

Revised 2<sup>nd</sup> May 2019

**Dunphys Chartered Surveyors Limited (Lettings)  
Rent Collection & Management Services,  
Terms & Conditions**

SAMPLE

**Prepared by: Mr E Freilich**

These Terms of Business form a legally binding contract between you and us, please make sure that you read and fully understand them before signing the *Lettings Agency Agreement Form*. Do not sign your acceptance if you are uncertain of the meaning of any of the terms or the charges you might incur, now or in the future. See 'Your Right to Cancel' towards the end of this document. You may wish to take independent legal advice before agreeing to these terms.

**Clauses 1 – 35, and Clause 48 of these Terms & Conditions apply to the Let Only, Rent Collection and Management Services.**

**1. Consent to Let**

By agreeing to these Terms of Business you are confirming that you are the owner of the property, or that you are lawfully entitled to enter into a tenancy agreement. It is often necessary to obtain consents to let your property from bodies such as your mortgage lender, insurance provider, freeholder, superior landlord. Copies of the written consents should be made available. If the property is leasehold, a copy of the superior/head lease should be provided for the tenant.

**2. Safety Regulations**

This information on safety and safety measures is for your guidance but is not exhaustive. Nothing in these notes or information limits or modifies your responsibility to your tenant.

**The Furniture and Furnishing (Fire) (Safety) Regulations 1988** as amended. These regulations apply to soft furnishing such as mattresses, padded headboards, bed bases, sofas, sofa-beds, armchairs, cushions, pillows, furniture with loose or fitted covers, children's furniture, garden furniture which may be used indoors, etc. Exemptions: Furniture/furnishings manufactured before 1950 and after 1989. Where displaying the legally required label. By signing this agreement you give us authority to remove, at your expense, any item that does not comply or have a fire label attached.

**Gas Safety (Installation and Use) Regulations 1998.** It is a criminal offence to let a property with gas appliances, installations and pipe-work that have not been checked by a properly qualified Gas Safety registered engineer. You will need to provide us with a copy of a current Landlords Gas Safety Certificate before the tenancy commences or we can arrange for one to be provided for you. The tenant must be given a copy of the certificate within 28 days of the inspection being carried out and in the case of a new tenancy each tenant must be given a copy of the certificate at the time they take occupation. If you are found guilty of non-compliance, you will have a criminal record and also face a fine or imprisonment, or both. It is important that you check the report when receiving it from the contractor to ensure that all gas appliances are listed on the report and that they have been passed as safe, and contractor has been approved by the Gas Safe Register to check all listed appliances. Any recommended remedial works should be carried out before the start of the tenancy. You are responsible for providing instruction booklets for all gas appliances.

**Electrical Equipment (Safety) Regulations 1994.** Any person supplying electrical equipment to a rented property must ensure that it is safe, will not cause danger and satisfies the requirements of the regulations. All electrical equipment must be safe and constructed with good engineering practice. You should have all electrics (wirings, plugs and sockets, etc.) and electrical appliances checked before the commencement of a tenancy and regularly thereafter. You are responsible for providing instruction booklets for all items of electrical goods. Building Regulations (Electrical Safety in Dwellings) Works, repairs, maintenance, etc. on 'electrical installations' in certain areas of a property are known as 'notifiable works' and as such must only be completed by a 'competent person'. Failure to comply with these regulations is a criminal offence, which could result in a fine and/or imprisonment.

**Building Regulations (Smoke Alarm) 1991.** It is mandatory to fit mains-powered smoke alarms in new residential buildings constructed after June 1992 (one on each floor). Whilst it is not a requirement in older properties, it is recommended that smoke alarms are installed in all properties. If the smoke alarm is battery operated you should make sure the batteries are working at the start of the tenancy.

### Electrical Installation Condition Report for Houses in Multiple Occupation

It is mandatory for any property designated as a House in Multiple Occupation (HMO), whether or not it requires a licence, to have a current satisfactory Electrical Installation Condition Report (EICR). A new satisfactory report must be obtained when the current one expires.

### 3. Keys and Parking Permits:

You must provide us with a full set of keys to all main and communal doors for each adult occupant at the start of a tenancy (plus a further set for us if we acting as managing agents of your property). We reserve the right to purchase further keys (at your expense) where necessary. You should also ensure that a full set of keys are available for the use of the tenant at the property for any cellar, loft, garage, shed, outbuilding, gates, dustbin cupboard, meter cupboard, window locks etc. Where parking permits/fobs are necessary, you must provide details of the cost and where these can be obtained as they will be assumed to form part of the tenancy unless advised by you in writing to the contrary.

### 4. Power of Attorney:

If you are not going to be available to negotiate the terms of the tenancy, sign the documents, during the course of the tenancy, or to settle the deposit at the end, then you will need to authorise someone to act on your behalf by means of a Power of Attorney. This should be properly drawn up by a solicitor and we will need a copy of this for our records. We cannot take instructions from a third party (including renewals and maintenance issues) without this document, even from your partner or parent (unless they are joint owners and have signed these terms of business). A letter simply stating that someone can act on your behalf will not be sufficient.

### 5. Verification of Identity:

The law requires that we verify the identity of all clients under the Proceeds of Crime Act 2002 and Money Laundering Regulations Act 2007. Your co-operation and assistance with this is appreciated and we will endeavour to keep the process as simple as possible. We will seek to verify your identity and proof of residency by obtaining and certifying copies of photo ID and proof of residency from yourself and all owners.

### 6. Ending a Tenancy:

If you do not wish to renew or extend the tenancy then we can, on your written instructions, arrange to serve Section 21 Notice or a Notice to Quit (as appropriate). You need to allow a minimum of ten weeks for this to take effect. We cannot be held responsible for any delay in you obtaining possession of the property if you do not allow sufficient time for the notice to be served. For other possession proceedings (such as any of the grounds under Section 8 of the Housing Act 1988) you will need to seek independent legal advice. We will not be responsible for any legal action that may ensue between you and your tenant at any stage during or following the tenancy.

**Please note:** current legislation does not require a tenant to give prior notice to end a fixed term tenancy; the tenant can just leave on the last day of the term (however, this does not apply to landlords, who are always required to give appropriate notice). For periodic tenancies, you agree to accept written notice from your tenant to bring the tenancy to an end at the appropriate time and that this does not need to be in the form of a Notice to Quit.

### 7. Notice Period

Either you or we can end our **Management Service** or **Rent Collection Service** by giving 3 months written notice. Irrespective of any notice served our **Lettings Service** will still apply at the fee printed in our *Lettings Agency Agreement Form*. All fees and outstanding charges remain due (as will all provisions relating to indemnities). However, we reserve the right to terminate the agreement with immediate effect if you fail to meet or maintain statutory or safety obligations.

### 8. Withdrawal Costs

If you accept a formal offer from a prospective tenant, it may not be possible to later withdraw. The tenant may be able to take legal action against you for any loss suffered and you may be required to meet the tenant's reasonable costs and expenses.

If you instruct us to proceed with a tenancy on your behalf and later withdraw, you agree by signing the *Lettings Agency Agreement Form* to meet the reasonable costs and expenses incurred by us, not limited to the cost for the preparation of the tenancy agreement, the inventory, any refund of any tenant referencing charges, EPC, and any other related costs.

### **9. Third Party Suppliers and Tenant Services**

We offer a range of services to clients and customers and we may provide services to tenants or prospective tenants. In the course of business, we may receive fees or reciprocal payments from other parties including tenants or prospective tenants. For certain services (such as utility switching, instructing energy performance certificates, inventory clerks or contractors) we may receive fees, discounts or other reciprocation.

### **10. Forwarding Post**

We recommend that you arrange for any post addressed to you to be redirected by the Post Office. We cannot accept responsibility for forwarding mail to you.

### **11. Stamp Duty**

Any payment of Stamp Duty Land Tax is the responsibility of the tenant. This will currently only become payable where the 'net present value' of the rental is more than £125,000 per tenancy. We will supply the tenant with website details for their guidance.

### **12. Housing Benefit**

We reserve the right to refuse to accept housing benefit, equivalent benefit or council tax directly from any benefit agency or local authority. We will always recommend that any benefit be paid directly to the tenant, who is ultimately responsible for all rental payments, regardless of whether or not the benefit is due or has been paid. You agree to accept liability should we be required to repay or reimburse any benefit agency or local authority and this liability shall not be limited to the length of the tenancy.

### **13. Insurance Cover and Claims**

You should check that your property is adequately insured for both contents and buildings cover. We can recommend a preferred provider who specialises in this type of insurance, offering cost-effective and efficient cover. Please ask for details. Financial Services Authority (FSA) regulations prevent us from processing any insurance claims on your behalf. However, we can submit a claim under the rent and legal protection policy, should it be necessary, if you subscribe to our management service.

### **14. Legal Services**

We are on hand to offer you support and advice during the tenancy, but should legal action become necessary, you will be responsible for instructing your own solicitor and for the settlement of any costs incurred in the issue of proceedings. We will be happy to recommend a suitable solicitor on request.

## 15. Other Relevant Legislation

- **'The Contracts (Rights of Third Parties) Act 1999'**: You and we are parties to these terms of business and do not intend that it will be enforceable by any person.
- **'Data Protection Act 1998'**: In the course of business, we will collect and use information or data about you. We will ensure that this information or data is properly collected, recorded and used in compliance with the Act. We reserve the right to pass our data to our insurance partners, preferred energy suppliers, inventory and EPC providers and contractors who may make contact with you in order to sell their products.
- **'Landlord and Tenant Act 1987'**: You agree to notify us of any change in your residential address so that we may advise your tenant.
- **Jurisdiction**: This agreement is made in England and Wales and shall be subject to the laws and courts of England and Wales.
- **Consent to Pass on Your Details**: You expressly consent to us:
  - > giving your contact details to your tenant and/or prospective tenant.
  - > notifying your tenant of any change in your residential address.
  - > giving your bank account details to your tenant and/or prospective tenant so that they can make rental payments to you direct (if applicable).
  - > giving your residential address to your tenant and/or prospective tenant - in line with the Landlord and Tenant Act 1987.
  - > giving your contact details to any utility service supplier/provider/company which may result in you being contacted directly or the utilities for the property being automatically switched to an alternative provider.
  - > giving your details to any local authority.

## 16. Interest and VAT

All fees and charges are subject to valued added tax (VAT) at the rate applicable when the liability to pay accrues.

We do not pay interest on monies held on behalf of landlords or tenants. We may charge interest at the statutory rate on unpaid or late paid letting, management and other fees, this will be calculated on a daily basis, from the date payment of the fee falls due until the date of payment or recovery (or up to the date of judgment if legal proceedings are issued).

## 17. Future Changes

We will from time-to-time agree with you changes to the Terms & Conditions, including changes to the *Lettings Agency Agreement*, and you shall not unreasonably withhold or delay your consent to such changes.

## 18. Accepting Your Instructions

We reserve the right to refuse to accept, or to refuse to continue to accept, your instructions if: You have not obtained consent to sub-let the property from any superior landlord or lender; if you have not informed us of any special requirements in respect of the property; if you have not obtained any necessary licence or planning consent, or if your property fails to comply with any of the following:

- > Furniture and Furnishings (Fire) (Safety) Regulations 1988 (as amended).
- > Gas Safety (Installation and Use) Regulations 1998 > Electrical Equipment (Safety) Regulations 1994.
- > Part-P Building Regulations (Electrical Safety in Dwellings).
- > Building Regulations (Smoke Alarm) 1991.
- > Management of HMOs (England) Regulations 2006.
- > Housing Act 2004.
- > Licensing of Houses in Multiple Occupation.
  - > The requirement for an Electrical Installation Condition Report for all types of Houses in Multiple Occupation.
- > The Town and Country Planning (Use Classes (Amendment) (England) Order 2010.
  - > Any other provisions that are the statutory responsibility of the landlord or are otherwise safe provisions. For the avoidance of doubt: you are responsible for the above statutory provisions regulations, regardless of any responsibilities that we may also have. If you do not choose our Management Service then you have a legal responsibility to ensure that the renewal of any gas safety record (and EICR, where applicable) is carried out within the statutory time limits.

## 19. Our Responsibility

We will use all reasonable means to provide the services described in these Terms of Business and in return you undertake to give us a reasonable opportunity to remedy any failure or shortcoming in such services. The total liability of us to you (however arising) shall be limited to the circumstances set out in the following paragraphs:

- > We accept liability without limit for death or personal injury which is due to our negligence.
- > You shall accept that any forecast about future income or expenditure is a general indication only and such general indication may change in response to market condition or other factors beyond our control and further you shall accept that we cannot be responsible to you in this way.
- > We shall not be liable for any loss, injury, damage or for legal or other expenses caused as a result of any defect in the contents in the property (whether or not such defect is apparent or latent) or as a result of any act, omission or insolvency of any person other than us.
- > Otherwise we shall not be liable to pay you in respect of any claims made by a third party for any loss, injury, damage or for legal or other expenses and you shall indemnify us for any costs, claims, damages, expenses, fines, loss or for legal or other expenses in respect of such claims.
- > In no circumstances shall we be liable for any indirect or consequential loss, damage, cost or expense of any kind.

## 20. Your Responsibility

- > You accept liability without limit for death or personal injury which is due to your negligence.
- > You shall pay and indemnify us for all costs, claims, damages, expenses, fines, loss or for legal or other expenses in full incurred by us as a result of your fraud, breach, negligence or default (whether arising as an act or omission).
- > You shall pay (or shall re-pay) us any costs howsoever arising in relation to the arbitration of the deposit.
- > You accept responsibility for any works undertaken by contractors and for payment of those works, as the contract or arrangement is between you and the contractor.

## 21. Assignment, etc.

We may assign, transfer, novate, sub-licence or otherwise dispose of any of our rights and/or obligations under these Terms of Business without your consent and in such event, these Terms of Business shall apply and take effect between you and the assignee.

## 22. Land Registration Act 2002 Additional Addresses for Service

We recommend that you as a Landlord should provide to the Land Registry up to 3 contact addresses (not including the property to be let) so you can be informed if an application is received which may affect your legal rights to the property. Further information can be obtained from the Land Registry: 0800 0283 404 or “could you be at risk of property fraud” section on their website [www.landregistry.gov.uk](http://www.landregistry.gov.uk)

## 23. Regulatory Bodies

We are members of The Property Ombudsman Scheme and the Deposit Protection Service (a designated deposit protection scheme approved under the provisions of the Housing Act 2004). So you can be sure our procedures and advice are both professional and thorough; should you have reason to complain please ask for our complaints leaflet.

## 24. Income Tax

Under current UK tax legislation you have an obligation to declare all rental income received on any property in the UK to HM Revenue & Customs (HMRC).

**Non-Resident Landlords** Under the provisions of the Taxation of Income from Land (Non-Residents) Regulations 1995 (Finance Act 1995), although you may be considered as non-resident in the UK for tax purposes, you still have a liability to pay UK income tax arising from rents received in this country. If you usually live outside the UK, then your usual place of abode will be outside the UK and we will need to deduct tax from your rental income. The Non-Resident Landlords Scheme (NRL) applies to all persons whose usual place of abode is outside of the UK. If you are temporarily living outside the UK for six months or less, then you are not regarded as having a usual place of abode outside the UK. However, if you are leaving on an extended holiday or going travelling it is not always possible to

know the exact time you will be out of the country - in which case we will need to treat you as non-resident. It is important to remember that these conditions also apply to members of HM Forces and HM Government employees.

**Note:** unless we receive information that satisfies us that the landlord does not have a usual place of abode outside the UK we will deduct tax from rental income. Companies that have their main office or other place of business outside the UK and companies incorporated outside the UK will normally have a usual place of abode outside the UK. Trustees have a usual place of abode outside the UK if all the trustees have a usual place of abode outside the UK.

From 6th April 1996, a letting agent for non-resident landlord (or the tenant where there is no letting agent and the rent is more than £100.00 a week) must deduct tax at the basic rate from the landlord's rental income and pay this over to HMRC on a quarterly basis.

**Note:** we do not pay interest on tax retentions we hold. Under the Non-Resident Landlords Scheme (NRL), landlords can apply directly to HMRC - Charity, Assets & Residence - Residency Dept: for approval to receive the rent without tax being deducted, by completing an NRL form. NRL1 for individuals, NRL2 for companies, NRL3 for trustees. These forms are available from HMRC and from any of our local lettings offices. Separate applications have to be made by each owner of a property, including husbands and wives. Application can be made any time, including before you leave the UK, or before the tenancy has started. If HMRC grants an approval they will write directly to us and issue us with an approval number for you - this is the only way we can stop retaining tax. Where approval is granted, this does not mean that the income is exempt from UK tax, only that we, as your agents, do not have to deduct it on your behalf. An approval CANNOT be accepted directly from the landlord or another agent as it is not transferable and must be in the name of the current letting agent handling the rent.

For non-resident landlords where we do not hold the appropriate HMRC approval, we will submit quarterly and annual returns on your behalf and prepare the final certificate. If we do not process more than 3 month's rent and the tax liability after deduction of our fees is less than £100.00, then we are not required to withhold tax. Although you may give a 'c/o address' for correspondence, we are required by HMRC to hold your actual residential address on file.

Where HMRC have issued an Approval to a Non-Resident Landlord, we are required to submit an annual return to HMRC, and we will make an annual charge for this submission.

**Note:** You agree to indemnify us against any costs incurred for:

- > Any tax liability or related costs > any interest on tax payments or related costs.
- > Any penalties levied on us.
- > Any shortfall of monies and to pay interest at 4% above Barclays Bank plc base lending rate in force on a daily basis from the date of payment by us until we have been fully reimbursed.

If you have any queries regarding your non-resident status please contact your local HMRC office. You must obtain your own tax advice on all aspects relating to the letting of your property.

For all landlords (where we process rent), we will provide you with a statement of income and expenditure on an annual basis to help you with your tax situation.

## 25. Houses in Multiple Occupation (HMO)

Broadly a HMO will exist if both of the following apply: at least 3 tenants live there, forming more than 1 household and you share toilet, bathroom or kitchen facilities with other tenants. Your home is a large HMO if both of the following apply: at least 5 tenants live there, forming more than 1 household and you share toilet, bathroom or kitchen facilities with other tenants. A household is either a single person or members of the same family who live together. A family includes people who are: married or living together - including people in same-sex relationships. Relatives or half-relatives, for example grandparents, aunts, uncles, siblings, step-parents and step-children.

**Mandatory Licensing** Some HMOs are subject to mandatory licensing, see below and you must supply us with a copy of the licence to enable a let to proceed.

A HMO is subject to a mandatory licence if all of the following apply:

- > The building or part of the building (see above) is classed as an HMO AND
- > The property is three or more storeys, (including basements, mezzanines and loft rooms) AND
- > It is occupied by five or more people, who form two or more households, who are sharing one or more basic amenity.

**Additional Licensing:** Local authorities have the power to introduce selective additional HMO licensing for HMO properties outside the standard rules of mandatory licensing. In order to introduce the additional licensing, the local authority will have to demonstrate that there is a particular market need to justify such a scheme as part of their overall local housing strategy.

It is a statutory requirement that an Electrical Installation Condition Report (EICR) is supplied for ALL properties designated as HMOs WHETHER OR NOT the properties require licencing. This report must be carried out every 5 years. It is an inspection of the condition of all existing electrical installations, to identify in order of priority any deficiencies against the national safety standard for electrical installations.

It is the owner/landlord's responsibility to apply for any required HMO licence and comply with the HMO legislation as detailed in the Housing Act 2004 and the Management of HMOs (England Regulations 2006), which includes carrying out a fire safety assessment of the property and keeping a log of the findings. This should include checking that any battery smoke alarms are in full working order, all necessary fire safety equipment is provided and that all means of escape clearly indicated and free of obstruction. It is a landlord's responsibility to ensure that any fire extinguisher provided to the property is serviced on an annual basis and a record kept of this. In order to be issued with an HMO licence both the landlord and any managing agent will have to meet the 'fit and proper person' requirements.

A licence may not be transferred to another person. The cost of an HMO licence is subject to local housing authority (LHA) discretion and the level of fees is set by each LHA.

**Penalties for Non-Compliance with the HMO Regulations** There are potentially significant penalties that can be imposed for either breaching (management or occupancy) conditions of the licence or for operating an HMO without a licence:

- > Financial penalties up to £20,000
- > A Section 21 Notice is invalid until a licence is obtained
- > In extreme cases, a tribunal can additionally order that rent be repaid to tenants
- > Some HMO's may also need planning consent

For further information and to clarify if your property requires a licence/planning consent please contact your Local Housing Authority.

## 26. Housing Health and Safety Rating System (HHSRS)

The Housing Act 2004 introduced a new system for local authorities to assess housing conditions in England and Wales (HHSRS) and it is the owner/landlord's responsibility to ensure that properties are let in a suitable condition. This is a "health and safety risk assessment" method of inspecting and approving rental accommodation.

The new legislation is fairly complex and covers 29 different areas of risk and hazard, which will be weighted and rated, depending on how serious they are. This considerably extends the 9-point Housing Fitness System of the Housing Act 1985 used previously. The system provides a method of grading the severity of threats to health and safety in a dwelling, working on the assumption that a dwelling should provide a safe and healthy environment.

Housing profiles are divided into 4 groupings:

- > **Physiological requirements** - damp and mould growth, excess cold, excess heat, pollutants.
- > **Psychological requirements** - space/crowding, security, lighting, noise.
- > **Protection against infection** - domestic hygiene, food safety, pests/refuse, personal hygiene, sanitation drainage, water supply.
- > **Protection against accidents** - falls (e.g. associated with baths, between levels, stairs), electrical hazards, fire, structural collapse, entrapment.

The assessment process considers the severity of each hazard by reference to those people who, based on age, would be most vulnerable to that hazard - even though those people may not actually be living in the property at the time, as the Act also considers any potential visitors to the property. For further information please contact your Local Housing Authority.

## 27. Alternative Dispute Resolution to Settle Deposits Housing Act 2004 - Deposits and Dispute Resolution

The Housing Act 2004 requires every landlord or agent who accepts a monetary deposit from a tenant under the terms of an assured shorthold tenancy (AST), to register it with an approved deposit protection scheme. Such scheme must also provide an alternative resolution service, in case a dispute arises about the allocation of the deposit (or part of the deposit) at the end of the tenancy. Failure to comply with this legislation can lead to civil sanctions, such as not being able to serve notice to end the tenancy or having to repay the full deposit to the tenant in addition to compensation of up to three times the amount of the original deposit. We are a member of the Government-approved Deposit Protection Service DPS which is administered by:

### **The Deposit Protection Service (The DPS)**

The Pavilions  
Bridgwater Road  
Bristol  
BS99 6AA

**Telephone No. 0844 4727 000**

Please note that tenancies which do not fall within the Housing Act 1988 are not required to have deposits protected and will not be included in this scheme.

If your tenancy qualifies for inclusion in the DPS then the following rules will apply: **1.** If there is no dispute, we will keep any amounts agreed as deductions where expenditure has been incurred on behalf of the landlord, or repay the whole or the balance of the deposit without interest according to the conditions of the tenancy agreement with the landlord and the tenant. Payment of the deposit will be made within 10 working days of written consent from both parties. **2.** If, after 10 working days following notification of a dispute by any party and reasonable attempts have been made in that time to resolve any differences of opinion, there remains an unresolved dispute between the landlord and the tenant over the allocation of the deposit it will (subject to rule 4 below) be submitted to the Independent Case Examiner of the DPS (ICE) for adjudication. All parties agree to cooperate with any adjudication. **3.** The statutory rights of either the landlord or the tenant to take legal action against the other party remain unaffected. **4.** It is not compulsory for the parties to refer the dispute to the ICE for adjudication. The parties may, if either party chooses to do so, seek the decision of the court. However, this process may take longer and may incur further costs. Judges may, because it is a condition of the tenancy agreement signed by both parties, refer the dispute back to the ICE for adjudication. If the parties do agree that the dispute should be resolved by the ICE, they must accept the decision of the ICE as final and binding. **5.** If there is a dispute we must remit to the Deposit Protection Service full deposit, less any amounts already agreed by the parties and paid over to them. This must be done within 10 working days of being told that a dispute has been registered whether or not you want to contest it. Failure to do so will not delay the adjudication, but the Deposit Protection Service will take appropriate action to recover the deposit and discipline us. **6.** We must co-operate with the ICE in the adjudication of the dispute and follow any recommendations concerning the method of the resolution of the dispute.

**Incorrect Information:** You warrant that all the information you have provided to us is correct to the best of your knowledge and belief. In the event that you provide incorrect information to us which causes us to suffer loss or causes legal proceedings to be taken then you agree to reimburse and compensate us for all losses suffered.

**Cost:** We will not charge you an administration fee to cover the registration and insurance of the deposit with the DPS, and in the event that a claim has to be submitted, there will be no additional charge for processing a claim on your behalf.

**Inventory:** If it becomes necessary to take advantage of the arbitration you will need to provide evidence of your claim. This will usually include a comprehensive Inventory, check-in and check-out report, together with signed schedules of condition. Awards may be automatically made in favour of the tenant, without arbitration, if such evidence cannot be provided.

For the avoidance of doubt where you have elected not to have an inventory and schedule of condition made, we will not submit any dispute on your behalf to the DPS, nor will we respond on your behalf to the DPS in answer to your Tenant's registration of a dispute.

**If we don't hold a deposit:** If you instruct us not to hold your tenant's deposit for an assured shorthold tenancy, then we will not collect or handle the deposit on your behalf. We will require you to provide us with evidence as to which other tenancy deposit protection scheme will protect the deposit and then ask the tenant to pay the deposit directly to you. You must provide your Tenant with the

statutory "Prescribed Information" and register or lodge the deposit with your chosen scheme within 30 days of it being received by you (whether the funds have cleared or not).

If you do not do so then the tenant can take legal action against you in the county court which may result in an order that you must repay the deposit to the tenant or lodge it with the custodial scheme. In addition, a further order may require you to pay compensation to the tenant of an amount up to three times the original deposit.

**You will be unable to serve a Section 21 Notice to end the tenancy until you have complied with such an order. We have no liability for any loss suffered if you fail to comply with the legislation.**

For the avoidance of doubt, where you have instructed us not to hold your tenant's deposit we will not be providing you with a tenancy agreement which complies with the rules of Deposit scheme you have chosen, it will be your responsibility to ensure your Tenant is provided with appropriate Prescribed Information, along with the scheme rules, certificate of registration and required clauses by way of the Tenancy Agreement or suitable addendum, you should consult your deposit scheme provider on both their and the statutory requirements. Should the tenant pay the deposit to us in error before the start of the tenancy and you are a member of 'My Deposit' (Tenancy Deposit Solutions Ltd), you must provide us with proof of membership before the deposit can be released to you. If you are not a member of this scheme we will send you a cheque for the amount of the deposit made payable to the 'Deposit Protection Service' for you to forward to them. In either case you must protect the deposit within 30 days of it having been received by Dunphys Chartered Surveyors and notify the tenant.

## 28. Commission fees and charge:

Please read this section carefully, including any renewals/extension fees that you may be liable to pay. Do not sign the *Lettings Agency Agreement Form* if you are uncertain of the meaning of the charges you may incur.

Our non-refundable letting fee is subject to a **minimum** fee of £ + VAT per tenancy for any of the services we offer.

### Lettings Service:

A renewal, periodic or continuation fee equal to of the original fee option agreed between us, as set out in the *Lettings Agency Agreement Form* before the start of the original tenancy will be due in respect of each extension and renewal of a tenancy. The same fee applies if the tenancy is not formally renewed and the tenant 'holds over' and the tenancy becomes periodic.

The following fees will apply, depending on how the tenancy is to be extended:

- > Fixed term tenancy = Letting fee (payable by landlord) + Tenancy agreement preparation fee (payable by tenant).
- > Periodic tenancy = Letting fee (payable by landlord).

**The above fees will apply whether or not we carry out the negotiations.**

### Rent Collection & Management Services:

A fee equal to agreed between us, as set out in the *Lettings Agency Agreement Form* before the start of the original tenancy will remain due to Dunphys Chartered Surveyors as long as the Tenant/s are in occupation of the property and Dunphys Chartered Surveyors continue to provide either a Rent Collection or Management Service. This fee will be due in respect of each extension and renewal of a tenancy. The same fee applies if the tenancy is not formally renewed and the tenant 'holds over' and the tenancy becomes periodic.

### Change or 'Swap' of Tenant:

A fee will be payable if, as result of our introduction of a tenant to the property, that tenant introduces another tenant to the property or to another property. In such cases you will pay our fee based on the agreed in the *Lettings Agency Agreement Form* and as described above, whether or not we undertake the negotiations, as long as one person forming the 'tenant' from the previous letting remains in the property.

### **29. Preparing To Let Your Property:**

We will advise you on the current market rental value of the property and, once you have agreed to our Terms & Conditions by signing we will start marketing. If you let us have a set of keys, we can arrange viewings without you needing to be there, (provided any current occupant agrees to access). Ideally, any decoration or refurbishment should be completed before we start viewings of the property. We recommend neutral colour schemes and professional cleaning, as well as clearing the property of all your personal effects. This makes it easier for tenants to imagine living there and appeal to the widest possible audience.

### **30. Marketing Your Property:**

In order to let your property as quickly as possible, once we have a copy of your EPC which reaches a minimum E rating (Energy Performance Certificate) we will register your property on our own website as well as other property portals. Additional marketing will include appropriate advertising to new and existing applicants currently registered with us.

### **31. Tenant Referencing:**

Once we have found a prospective tenant and terms have been agreed, the tenant will be asked to complete a tenant assessment application form, which will be used for processing tenant referencing. References will be checked, however this does not form a recommendation on our part, as it is always your decision to proceed. The report will not contain background, verification of bank details or criminal record checks. On receipt of a suitable response the relevant tenancy documentation will be prepared. We cannot be held responsible for the accuracy of the report or the information it contains, unless it is due to our negligence or breach of contract.

### **32. Preparing the Tenancy Agreement:**

The tenancy agreement is a contract between you and your tenant that is legally binding for the protection of you both. A document will be prepared that is relevant to your particular tenancy and you should familiarise yourself with its contents. If you are unsure, or have any areas of concern, we recommend that you take your own independent legal advice. We cannot accept responsibility for a tenancy agreement (or for any other documents) introduced by another party (e.g. by you, a tenant, a relocation company, or a solicitor) and which we have not prepared. We can however, arrange for such a document to be checked for you, this will incur an additional charge.

### **33. Collection of Initial Rent and Deposit:**

We will collect the first month's rent and deposit. The deposit will be held by us as stakeholders as per the terms of the Tenancy Agreement. We do not pay interest on this. Deposits for assured shorthold tenancies will be protected by the Tenancy Deposit Scheme (TDS). At the end of the tenancy the landlord and tenant must reach an agreement regarding the return of the deposit. We cannot release funds to either party without such an agreement, or unless a court or an alternative dispute resolution adjudication is provided to us in writing. However if the deposit is protected by the TDS, and neither we nor your former tenant are able to contact you, then we may have to return the deposit to the tenant in full without your consent, in accordance with the TDS regulations.

### **35. Arranging an Energy Performance Certificate (EPC):**

Before we can start to market your property, we will need a copy of your current EPC. It is a legal requirement that an EPC is available to any applicants wishing to read about or view your property and it must reach a minimum E rating. You must also provide a copy to the tenant before the start of the tenancy. If you do not already have an EPC in place, we reserve the right to arrange for one on your behalf and at your expense.

**Clauses 36 – 38 of these Terms & Conditions apply to the Rent Collection and Management services only.**

### **36. Inventory/Check In/Out Procedure:**

It is vital for your own protection that an inventory containing a schedule of the contents and condition of the property is available before a tenancy starts. This will be used to check your tenant in and out of the property. (Please note that an inventory or inventory check does not include testing appliances, testing the central heating system, or moving furniture). To provide you with the best possible service we will instruct an inventory which will be undertaken by an independent inventory company from our approved panel. Costs vary dependent on the size of the property. We reserve the right to arrange this service on your behalf and make the relevant monetary deduction as part of our initial charges. The landlord usually pays the cost of preparing the inventory at the start of the

tenancy, then the landlord and tenant share the costs of checking the inventory at the beginning and end of the tenancy (but subject to the terms of the tenancy agreement). If the tenant fails to make payment towards the cost of the checking, then we reserve the right to recoup any outstanding amounts from you.

In the event of a dispute, unless there is a comprehensive inventory, check-in and check-out report then the Tenancy Deposit Protection Scheme (DPS), or other dispute resolution schemes, may automatically award the full deposit to your tenant without deduction. For the avoidance of doubt where you have elected not to have an inventory and schedule of condition made, we will not submit any dispute on your behalf to the DPS, nor will we respond on your behalf to the DPS in answer to your Tenant's registration of a dispute. In any event where we have instructed an inventory/ check in/check out reports, we will only submit disputes on your behalf or respond to DPS in answer to your Tenant's dispute if you subscribe to our management service, we hold the tenancy deposit and we have provided/ arranged the inventory and schedule of condition.

### **37. Cleaning:**

We strongly recommend that the Property is professionally cleaned prior to the commencement of the tenancy, this is a recognised standard, and will be noted as such in the Schedule of Condition by the Inventory Clerk, and by way of proof, we recommend that a receipted invoice is also attached to the Schedule of Condition. This will set the required standard of cleanliness for the tenant on the termination of the tenancy, subject of course to wear and tear. Where properties are not professionally cleaned at the start of a Tenancy, it is becoming more difficult for a Landlord to claim many deductions from the Tenant's deposit in cases where a cleaning requirement is identified. We can provide a quote for professional cleaning upon written request.

### **38. Rent Processing during tenancy**

After collecting the initial rent payment, we will continue to process the rents received from your tenant throughout the tenancy. We will deduct any fees or expenses due, and electronically forward any balance due to your nominated UK based bank account via BACS (bank automation clearing system). We will endeavour to action all payments within two working days of being notified that the funds have cleared into our account. (Please remember that bank clearing times are usually three working days, but this may vary). We are unable to make payments into non-UK Bank Accounts, if you have such an account, you will need to set up a UK based bank account and provide us with the details.

A full statement of account will be sent to you after the end of each month, so long as there has been activity on your account during that month. We will post hard copy statements to the correspondence address you have provided to us. Where we are processing the rent, and the payments are late, or the account becomes in arrears, we will issue reminder letters to your tenant(s) as follows: 7-9 and 14-16 working days after the due date. After 28-30 working days, a final reminder is sent advising the tenant that legal action may be taken. At this time, we will contact you and ask for your instructions, but we will not be actively chasing your tenant for outstanding rent after this time.

You may wish to deal with the matter yourself or consult a solicitor. It will always be your responsibility to take legal action, instruct a solicitor or protect your position. We can recommend a suitable firm of solicitors on request. Should you choose to deal with the matter yourself, we will assist you where possible, but once a solicitor has been instructed we will take no further action. We cannot give advice or take any steps in legal proceedings.

**Clauses 39 – 47 of these Terms & Conditions apply to the Management service only.**

### **39. Gas and Electricity:**

To ensure that you comply with the Gas Safety (Installation and Use) Regulations 1998, we will instruct a contractor (registered with Gas Safe) annually to check all gas appliances in the property belonging to you. If you have informed us that you have a contract in place with another party that includes this safety check (e.g. British Gas), then you must provide us with a copy of the satisfactory record on or before the expiry date of the previous one. If we do not receive a copy in time, we will instruct a test on your behalf with one of our preferred contractors without further reference to you and make any necessary deduction from your account.

We will only arrange for ongoing checks to portable electrical appliances (PAT) or carry out the Electrical Installation Condition Report (EICR) at the appropriate time during the tenancy if:

- A.) you instruct us in writing before or during the tenancy which test(s) you wish us to arrange, or

- B.) you instruct us in writing that you have a current PAT or EICR at the start of the tenancy which is due to expire during the term, and you wish us to arrange further testing as it becomes due.

The cost of any safety tests will be charged to you and we must be in cleared funds to carry these out. Please note: If the property is designated as a House in Multiple Occupation (whether or not it requires a licence), we will instruct a qualified electrician to carry out a new EICR if the current one expires during the tenancy and without further reference to you. This will be carried out automatically unless you instruct us in writing at least one month before the due date that you are dealing with this matter yourself AND you supply us with a copy of your own satisfactory report before the due date.

#### **40. Property Visits:**

Scheduled property visits may be carried out by us, or by contractors, or agents, to assess the general condition and decorative state of the tenanted property (excluding lofts, garages, outbuildings and basements - unless classed as formal living accommodation under Building Regulations). These visits are not carried out by surveyors and do not form part of an inventory check. A property visit will be carried out once every 6 months, subject to access being granted by the occupant. Please note that we are unable to use any keys to the property without the occupant's express consent and are unable to force entry.

#### **41. Repairs and Maintenance:**

Where we instruct contractors on your behalf, we do not warrant or imply responsibility for any aspect of the works. Such contract or arrangement will be directly between you and the contractor. Any recourse in relation to the works or to payment for the works will be between you and the contractor. We will take reasonable steps to identify and manage contractors, but we cannot accept responsibility (at law or in fact) for them. Neither can we accept responsibility if we are unable to carry out repairs or maintenance work due to insufficient funds in your account (unless it is due to our negligence or a breach of these Terms of Business). If major works are necessary, such as re-roofing or replacement of a boiler, we will obtain an estimate and send it to you for approval. For all other works, including emergency works, we will instruct contractors to investigate any reported faults and to carry out repairs where necessary, without reference to you, if such faults are your responsibility under the terms of the tenancy agreement. These will be paid for from funds held by us in your account. While we will investigate any fault or defect brought to our attention, we cannot undertake inspections for latent, inherent or structural problems.

#### **42. Utility Suppliers:**

We will transfer the utilities and council tax into and out of the tenant's name at the beginning and end of the tenancy wherever possible and supply meter reading (where applicable) as long as the inventory clerk has been able to access the relevant meters at the time of the check in and/or out. We reserve the right, where possible, to change your gas and electricity accounts to our preferred energy supplier and telecom/broadband suppliers to assist with the control of your utility accounts. We may earn a fee from the energy supplier. Please note that under the Water Act 2003 a landlord cannot refuse a tenant's request to install a water meter to the property. Once a meter has been installed, it is not possible to revert to the previous rated system. Section 45 of The Flood and Water Management Act 2010 places an obligation on you the Landlord to provide the tenant's contact details to the water company. We will only do this on your behalf where you have selected our Management service.

#### **43. Working Float:**

We are unable to make payments over and above the money available on your account. Therefore, as a minimum, we will need you to provide a working float equal to at least 50% of the monthly rental value (and not less than £300). If rents are paid quarterly (or the frequency exceeds quarterly) we will need to retain a larger amount. The float will be held by us at all times and topped up from funds/rents received, to enable us to meet all expenditure. We reserve the right not to make payment of outgoings or instruct contractors to carry out repairs unless we hold sufficient cleared funds. We cannot accept liability for disputes over the amount or payment of any bill.

#### **44. Your Own Contractor:**

In most cases, we can use contractors suggested by you so long as we have a copy of their current relevant Public Liability insurance cover and any Professional Certification first. However, we reserve the right to instruct other contractors as we see fit. We are unable to settle any invoices from your account for works not instructed by us.

#### **45. Service Agreements:**

If you have a warranty for a newly built property, or a repair/maintenance/service agreement, then you must find out if you need to give prior authority to a third-party to accept our instructions. If you have not done so, and failure to carry out a repair would breach your contractual and statutory obligations, then we reserve the right to instruct another contractor on your behalf and at your expense. In these circumstances we cannot be responsible if any warranty, contract or agreement becomes invalidated. We cannot be held liable or accept responsibility for the workmanship, delays or failure to act by the third party, including any consequential loss suffered.

#### **46. Commencement of Management Service:**

Our Management Services will not start until a tenancy begins and you have returned the completed management detail form. Should we not be in receipt of the duly completed management detail form and we are required to instruct a contractor on your behalf; this will be at your expense. In these circumstances we cannot be responsible should any warranty, contract or agreement become invalidated. Similarly the Management services/arrangements will end when the tenancy ends, or at the end of an agreed notice period. We will not accept any responsibility for your property during vacant periods.

#### **47. Renewal Service:**

Where possible, we will contact you towards the end of the fixed term of the tenancy to take your instructions on whether you wish to offer the tenant a further term or serve notice to end it. If you want to renew the contract then we can advise you on the market conditions at that time and if we think an increase in rent is possible or desirable depending upon current market conditions. We will only act on your written instructions. If a tenant renews or extends their tenancy beyond the initial term and you will continue to benefit from our services in the future, then please be aware that any such renewal or extension is subject to an additional letting fee + VAT, whether or not we carry out negotiations on your behalf.

**Note: if you choose to negotiate directly with your tenant, then our management fee continues to be payable for the duration of the time the tenant remains in the property.**

Once we have received your written instruction, we will negotiate with your Tenant and agree terms between both parties and then prepare a new tenancy agreement where appropriate, including drafting any additional clauses. We accept no liability if either party does not return the signed document and in which case the tenancy will automatically continue as a periodic tenancy until either party gives notice in writing to end it in line with legislation. **Our management fee will remain due whether the tenancy continues as a fixed term or a periodic tenancy.**

**Please note:** if your tenancy does not enter into a new fixed term agreement then the rent can only be legally increased if you serve a Section 13(2) Notice under the Housing Act 1988. We can prepare this for you. Please be aware that this form advises the tenant that they have a right to challenge the increase by serving a counter notice and possibly referring the matter to the Rent Assessment Committee.

#### **48. Your Right to Cancel:**

'Cooling off' period - you only have the right to cancel these Terms of Business under 'The Cancellation of Contracts Made in a Consumer's Home or Place of Work etc Regulations 2008' within a cooling off period of 7 calendar days (the 'Cooling Off Period') if you are a consumer and if the Terms of Business are signed in your home or place of work in the presence of one of our representatives. The 'cooling off period' begins when you receive this notice of your right to cancel.

By signing the *Lettings Agency Agreement Form* (accompanying these Terms & Conditions), you are asking us to start work immediately on marketing and letting your property - and before the end of the cooling off period. In order to do this, our activities may also include ordering an EPC, preparing a tenancy agreement, arranging an inventory, carrying out works to the property on your instructions, etc. As you will be receiving services from us, even if you exercise your right of cancellation of the terms of business, you will still be responsible for our professional fees, costs and expenses reasonably incurred on your behalf up to the moment when we receive your cancellation notice.

'Distance Selling' - you are not able to cancel these terms of business under 'The Consumer Protection (Distance Selling) Regulations 2000' once work has begun, unless you have stated otherwise, as you have requested we begin work immediately. This does not affect any rights that you might have if 'The Cancellation of Contracts Made in a Consumer's Home or Place of Work Regulations 2008' applies. Those cancellation rights are dealt with separately above.

Revised 2<sup>nd</sup> May 2019

**Notice of your right to cancel:** You have the right to cancel these Terms of Business, instructions to produce an energy performance certificate or conduct pre-tenancy safety works, within 7-calendar days from when you received this notice of your right to cancel ('the cooling off period'). This right may be exercised by delivering or sending (including by electronic mail) a cancellation notice to the name and address stated below within the cooling off period. The notice of cancellation is deemed to be served as soon as it is posted or sent.

As agreed, you will still be required to pay for the services supplied in accordance with our Terms & Conditions as set out above. This notice is dated as per the date of the Terms & Conditions according to the *Lettings Agency Agreement Form* attached to the back of this booklet.

**Either write to** – Dunphys Chartered Surveyors , York House, Montague Road, Hounslow, Middlesex, TW3 1JZ

or

**Email to** – [lettings:@dunphys.co.uk](mailto:lettings:@dunphys.co.uk)

SAMPLE

## Lettings Agency Agreement Form

### Property Address:

#### Cooling off period

- By placing an X in this box you have requested that we start work immediately on all the options selected below and before the end of the cooling off period. You also confirm if you have opted for us to start work immediately that you will be responsible for our professional fees, costs and expenses reasonably incurred in accordance with the terms of business up to the moment we receive your cancellation notice.

#### Energy Performance Certificate

- By placing an X in this box you have instructed us to arrange an EPC on your behalf immediately to enable commencement at the earliest opportunity. The cost will be £75.00 + VAT.
- By placing an X in this box you have agreed to supply a copy of your EPC with an E rating (minimum) or you will personally arrange an EPC yourself and provide a copy to Dunphys Chartered Surveyors within 5 working days, otherwise your property will have to be withdrawn from the market until we have a copy of the EPC.

#### Is there a gas supply at the property? yes / no (delete appropriately)

- By placing an X in this box you have instructed us to arrange a Gas Safety Certificate on your behalf.
- By placing an X in this box you have agreed to supply a copy of your own Gas Safety Certificate 5 days before the tenant is due to move into the property.

#### Electrical Safety

- By placing an X in this box you have instructed us to arrange a periodic electrical wiring inspection (PIR) & Portable appliance test (PAT).

**If you do not select the above electrical safety checks or provide us with copies of your own satisfactory electrical test reports ,then by signing this agreement you are confirming that the electrics in the property are safe and comply with the Electrical Equipment (Safety) Regulations 1994. Please note if your property is designated as a House in Multiple Occupation we cannot proceed with a tenancy without being supplied a valid PIR.**

## Service Selected & Fee

### Managed Service

Fee: %

By placing an X Dunphys Chartered Surveyors will be paid in advance.

By placing an X Dunphys Chartered Surveyors will take monthly instalments.

Working float required for all managed properties (minimum £300), float agreed £\_\_\_\_\_

### Let Only Service

Fee: %

By placing an X Dunphys Chartered Surveyors will be paid in advance.

### Renewal/Extension/Periodic Tenancy Fees:

Renewal/extension/periodic tenancy fees will be due in line with the terms specified in Clause 28 of Dunphys Chartered Surveyors , Rent Collection & Management Services, Terms & Conditions.

SAMPLE

I/We declare that I/We understand that in signing this agency agreement form, a legally binding contract will be produced comprising of the Dunphys Chartered Surveyors , Rent Collection & Management Services Terms & Conditions, and Letting Agency Agreement.

I/We declare that I/We have obtained necessary permissions to let whether it be from lessors, mortgagees, insurers or others).

**Before you sign** (delete where appropriate)

I/We declare that I/We am/are sole/joint owner(s) of all the property.

**Signed by/on behalf of Landlord 1**

<input type="text"/>	Landlord print name	<input type="text"/>	Dated:
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<input type="text"/>	Signed by Landlord	<input type="text"/>	Dated:
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**Signed by/on behalf of Landlord 2**

<input type="text"/>	Landlord print name	<input type="text"/>	Dated:
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<input type="text"/>	Signed by Landlord	<input type="text"/>	Dated:
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**Signed on behalf of Dunphys Chartered Surveyors**

<input type="text"/>	Print Name	<input type="text"/>	Dated:
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<input type="text"/>	Signature	<input type="text"/>	Dated:
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**LANDLORD INVENTORY DISCLAIMER:**

I/we \_\_\_\_\_ am/are the landlord/s of \_\_\_\_\_  
\_\_\_\_\_ and hereby confirm that Dunphys Chartered  
Surveyors have fully explained the implications of not organising a full professional inventory and schedule of condition  
for the above property.

I/we accept that should there be a dispute over dilapidations with the tenant at the termination of tenancy, not having a  
professional inventory with schedule of condition may affect my claim.

**Signed:**

**DATED:**

**LANDLORD TENANTS' DEPOSIT DISCLAIMER:**

I/we \_\_\_\_\_ am/are the landlord/s of \_\_\_\_\_  
\_\_\_\_\_ and hereby confirm that Dunphys Chartered  
Surveyors have fully explained the laws relating to the Tenants Deposit Scheme. I understand that if I fail to register the  
deposit in a recognised scheme, I may be liable to have to pay the tenants up to 3 times the value of the deposit, plus costs  
and interest and I further understand that I may have problems recovering possession of my property.

I/we have instructed agents name to release the deposit to us and I/we confirm that we will be placing the deposit in the  
following scheme.

**SCHEME NAME:** \_\_\_\_\_

**Signed:**

**DATED:**

**ELECTRICAL INSTALLATION CONDITION REPORTS (EICR):**

By signing this form are confirming that the electrics in the property are safe and comply with the Electrical Equipment  
(Safety) Regulations 1994. However, if your property is let as a HMO then you have a legal requirement to carry out an  
EICR and cannot opt out of it, you hereby agree to pay for the appropriate EICR if a current one is not in existence.

Please note: We will require cleared funds prior to any work or testing being instructed.

**Signed:**

**DATED:**