

**AGREEMENT
BETWEEN THE
LANDLORD AND
THE AGENT
SETTING OUT
SERVICE CHARGE
ACCOUNTING
TERMS FOR A
BLOCK OF FLATS**

Subject Property:

Landlord:

Date of Agreement:

Terms of Appointment

1. 'The Service' to be provided by the Agent

With reasonable skill, care and diligence to:

- 1.1 use his best endeavours to collect current instalments, any arrears of rent, service charges, contingency and future expenditure fund contributions, and any other payments due from leaseholders/tenants of the property, and hold such sums in accordance with the RICS Members' Accounts Regulations until disbursement;
- 1.2 prepare, if required, an annual estimate of future expenditure, administer any service charge or contingency and future expenditure funds and prepare and distribute appropriate service charge accounts;
- 1.3 check that demands for payment for goods, services, plant and equipment supplied for the benefit of the Property have been duly authorised by the relevant nominated contact.
- 1.4 provide quarterly statements of account to the Client;
- 1.5 produce for inspection, on written demand by the Client and leaseholders/tenants, as appropriate, receipts or other evidence of expenditure, and provide VAT invoices (if any) in the form prescribed;
- 1.6 within the time specified in the Agreement after the end of each agreed accounting period, or of the termination of the Agreement, send to the Client a written statement for that period of:
 - (a) moneys due to the Client, showing how much the Agent has received and any interest due to the Client that has accrued on moneys 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 any 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).

2. Authorisations of the Agent by the Client

The Client authorises the Agent as follows:

- 2.1 to expend any sums for the benefit of the Property that are within the expenditure limits specified in the Agreement and, also, in cases of emergency, to take such reasonable measures as the Agent shall consider appropriate;

- 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 whenever the Agent expends any sums under Clauses 2.1 and 2.2 above, to reimburse himself from any service charge or contingency/future expenditure fund kept for that purpose or from any moneys of the Client held by the Agent;
- 2.4 from moneys received by him for the Client:
- (a) at any time to pay or reimburse himself for any expenses or other disbursements recoverable from the Client;
 - (b) to deduct during any payment period his remuneration for that period, other than any charge already collected in advance by agreement;
 - (c) after termination of the Agreement, to deduct his outstanding remuneration and/or expenses due.

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, shall be confirmed in writing within seven days.
- 3.2 The Client is to provide personally or through a previous agent all information necessary to initiate and undertake the accounting service and any additional work necessitated by absence of such information is chargeable.
- 3.3 The Client shall promptly upon request by the Agent provide 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 in respect of Clauses 2.1 and/or 2.2, 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 undisputed claim by the Client against the Agent;
- 4.3 To pay interest on overdue remuneration expenses and other disbursements at the rate per cent specified in the Agreement above the base rate in force from time to time of the bank specified in the Agreement.

5. Bases of Remuneration

- 5.1 The basis or bases of the Agent's remuneration as recorded in the Agreement shall apply.
- 5.2 In the event of it being agreed that additional work not part of the Service (Clause 1) shall be remunerated by the hour, the rates to apply from the commencement of the Agreement shall be as specified in the Agreement.
- 5.3 The Client shall reimburse the Agent for any agreed out-of-pocket expenses immediately on request.
- 5.4 Any fixed fee specified in the Agreement for Clause 5.1 shall be adjusted annually in proportion to the change in the Retail Price 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 specified in the Agreement for Clause 5.2 may be reviewed at the instance of either party at any time after a year from any previous review, and any revised rates will apply from an agreed date.

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.

7. Termination

- 7.1 Either party may terminate this Agreement with effect from expiry of the tenancy or by serving on the other three months' notice in writing.
- 7.2 Notwithstanding the provisions of Clause 7.1 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 serving 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 or makes any arrangement with his creditors or if distress or execution is levied or threatened upon any of his property or any judgement against him 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.

8. Liability of the Agent

- 8.1 Unless caused by the Agent's negligence in the provision of the Service (Clause 1) the Agent is not liable either in contract or in tort 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 or failure to identify any defect in the Property or plant, 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. Clause 8.1. to 8.3 above shall not be valid in so far 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 employees.

8.6 The Agent's liability to the Client for death or injury resulting from his own or that of his employees' agents' or sub-contractors' negligence shall not be limited.

9. Waiver

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

10. Arbitration

10.1 Any dispute between the Client and the Agent arising out of the Agreement and/or the Terms of Appointment 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, within 30 days of the dispute being identified, appointed by the President or a Vice-President for the time being of the Royal Institution of Chartered Surveyors.

Annexe

The following are not part of the Service described in the Terms of Appointment to which this is an Annexe:

- (a) carrying out an inspection of the Property (other than the common parts thereof), or a building survey or valuation of the Property as a security or for insurance purposes or preparing any schedule of dilapidations or inventory;
- (b) offering vacant property to let, advising the Client on the terms of any lease or negotiating the terms of any new or varied lease;
- (c) initiating, conducting, preparing evidence for and attending hearings for an otherwise dealing with any rent review, party wall proceedings, application for a grant or for consent, insurance claim, arbitration or litigation;
- (d) dealing with local government matters including council tax valuations, planning permission, building regulation consent and grant applications;
- (e) engaging, instructing, supervising and paying the fees, other charges and disbursements from funds held of any contractor or other professional or consultant engaged with the prior consent of the Client;
- (f) preparing specifications and tenders for, supervising and measuring works the cost of which exceeds the specified expenditure limits and for non-routine matters and where expenditure is in excess of the limits contained in the Landlord and Tenant Acts 1985 and 1987 or as subsequently amended;
- (g) advising on safety or health;
- (h) any advertising and recruitment of staff on behalf of the Client;
- (i) supply extra copies of statements of account and copies of any other documents;
- (j) if the Client is a company, acting as company secretary;
- (k) dealing or advising upon applications for assignment of tenancies or leases, sub-lettings alterations and changes of use;
- (l) providing management services for the maintenance of the Property;
- (m) inspecting the Property;
- (n) arranging insurance, administering insurance claims; and
- (o) preparing replies to solicitors enquiries.

Agreement

The Terms of Appointment as attached shall apply to this Agreement between the undermentioned parties, subject to the following, which also applies.

A Date of this Agreement: _____

B 'The Client'
(name and registered office or address)

Tel no: _____ Fax no: _____

C 'The Agent'
(name and address)

D 'The Property' the subject of this Agreement
(address(es)/description)

Number of continuation sheets (if any)

E Any variations to the attached Terms of Appointment

F The Clauses listed below refer to those in the Terms of Appointment herewith. The relevant information is set alongside the corresponding Clause number.

Clause 1.6 Period of time for sending written statement of account: Six months

Clause 1.6 Accounting period _____

Clause 4.3 Specified rate above bank's base rate: 4%

Specified bank: Lloyds TSB plc

Clause 5 Basis of Agent's remuneration for the Service as described in the Terms of Appointment. For the avoidance of doubt, unless otherwise agreed in writing at E above, this remuneration does not cover services set out in the Annexe to the Terms of Appointment. Fees should be agreed in writing for these extra services at the time. The Agent shall also be reimbursed by the Client for any agreed out-of-pocket expenses incurred.

Clause 5.1 Basis of remuneration to apply

Agreed setting up fee £250 plus VAT payable in the event of the appointment being terminated by the Client within two years from commencement of the Agreement

And

A fixed fee of £____ per property per annum plus VAT will be paid in arrears quarterly.

Clause 5.2 The hourly rates for additional work charged by the hour to be:

for a partner/director £105 plus VAT

for a surveyor £75 plus VAT

for a clerk or property manager £40 plus VAT

Clause 5.3 Allowance per mile for car travel £0.40

Clause 5.5 Month of review of rates December

This Agreement is to be governed, construed and enforced in accordance with the law of England and Wales.

G SIGNED BY OR on behalf of the Client: _____

Name in capitals: _____

Signing as:

Director, duly authorised to do so

Partner, duly authorised to do so

The Client in person

in the presence of:

Signature of Witness: _____

Name of Witness: _____

Name of Witness in capitals: _____

H Signed by the Agent: _____

Name in capitals: _____

In the presence of:

Signature of Witness: _____

Name of Witness in capitals: _____