



**The Royal Institution of Chartered Surveyors  
Agreement with Conditions of Engagement for the  
Appointment of an Agent to Manage Property**

*Client Name*

In respect of

*Property Name*

Managing Agent

**Alexander Faulkner Partnership Limited**



## THE AGREEMENT

The attached Conditions of Engagement (which are modelled on the Royal Institution of Chartered Surveyors' Conditions of Engagement) shall apply to this Agreement, as modified by the following:

- A. **'The Client'** (name, registered office and company number if relevant)

**Name:**

**Company No.:**

**Registered Office:**

**Contact Address:**

- B. **'The Managing Agent'** later referred to as the Agent

**Alexander Faulkner Partnership Limited**

Registered Office: **5 Stanbridge Lakes, Romsey, Southampton, SO51 0GY**

Registered No.: **0557 4453**

VAT Registration No.: **115 3879 08**

For information on the Royal Institution of Chartered Surveyors please visit the RICS website at <http://rics.org>

A copy of our complaints handling procedure is available on request.

A copy of our public indemnity policy is available upon request.

The Client and the Agent are collectively referred to as the Parties

- C. **'The Property'** the subject of this Agreement:

.....

- D. **Start Date of Management**

.....

The Client appoints the Agent to be its managing agent for the Property from the Start Date of Management until terminated as per the attached Conditions of Engagement

- E. **'The Property Manager'** responsible for fulfilling the terms of this Agreement shall be ..... who may normally be contacted at Alexander Faulkner Partnerships Ltd, Portsmouth office, between 0900-1730 hours, Monday to Friday, as follows:

T: .....

M: .....

E: .....

Discretionary contact may be available outside normal hours, by leaving a message on the mobile number above.

The Agent reserves the right to nominate an alternative Property Manager, by prior agreement with the Client.

The Clauses listed below refer to those in the Conditions of Engagement which follow and the relevant information is set alongside the corresponding Clause.

**Clause 1.1**

Frequency of Inspection, if more regular than once each year **TBC**

**Clause 1.11**

Accounting Frequency **TBC**

**Clause 2.1**

Expenditure Limit: **TBC**

**Clause 4.3**

Specified rate above bank’s base rate: **Three percent**

Specified bank: **Natwest Bank  
52 West Street  
Fareham  
Hampshire  
PO16 0JX**

Our client account details: **Alexander Faulkner P’ship Ltd Client A/c**

**Sort Code:** .....

**Account No:** .....

This is the account into which all client monies are paid on receipt and where Alexander Faulkner Partnership Limited will hold client funds, awaiting clearance and transfer to your order. This is a trustee account and does not form any part of the assets of Alexander Faulkner Partnership Limited. Alexander Faulkner Partnership Limited does not use Natwest Bank as its corporate banker, so as to keep client monies entirely separate from its business. It is an RICS requirement that we provide you with this information.

**Clause 5**

The basis of the Agent’s remuneration for the service is as described in the Conditions of Engagement and as specified below. All fees and charges by the Agent are subject to VAT at the prevailing rate, and are payable without any right of set-off against any other account with the Client.

For the avoidance of doubt, unless otherwise agreed in writing, this remuneration does not cover services as set out in Appendix 1 of the Conditions of Engagement and fees should be agreed in writing for these extra services at the time, if fees for particular matters have not already been set out as agreed fees in Appendix 2.

**Clause 5.1**

Basis of remuneration:

5.1 (a) A setting up fee of **No Charge**

Payable three months after the start date of management

5.1 (b) Service Charge Administration £..... + VAT per annum

Payment will be made quarterly in advance from service charge monies held by the Agent in the Property service charge account, or if insufficient funds from any Reserve fund to the extent such sums may be so properly recovered, and accounted for on the Property service charge year end statement.

5.1 (c) Ground Rent Collection & Accounting ...% + VAT of Ground Rent Collected

Payment will be made from rents received, as they are cleared through our Clients' Account, and accounted for on the Client's periodic statement of income and expenditure.

5.2

**Clause 5.2**

The hourly rates for additional work charged by the hour, excluding VAT, to be:

For a partner/director	<b>£225.00</b>
For a senior surveyor or property manager	<b>£150.00</b>
For management accounts enquiries	<b>£85.00</b>

**Clause 5.3**

Allowance per mile for car travel: **£0.75 / mile**

**Clause 8.8**

Agreed limit on liability of the Agent: **TBC**

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

**F. SIGNED for and on behalf of the Client**

\_\_\_\_\_ for .....

Print Name:.....

Position:.....Dated:.....

**Witnesses Signature:.....**

Print Name:.....

Address:.....

*Client:*

*Property:*

*version 1*

Employment:.....

**G. SIGNED for and on behalf of the Agent**

\_\_\_\_\_ for **Alexander Faulkner Partnership Limited**

Print Name:.....

Position:.....Dated:.....

**Witnesses Signature:.....**

Print Name:.....

Address:.....

Employment:.....

## CONDITIONS OF ENGAGEMENT

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

*The Agent will, with reasonable skill, care and diligence and with regard to the principles contained in Chapter 8, RICS UK Residential Property Standards, 5<sup>th</sup> edition*

- 1.1 inspect the Property and any common parts periodically (at least once per year), and at least as regularly as the Frequency of Inspection (see the Agreement) and also when deemed necessary to do so following notification of matters by the Client, lessees or contractors, to ascertain for the purpose of day to day management only the general condition of the Property, those common parts and any neighbouring parts. (Inspections will be undertaken without the use of inspections equipment). Any relevant matters noted shall be dealt with or if likely to exceed the approved Expenditure Limit (see the Agreement) shall be reported to the Client;
- 1.2 administer third party service provider contracts and check invoices for payment for goods, services, plant and equipment supplied for the benefit of the Property, arrange payment where the cost falls to be paid from service charge funds or by the Client (if funds held) if within the approved Expenditure Limit or otherwise seek approval to do so;
- 1.3 for minor works and services such as cleaning, gardening, window cleaning, prepare specifications, seek competitive tenders and enter into contracts on behalf of the Client;
- 1.4 consult with the Client on management matters, the general interpretation of leases and management policy, Qualifying Works and Qualifying Long Term Agreements as defined by the Landlord & Tenant Act 1985 (except for consultation on the appointment of a managing agent), and when specialist surveyors or consultants may be required;
- 1.5 issue invoices for payments due in respect of the Property and keep money received or held in separately identifiable client accounts for each Client's Property, strictly in accordance with the RICS Members' Accounts Regulations, with interest earned on the designated account(s) to be credited to that account(s);
- 1.6
  - (a) advise the Client when notices pertaining to the Landlord & Tenant Acts or any other relevant notices should be served relating to the occupation of the Property;
  - (b) advise the Client when health & safety or any other statutory or regulatory requirements relating to the Property or any common parts need to be acted upon;
- 1.7 keep files and other documents relating to the Property that have been supplied to the Agent and at all reasonable times upon reasonable notice to allow the Client access to all records and accounts appertaining to the management of the Property;
- 1.8 attend promptly and efficiently to routine enquiries from the Client or its nominated advisers or authorised representatives, or any lessee, recognized residents association, tenant, auditor, or relevant third party, and take instructions from the Client on relevant lessees' dissatisfaction;
- 1.9 where appropriate, prepare an annual budget estimate of future recoverable service charge expenditure, administer service charges and/or sinking funds and/or

- reserves and prepare and distribute appropriate service charge accounts in accordance with the principles contained in the RICS Service Charge Residential Management Code, 2<sup>nd</sup> edition. A draft annual budget is to be prepared prior to the start of the period for which it applies, for approval by the Client, if requested;
- 1.10 produce for the Client, as appropriate, evidence of expenditure and VAT invoices in proper form when accounting for periodic expenditure;
  - 1.11 At the end of each quarterly accounting period, or such other accounting frequency as may appear in the Agreement, or at the termination of the Agreement, send to the Client a written statement for that period of:-
    - (a) money received, expenditure made and any other disbursements made on behalf of the Client and whether any VAT is included;
    - (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;
  - 1.12 use all reasonable endeavours to ensure that lessees and tenants comply with the terms of their Leases, including compliance with statutory requirements, and report any infringements with suitable recommendations;
  - 1.13 liaise with the internal financial controllers and external auditors of the Client in order to produce accurate and relevant information for management control purposes;
  - 1.14 whenever the Agent commits expenditure of any sums under 2.1, 2.2 and 2.3 below, to provide to the client proper VAT invoices;
  - 1.15 arrange to provide you with insurance quotations from suitably qualified personnel to meet your insurance requirements (unless you have previously declined our services) and comply with the rules of the Financial Conduct Authority when carrying out any regulated insurance activities. If required, the Agent will provide insurance information on available products, but the Agent will not advise or recommend and the Client must make its own choice of how to proceed;
  - 1.16 provide copy insurance documentation to lessees, liaise with insurance assessors and pursue claims where damage has been caused to the parts maintainable by the Client;
  - 1.17 take preliminary action to collect arrears of rent, service charge or other sums due from lessees and any commercial tenants, and where permitted by the lessee's / commercial tenant's lease, to recover the cost of such actions from the lessees and / or commercial tenants in arrears, but not to undertake legal work or correspond with the leaseholder's solicitor and / or the First Tier Tribunal, but to supply information to solicitors appointed by the Client to pursue arrears;
  - 1.18 comply with the relevant legislation and guidance in areas of Landlord & Tenant, Health & Safety, Fire Safety and Employment and other relevant laws and regulations relating to the management of the Property and with the requirements of the Royal Institution of Chartered Surveyors and the Association of Residential Managing Agents;
  - 1.19 meet with the Client on a quarterly basis and prepare and circulate agendas, supporting documentation and minutes, and action matters arising where possible;

- 1.20 arrange and attend an annual meeting with all of the lessees; prepare and circulate agendas with any supporting information and minutes.

## **2. Authorisations of the Agent by the Client**

*The Client authorises the Agent as follows:*

- 2.0 to deduct the remuneration / fees set out in clause 5 of the Agreement and any agreed charges for additional work from the Client's funds held by the Agent;
- 2.1 to approve expenditure of any sums in connection with the proper management of the Property within the Expenditure Limit (see Agreement), and additionally arrange payment of any staff of the Client via PAYE and account for National Insurance and Pension Welfare (if any) and, in cases of emergency, to take such reasonable measures as the Agent shall think fit;
- 2.2 to approve expenditure of any other sums considered necessary by the Agent to ensure compliance with any statutory or regulatory provision affecting the Property, or affecting the Client with regard to the Property, unless the Agent has consulted the Client regarding such matters and the Client has not approved the expenditure;
- 2.3 to seek independent professional advice as is reasonably necessary in connection with the management of the Property and to charge the cost of the same to the Client or to the service charge account, as appropriate;
- 2.4 to retain commission payable, as an insurance handling fee in the event that property insurance is arranged through the Agent, in consideration for which the Agent will inform the Client of the amount of commission received in respect of the Property.
- 2.5 to retain interest earned on funds whilst clearing through the Agent's Clients' Account notwithstanding clause 1.5 above.
- 2.6 to place claims under the Property's insurance policy as may be appropriate unless the Client has been consulted and has refused approval in writing to the Agent to place a claim.
- 2.7 to pro-actively submit to all relevant advice on best practice regarding property management policies
- 2.8 to issue to an Owner, upon request a copy of the 'Summary of 'The Service to be provided' attached hereto.

## **3. Communications between the Client and the Agent**

- 3.1 Any communication or instruction from the Client to the Agent shall be made by a Director or Secretary of the Client or person of equivalent executive authority.



- 3.2 All material 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 by email, or if given orally, shall be confirmed by email, or post. The Agent shall acknowledge receipt of such written instructions by email, or post. The Agent shall attend management liaison or Board meetings with the Client when reasonably required, for the fee basis as set out in Appendix 2, or in the absence of any such fee basis then at such charge as may be agreed.
- 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 promptly of proposals to assign its interest in the Property or any part thereof.

## **4. Undertakings by the Client**

### *The Client undertakes:*

- 4.1 to use its best endeavours to ensure the handover of the documents listed in Appendix 3 (the Handover List) is provided in full to the Agent, and any additional work agreed between the Client and the Agent as necessary to initiate and undertake the management service arising from the absence of such information is chargeable as per Appendix 2;
- 4.2 to settle invoices pursuant to Clauses 2.1, 2.2 and 2.3 within 14 days, unless such sums are available and properly payable from funds held, if any;
- 4.3 if payment is not taken by the Agent from rents received, or from service charge funds received, if applicable, then within 14 days of the Agent sending the statement referred to in Clause 1.11 above, to pay to the Agent the specified remuneration due to the Agent, and to reimburse any reasonable expenses and other disbursements 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;
- 4.4 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;

- 4.5 if not specifically agreed otherwise, to insure the property in its full reinstatement value, including demolition and site clearance, professional fees, and not less than three years' loss of rent, unless otherwise defined in a relevant lease, in respect of all usual risks and to insure for property owners' liability, providing copies of the policies and schedules to the Agent.

## **5. Basis of Remuneration**

- 5.1 The basis of remuneration for The Service is as specified in the Agreement.
- 5.2 Additional work not covered by Clause 5.1 shall be remunerated by the hour, the rates therefore being at the hourly rates specified in the Agreement unless an alternative figure has been pre-agreed in writing between the Client and the Agent, and unless the work relates to one of the Additional Services referred to in Appendix 2 in which case the charging basis set out in Appendix 2 will apply.
- 5.3 The Client is to reimburse the Agent for any agreed out of pocket expenses.
- 5.4 The basis of the Agent's remuneration referred to above in Clause 5.1, 5.2 and 5.3 may be reviewed at the instance of either party whilst agreeing the service charge budget and any revised rates will apply from the start of the next service charge accounting year. If no agreement is reached between the Parties within one month of the service charge accounting year end then the rates in clause 5.1 will be varied by the amount by which the Retail Price Index has changed from a date 6 months before the rates in clause 5.1 were last reviewed and ending on the date closest to 6 months before the service charge year end date.

## **6. Assignment**

- 6.1 This Agreement may be assigned or transferred in whole or in part only with the written consent of the other party hereto and such assignment or transfer shall be valid only after written notice to that effect has been given and a direct covenant by the assignee to comply with the obligations of the assignor in this Agreement has been given to such other parties hereto in such form as is agreed, all parties acting reasonably

## **7. Termination**

- 7.1 Unless agreed by the mutual consent of the Parties in writing, this Agreement is for an initial period of one year from the Start Date of Management under clause D of the Agreement and shall continue with the right to termination by either party by serving on the other three months' prior notice in writing at any time.
- 7.2 If the Client sells the property it shall be entitled to terminate the contract on short notice, but shall pay a sum equivalent to three months' management fee to the Agent in lieu of notice.
- 7.3 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 14 days;

- (b) if the party in breach fails within 14 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.
- 7.4 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, or suffers any similar or analogous event or circumstance (whether voluntarily or otherwise) such that its ability to perform its obligations hereunder is or may be impaired, the other party may terminate the Agreement forthwith upon serving written notice to that effect.
- 7.5 The Agent may end this agreement at any time in writing if: -
- (a) the Client fails to pay the fees arising from clause 5 of these Conditions of Engagement to the Agent within one calendar month of notice of the fee and charges; or
  - (b) the Client acts in a way that prevents the Agent from performing the services in clause 1 of these Conditions of Engagement
- 7.6 When this agreement is ended the Agent will hand over to the Client a hard copy of the documents itemised in Appendix 3 (the Handover List), if they are in its possession.

## **8. Liability of the Agent**

- 8.1 Subject to clause 8.7, no liability shall attach 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 incorrect 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 any third party for any loss injury damage or legal or other expenses incurred as a result of any one or more of those circumstances 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 any third party for any loss injury damage or legal or other expenses incurred as a result of any one or more of those circumstances referred to in Clause 8.1 above, except where such loss injury damage or legal or other expenses results from the negligence of the Agent.

- 8.4 The Agent shall not be liable for any indirect, special or consequential loss or damage howsoever caused (including loss of rental and/or development value) whether in contract, tort, negligence or otherwise.
- 8.5 The Agent shall not be liable to the Client for any loss incurred in relation to injury to persons or property arising out of the condition of the property or any hazard in or about the Property unless such conditions have been previously advised and not acted upon, or unless arising from the failure of the Agent to perform its obligations under this Agreement.
- 8.6 Clauses 8.1 to 8.3 above shall not be valid insofar as prohibited by statute.
- 8.7 The Agent's liability to the Client for fraud or for death or injury resulting from negligence of his/her own or that of his/her employees, agents or subcontractors shall not be limited.
- 8.8 Subject as above the total aggregate liability of the Agent arising out of, or in connection with this agreement howsoever arising whether for negligence or breach of contract or otherwise shall in no event exceed the sum specified in the Agreement or, if no such sum has been specified, £50,000.

## **9. Data Protection**

- 9.1 The Agent confirms its registration under the Data Protection Act and its compliance therewith. A copy of our Certificate of Registration is available upon request.
- 9.2 The Agent confirms it will only hold and retain information for the purpose of fulfilling this Agreement.

## **10. Waiver**

- 10.1 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.

## **11. Complaints**

- 11.1 If the Client should wish to make a formal complaint against the Agent in respect of matters arising from this Agreement, then the Client may follow the Agent's Complaints Handling Procedure, modelled on the RICS complaints handling procedure.
- 11.2 Complaints against the Agent in respect of general insurance mediation work, which cannot be resolved through the aforementioned complaints handling procedure may be referred to the:-

Ombudsman Service: Property  
PO Box 1021  
Warrington  
WA4 9FE  
Tel: 0330 440 1634 or 01925 530270  
Fax: 0330 440 1635 or 01925 530271  
Email: [enquiries@os-property.org](mailto:enquiries@os-property.org)

## **12. Arbitration**

- 12.1 Any dispute between the Client and the Agent arising out of the Agreement and these 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.

### **13. Force Majeure**

- 13.1 For the purpose of this Agreement 'Force Majeure' means an event or circumstance outside the reasonable control of a party affecting its ability to perform its obligations under this Agreement.
- 13.2 If either party is affected by Force Majeure it shall promptly notify the other party in writing, keep that other party updated of the Force Majeure and its impact.
- 13.3 Force Majeure shall not entitle either party to terminate this Agreement and neither party shall be in breach of this Agreement, or otherwise liable to the other, by reason of any delay in performance, or non-performance of any of its obligations due to Force Majeure

### **14. Compensation**

- 14.1 The Agent is covered by RICS' Client Money Protection Scheme. You may be entitled to compensation through that scheme, if we cannot meet our obligations. This will depend upon the type of business and the circumstances of the claim.

## **Appendix 1**

For the avoidance of doubt, unless otherwise agreed in writing, the following are not part of the service described in the Conditions of Engagement and fees should be agreed in writing for these extra services at the time, if fees for particular matters have not already been set out as agreed fees in Appendix 2.

- (a) Carrying out an inspection of the Property for the purpose of a structural or valuation survey of the property as a security, or for insurance purposes, or otherwise, or preparing any schedule of dilapidations or inventory or planned preventative maintenance programme etc.
- (b) Offering vacant property to let or for sale and advising the Client regarding 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, or attending meeting(s) at the request of the Client for any purpose which the Agent is not under an obligation to fulfil.
- (d) Dealing with local government matters including rates, council tax, planning permissions, building regulation consent and grant applications.
- (e) Preparing specifications and tenders, and supervising and measuring works, the cost of which exceeds any specified Expenditure Limits (referred to in clause 2.1 of the Conditions of Engagement) and for non-routine matters.

- (f) Any renegotiating or enforcing terms of the Client's estate staff employment contracts, with the exception of letters to staff notifying their failure to undertake their duties.
- (g) If the client is a company, acting as company secretary, unless the Company Secretariat service is listed under the 'basis of remuneration' in the Agreement.
- (h) Preparing a Planned Maintenance Programme/Schedule, usually for a 5- or 10-year term.
- (i) Attending to dwellings, as against common parts, for the installation, changing, crediting or reading of the meters of utility providers.