- (b) it has full capacity and authority to enter into the ASA;
- (c) it shall comply with all applicable laws and regulations (including those relating to marketing, the sale of passenger transportation by air and the operation of its business) and shall maintain all applicable licences, permits and consents, including an IATA licence, an ATOL, and those licences imposed by industry bodies, required to enter into and perform its obligations under the ASA;
- (d) it shall immediately upon an Airline's request, produce documentary evidence reasonably satisfactory to such Airline, that the licences required under clause (c) above are in effect or not necessary as the case may be;
- (e) any failure by the Agent to maintain applicable licences shall be regarded as an irremediable material breach giving the Airlines the right to terminate the ASA with immediate effect and without incurring any liability;
- (f) it shall communicate to all passengers that all tickets issued and all flights are subject to the applicable Airline's Conditions of Carriage and Conditions of Contract and shall bring these to the attention of the passenger before the contract is concluded;
- (g) it shall ensure that passengers travelling on tickets for an Applicable Route issued by the Agent or any Sub-Agent pursuant to the ASA are made aware that there may be visa requirements, restrictions on travel to certain destinations and health requirements;
- (h) it shall not make any representations to passengers on behalf of an Airline (save in relation to the provision of flight details and other information related to the services offered by the Airline as authorised by the Airline), nor shall it make any warranties on behalf of an Airline;
- (i) it shall conduct its business in accordance with the highest business standards normally expected of agents providing similar services and not do, permit or omit to do anything which could reasonably be expected to reflect adversely upon the business, integrity or goodwill of an Airline;
- (j) it shall promptly provide the applicable Airline with full details of any complaints received from passengers in relation to the air services marketed or operated by it;
- (k) it shall in all cases comply with the Airlines' credit card verification procedures as notified by the Airline to the Agent from time to time. The Airlines will act in good faith to give the Agent reasonable prior notice of any changes to the procedures;
- (l) it shall provide the Airlines with its full details by signing up to VS Flying Hub and completing the registration form;
- (m) except as authorised by the Airlines, it shall not to act in a way which will incur any liabilities on behalf of the Airlines nor pledge the credit of the Airlines;

- (n) it shall comply with all reasonable and lawful instructions of the Airlines from time to time concerning the marketing and sale of the Airlines' fares, products and services; and
- (o) it shall describe itself in all dealings with the public and in all associated advertising and promotional material as "agent", "booking agent", "sales agent" or similar of the Airlines.

6.2 The Agent indemnifies and holds harmless in full and on a continuing basis each Airline and its Representatives from and against all and any Losses incurred as a result of:

- (a) the Agent's or its Sub-Agent's negligence or wilful misconduct;
- (b) the Agent or its Sub-Agent breaching any applicable law from time to time in force in any country of the world; and
- (c) the breach by the Agent or a Sub-Agent of any terms of the ASA or the IATA Agency Agreement.

6.3 The Agent acknowledges and warrants that it has duly authorised and executed the ASA which constitutes a legally valid and binding obligation, enforceable against it in accordance with its terms.

6.4 The Agent shall comply with all applicable provisions (if any) of the US Department of Transport Enhancing Airline Passenger Protections: Final Rule including:

- (a) the full fare advertising rules in s399.84 in respect of the Airlines' flights;
- (b) 14 C.F.R. Part 257, concerning the disclosure of codeshare services;
- (c) 14 C.F.R. Part 258, concerning the disclosure of change of gauge services;
- (d) delivery of all applicable ticket notices, including without limitation the notice of incorporated terms required by 14 C.F.R. Part 253; the baggage liability notice required by 14 C.F.R. Part 254, international liability limitation notices required pursuant to DOT Order 2006-10-14; and notice of overbooking required by 14 C.F.R. Part 250;
- (e) the notice of baggage fees and other fees requirements in s399.85 in respect of the Airlines' flights; and
- (f) before it accepts any payment from a consumer booking with an Airline to, from or within the US, getting the consumer to give their written consent (or record through permanent means, the consumer giving their verbal consent) to pay the Agent or the Airline for any post-purchase government imposed tax or fee.

6.5 The Agent further warrants that:

- (a) it shall not make fraudulent, fictitious or speculative bookings in the GDS, or hold reservations or block space to accommodate anticipated demand;

- (b) it shall only create Passive Bookings for the purpose of ticketing an identical reservation that exists in an Airline's internal reservation system;
- (b) it shall only use Passive Bookings in its GDS for ticketing and not for accounting or administrative purposes, or for satisfying productivity requirements contained in any agreement between the Agent and a GDS provider or to circumvent any fare rules; and
- (c) it shall ensure that it removes any inactive segments from PNRs. These include, but are not limited to UN, UC, HX or NO as the status code.

## **7. Obligations of Airlines**

7.1 Each Airline confirms and agrees that:

- (a) it has full capacity and authority to enter into the ASA;
- (b) it has duly authorised and executed the ASA and the ASA constitutes a legally valid and binding obligation, enforceable against it in accordance with its terms;
- (c) there will be no unsolicited contact with customers using the Agent's passenger data without seeking prior written consent from the Agent; and
- (d) it will not bid on the Agent's brands to influence traffic for its own benefit or to obtain an advantage in the conduct of its business.

## **8. Payment**

8.1 The Agent shall remit all payments due to the Airlines for bookings made under the ASA via the BSP, in accordance with its applicable payment time limits in place with IATA.

8.2 Any refunds in respect of:

- (a) a passenger's cancellation of a booking; or
- (b) an Airline's cancellation of a flight prior to the date of departure,

shall only be made by the Agent to the passenger in accordance with the applicable Airline's refund policy. Reimbursement by the Airline to the Agent for refunds in accordance with its policy shall be done by BSP.

8.3 Any reimbursement, refund or compensation due to a passenger by an Airline in respect of flight cancellation, delay or denied boarding by the Airline on the day of the relevant flight shall be dealt with by the Airline directly with the passenger and the Agent shall direct any passengers to the Airline in respect of such queries.

8.4 Tracking of sector and revenue under the ASA (including the Baseline as defined in Schedule 1) shall be based on revenue information provided by the Airlines, which is tracked automatically from the Agent and/or Branch unique IATA code. The Airlines will provide these tracking reports to the Agent on a monthly basis. Such information shall be binding and conclusive on the parties, absent manifest error.



- 8.5 Payment of any Sales Incentive shall be made to the Agent's bank account within ninety (90) days after the expiry of the payment term as contained in Schedule 1.

## 9. IATA Details

- 9.1 The Agent is required to be registered with IATA and its details are as set out in Schedule 2. The Agent shall notify the Airlines in writing not less than thirty (30) days in advance of any change in the identity or status of any Branch. This notification is vital and the responsibility of the Agent. Each Airline agrees that a Branch may be changed on a quarterly basis by the Agent provided that such change shall be subject to the prior written notification to the Airlines including such Branch's IATA number. Failure to notify the Airlines of the change in Branch may result in Qualifying Sales being excluded from the calculation of Flown Revenue under the ASA.

## 10. Airlines' right to cancel flights

- 10.1 Each Airline, without prior notice, may cancel flights, amend departure times, change equipment and transfer passengers to alternative carriers in case of necessity.
- 10.2 If an Airline notifies the Agent of a flight cancellation or delay, the Agent shall immediately inform all affected passengers (for whom it holds bookings) of such cancellation or delay. Failure by the Agent to comply with this obligation shall constitute an irremediable material breach of the ASA entitling each Airline to terminate the ASA in accordance with clause 14.
- 10.3 All travel on an Airline shall be subject to its Conditions of Carriage and Conditions of Contract as may be amended from time to time.

## 11. Confidentiality and Data Protection

- 11.1 Each party (the "**Receiving Party**") acknowledges the economic value to the other party (the "**Disclosing Party**") of the Disclosing Party's Confidential Information and, in accordance with the terms of the ASA, shall keep in confidence all such Confidential Information. The Receiving Party shall (and shall procure that its Representatives who have access to the Confidential Information of the Disclosing Party pursuant to clause 11.2 shall):
- (a) treat and maintain as confidential all Confidential Information of the Disclosing Party by taking the same security measures and using the same degree of care as the Receiving Party applies to its own confidential information and which it warrants as providing adequate protection against any unauthorised disclosure, copying or use (but shall in any event use all reasonable endeavours to keep the Confidential Information of the Disclosing Party confidential);
  - (b) not disclose the Confidential Information of the Disclosing Party to any other person other than with the prior written consent of the Disclosing Party or in accordance with clauses 11.2 and 11.3; and
  - (c) not use the Confidential Information of the Disclosing Party for any purpose other than the performance of its obligations under the ASA.

- 11.2 The Receiving Party may disclose the Confidential Information of the Disclosing Party solely to its Representatives for the duration of the ASA and to the extent that it is necessary for the purposes of the ASA.
- 11.3 The Receiving Party shall procure that each Representative is made aware of and complies with all the Receiving Party's obligations of confidentiality under the ASA as if the Recipient was a party to the ASA. The Receiving Party shall be fully responsible and liable for any breaches of this clause 11 by any of its Representatives as if such breach were made by the Receiving Party.
- 11.4 The obligations of confidence under this clause 11 shall not apply to any information that:
- (a) is or becomes generally available to the public (other than as a result of disclosure by the Receiving Party or its Representatives in breach of this clause);
  - (b) was available to the Receiving Party on a non-confidential basis before disclosure by the Disclosing Party;
  - (c) was, is or becomes available to the Receiving Party on a non-confidential basis from a person who, to the Receiving Party's knowledge, is not bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Receiving Party;
  - (d) the parties agree in writing is not confidential or may be disclosed; or
  - (e) is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible.
- 11.5 All Confidential Information, including permitted copies, shall be deemed the property of the Disclosing Party. The Receiving Party shall, within twenty (20) days of receiving a written request from the Disclosing Party, destroy or return to the Disclosing Party (at the Disclosing Party's discretion) all Confidential Information, including permitted copies thereof.
- 11.6 The obligations of confidence under this clause 11 shall survive expiry or termination of the ASA howsoever arising for a period of two (2) years thereafter.
- 11.7 The parties agree to comply with the requirements of any applicable data protection laws and regulations relevant to their conduct under the ASA.

## **12. Intellectual Property**

- 12.1 Except as expressly provided for in the ASA, the Agent shall have no right to use the Airlines' respective names, logos or trade marks and shall not acquire any right or title in such names, logos or trade marks.

## **13. Variation and Amendments**

- 13.1 Subject to clause 3, no variation or amendment of the ASA shall be effective unless made in writing and signed by a duly authorised representative on behalf of both parties.

#### **14. Termination**

- 14.1 Any party may terminate the ASA immediately or with up to 30 days written notice to the others, if any party:
- (a) commits a material breach of the ASA, which it fails to remedy within fourteen (14) days of having been notified of such breach; or
  - (b) suffers an Insolvency Event.
- 14.2 An Airline may exit the ASA (and/or terminate any schedules) for any reason, with or without cause and without liability, upon providing the other parties 30 days' prior written notice. Unless otherwise notified to the Agent in writing, exit by one Airline shall not affect the continuation of the ASA in respect of the other parties.
- 14.3 Any termination or expiration of the ASA shall be without prejudice to the rights and remedies of the parties that may have accrued up to the date of termination or expiration. The exercise of any right to terminate the ASA pursuant to this clause 14 shall be without prejudice to any other right or remedy of either party in respect of the breach concerned or any other breach.
- 14.4 If the ASA terminates for any reason, such termination shall have no impact on any bookings made but not yet flown or any outstanding amounts owed by the Agent to the Airlines prior to the effective date of such termination.
- 14.5 On termination or expiration of the ASA all rights and obligations of each of the parties under the ASA shall automatically terminate except for any provisions which expressly or by implication are intended to come into or continue in force on or after such expiration or termination (all of which shall survive termination or expiry of the ASA for any reason whatsoever).
- 14.6 If the performance of the ASA or any obligation hereunder is prevented, restricted or interfered with by any act or condition whatsoever beyond the reasonable control of the affected party, the party so affected, upon giving prompt notice to the other party, shall be excused from such performance, except for the making of payments hereunder, to the extent of such prevention, restriction, or interference, for so long as the non-performing party uses reasonable endeavours to resume performance. In the event of non-performance pursuant to this clause 14 for more than sixty (60) days, the other party may terminate the ASA upon fifteen (15) days written notice to the other parties.

#### **15. Online Sales / Distribution**

- 15.1 For online distribution of the Airlines' respective fares, products and services the Agent must be either a registered member of Electronic Reservation Services Provider or have a dedicated IATA number notified to the Airlines in accordance with clause 9.1.

## **16. Keyword Search**

16.1 Agent shall not use, procure, or otherwise arrange for a “Sponsored Link” (as defined below) on any Internet search engine which uses or includes the trade marks, trade names, service marks or corporate names of either of the Airlines. Agent shall include the trade marks, trade names, service marks or corporate names of each of the Airlines as negatives within any search engine or search engine service which uses Sponsored Links. Negatives shall be added as broad-match in those search engines that have match-type functionality. For the purposes of the ASA, a “Sponsored Link” means a link offered, created, or displayed for a fee (whether on a “cost-per-click” basis, commission, or any other commercial arrangement) by any Internet search engine using search terms or keywords to identify, draw attention to, or direct Internet traffic to an Internet site.

Required negative matched terms: Virgin Atlantic, Delta, Northwest, VS, NWA, NW, DL.

## **17. No Bias Display.**

17.1 Agent and each Agent Branch and authorized Sub Agent shall display and make available for sale each Airline’s respective fares (and related schedules, and seat availability) or ancillary services and products that such Airline makes available to Agent, Agent Branch or Sub-Agent from time to time.

17.2 Unless otherwise directed by a customer of Agent, neither Agent nor any Agent Branch and authorized Sub Agent shall bias against any Airline in any way the display, distribution of or access to any “Carrier Content” or preference another air carrier’s content, products or services as compared to the Carrier Content, products or services of each Airline at any time. Any integrated display provided by or through Agent or any Agent Branch and authorized Sub Agent shall be determined on the basis of service criteria that do not reflect carrier identity and that are applied consistently to all air carriers and to all markets (e.g. lowest fare, shortest elapsed travel times, non-stop versus one or more stops).

17.3 For the purposes of the ASA, “Carrier Content” means, with respect to each Airline, all information and content that such Airline or any agent of such Airline makes available to Agent or any Agent Branch and authorized Sub Agent, directly or indirectly, including, without limitation, all fares, schedules, seat availability, seat assignment, service enhancements, flight information, frequent flyer program account information, functionality, ancillary products and services, merchandising opportunities and inventory availability.

## **18. Appointment of Sub–Agents**

18.1 The Airlines agrees that the Agent is entitled to appoint Sub-Agents, provided that the appointment is made on the following terms, namely:

- (a) the relevant Airline give its prior written consent;
- (b) no Sub-Agent shall be entitled to assign or create further sub-agencies;

- (c) the relevant sub-agency is automatically terminated in the event that the ASA is terminated or expires or the relevant Airline exits the ASA pursuant to clause 14;
- (d) each Sub-Agent shall be subject to the obligations imposed on the Agent pursuant to the ASA;
- (e) in the capacity of principal obligor (not merely as surety), the Agent unconditionally and irrevocably guarantees the full and prompt performance by the Sub-Agent of the obligations contained in the ASA; and
- (f) The Agent shall indemnify and keep indemnified, the Airlines from all Losses howsoever arising out of, or in connection with, any failure of the Sub-Agent to perform any of its obligations.

## **19. Assignment**

- 19.1 Neither the rights nor the obligations of the Agent under the ASA may be assigned, transferred, sub-contracted or otherwise disposed of, in whole or in part, without the prior written consent of each Airline.

## **20. No Waiver**

- 20.1 There shall be no waiver of any term, provision or condition of the ASA unless such waiver is evidenced in writing and signed by the waiving party. No omission or delay by either party in exercising any of its rights shall be treated as a waiver thereof, nor shall any single or partial exercise of right preclude any other or further exercise thereof or any exercise of any other right. For the avoidance of doubt it is agreed that a waiver of a right on one occasion shall not constitute a waiver of such right in the future.

## **21. Severance**

- 21.1 The court may strike out or override any part of the ASA which it considers to be unreasonable, invalid or unlawful (whether an entire clause or only part of one) and enforce the contract as if the offending part had never been contained in it. The remaining provisions shall remain unaffected.

## **22. Notices**

- 22.1 Any notice required to be given by one party to the ASA to the others will be in writing and will be served by hand delivery, pre-paid first class post, airmail or e-mail to the designated representative at the address as set out in the ASA (or as otherwise notified by a party to the others in accordance with this clause).
- 22.2 A notice:-
  - (a) if sent by pre-paid first class post, shall be deemed to be received two (2) days after the day on which it was posted;
  - (b) if sent by airmail, shall be deemed to be received seven (7) days after the day on which it was posted;

- (c) if delivered by hand or courier during normal business hours on a business day, shall be deemed to be received on that day, or (if outside normal business hours) on the business day following the date of delivery; and
  - (d) if delivered by e-mail, shall be deemed to be received on the next business day after the day on which it was sent.
- 22.3 Notwithstanding the above, any notice to terminate the ASA shall be served by the means set out in clauses 22.2(a), 22.2(b) or 22.2(c) only.

### **23. Public Statements**

- 23.1 No party shall make or publish any public announcements, communication or circular as to the existence or contents of the ASA for any reason whatsoever, without the consent of all the other parties.
- 23.2 The parties shall not (and each procures that their Representatives shall not) make public statements or comments in writing or verbally that expressly or impliedly disparage or defame another party to the ASA or such party's Representatives, trade marks, products, services, customers or method of doing business.

### **24. Ethical Business**

- 24.1 In accordance with the Airlines' commitment to ethical business practices, each party warrants that when performing any service for or on behalf of the other party, and/or otherwise in relation to any activities it undertakes in connection with the performance of the ASA, it shall (and shall procure that its Representatives shall):
- (a) comply with all applicable anti-bribery and anti-corruption laws, including but not limited to the UK Bribery Act 2010;
  - (b) not offer, promise, give or accept any financial or other advantage to or from any person (including any customer or supplier) with the intention of improperly influencing any person in the performance of any function or activity; and
  - (c) not make, promise or offer, directly or indirectly, any payment, gift or other advantage to a foreign public official with the intention of influencing such official and obtaining or retaining an advantage in the conduct of business.

### **25. Entire Agreement**

- 25.1 Subject to clause 3, the ASA constitutes the entire agreement between the parties relating to the subject matter of the ASA and supersedes all previous agreements between the parties whether written or oral. No party has relied on any representation or promise except as expressly set out in the ASA, save that nothing in this clause shall excuse either party from fraudulent misrepresentation.

### **26. Third Parties**

- 26.1 A person who is not party to the ASA shall have no right under The Contracts (Rights of Third Parties) Act 1999 to enforce any term of the ASA. This

clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

**27. Governing Law**

27.1 The ASA and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English law and the English courts shall have exclusive jurisdiction.

**28. Liability**

28.1 In no event shall Virgin Atlantic and Delta be held jointly and severally liable for any actions of each other under the ASA.

28.2 All Branches are considered to be the Agent for the purposes of the ASA and the Agent will be liable for any costs or losses incurred by Virgin Atlantic or Delta arising out of, or in connection with, any act or omission of a Branch.

28.3 Each party's total liability in contract, tort (including without limitation negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the ASA shall be limited to 10% of total Flown Revenue generated under the ASA.