

TERMS & CONDITIONS FOR AGENCY ACQUISITION/DISPOSAL SERVICES/LETTING SERVICES

1 DEFINITIONS AND INTERPRETATION

In these Terms & Conditions:

- 1.1 “Financial Crime Rules” means the guidance, laws, regulations and responsibilities imposed on CDG (as defined below) contained or referred to in (i) the HMRC Guidance on Anti Money Laundering Supervision for Estate Agency Businesses and Letting Agency Businesses as the same is updated from time to time; and (ii) the Criminal Finances Act 2017 together with all policies and procedures in relation thereto crafted and implemented by CDG from time to time;
- 1.2 “CDG” means CDG Leisure Limited registered in England and Wales under company number 07128833 whose registered office is at 30 Berwick Street, Soho, London, W1F 8RH;
- 1.3 “the Client” means the person(s) to whom the Letter of Engagement is or are addressed and the person(s) to whom the Services are provided;
- 1.4 “the Fee” means the fees payable by the Client in consideration of CDG carrying the Services;
- 1.5 “Letter of Engagement” means the letter which accompanies these Terms & Conditions which has been or will be sent to the Client by CDG and which sets out details of the Client, Services, Property and Fee and such other terms and conditions relating to the Services as may be appropriate;
- 1.6 “the Property” means the location, site or building(s) which is the subject of the Services and where the context so admits shall include all properties identified in the Letter of Engagement;
- 1.7 “Report” means any document, report, drawing specification, calculation or form or table which is written, produced or created by CDG in the course of carrying out the Services;
- 1.8 “the Services” means the services to be provided by CDG as the same are more particularly set out in the Letter of Engagement which shall comprise solely Estate Agency Work (“Estate Agency Work”) as defined in Section 1 of the Estate Agents Act 1979 or letting agency work and shall in no circumstances extend to advice involving building surveying, construction services, dispute resolution or valuation;
- 1.9 “Terms of Engagement” means this document together with the Letter of Engagement as well as the Privacy Notice and all other terms and conditions contained and referred to on the CDG website as the same may be from time to time found at: www.cdgleisure.com;
- 1.10 If there is any inconsistency or contradiction between the Letter of Engagement and these Terms & Conditions, the provisions of the Letter of Engagement will prevail;
- 1.11 From time to time it may be necessary to amend or replace these Terms & Conditions with new terms. Where this is the case, CDG will notify the Client in writing of the changes and, unless we are notified by the Client in writing to the contrary within 7 days after such notification, the amendments or new terms will come into effect from the end of that period;

1.12 These Terms & Conditions have been drafted to apply generically to Acquisitions, Disposals and Lettings. In the event that the Services to be provided by CDG pursuant to the Letter of Engagement relate to:

1.13.1 an acquisition, then paragraph 11 of these Terms & Conditions shall apply; and/or

1.13.2 a disposal and/or letting, then paragraphs 12, 14, 15 and 16 of the Terms & Conditions shall apply

and such paragraphs will not apply as the case may be to non-relevant transactions.

2 APPOINTMENT AND LIABILITY

2.1 The Client has appointed CDG to undertake the Services and CDG agrees to accept the appointment and provide the Services in accordance with the Terms of Engagement;

2.2 CDG shall provide the Services with all reasonable professional skill and care expected of a professional estate agent conducting Estate Agency Work and/or letting agency work but not further or otherwise;

2.3 The liability of CDG for its own acts and omissions whether in contract or in tort or otherwise for any loss, injury or damage sustained shall be limited in each of the following respects:

2.3.1 CDG shall not in any event be liable for more than PR's just and equitable proportionate share of the loss, injury or damage assuming that all other professionals / consultants / specialists (either directly or sub-appointed) who are responsible are equally obliged to exercise reasonable professional skill and care and that they have been appointed on terms no less onerous and shall be deemed to have paid to the Client their just and equitable proportionate share of the liability;

2.3.2 CDG shall not in any event be liable unless proceedings by way of court action or arbitration or alternative dispute resolution have been commenced within six years from completion of the Services;

2.3.3 subject to paragraph 2.5, the maximum liability of CDG shall be limited to £1million in total for all claims arising in connection with the Services;

2.3.4 no liability shall attach to CDG either in contract or in tort or otherwise for loss, injury or damage sustained as a result of any defect in any material or the act, omission or insolvency of any party other than CDG and CDG shall not be liable to indemnify the Client in respect of any claim made against the Client for any such loss, injury or damage;

2.4 The Client will not be entitled to recover, and hereby disclaims and waives any right that it may otherwise have to recover loss profit or revenues or indirect or consequential loss or damage as a result of any breach (including without limitation, negligence) by CDG of its obligations in respect of the Services;

- 2.5 Nothing in the Terms of Engagement shall exclude or restrict CDG's liability:
- 2.5.1 for death or personal injury resulting from CDG's negligence; or
 - 2.5.2 for fraud, illegal or unlawful acts.
- 2.6 The duties and responsibilities owed to the Client in respect of the Services are solely and exclusively those of CDG and no director or employee of CDG shall owe the Client any personal duty of care or be liable to the Client for any loss or damage howsoever arising as a consequence of the acts or omission of such employee or partner (including any negligent acts or omissions) save and to the extent that such loss or damage is caused by the fraud, dishonesty, wilful misconduct or unauthorised conduct on the part of such employee or partner);
- 2.7 If at any time any provisions contained in the Terms of Engagement is or becomes illegal, invalid or unenforceable in any respect, it will not affect or impair the legality, validity or enforceability of any other provision contained in the Terms of Engagement.

3 FINANCIAL CRIME RULES

- 3.1 The Client acknowledges that CDG is obliged to comply with the Financial Crime Rules, including without limitation:
- 3.1.1. To identify all legal persons comprising the Client and any transaction counterparty, their officers and beneficial owners and agrees to fully comply as expeditiously as possible with all proper requests made by CDG and its advisors in relation to the provision of documentation and information thereto; and
 - 3.1.2. the obligation to not assist in tax evasion and otherwise comply with the obligations of the Criminal Finances Act 2017.
- 3.2 CDG will use all reasonable endeavours as expeditiously as possible following the commencement of the Services to inform the Client of all its requirements to discharge the Financial Crime Rules in relation to the Services.

4 PAYMENT OF PROFESSIONAL FEES

- 4.1 The Client undertakes to pay the Fee to CDG for the performance of the Services in accordance with the Terms of Engagement and at the rate set out in the Letter of Engagement subject to a minimum fee of £7,500 (and any specific stage payment schedules) to include any Fee relevant to deferred or unascertained consideration relating to a property;
- 4.2 Where the Fee is based on a percentage of the average annual rent, this shall be calculated from the date of the commencement of the lease/licence to the first rent review date;
- 4.3 In the event of a sale or purchase of a corporate vehicle, going concern or special transaction as distinct from a property sale or acquisition, the Fee payable will be identified in the Letter of Engagement;
- 4.4 In the event of a management contract or similar agreement being entered into as opposed to

an occupational agreement, the Fee will be based on an equivalent basis to a fee relating to annual rent and premium and identified in the Letter of Engagement;

- 4.5 In the case of an assignment or subletting of an existing lease, the Fee will include a sum identified in the Letter of Engagement relative to any premium given or received together with any consideration paid for fixtures, fittings and goodwill;
- 4.3 CDG shall issue an invoice for the Services (or part thereof) and this will be payable by the Client within 28 days of the date of issue of the invoice or if earlier the date of possession, occupation or completion of the sale, purchase or lease except where contracts are exchanged conditionally;
- 4.4 In the event that agreements are exchanged conditionally, CDG shall invoice thereon for 50% of the Fee together with all expenses and disbursements. The balance of the Fee shall be invoiced by CDG payable on the earlier of completion of the transaction or six months after the date of the first invoice. In the event that any conditions cannot be satisfied within six months after the date of the first invoice, then CDG shall be deemed to have fulfilled its instructions in relation to the Services and no further fee shall become payable;
- 4.5 In the event that completion is to be delayed by development works, CDG shall invoice thereon for 50% of the Fee and all expenses and disbursements on exchange of agreements. The balance of the Fee shall be invoiced by CDG and payable on the earlier of completion of the transaction or six months after the date of the first invoice. In the event that any development works have not been completed within six months after the date of the first invoice, then CDG shall be entitled to invoice for the balance of the Fee and shall be deemed to have fulfilled its instructions in relation to the Services;
- 4.6 CDG reserves the right to charge the Client interest (both before and after any Judgement) on any unpaid invoices at the rate of 3% per annum above the base rate for the time being at Barclays Bank plc from the date which is 28 days after the date of the invoice until payment is made, or, at the sole election of CDG, interest due under the Late Payment of Commercial Debts (Interest) Act 1998;
- 4.7 Where the Fee is subject to the addition of expenses and disbursements these shall be payable by the Client as invoiced and at the rates indicated by CDG;
- 4.8 The Fee shall be subject to the addition of Value Added Tax applicable at the time of the invoice.

5 COMMENCEMENT AND TERMINATION

- 5.1 The commencement of instructions under the Terms of Engagement will be on the date set out in the Letter of Engagement;
- 5.2 Either the Client or CDG may terminate the CDG appointment by giving 28 days notice in writing to the other party or immediately in the event of either party having a receiver, administrative receiver or administrator appointed over all or any part of its assets or undertaking or if either party passes a resolution to wind up or has a liquidator appointed or, in the case of an individual, is adjudged bankrupt;

- 5.3 In the event that CDG believe in its proper opinion that the Client or any transaction counterparty has not discharged its obligation to comply with the Financial Crime Rules in accordance with paragraph 3 above prior to exchange of any agreement relating to a relevant transaction, then CDG reserve the right to forthwith terminate the Services.
- 5.4 In the event of termination of instructions for whatever reason, the Client shall pay all fees reasonably due to CDG on receipt of an invoice;
- 5.5 The termination of instruction under the Terms of Engagement will not affect the rights of either party that have accrued to the date of termination.

6 **COPYRIGHT**

- 6.1 The copyright in the Report and other documents produced by CDG in connection with the Services (the "Proprietary Material") shall remain vested in PR, but the Client shall have an irrevocable royalty-free and non-exclusive licence to copy and use such Proprietary Material for any purpose related to the Services, including, but without limitation, the construction, reconstruction, completion, maintenance, letting, promotion, management, sale, advertisement, reinstatement, repair, alteration, modification, extension and use of the Property.

7 **CONFIDENTIALITY**

- 7.1 Any Report and Services provided to the Client will be treated by CDG in confidence and CDG will take reasonable steps to keep such matters confidential as may be required by the Client in writing save for such information which:
- 7.1.1 is now or hereafter becomes available in the public domain other than through the fault of CDG or any of its directors, employees' sub-contractors or advisers;
- 7.1.2 is already or becomes known to CDG or any of its directors, employees, sub-contracts or advisors at the time of its disclosure;
- 7.1.3 is required by law by any court of competent jurisdiction, or by a governmental or regulatory authority, or where there is a legal and/or regulatory duty or requirement to disclose.

8 **THIRD PARTY**

- 8.1 Any Report is supplied to the Client for the strict and limited purpose as intended and all information within a Report may only be used by the Client. No liability whatsoever is offered to any third party without the express written consent of CDG;
- 8.2 Except as set out in paragraph 2.6, the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Terms of Engagement.

9 **ASSIGNMENT**

Neither party may assign any of their respective rights or obligations under the Terms of Engagement to any third party without the prior written consent of the other party.

10 GOVERNING LAW

The Terms of Engagement shall be governed by and construed and interpreted in accordance with the law of England and Wales and the parties agree that all matters arising out of or in connection with the Terms of Engagement shall be determined by the High Court of Justice in England and the parties hereby submit to the exclusive jurisdiction of that Court for such purposes.

11 ACQUISITIONS

11.1 In the event that CDG are appointed in the Letter of Engagement as “Sole/Joint Sole Acquisition Agents”, this means the Client will be liable to pay remuneration to CDG, in addition to any other costs or charges agreed, in each of the following circumstances:

11.1.1 If unconditional contracts for the acquisition of the Property (or conditional contracts that subsequently become unconditional) are exchanged in the period during which CDG has sole acquisition rights, even if the property was not found by CDG but by another agent or by any other person, including the Client;

11.1.2 If unconditional contracts for the acquisition of the Property (or conditional contracts that subsequently become unconditional) are exchanged after the expiry of the period during which CDG has sole acquisition rights in a property that was introduced to the Client during that period by CDG or another agent or by any other person, including by way of the Client’s own actions, or with whom CDG had negotiations about the Property during that period;

11.2 In the event of CDG’s instructions being terminated by the Client for any reason whatsoever pursuant to paragraph 5.2 above, the Client will be liable to pay a remuneration to CDG equal to the fee to which CDG would have been entitled to as if the anticipated transaction had proceeded so as to render the Client liable to pay the full remuneration in addition to any costs or charges.

12 DISPOSALS AND/OR LETTINGS

12.1 In the event that CDG are appointed in the Letter of Engagement as “Sole/Joint Sole Letting/Selling Rights”, this means the Client will be liable to pay remuneration to PR, in addition to any other costs or charges agreed, in each of the following circumstances: -

12.1.1 If unconditional contracts for the sale/letting of the Property (or conditional contracts that subsequently become unconditional) are exchanged in the period during which CDG has sole selling/letting rights, even if the purchaser/tenant was not found by CDG but by another agent or by any other person, including the Client;

12.1.2 If unconditional contracts for the sale/letting of the Property (or conditional contracts that subsequently become unconditional) are exchanged after the expiry of the period during which CDG has sole selling/letting rights but to a purchaser/tenant who was introduced to the Client during that period by CDG or another agent or by any other person, including by way of the Client’s own actions, or with whom CDG had negotiations about the Property during that period;

12.2 The Client confirms that as at the date of the Letter of Engagement there is no prospective

purchaser or tenant from any source who has expressed an interest in acquiring or leasing the Property;

- 12.3 Where CDG is instructed (whether expressly or implied) to dispose of a property belonging to the Client's subsidiary or associate or another company within the same group or in any partnership or joint venture or association with the Client (the "Associated Party"), or if any such property is disposed of by an Associated Party, the Client will nevertheless be liable to pay any fees and expenses due to CDG;
- 12.4 In the event of CDG's instructions being terminated by the Client for any reason whatsoever pursuant to paragraph 5.2 above, the Client will be liable to pay a remuneration to CDG equal to the fee to which CDG would have been entitled to as if the anticipated transaction had proceeded so as to render the Client liable to pay the full remuneration in addition to any costs or charges provided for if a Ready, Willing and Able purchaser/tenant is introduced by CDG in accordance with the Client's instructions before the termination of the appointment including the period before the expiry of any period whilst CDG are under notice of the Client's desire to terminate the appointment. A purchaser/tenant is a "Ready, Willing and Able" purchaser/tenant if he is prepared and is able to exchange unconditional contracts (or conditional contracts that subsequently become unconditional) for the purchase/letting of the Property. The Client will be liable to pay remuneration to CDG, in addition to any other costs or charges agreed, if such a purchaser/tenant is introduced by CDG in accordance with the Client's instructions and this must be paid even if the Client subsequently withdraws and unconditional contracts for sale/letting of the Property are not exchanged, irrespective of the Client's reasons;
- 12.5 In the event of CDG's instructions being terminated by the Client for any reason whatsoever pursuant to paragraph 5.2 above, before the expiry of 6 months from the date of the Letter of Engagement, CDG shall be entitled to charge the Client an abortive fee calculated on a time cost basis, or, at the sole election of CDG a fee equivalent to 50% of the Fee to which would have been entitled to as if the anticipated transaction had proceeded so as to render the Client liable to pay the full remuneration in addition to any other costs or charges provided for in the Terms of Engagement.

13 **ADDITIONAL CHARGES**

- 13.1 In addition to the Fee the Client shall pay to CDG:
- 13.1.1 All agreed marketing expenses, in advance, which are to be incurred in accordance with the Client's instructions;
- 13.1.2 VAT where applicable on all other amounts due from the Client to CDG;
- 13.1.3 All reasonable out of pocket expenses incurred by CDG in carrying out the instruction. Such out of pocket expenses shall be payable by the Client whether or not the anticipated transaction which is the subject of the Client's instruction is completed. CDG will be entitled to bill out of pocket expenses on a monthly basis.

14 **MARKETING**

- 14.1 CDG will provide estimates of all marketing costs, such as brochures, advertising and marketing boards for which the Client will be liable and will obtain confirmation from the Client before incurring such expenditure;
- 14.2 CDG will be entitled to receive and retain the usual commissions and discounts on any orders for goods and services placed on the Client's behalf;
- 14.3 Accounts for marketing costs may be submitted at the same time as such are incurred but usually within 28 days;
- 14.4 As part of CDG's marketing services, CDG may offer, without obligation, estate agency or professional services to any prospective purchaser or lessee including CDG's services regarding the sale or letting of a prospective purchasers or tenant's existing property.

15 **CLIENT'S WARRANTY AND INDEMNITY**

- 15.1 The Business Protection from Misleading Marketing Regulations 2008 (BPRs) makes it an offence to use misleading practices about a property in certain circumstances and the Client undertakes to CDG to check and verify, in so far as is reasonable for the Client to do so, all marketing materials sent to the Client for approval and to notify CDG without delay of any matter contained therein that is or thereafter becomes inaccurate or misleading;
- 15.2 The Client hereby represents and undertakes to CDG that all information provided by the Client and/or its professional advisors regarding the Property is complete and accurate, not false and misleading and that there are no other material facts known to the Client relating to the Property which may be relevant to CDG in carrying out its instructions;
- 15.3 The Client hereby undertakes to indemnify CDG and to keep CDG indemnified against all actions, losses, damages, costs and expenses, including legal fees and disbursements on a solicitor and own Clients basis, arising out of or by virtue of the Client's instructions to CDG and including all losses arising from the Client's failure to provide or check information given to CDG or information otherwise verified by the Client, as referred to in paragraph 16.1 above, other than any losses, damages, costs and expenses arising by virtue of the default or negligence of CDG.

16 **LIMITATION**

- 16.1 Unless otherwise agreed between the Client and CDG, CDG shall further be entitled to assume that:
 - 16.1.1 information provided as to ownership of the Property is complete and correct, and that there are no encumbrances or unduly onerous or unusual easements, covenants, restrictions, outgoings or conditions attached to the Property which may affect the marketability of the Property (save that which are specifically notified to CDG in writing by or on behalf of the Client);
 - 16.1.2 the Property complies with all relevant statutory requirements (including but not limited to

- byelaws, fire and health and safety at work regulations);
- 16.1.3 the Property has been constructed and is occupied in accordance with the valid planning and building regulations approval; and
- 16.1.4 the Property is not contaminated.
- 16.2 Unless otherwise agreed with the Client, CDG shall not be responsible for making any structural survey or physical inspection of the Property nor for testing any services to the Property or for investigating the possibility of the existence of contamination nor for instigating local search or other enquiries of local or any other authorities or investigation of the title regarding the Property which will be the Client's sole responsibility;
- 16.3 Unless otherwise agreed with the Client, CDG shall have no management role or responsibility in relation to the Property which shall be the sole responsibility of the Client. In particular the Client shall be responsible for making such security arrangements for the Property as the Client shall deem appropriate. If specifically instructed in writing by the Client, CDG may be able to organise security and management of the Property but without obligation to do so;
- 16.4 Any information provided by CDG regarding a potential asking price or rent does not represent a formal or accurate opinion of value and may not be relied upon by the Client or any other party as an indication of the valuation of the Property;
- 16.5 The Estate Agents Act 1979 requires CDG to inform any prospective purchaser/lessee of any connected business, or family relationship which the Client may have with CDG, any of CDG's employees, or any associated company. CDG will undertake independent checks, but the Client is required to inform CDG in writing immediately if the Client is aware that any such relationship exists;
- 16.6 Unless otherwise agreed in writing between the Client and CDG, title deeds and other legal documents will not be read by CDG. In any even any advice, approval or representation made by CDG or any person on behalf of CDG regarding the legal meaning or effect of any title deeds or other legal documents (draft or final version) will not be relied on by the Client and such advice will be limited to estate agency matters and will not constitute advice regarding legal interpretation or drafting issues which will at all times remain a matter for the Client's solicitor whether or not any advice, approval or representation is given by CDG;
- 16.7 CDG will not be liable for any acts or defaults committed by any other agent where CDG is instructed on a joint agency basis;
- 16.8 If CDG holds keys to the Property, CDG may loan these to prospective purchaser or tenants (unless the Client instructs CDG in writing to the contrary), and CDG will exercise reasonable care when loaning keys, CDG has no liability arising from the actions of any third parties;
- 16.9 The Client will be precluded from bringing any claim in connection with services CDG provide against our Partners and employees personally.