

AGREEMENT WITH CONDITIONS OF ENGAGEMENT FOR THE APPOINTMENT OF AN AGENT TO MANAGE RESIDENTIAL PROPERTY

Conditions of Engagement

1. “The Service” to be provided by the Agent

With reasonable skill, care and diligence

- 1.1 collecting current instalments and any arrears of rent service charges, sinking fund contributions, and any other payments due from tenants of the property and the collection of any arrears only up to the time of instructing solicitors;
- 1.2 inspecting the common parts of the Property periodically to ascertain for the purpose of day to day management only the general condition of those common parts;
- 1.3 preparing, if required, an annual estimate of future expenditure, administering any service charge or sinking funds and preparing and distributing appropriate service charge accounts;
- 1.4 administering contracts and checking demands for payment for goods, services, plant and equipment supplied for the benefit of the Property where the cost falls within the expenditure limits specified;
- 1.5 engaging for and on behalf of the Client staff, whether part or full time, residential or not, and paying their remuneration, (withholding of PAYE tax and National Insurance contributions) and where appropriate dismissal payment or redundancy pay;
- 1.6 arranging insurance in respect of the Property;
- 1.7 advising the Client when notices should be served;
- 1.8 keeping files of leases and other documents relating to the Property that have been supplied to the Agent;
- 1.9 attending to routine enquiries from the Client or any tenant, tenants’ association, or auditor;
- 1.10 rendering quarterly statements of account to the Client;
- 1.11 providing information to solicitors and others in connection with enquiries on sales (for which fees would be chargeable to those applying for the information);
- 1.12 producing for inspection, on written demand by the Client, as appropriate receipts or other evidence of expenditure, and provide VAT invoices in proper form;
- 1.13 within the time specified after the end of each agreed accounting period or of the termination of the Agreement, sending to the Client a written statement for that period of:
 - (a) monies due to the Client, showing how much the Agent has received and any interest due to the Client that has accrued on monies received;

- (b) remuneration due to the Agent (any fixed element of fee being apportioned as appropriate if this Agreement takes effect or is terminated during a payment period) and any VAT due;
 - (c) expenses and other disbursements made on behalf of the Client and whether or not VAT is included;
 - (d) any sum due to the Agent or deducted in calculating (a) above for bank charges relating to the administration of a service charge account(s).
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2. Authorisation of the Agent by the Client

The Client authorises the Agent as follows:

- 2.1 to expend any sums in connection with the Service that are within the specified expenditure limits and in cases of emergency to take such reasonable measures as the Agent shall think fit;
 - 2.2 to expend any other sums considered necessary by the Agent to ensure compliance with any statutory provision affecting the Property or affecting the Client or the Agent with regard to the Property;
 - 2.3 to seek such independent professional advice as is reasonably necessary in connection with management of the Property as to charge the cost of the same to the service charge account or the Client, as appropriate;
 - 2.4 whenever the Agent expends any sums under 2.1, 2.2 and 2.3 above to reimburse him/herself from any service charge or sinking fund kept for that purpose or from any monies of the Client held by the Agent;
 - 2.5 from monies received by him/her for the Client;
 - 2.5.1 at any time to pay or reimburse him/herself for any expenses or other disbursements recoverable from the Client;
 - 2.5.2 to deduct during any payment period his/her remuneration for that period other than any charge already collected in advance by agreement;
 - 2.5.3 after termination of the Agreement, to deduct his/her outstanding remuneration and/or expenses due.
 - 2.6 to retain any commission received by him/her for arranging insurance in respect of the Property without accounting to the Client as to retain interest on reasonable working balances in the Client's account.
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3. Communications between the Client and the Agent

- 3.1 All instructions of the Client to the Agent with regard to the Service to be performed by the Agent shall be given to the Agent in writing or, if given orally by telephone, shall be confirmed in writing within 7 days.

- 3.2 The Client is to provide personally or through a previous agent all information necessary to initiate and undertake the management service and any additional work necessitated by absence of such information is chargeable.
- 3.3 The Client shall promptly upon request by the Agent convey to the Agent any decision or information that the Agent considers necessary for the proper performance of the Service to be performed by the Agent.
- 3.4 The Agent shall promptly upon request by the Client allow the Client to inspect and at the Client's expense copy any accounts and documents in the possession of the Agent relating to the Property.
- 3.5 It shall be sufficient service of any written notice or other written communication to send such by first class post to the address specified in the Agreement or the last known address of the person for whom the communication is intended, and;
- (a) any notice or communication posted on a Monday or Tuesday shall be deemed served on the following Thursday;
 - (b) any notice or communication posted on a Wednesday or Thursday shall be deemed served on the following Tuesday;
 - (c) any notice or communication posted on a Friday, Saturday or Sunday shall be deemed served on the following Wednesday.
- 3.6 The Client undertakes to keep the Agent informed of proposals to sell the Property or any part thereof.

4. Undertakings by the Client

The Client undertakes:

- 4.1 upon written notice by the Agent that the Agent requires the Client immediately to advance or reimburse sums pursuant to Clauses 2.1, 2.2 and 2.3, to immediately do so;
- 4.2 within 14 days of the Agent sending the statement referred to in Clause 1.13 above, to pay to the Agent the specified remuneration still due to the Agent and to reimburse any expenses and other disbursements (including premiums for insurance) still due to the Agent, and to pay any VAT due, in every case without any deduction or set off in respect of any other claim by the Client against the Agent;
- 4.3 to pay interest on overdue remuneration expenses and other disbursements at the specified rate per cent above the base rate in force from time to time of the specified bank.

5. Bases of Remuneration

- 5.1 Whichever of the following bases of remuneration as it specified in the Agreement shall apply:

- 5.1.1 a specified initial and once only setting up fee (payable in the event of the appointed being termination by the Client within a specified period from commencement of the Agreement);
 - 5.1.2 as specified, fixed fee per year, quarter or month payable in arrears or in advance;
 - 5.1.3 as specified, per cent of the gross rents, service charges and other monies received or receivable.
- 5.2 In the event of it being agreed that additional work not covered by Clause 5.1 shall be remunerated by the hour, the rates thereof shall from the commencement of the Agreement be as specified
- 5.3 The Client is to reimburse the Agent for any agreed out-of-pocket expenses.
- 5.4 The fee and/or lump sum as specified in Clause 5.1.1 and 5.1.2 shall be adjusted annually in proportion to the increase in the Average Earnings Index from the figure current at the time of the last review to the last published monthly figure before the review date.
- 5.5 The rates in Clause 5.2 may be reviewed at the instance of either party during the specified month in each year, and any revised rates will apply from an agreed date.
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6. Assignment

- 6.1 This Agreement may only be assigned or transferred in whole or in part with the written consent of the other party thereto, and such assignment or transfer shall be valid only after written notice to that effect has been given.
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7. Termination

- 7.1 Either party may terminate this Agreement by serving on the other three months' notice in writing.
- 7.2 Notwithstanding the provision of Clause 7, if either party is in breach of this Agreement;
- (a) the other may serve on the party in breach written notice specifying the breach or breaches and requiring them to be remedied within 60 days and,
 - (b) if the party in breach fails within 60 days of the service of such notice to remedy such breach or breaches, then
 - (c) the party who served the notice may terminate the Agreement upon service written notice to that effect on the other party.
- 7.3 If either party commits an act of bankruptcy or has a receiving order made against him/her or makes any arrangement with his/her creditors or if distress or execution is levied or threatened upon any of his/her property or any judgement against him/her remains unsatisfied for more than 14 days or if being a limited company a party enters into liquidation whether compulsory or voluntary (other than a voluntary

liquidation for the purpose of amalgamation or reconstruction) or has a receiver appointed of any of its assets, the other party may terminate the Agreement upon serving written notice to that effect.

- 7.4 If the Agent is one individual and dies, the Agreement shall terminate immediately upon the death of Agent.

8. Liability of the Agent

- 8.1 No liability shall be attached to the Agent either in contract or in tort or otherwise for any loss, injury, damage or legal or other expenses sustained as a result of:
- (a) the Agent having reasonably relied upon the Client to provide accurately all relevant information;
 - (b) any inaccurate forecast by the Agent of future income or expenditure;
 - (c) any defect in the Property or plant and machinery equipment or materials used for the Property whether or not such defect be latent or apparent on examination;
 - (d) the act, omission or insolvency of any person other than the Agent.
- 8.2 The Client shall indemnify the Agent in respect of any claims made by another or third party for any loss injury damage or legal or other expenses referred to in Clause 8.1 above.
- 8.3 The Agent shall not be liable to indemnify the Client in respect of any claims made by another or third party for any loss injury damage or legal or other expenses referred to in Clause 8.1 above.
- 8.4 Clauses 8.1 to 8.3 above shall not be valid insofar as prohibited by statute.
- 8.5 In no circumstances shall the Agent be liable for any consequential loss or damage save where death or injury results from negligence on the part of the Agent or his/her employees.
- 8.6 The Agent's liability to the Client for death or injury resulting from his/her own or that of his/her employees' agents or sub-contractors' negligence shall not be limited.

9. Waiver

No indulgence shown by either the Client or the Agent shall prevent the other subsequently insisting upon his/her rights and remedies under the Agreement.

10 Arbitration

- 10.1 Any dispute between the Client and the Agent arising out of the Agreement and the Conditions of Engagement may be referred at the instance of either or both parties to and determined by a sole arbitrator to be agreed between the Client and the Agent or

in default of agreement appointed by the President or a Vice-President for the time being of the Royal Institution of Chartered Surveyors.

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