

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 and any other payments due from tenants of the property, holding such in accordance with the National Association of Estate Agents Regulations until disbursements.
- 1.2 administer contracts and check 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 in the attached Agreement;
- 1.3 if specified in the Agreement arrange insurance in respect of the Property and/or contents;
- 1.4 advise the client when notices should be served;
- 1.5 keep files of the signed current tenancy agreement/lease and other documents relating to the Property that have been supplied to the Agent;
- 1.6 attend to routine enquiries from the Client and tenant;
- 1.7 render quarterly statements of account to the Client and any tax adviser to the Client;
- 1.8 produce for inspection, on written demand by the Client, as appropriate, receipts or other evidence of expenditure, providing VAT invoices (if any) in the form prescribed;
- 1.9 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) monies due to the Client showing how much the Agent has 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; and
 - (e) any amount to be withheld until final tax demands have been settled

2. Authorisation 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 considers 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 regards to the Property;
- 2.3 to reimburse himself for any sums expended under Clauses 2.1 and 2.2 above from any monies of the Client held by the Agent;
- 2.4 from monies 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;
- 2.5 to retain interest on balances in the Client's account.

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 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 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.
- 3.5 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 1.10 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 at the bank;
- 4.4 to indemnify the Agent against any demands made by the Inland Revenue against the Agent in respect of tax and/or assessments raised relating to the Client's managed property.

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 by serving on the other three month's notice in writing unless otherwise agreed between the parties.
- 7.2 notwithstanding the provision 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 arrangements 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 liquidations whether compulsory or voluntary (other than a voluntary liquidation to 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 reasonable relied upon the Client to provide accurately all relevant information.
 - (b) any inaccurate forecast by the Agent or future income or expenditure;
 - (c) any defect or failure to identify 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 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 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 National Association of Estate Agents..

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 and 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 regulations 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) supplying extra copies of statements of account and copies of any other documents;
- (j) if the Client is a company, acting as company secretary; and
- (k) dealing or advising upon applications for assignment of tenancies or leases, sub-lettings, alterations and changes of use.

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

A. Date of this Agreement: _____

B.i 'The Client': _____
(Name)

Present Address: _____
(Registered office or address)

Tel No: _____ Fax No: _____

Future Address: _____

Tel No: _____ Fax No: _____

B.ii If there should be a representative in this country to whom to refer:

Name: _____

Relationship: _____

Power of Attorney: *Yes *No

(* delete as appropriate)

Address: _____

Tel No: _____ Fax No: _____

C 'the Agent' : _____
(Name and address) Ellman Henderson

43 Church Road,

Hove,

East Sussex

BN3 2BE

D 'The Property'
The subject of this Agreement:
(Address(es) description)

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 1.2 and 2.1 £ N/A plus VAT or

Clause 1.4
The Agent is* is not* responsible for arranging insurance in respect of the Property.
(delete as appropriate)*

Clause 1.10
Period of time for sending
written statement of account Quarterly

Clause 1.10
Accounting period March: June: September December

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

Specified Bank Barclays Bank PLC

Clause 5.1
Basis of remuneration to apply 10% of rents received plus VAT at the appropriate rate currently
(delete whichever bases are not to apply) 17.5%.

Specified setting up fee £ N/A

Payable in the event of the appointment being terminated by the Client within N/A

from commencement of this Agreement

And / or

A fixed fee £ N/A per _____

Payable _____ in advance arrears
(Insert annual date(s)) (delete as appropriate)

And / or

_____ Of the annual gross rent(s) RECEIVED under the tenancies and the Agent shall be entitled to retain any commission received by him for arranging insurance(s) in respect of the Property, without accounting to the client.
(*delete as appropriate)

Clause 5.2

The hourly rates for additional work charged by the hour where appropriate to be:

for the partner / director (ex VAT)	£85.00

for an associate	£50.00 ex VAT)

for a clerk or property manager	£

Clause 5.3

Allowance per mile for far travel £ N/A

Clause 5.5

Month of review of rates Annually

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

Note: The parties may choose to record other information relevant to management of the Property on sheets to be attached to this Agreement.

Number of continuation sheets : _____

G SIGNED BY OR on behalf of the Client: _____

Name in capitals: _____

Signing as: Director, duly authorised to do so

In the presence of:

Signature of witness: _____

Names of witness in capitals: _____

H SIGNED by the Agent _____

Name in capitals Mr C E Perry FNAEA

In the presence of:

Signature of witness: _____

Name of witness in capitals:
