

**AGENCY AGREEMENT**  
**Abercrombie & Kent Limited**

This Agreement is made the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

BETWEEN:

**[NAME OF AGENT]** \_\_\_\_\_ whose registered office is at \_\_\_\_\_  
\_\_\_\_\_ (the 'Agent')

-and-

**ABERCROMBIE & KENT LIMITED** whose registered office is at St George's House, Ambrose Street, Cheltenham, GL50 3LG ('The Principal' and in respect of Licensable Transactions 'The Principal ATOL Holder').

### 1. Definitions

The definitions used in this Agreement have the same meaning as those used in the ATOL Regulations. The following words have the following meanings:

“**ABTA**” means the Association of British Travel Agents.

“**Agent**” means the Company specified above including all current and future branches and trading addresses.

“**Arrangements**” means the Principal's holiday arrangements.

“**ATOL**” means an Air Travel Organisers' Licence issued by the CAA.

“**ATOL Regulations**” mean the Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012.

“**Consumer(s)**” means the person(s) or any of them who purchase any Arrangement(s) or on whose behalf any Arrangement(s) is/are purchased.

“**DPA**” means the Data Protection Act 1998.

“**Lead Name**” means the person over the age of 18 years named as the first person on the booking form, or any substitute for that person.

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

“**PTRs**” mean the Package Travel, Package Arrangements and Package Tours Regulations 1992 and any amendment or re-enactment of the same and all other UK legislation implementing the EC Directive on Package Travel, Package Arrangements and Package Tours.

### 2. Appointment

From the date of this Agreement, the Principal appoints the Agent to be its non-exclusive agent for the retail sale of the Arrangements within the United Kingdom. The Agent accepts its appointment and agrees to sell the Arrangements and perform the other obligations set out in this Agreement.

Please note that in the event of sales of non licensable transactions being carried out by the Agent the Supplementary Agreement will not apply, and any references in this Agreement to the issue of ATOL certificates or other general ATOL obligations will not be applicable to such transactions.

### 3. Supplementary Agreement containing ATOL Agency Terms

This Agreement and the Supplementary Agreement constitutes the entire agreement between the parties and supersedes any prior agreement or arrangement. See also Agency Terms 1 and 11 in The Supplementary Agreement. In the event of any conflict between the clauses in this Agreement and the Supplementary Agreement, the clauses in the Supplementary Agreement shall take precedence to the extent of any conflict only.

### 4. Financial Protection

The Principal's arrangements for the protection of consumers' monies with respect to the Arrangements sold under this agreement are as follows:

Licensable products: protected under ATOL number 2881.  
Non-licensable packages: protected by means of a bond held by ABTA.  
Non-package products: None.

## **5. Duties of the Agent**

- 5.1 To identify the Principal on all advertising material and to state clearly that it acts as Agent for the Principal and state the Principal's name and ATOL number on all advertising material and other documents issued that evidence the formation of a contract between any Consumer and the Principal;
- 5.2 To only use the Principal's trade names, trademarks, service marks, or logos on advertising material if it complies with all reasonable conditions the Principal may impose to protect the use of such marks. Except as expressly stated in this Agreement this Agreement shall not be construed to be a license for either party to use the trade names, trademarks, service marks, or logos of the other party without the prior written consent of such party;
- 5.3 Not to make any representations, verbally or in writing, to any Consumer which are in addition or different to those provided by the Principal unless authorised to do so by the Principal in writing;
- 5.4 To ensure that the ATOL certificate provided to the Lead Name in respect of a booking including air transportation, sold under the Principal's ATOL includes the information as set out in The Supplementary Agreement to this Agreement. The Agent undertakes not to accept payment for the making available of flight accommodation without supplying to the client an ATOL Certificate on behalf of the Principal ATOL holder.
- 5.5 Where the Agent makes a booking which is not a flight, Flight Plus or flight inclusive Package, the agent agrees to provide the Lead Name with a receipt following the payment for any Arrangements, stating the amount taken on behalf of the Principal, that the Agent acts as Agent for the Principal and naming the Principal; and the confirmation document issued by the Principal as soon as it is received from the Principal.
- 5.7. To collect from Consumers all deposits, balances, cancellation charges, amendment fees and all other monies payable by Consumers in accordance with the Principal's applicable booking conditions and to remit those monies as shown on the Principal's confirmation invoice, cancellation invoice or amendment invoice as applicable to the Principal by their due date. The Agent will remain personally liable to the Principal for monies which it has failed to collect in accordance with the terms of this Agreement and the Principal's booking conditions. .
- 5.8 To comply with all relevant laws, regulations and Codes of Practice, including the PTRs, ATOL Regulations, the Consumer Protection from Unfair Trading Regulations 2007, the DPA and the ABTA Code of Conduct (including any amendments), insofar as they affect the Agent's activities.

## **6. Provision of Information**

- 6.1 The Agent will, if required by the CAA, report to the Principal, the unique reference number of each ATOL Certificate supplied by it, along with the corresponding ATOL holder's reference number, where it acts as agent for the Principal and where the transaction with the Consumer was a Flight-Only or a Package. If requested to do so by the CAA at any time, and including after the failure of the Principal, the Agent will provide this information to the CAA.
- 6.2 The Agent will provide any information requested by the Principal necessary to enable the Principal to comply with the ATOL Standard Terms or any term of its ATOL.
- 6.3 Immediately upon the failure of the Principal, the Agent will provide the CAA with information on money paid to it by Consumers in respect of services to be provided for future travel by the Principal to Consumers and the ATOL Certificate unique reference numbers to which they apply in a form acceptable to the CAA.

## **7. Indemnity**

The Agent agrees to indemnify the Principal for the full amount of all claims, liabilities, demands, damages, costs (including legal costs), expenses, fines and all other sums of whatever nature which that other party reasonably incurs or becomes liable for as a result of any breach of and/or act outside of the scope of this Agreement or the Supplementary Agreement or otherwise without the authority of the Principal. This indemnity will continue to apply after this Agreement or the Supplementary Agreement comes to an end for whatever reason.

## **8. Commission**

- 8.1 The Principal shall pay the Agent commission on each booking made by the Agent with The Principal at such variable rates as agreed between the parties in writing from time to time, which may be included in Schedule 1 to this Agreement.
- 8.2 No commission shall be payable until the Agent has made payment in accordance with this Agreement and the Principal has issued a confirmation invoice to the Agent; and no commission shall be payable on that part

of any confirmed Arrangements subsequently cancelled (by any party), save that the Agent shall be entitled to receive commission on any forfeit deposits or cancellation charges payable, provided such payment has been collected and paid to the Principal.

8.3 The mechanism for payment of commission is as agreed between the Agent and the Principal and may be set out in Schedule 1.

## **9 Term and Termination**

This Agreement will continue in force indefinitely subject to termination as detailed below:

9.1 The Principal has the right to terminate this agreement at any time by giving notice of one month to the Agent.

9.2 Either party may terminate this Agreement immediately on giving written notice to the other party if the other party fails to perform or commits any serious breach of this Agreement or fails to remedy to the satisfaction of the non-breaching party, within 7 days of receiving a written request to do so, any other breach of this Agreement.

9.3 If in the Principal's reasonable opinion, there is any repeated or persistent failure by the Agent to provide a service of a sufficiently high standard to Consumers, the Principal has the right to terminate the Agreement with immediate effect.

9.4 This Agreement shall terminate immediately without notice if either party suspends or ceases trading or indicates that it intends to cease trading or becomes unable to pay its debts as they fall due or either party has a receiver or liquidator appointed.

9.4 The terms of this Agreement will remain binding on the Agent even if the Principal has failed. The Agent must keep a copy of this agency agreement for the period it is in force and for 12 months after it expires or is terminated.

## **10 Set Off**

The Agent shall not be entitled to set off or deduct any amount(s) due to it from The Principal on any basis or for any reason from any amount(s) due to The Principal on any basis or for any reason which must be paid to The Principal strictly in accordance with this Agreement. The Principal shall be entitled to deduct any sums owed to it by the Agent on any basis from any payment due to the Agent under this Agreement or any other agreement between the parties.

## **11 Change of ownership or management**

The Agent shall immediately notify the Principal in the event of any change of ownership or of any significant change of management of the Agent.

## **12 Notices**

Any notice given under this Agreement must be given in writing and sent by fax or pre paid first class recorded delivery post or delivered by hand to the other party's registered or principle office. If sent by fax or hand delivered the notice(s) will be deemed served at the moment of delivery. If sent by post it will be deemed served 48 hours from the time of posting.

## **13 Confidentiality**

No publicity may be given by either party about the contents of this Agreement (including for the avoidance of doubt, the commercial terms which form part of this Agreement) without the written consent of the other.

## **14 General**

No waiver of any breach shall be a waiver of any subsequent breach of this Agreement. Any failure to enforce or agreement not to enforce any rights under this Agreement shall not affect the rights of the party not at fault on any later occasion.

Neither party will be entitled to add to and/or amend this Agreement without the prior written consent of the other.

In the event of any inconsistency between the terms of this Agreement and any legislation, regulations, rules or codes of practice (including, for the avoidance of doubt, any issued by the CAA) by which The Principal and/or Agent is bound in the conduct of its business, the latter shall apply to the extent of the inconsistency and the terms of this Agreement shall be construed accordingly.

Neither party may assign its rights or obligations under this Agreement (in whole or part) without the prior written consent of the other.

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

**15 Law and Jurisdiction**

This Agreement is governed by the laws of England and Wales. The parties agree to submit to the exclusive jurisdiction of the Courts of England and Wales.

Signed by an authorised representative on behalf of the Principal

Signed by an authorised representative on behalf of the Agent

Signature: 

Signature: .....

Full Name: Scott Bearman-Brown

Full Name: .....

Position: Agency Sales Manager

Position: .....

Date: 30<sup>th</sup> April 2012

Date: .....

**SCHEDULE 1**

**Commissions**

Such variable commission arrangements as agreed between the parties from time to time, which may be set out below or otherwise agreed.

**Minimum 10% for touring, and 5% for non-touring / 'Fly & Flop' itineraries**

**OR**

**Other commissions as previously agreed in writing**

**Supplementary Agreement for licensable transactions**

**AGREEMENT BETWEEN [REDACTED] AND ABERCROMBIE & KENT LIMITED, ATOL NUMBER 2881 APPOINTING [REDACTED] AS ABERCROMBIE & KENT LIMITED'S AGENT PURSUANT TO ATOL REGULATIONS 12 AND 22**

**Definitions** The definitions used in this agreement have the same meaning as those used in the ATOL Regulations 2012

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

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

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

**Priority of Agency terms published by CAA**

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

**Agency Term 1** By making available flight accommodation to consumers in the capacity of an agent, in accordance with ATOL Regulations 9, 10 and 12 the agent is deemed to have agreed to the terms of the written agency agreement between the principal ATOL holder and its agent.

The terms of the agency agreement include terms mandated by the CAA to be agreed between principal ATOL holders and agents for principal ATOL holders making available flight accommodation as agents of that principal ATOL holder. Principal ATOL holders and agents cannot agree, whether in writing, by conduct or otherwise, any terms which contradict, or purport to contradict the terms managed by the CAA. The agent must keep a copy of this agency agreement for the period it is in force and for 12 months after it expires or is terminated.

**Agency Term 2.1** Agents must comply with all the terms of ATOL Standard Term 1 as if they applied directly to the agent and any requirements to set out the principal ATOL holder's name and number should be read as requirements to set out the agent's principal's name and ATOL number. That is:

Parts of AST1 that apply to agents are set out below (for the avoidance of doubt AST1.8-AST1.10 do not apply to agents):

**Interim AST A** *Until 1 October 2012, ATOL holders must not (and ATOL holders must ensure their agents and Accredited Body Members do not) supply an ATOL Certificate in the form and content referenced by paragraph 1 of Section 1.3 of the Official Record Series 3, unless the ATOL holder has permission from the CAA. Such permission will be given once the CAA is satisfied that the ATOL holder, its agents and its Accredited Body members, is competent (taking into account its business systems and any other relevant factor) to supply ATOL Certificates in that form.*

**Interim AST B** *Until 1 October 2012, unless ATOL holders, their agents and Accredited Body Members have the permission referred to in Interim ATOL Standard Term A*

- (a) *The statement required by AST1.1 must not be made.*
- (b) *The statement required by AST1.2 must not be made.*
- (c) *The information to be provided to consumers before a contract is concluded in accordance with AST1.4 (b) is only "the fact that the booking is authorised under the ATOL holder's ATOL number and is protected under the ATOL scheme" and is not as set out in AST1.4 (b).*
- (d) *The statement to be included in ATOL holder's terms and conditions of booking, information relating to payment requests (Invoices) and information relating to payment acknowledgment (Receipts), as set out in AST1.5 must not include the financial protection statement set out in AST1.5.*
- (e) *AST1.6 does not apply*
- (f) *The statement required by AST1.7 must not be included and the following statement must be included*

*"We, or the suppliers of the services you have bought, will provide you with the services you have bought (or a suitable alternative). In some cases, where neither we nor the supplier are able to do so for reasons of insolvency, an alternative ATOL holder may provide you with the services you have bought or a suitable alternative (at no extra cost to you). You agree to accept that in those circumstances the alternative ATOL holder will perform those obligations and you agree to pay any money outstanding to be paid by you under your contract to that alternative ATOL holder. However, you also agree that in some cases it will not be possible to appoint an alternative ATOL holder, in which case you will be entitled to make a claim under the ATOL scheme (or your credit card issuer where applicable)."*

- (g) *AST1.9 does not apply.*
- (h) *The obligation to include the Unique Reference Number on the relevant ATOL Certificate in AST1.11 does not apply.*
- (i) *AST5 (h)(i) and (iii) does not apply.*

**AST1.1** *The ATOL holder must ensure that:*

- (a) *The name shown on its ATOL (or a trading name notified to the CAA) and its ATOL Number; and*

*(b) The Statement*

*“All the flights and flight-inclusive holidays [in this brochure] [on this website – as appropriate] are financially protected by the ATOL scheme. When you pay you will be supplied with an ATOL Certificate. Please ask for it and check to ensure that everything you booked (flights, hotels and other services) is listed on it. Please see our booking conditions for further information or for more information about financial protection and the ATOL Certificate go to: <http://www.atol.org.uk/ATOLCertificate>”*

*is stated clearly on all publicity material (including websites and brochures).*

**AST1.2** *If some products listed in publicity material (including websites and brochures) are not ATOL protected, then the following statement should be stated clearly on all publicity material:*

*“Many of the flights and flight-inclusive holidays [in this brochure] [on this website – as appropriate] are financially protected by the ATOL scheme. But ATOL protection does not apply to all holiday and travel services listed [in this brochure/on this website]. Please ask us to confirm what protection may apply to your booking. If you do not receive an ATOL Certificate then the booking will not be ATOL protected. If you do receive an ATOL Certificate but all the parts of your trip are not listed on it, those parts will not be ATOL protected. Please see our booking conditions for information or for more information about financial protection and the ATOL Certificate go to: <http://www.atol.org.uk/ATOLCertificate>”*

**AST1.3** *ATOL holders that advertise ATOL protected products in broadcast media (television/radio/cinema etc.) must, unless the CAA agrees an alternative that achieves equivalent consumer clarity, ensure that the advert contains audible words “**ATOL protected**” and that the ATOL protected logo and ATOL number are shown during the broadcast.*

**AST1.4** *The ATOL holder must ensure that the consumer is appropriately advised of:*

- (a) the ATOL holder’s name, or its trading name notified to the CAA; and*
- (b) the fact that the booking is authorised under the ATOL holder’s ATOL number and is protected under the ATOL scheme, as set out in the ATOL Certificate to be supplied,*

*immediately before it enters into a contract for a licensable transaction but after the consumer has chosen a flight and all other elements to be purchased. In this AST a consumer has chosen a flight when the date, origin, destination, time, airline operator (and flight number where known) of each flight have been determined.*

**AST1.5** *The ATOL holder must ensure that:*

- (a) the terms and conditions upon which the ATOL holder (or its agent or AB member on its behalf) enters into a licensable transaction;*
- (b) the terms and conditions which the ATOL holder (or its agent or AB member on its behalf) holds out as terms upon which it will enter into a licensable transaction; and*
- (c) any receipts or invoices supplied by the ATOL holder, its agent or its AB member for a licensable transaction;*

*each contain the ATOL holder’s name as shown on its ATOL (or trading name notified to the CAA), ATOL Number and a statement in the following form:*

*“Your Financial Protection*

*When you buy and ATOL protected flight or flight inclusive holiday from us you will receive an ATOL Certificate. This lists the flight, accommodation, car hire and/or other services that are financially protected, where you can get information on what this means for you and who to contact if things go wrong.”*

**AST1.6**

*(a) Where the information entered on an ATOL Certificate changes more than 72 hours before the consumer is due to depart from the UK, the ATOL holder must (and the ATOL holder must ensure its agents and AB members) supply a new ATOL Certificate containing the up to date information to the consumer and update this information on its business systems.*

*(b) Where the information in (a) changes less than 72 hours before the consumer is due to travel the persons in (a) must update and record those changes on their business systems.*

**AST1.7** *Where the ATOL holder has a contractual or statutory obligation (including as a Flight-Plus arranger) to*

*provide a flight (and where applicable other travel services) to a consumer whether concluded direct or through an agent or AB member, the ATOL holder must ensure the terms of its agreement with its consumer require the consumer to accept and agree that, if the ATOL holder fails, services to be provided by the ATOL holder pursuant to a licensable transaction may be provided by another ATOL holder or the consumer may be required to claim a refund under the ATOL scheme by including in its terms of business with consumers the term that:*

*“We, or the suppliers identified on your ATOL Certificate, will provide you with the services listed on the ATOL Certificate (or a suitable alternative). In some cases, where neither we nor the supplier are able to do so for reasons of insolvency, an alternative ATOL holder may provide you with the services you have bought or a suitable alternative (at no extra cost to you). You agree to accept that in those circumstances the alternative ATOL holder will perform those obligations and you agree to pay any money outstanding to be paid by you under your contract to that alternative ATOL holder. However, you also agree that in some cases it will not be possible to appoint an alternative ATOL holder, in which case you will be entitled to make a claim under the ATOL scheme (or your credit card issuer where applicable).”*

**AST1.11** *An ATOL holder that sells a package (whether direct or via an agent or AB member) must produce a ‘Confirmation’. The Confirmation must contain:*

- *Lead name*
- *Flight times*
- *Flight numbers*
- *Departure and arrival airports*
- *Name of air carrier (i.e. airline)*
- *Name and location of accommodation*
- *Other ground arrangements e.g. car hire, transfer, tours, entrance tickets*
- *Total price of package*
- *The unique reference number of the relevant ATOL Certificate\**

*\* **Note: Prior to 1 October 2012**, the requirement to include the Unique Reference Number of the relevant ATOL Certificate only applies if an ATOL Certificate in the form and content referenced by paragraph 1 of Section 1.3 of the ORS3, has been issued to the consumer.*

*Where an ATOL holder sells a package via an agent or AB member, whether or not that agent or AB member arranges a Flight-Plus incorporating that package, the ATOL holder must supply the Confirmation to the agent or AB member, who must supply it to the consumer.*

*The Confirmation must be sent to the consumer in order that it is received within 3 days of payment by the consumer being accepted.*

**AST1.12** *If any of the information on the ‘Confirmation’ changes the ATOL holder must produce a revised Confirmation which must be received by the consumer as soon as possible. The Confirmation must make it clear that it is a revised Confirmation.*

**AST1.13** *ATOL holders must ensure that it is a term of their agreement with their consumer that:*

- (a) money accepted by their agent or AB member from the consumer is held by that agent or AB member on behalf and for the benefit of the Trustees of the Air Travel Trust at all times, but subject to the agent or AB member’s obligation to pay it to the ATOL holder for so long as the ATOL holder does not fail; and*
- (b) if the ATOL holder fails, any money held at that time by the agent or AB member, or subsequently accepted from the consumer by their agent or AB member, is and continues to be held by that agent or AB member on behalf of and for the benefit of the Trustees of the Air Travel Trust without any obligation to pay that money to the principal ATOL holder*

**Agency Term 2.2** *The agent must at all times identify the selling, protecting principal ATOL holder on all publicity material (including websites and brochures) that identify a flight or flight inclusive package or Flight-Plus which the agent is holding out it can make available to consumers.*

**Agency Term 2.3** *If the agent produces a receipt for money paid by a consumer the agent must identify which part of that money is protected by the principal ATOL holder’s ATOL and which, if any, is not.*

**Agency Term 3** *The agent will, if required by the CAA, report to the principal ATOL holder the unique reference number of each ATOL Certificate supplied by it, along with the corresponding principal ATOL holder’s reference number, where it acts as agent for the principal ATOL holder and where the transactions with the consumer was a Flight-Only or a package. If requested to do so by the CAA at any time, and including after the failure of the*

principal ATOL holder, the agent will provide this information to the CAA.

**Agency Term 4** The agent will provide any information requested by the principal ATOL holder necessary to enable the principal ATOL holder to comply with the ATOL Standard Terms or any term of its ATOL.

**Agency Term 5** Any payment received by the agent from consumers, for services owed by the principal ATOL holder to the consumer, is received and held by the agent on behalf of and for the benefit of the Trustees of the Air Travel Trust but subject to the agent's right and obligation to make payment to the principal ATOL holder for so long as the principal ATOL holder does not fail. If the principal ATOL holder fails the agent confirms it will continue to hold consumer payment on behalf of the Trustees of the Air Travel Trust and without any right or obligation to pay the same to the principal ATOL holder.

**Agency Term 6** Where an agent makes available a package as agent of a principal ATOL holder, the agent must obtain a Confirmation (see AST 1.11) from the principal ATOL holder and pass it immediately to the consumer by the specified method.

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

**Note:** The specified method means:

- (a) in the case of a person who is present, providing the Confirmation to that person at the time such payment is made;
- (b) in the case of a person who is not present, immediately sending to that person the Confirmation by email or some other equivalent electronic means; or
- (c) in the case of a person who makes a booking by telephone, either the method specified in subparagraph (b) or immediately posting the Confirmation to that person.

**Agency Term 7** When accepting payments in respect of transactions the agent would need an ATOL to transact if the agent were not the agent of the principal ATOL holder, agents may only accept payment from consumers as defined in the ATOL Regulations 2012.

**Agency Term 8** Immediately upon the failure of the principal ATOL holder, the agent will provide the CAA with information on:

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

*\*Note: Prior to 1 October 2012, the requirement to include the Unique Reference Number of the relevant ATOL Certificate only applies if an ATOL Certificate in the form and content referenced by paragraph 1 of Section 1.3 of the ORS3, has been issued to the consumer.*

**Agency Term 9** The rights of the CAA and the Trustees of the Air Travel Trust to enforce any obligations under this agreement on either party are not excluded. For the avoidance of doubt, they may be enforced by the CAA and the Trustees of the Air Travel Trust.

#### **Agency Term 10**

An agent is not permitted to appoint a sub-agent to perform its obligations as an agent of the Principal ATOL holder on the agent's behalf.

**Agency Term 11** If a new or revised Schedule of Agency Terms is published by the CAA in its Official Record Series 3 those now or revised terms will immediately take effect as terms of the agency agreement between the principal ATOL holder and the agent.