

LETTINGS

Terms and conditions for the letting and management of residential property



IMPORTANT INFORMATION

Thank you for instructing ASTON VAUGHAN LTD as your agent in connection with the letting and / or management of your Property.

It is important that you read the Schedule of Instruction, Schedule of Services and Terms and Conditions in full before signing. By signing the Schedule of Instruction you are confirming you accept our Terms and Conditions, and a legal contract will be formed between us.

The fee you pay us will vary depending on the Services you select for the us to provide, and details of the fees can be found in the Schedule of Instruction, the Schedule of Services and clause 6 of the Terms and Conditions.

We wish to draw your attention to clauses 3.14 and 4 of the Terms and Conditions as these relate to safety issues concerning the Property and your obligations as a Landlord to ensure a safe property is provided to your tenants.

Schedule of Instruction

Property Address **ADDRESS**

Landlords **NAME**

NAME / COMPANY IF APPLICABLE

CORRESPONDENCE ADDRESS

E-mail

Telephone

Bank Name

Account Number

Sort Code

Minimum period of management: An initial period of **12** months and continuing thereafter until terminated in accordance with the Terms and Conditions by the giving of Notice pursuant to clause 5 of the Terms and Conditions

Service **Fully Managed**

Float **£0**

Limit of Authority **£250**

Emergency Limit **£250**

Set Up Fee ***See Schedule below**

Cancellation Fee **£65 exclusive of VAT per named tenant / reference undertaken prior to commencement**

(See section 6.6)

Management Fee* **7%** exclusive of VAT of the Rent (as defined by clause 1.1 of the Terms and Conditions)

***6 MONTHS FEE FREE £0 SET UP FEES OFFER APPLIED FROM X AUGUST 2021 thru X FEBRUARY 2022.**

7%+VAT FULL MANAGEMENT THEREAFTER TO INCLUDE FEES BELOW (WHERE APPLICABLE)

	Services included in Full Management Fee	Services included in Let Only Fee
Finding a Tenant		
Marketing of the property as available to rent	✓	✓
Conduct viewings of the property with prospective tenants	✓	✓
Advising on rental valuation	✓	✓
Negotiate tenancy offer with prospective tenants	✓	✓
Referencing & Right to Rent		
Obtaining references for prospective tenants by referring to an independent referencing agency	£120+VAT per tenant ("Set Up Fee")	£120+VAT per tenant ("Set Up Fee")
Provide a standard form AST (Assured Shorthold Tenancy)		
Make minor changes (by way of additional clauses) to AST		
Provide Company Let Agreement where AST not applicable inc company financial reference	£229+VAT	£229+VAT
Check In		
Undertake schedule of condition with meter reading and full photograph schedule	1 bed - £65 + VAT 2 bed - £75 3 bed - £95 4 bed - £110 5 bed - £130 6 bed - £150 7 bed - £165 8 bed - £175 Residential furnishings + 30% Holiday let furnishings (cutlery, bedding etc) + £45 supplement	
3D Virtual Tours (Professional) Potential tenants are 300% more engaged with a virtual tour than with 2D imagery You own these so can use for onward purposes / sale etc	0-1 Bed £95 + VAT 2-3 bed £120 4-5 bed £145 6 bed £210 7 bed+ POA	0-2 Bed £95 + VAT 2-3 bed £120 4-5 bed £145 6 bed £210 7 bed+ POA
Collect deposit from tenant prior to commencement of tenancy (subject to Tenant Fee ban 2019 5 week cap where applicable)	✓	✓
Notify utility companies of change of occupancy	✓	✗
Arrange for any deposit to be protected by the required government scheme (My Deposits)	£45+VAT	£75+VAT
Rent Collection		
Collect rent payable under terms of Tenancy Agreement	✓	✗
Provide rental statements by e-mail	✓	✗
Provide period / summary statements of income / expenditure breakdown in line with tax year April - March	✓	✗
Pay tax to HMRC where Landlord is overseas without approval number	✓	✗
During the tenancy		

Visit the property twice annually	✓	✗
Deal with tenant enquiries	✓	✗
Organise routine maintenance and repairs	✓	✗
Undertake and provide mid-term inspection reports with supporting photography (where required)	✓	✗
Termination		
Serve S8 Notice or similar to terminate the tenancy in the event of a breach	✓	✗
Serve S21 Notice or similar to terminate the tenancy	✓	✗
Renewal		
Negotiate renewal of the Tenancy Agreement	✓	✗
Draft Renewal AST	£75+VAT	£75+VAT
Draft Renewal Company Let	£120+VAT	£120+VAT
Check Out		
Undertake check-out inventory and schedule of condition	1 bed - £45 + VAT 2 bed - £55 3 bed - £65 4 bed - £75 5 bed - £85 6 bed+ £99 Residential furnishings + 30% Holiday let furnishings (cutlery, bedding etc) + £45 supplement	✗
Deal with any deposit dispute via the Adjudication Scheme at My Deposits	✓	✗
Provide assistance to Landlords Solicitor in any possession proceedings to include attendance at Court in Sussex.	✓	✗
Arrange for professional cleaning	By quotation	By quotation
Safety		
Arrange EPC	£120+VAT (Residential) £302.40+VAT (Commercial)	£120+VAT (Residential) £302.40+VAT (Commercial)
Arrange Landlords Gas Safety Inspection / Certificate	£75+VAT £120+VAT with service	£75+VAT £120+VAT with service
Arrange ECIR	1 bed £138+VAT 2-3 bed £186+VAT 4-5 bed £216+VAT 6 bed £249+VAT* *Per way over standard 10, is + £18 per way	✗
Arrange Legionella Testing	By quotation	By quotation
Other		
Apply and track HMO Licence application include attendance of inspector visit	£975+VAT	£975+VAT
HMO Licence amend or renew	£600+VAT	£600+VAT

Keys	£35+VAT per MT5 key £4.50+VAT per yale £8.50+VAT per mortice	£35+VAT per MT5 key £4.50+VAT per yale £8.50+VAT per mortice
Mattress Protectors	£25+VAT (Double) £20+VAT (Single)	£25+VAT (Double) £20+VAT (Single)
HMO notice board supply, fit and certs display	£45+VAT	×
Agent management plaque supply and fit (to exterior) HMOs only	£65+VAT	×
C02 Alarms (inc first batteries)	£25+VAT	£25+VAT

Name

Signature

Date

ASTON VAUGHAN SALES & LETTINGS TERMS AND CONDITIONS

INTERPRETATION

The following definitions and rules of interpretation apply in these Terms and Conditions.

1.1 Definitions:

"Agent" means ASTON VAUGHAN LTD registered in England and Wales with company number 11214094.

"Business Day" means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

"Cancellation Fee" means the amount shown in the Schedule of Instruction and payable pursuant to clause 6.6

"Contract" means the contract between the Agent and the Landlord for the supply of Services in accordance with these Terms and Conditions, Schedule of Instruction and Schedule of Services .

"Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures" means as defined in the Data Protection Legislation.

"Data Protection Legislation" means the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).

"Deposit" means any sum paid by the Tenant under the term of their Tenancy Agreement

"Fundamental Breach" means a complete failure on the part of the Agent to provide the Services and / or a failure to comply with any obligation essential to the provision of such Services

"Landlord" means the owner of the Property and shown in the Schedule of Instruction.

"Landlord Default" means has the meaning set out in clause 5.2. **"Limit of Authority"** is the sum as

shown in the Schedule of Instruction "**Management Fee**" means the charges payable by the Landlord to the Agent for the Services as set out in the Schedule of Instruction and calculated in accordance with clause 6.

"Minimum Period of Management" shall mean the minimum period for which the Landlord must instruct the Agent and is shown in the Schedule of Instruction, and will continue thereafter until terminated in accordance with clause 5

"Permitted Occupiers" shall mean any person in actual occupation of the Property, which includes the Tenant and persons occupying with the Tenant's permission

"Property" means the residential property or properties as listed in the Schedule of Instruction

"Property Information Form" means the form completed and signed by the Landlord providing information to the Agent about the Property

"Rent" means the amount payable by the Tenant for the letting of the Property under the applicable Tenancy Agreement for the Property, whether or not it is in fact paid

"Right to rent" means the requirement under the Immigrations Act 2014 to ensure all adult occupiers have the appropriate right to rent property

"Routine Repairs and Maintenance" means general day to day minor maintenance that might reasonably arise during the course of a tenancy at an otherwise well maintained property in good order

"Schedule of Instruction" means the document completed by the parties setting out the Landlord's details, the Property and Service to be provided by the Agent.

"Schedule of Services" means the list of services to be provided by the Agent under each service level offered

"Services" means the services supplied by the Agent to the Landlord as listed in the **Schedule of Instruction** and the **Schedule of Services**.

"Set Up Fee" means the amount shown in the Schedule of Instruction and payable pursuant to clause 6.5

"Tenancy" means the entire period that the Permitted Occupiers remain in occupation of the Property

"Tenancy Agreement" means the document governing the Tenant's right to occupy the Property, whether or not prepared by the Agent

"Tenant" means the individual(s), company, trust, partnership or other legal entity named as Tenant in the Tenancy Agreement

"Terms and Conditions" means these terms and conditions as amended from time to time in accordance with clause 10.3.

"UK Data Protection Legislation" means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive (2002/58/EC) (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

1.2 Interpretation:

1.2.1 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

1.2.2 Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and

shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.2.3 A reference to **writing** or **written** includes fax and email.

2. APPOINTMENT

2.1 The Landlord agrees to appoint the Agent for the Minimum Period of Management to provide the Services as selected in the Schedule of Services.

2.2 These Terms and Conditions apply to the Contract to the exclusion of any other terms that the Landlord seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3. PROVISION OF SERVICES

3.1 The Agent shall supply the Services to the Landlord using reasonable care and skill.

3.2 Only those Services as stated in the Schedule of Services will be provided, and where provided, the Agent will carry these out in accordance with clauses 3.3 to 3.15 below.

3.3 Finding a Tenant

The Agent will:

3.3.1 market the Property as available for letting

3.3.2 will discuss the suggested rental with the Landlord, but this is a guide only and the final decision on what rent to seek is the Landlord's and the Agent will not be liable for any delay in finding a Tenant or for any loss the Landlord might incur in respect of the suggested market rental valuation

3.3.3 provide the Landlord with regular updates

3.3.4 will conduct viewings with prospective tenants

3.3.5 negotiate the tenancy offer with prospective tenants

3.4 Referencing and Right to Rent

The Agent will:

3.4.1 obtain references for prospective Tenants and their guarantors using the services of an independent referencing agency;

3.4.2 not accept any liability for the Tenant misrepresenting their identity or failing to meet the terms of the tenancy including their behaviour and the payment of rent.

3.4.3 complete the required Right to Rent checks against Tenants and Permitted Occupiers in accordance with the Immigration Act 2014 at or prior to the commencement of the tenancy, and notify the Landlord should any fail.

3.4.4 not take any responsibility for undertaking checks on any occupiers who the Agent is not notified as being in occupation of the Property.

3.4.5 Attempt to carry out follow up checks as required on Tenants with a time- limited Right to Rent as required under the Immigration Act 2014

3.4.6 Report to the Home Office if the Agent is not reasonable satisfied that any occupier has the continued Right to Rent

3.5 Tenancy Agreement

The Agent will:

3.5.1 provide a Tenancy Agreement when an Assured Shorthold Tenancy Agreement (AST) is applicable

3.5.2 make limited amendments to the AST on the Landlord's behalf to represent the agreement between the Landlord and Tenant

3.5.3 provide a Company Let Agreement where an AST is not applicable if requested by the Landlord and subject to the additional fee shown in the Schedule of Services.

3.5.4 Recommend to the Landlord that they engage the services of a Solicitor where more completed changes are needed to a tenancy or a bespoke tenancy agreement is required.

3.6 Check In

3.6.1 Prior to the commencement of the Tenancy the Agent will require a professional Inventory from the Landlord, and will arrange this on the Landlord's behalf where instructed in the Schedule of Services

3.6.2 The Agent will use reasonable care when instructing an independent inventory clerk on the Landlord's behalf but the Agent accepts no liability for any error or omission on their part

3.6.3 The Agent will notify all utility companies of the change of occupation

3.6.4 The Agent will collect any Deposit from the Tenant payable under the Tenancy Agreement

3.6.5 The Agent will deal with the Deposit in accordance with clause 3.7

3.7 Deposit

3.7.1 The Agent is a member of the My Deposits deposit protection scheme administered by:

My Deposits 1st Floor, Premiere House, Elstree Way, Borehamwood, Hertfordshire, WD6 1JH

3.7.2 If the Tenancy Agreement is an AST the Agent shall collect the Deposit from the Tenant which will be registered and held under the terms of the My Deposits scheme

3.7.3 The Agent will serve the correct prescribed information under the My Deposits scheme to ensure the Landlord is compliant with the requirements under the Housing Act 2004

3.7.4 Where the Landlord is to hold the Deposit himself, then subject to the Tenant's consent, the Agent will transfer this within five working days and the Landlord agrees to register it within an authorised deposit scheme within 30 days of the date it was received by the Agent

3.7.5 Where the Landlord will hold the Deposit, the Landlord agrees to give the Tenant the 'prescribed information' as required under the Housing Act 2004

3.7.6 The Agent shall have no liability should the Landlord fail to comply with the terms of his chosen tenancy deposit scheme

3.8 Rent Collection and Tax

3.8.1 The Agent will use reasonable endeavours to collect the Rent in accordance with the terms of the Tenancy Agreement

3.8.2 The Agent will pay to the Landlord any Rent received less any sums due to the Agent within seven days of receipt, or within such other period as may be agreed between the parties in writing

3.8.3 Where Rent is outstanding for seven days after it becomes due, the Agent will notify the Landlord and will use reasonable endeavours to obtain payment from the Tenant

3.8.4 Where Rent is outstanding for one month after it becomes due, the Agent will notify the Landlord and offer general advice on the next steps, which may include recommending the Landlord instruct a Solicitor to advise. The Agent cannot undertake legal proceedings on the Landlord's behalf.

3.8.5 The Agent will provide the Landlord with rental statement at monthly intervals

3.8.6 The Agent will provide the Landlord with a year end statement and reconciliation and copy paperwork on such year end date as the Landlord shall notify to the Agent

3.8.7 If the Landlord is resident overseas he may be considered non-resident for the purposes of tax, however UK tax remains payable on rental income received in the UK.

3.8.8 Unless the Landlord provides the Agent with an approval number from HMRC providing consent to account for tax under self assessment the Agent will make deductions from rental income collected at the prevailing rate and account to HMRC. Any overpayment of tax by the Agent will need to be claimed from HMRC by the Landlord.

3.8.9 It is the Landlord's responsibility to obtain an approval number, and this should be provided to the Agent prior to the commencement of the Tenancy

3.8.10 The Landlord agrees to indemnify the Agent against all losses damages fines costs penalties or charges, in addition to the full cost of any professional advice taken by the Agent that it may incur due to the

Landlord's failure to obtain an approval number or inform the Agent that the Landlord is an overseas landlord within the meaning of the Income Tax Act 2007

3.9 During the Tenancy

3.9.1 The Agent will deal with the Tenant's day to day queries

3.9.2 The Agent will visit the property twice annually providing the Tenants permits access. The visit is of a superficial nature and intended only to review the Tenant's use of the Property and highlight any obvious defects. It does not constitute an interim inventory check or check for sub-letting,

3.9.3 The Agent accepts no liability for hidden or underlying defects.

3.9.4 If requested in the Schedule of Instruction the Agent will arrange for an interim Inventory check at the cost stated.

3.9.5 If the Tenant does not allow access, the Agent will notify the Landlord and the Landlord should take legal advice on the appropriate steps to take

3.10 Repairs and Maintenance

3.10.1 The Landlord will provide the Float to the Agent at the commencement of the Tenancy and agrees that the Agent may top this up from the Rent received from the Tenant

3.10.2 The Agent will organise Routine Repairs and Maintenance to the Property on the Landlord's behalf up to the Limit of Expenditure per invoice without needing the consent of the Landlord

3.10.3 The Agent will notify the Landlord of any Routine Repairs or Maintenance needed in excess of the Limit of Expenditure and seek the Landlord's consent to carry out the works and if necessary the Landlord will put the Agent in funds in excess of any Float in order for the Agent to organise the work

3.10.4 In the case of an emergency the Landlord authorises the Agent to take reasonable measures as the Agent considers appropriate up to an Emergency Limit

3.10.5 The Landlord authorises the Agent to expend any sums considered necessary by the Agent to ensure compliance with any statutory provision affecting the Property

3.10.6 The Agent will use its preferred contractors to carry out any works on the Landlord's behalf

3.10.7 The Agent does not accept responsibility for loss or damage caused by the neglect or default of any contractor

3.10.8 The Agent may receive and retain a commission fee from contractors for service provided to the Landlord and the Agent will inform the Landlord of any sum paid.

3.11 Terminating the Tenancy

3.11.1 The Landlord must notify the Agent twelve weeks prior to the Tenancy expiration of his desire to end the Tenancy at the end of the fixed term or according to any break clause in the Tenancy Agreement

3.11.2 If the Landlord gives instructions in writing to the Agent, the Agent will serve the applicable notice under section 21 of the Housing Act 1988 or such similar notice to terminate the Tenancy

3.11.3 In the event of the Tenant being in arrears of Rent, if requested by the Landlord, the Agent will serve the applicable notice under section 8 of the Housing Act 1988 or such similar notice to terminate the Tenancy

3.12 Renewal

3.12.1 The Agent will contact the Landlord prior to the expiration of the Tenancy to enquire whether Landlord wishes to renew the Tenancy

3.12.2 Where the Landlord wishes to renew, the Agent will use reasonable endeavours to negotiate a renewal of the Tenancy Agreement

3.12.3 The Agent will discuss the suggested rental with the Landlord, but this is a guide only and the final decision on what rent to seek on renewal is the Landlord's

3.12.4 The Agent will draft a renewal Tenancy Agreement

3.13 Check Out

3.13.1 The Agent will require a professional Inventory from the Landlord and will arrange this on the Landlord's behalf where instructed in the Schedule of Services

3.13.2 The Agent will use reasonable care when instructing an independent inventory clerk on the Landlord's behalf but the Agent accepts no liability for any error or omission on their part

3.13.3 The Agent will advise the Landlord on the appropriate deductions to be made from the Deposit

3.13.4 Where the Agent held the Deposit it will liaise with the Tenant and My Deposits regarding deductions from the deposit and assist the Landlord with any dispute under the Adjudication process at the My Deposits scheme

3.13.5 The Agent will arrange for professional cleaning of the Property where requested by the Landlord in the Schedule of Services

3.13.6 The Agent will notify all utility companies of the change of occupation

3.14 Safety

3.14.1 The Landlord will provide an Energy Performance Certificate (EPC) to the Agent upon instruction, and if none exists the Agent if instructed in the Schedule of Services will arrange for an EPC

3.14.2 The Landlord must provide a smoke alarm on each floor of the Property and a carbon monoxide alarm in any room used as living accommodation and contains a solid fuel burning combustion appliance

3.14.3 The Landlord must undertake a fire risk assessment prior to the start of the Tenancy to identify all fire hazards posing a danger to the Property and its Permitted Occupiers pursuant to the Regulatory Reform (Fire Safety) Order 2005

3.14.4 The Landlord must comply with the Gas Safety (Installation & Use) Regulations 1998 and have all gas equipment m pipe work and flues at the Property checked by a qualified person and keep a record of any work carried out and obtain a Gas Safety Record.

3.14.5 Where requested in the Schedule of Services and at the additional cost stated, the Agent will arrange the gas safety check and Gas Safety Record

3.14.6 The Landlord will comply with the Furniture & Furnishings (Fire) Safety Regulations 1988

3.14.7 The Landlord will comply with the European Standards for Safety of Internal Window Blinds

3.14.8 The Landlord will undertake a risk assessment for Legionella bacteria and provide a copy to the Agent prior to the commencement of the tenancy. Where requested in the Schedule of Services, the Agent will arrange Legionella testing at the additional costs stated to the Landlord.

3.14.9 The Landlord will comply with the Electrical Equipment (Safety) Regulations 1994 and Plugs and Sockets etc (Safety) Regulations 1994. Where requested in the Schedule of Services, the Agent will arrange annual testing at the additional costs stated to the Landlord.

3.14.10 If the Agent considers the Landlord at the Property is in breach of any of the requirements under this clause 3.14 then the Agent may take any action necessary to ensure compliance, the cost of which can be charged to the Landlord.

3.15 HMO

3.15.1 Where the Property is to be let as an HMO, the Landlord must obtain and provide a copy of the applicable Licence to the Agent

3.15.2 Where requested in the Schedule of Services and at the additional cost stated, the Agent will make the application for an HMO Licence on behalf of the Landlord

3.15.3 For any Tenancy where the Agent is deemed to be a person responsible for management pursuant to HMO legislation, in the event of any breach of these Terms and Conditions by the Landlord which may put the Agent at risk of prosecution under HMO legislation, the Agent may terminate the Contract immediately without notice.

4. LANDLORD'S OBLIGATIONS AND WARRANTIES

4.1 The Landlord warrants that

4.1.2 he is the sole or joint owner of the Property and has the legal right to let the Property under the terms of any mortgage or head lease and that he holds all the necessary planning and other statutory permissions.

4.1.3 Where the Property is let or to be let as an HMO that he has the applicable Licence in place or in application and that the licencing status is suitable for the prospective tenants

4.1.4 all information provided in the Schedule of Instruction and Property Information Form is complete and accurate

4.1.5 that the Property and any fixtures, fittings, appliances and furnishings are to the best of the Landlord's knowledge and belief available to let in a safe condition and in compliance with the relevant consumer and safety regulations applicable to residential let property.

4.2 The Landlord shall:

4.2.1 co-operate with the Agent in all matters relating to the Services;

4.2.2 provide the Agent with such information as the Agent may reasonably request in order to supply the Services, and ensure that such information is complete and accurate in all material respects;

4.2.3 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;

4.2.4 comply with all applicable laws, including health and safety laws;

4.2.5 reimburse the Agent in full for:

(a) all costs expenses (including legal expenses) or liabilities properly incurred by the Agent in the carrying out its duties under these Terms and Conditions

(b) all costs expenses (including legal expenses) or liabilities incurred by the Agent as a result of false or misleading information provided by the Landlord

(c) all costs expenses (including legal expense) or liabilities which the Agent may incur due to the Landlord's failure to comply with any applicable law

5. SUSPENSION AND TERMINATION

5.1 The Agent reserves the right to terminate the Contract at any time by giving the Landlord not less than three months' written notice.

5.2 The Agent may terminate the Contract on seven days' written Notice in the event the Landlord breaches any of these Terms and Conditions and the Agent makes a written request the breach is remedied and the Landlord fails to remedy it within seven days

5.3 If the Agent's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Landlord or failure by the Landlord to perform any relevant obligation ("**Landlord Default**");

5.3.1 without limiting or affecting any other right or remedy available to it, the Agent shall have the right to terminate suspend performance of the Services until the Landlord remedies the Landlord Default, and to rely on the Landlord Default to relieve it from the performance of any of its obligations in each case to the extent the Landlord Default prevents or delays the Agent's performance of any of its obligations;

5.3.2 the Agent shall not be liable for any costs or losses sustained or incurred by the Landlord arising directly or indirectly from the Agent's failure or delay to perform any of its obligations as set out in this clause 5.2; and

5.3.3 the Landlord shall reimburse the Agent on written demand for any costs or losses sustained or incurred by the Agent arising directly or indirectly from the Landlord Default.

5.4 The Landlord may terminate the Contract after the Minimum Period of Management by giving a minimum of one month's written notice to the Agent

5.5 Upon terminating the Contract in accordance with clause 5.4, if at the date of termination the Property is subject to a Tenancy with a Tenant found by the Agent, then the Landlord must pay the Management Fee that would have been payable to the Agent in the six months following after the date notice is given

5.6 The Agent will handover all documents and provide a final account to the Landlord within 14 days of the date of termination

5.7 The Landlord may terminate the Contract at any time if there is a Fundamental Breach by Agent.

6. FEES AND CHARGES

6.1 The Landlord agrees to pay the Agent the Management Fee stated in the Schedule of Instruction and any additional fees stated in the Schedule of Services where the additional service has been selected (collectively referred to as the Fees).

6.2 The Management Fee is calculated by reference to the total Rent payable under the terms of the Tenancy Agreement including where the Tenancy is renewed, extending or held over, and will fall due to the Agent on the dates provided for rental payment

6.3 The Agent may require the Landlord to pay in advance the cost of any additional services selected in the Schedule of Services, but will otherwise deduct all Fees due from Rent received before accounting to the Landlord

6.4 If Rent is not received so collection of the Fees due is not possible the Agent will send an invoice to the Landlord for the Fees due and the Landlord will pay this within 14 days

6.5 The Set Up fee is payable for each Property listed in the Schedule of Instruction

6.6 The Cancellation Fee will apply where the Landlord withdraws from a proposed tenancy once an offer is accepted and references applied for and / or Tenancy documentation prepared.

6.7 If the Landlord fails to make a payment due to the Agent under the Contract by the due date, then, the Landlord shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest

will accrue each day at 4% a year above the Bank of England's base rate from time to time.

6.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

7. DATA PROTECTION

7.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 7 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this clause 6, **Applicable Laws** means (for so long as and to the extent that they apply to the Agent) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.

7.2 The parties acknowledge that for the purposes of the Data Protection Legislation, both parties will be a data controller. Full details on how we process information can be found on our privacy policy located here: www.astonvaughan.co.uk

7.3 Without prejudice to the generality of clause 7.1, the Landlord will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Agent for the duration and purposes of the Contract.

7.4 Without prejudice to the generality of clause 7.1, the Agent shall, in relation to any personal data processed in connection with the performance by the Agent of its obligations under the Contract:

7.4.1 process that personal data only on the documented written instructions of the Landlord unless the Agent is required by Applicable Laws to otherwise process that personal data. Where the Agent is relying on Applicable Laws as the basis for processing personal data, the Agent shall promptly notify the Landlord of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Agent from so notifying the Landlord;

7.4.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Landlord, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

7.4.3 ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and

7.4.4 not transfer any personal data outside of the European Economic Area unless the prior written consent of the Landlord has been obtained and the following conditions are fulfilled:

(a) the Landlord or the Agent has provided appropriate safeguards in relation to the transfer;

(b) the data subject has enforceable rights and effective legal remedies; (c)

the Agent complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and

(d) the Agent complies with reasonable instructions notified to it in advance by the Landlord with respect to the processing of the personal data;

7.4.5 assist the Landlord, at the Landlord's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

7.4.6 notify the Landlord without undue delay on becoming aware of a personal data breach;

7.4.7 at the written direction of the Landlord, delete or return personal data and copies thereof to the Landlord on termination of the agreement unless required by Applicable Law to store the personal data; and

7.4.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 6 and allow for audits by the Landlord or the Landlord's designated auditor and immediately inform the Landlord if, in the opinion of the Agent, an instruction infringes the Data Protection Legislation.

7.5 The Landlord consents to the Agent appointing Van Mildert as a third party processor of personal data under the Contract. The Agent confirms that it has entered or (as the case may be) will enter with the third party processor incorporating terms which are substantially similar to those set out in this clause 6 and in either case which the Agent confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Landlord and the Agent, the Agent shall remain fully liable for all acts or omissions of any third party processor appointed by it pursuant to this clause 6.

7.6 Either party may, at any time on not less than 30 days' notice, revise this clause 7 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).

8. LIMITATION OF LIABILITY: THE LANDLORD'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

8.1 The restrictions on liability in this clause 8 apply to every liability arising under or in connection with this agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

8.2 The Agent will not be liable for any failure on the part of the Tenant to pay the Rent in the time and manner set out under the Tenancy Agreement.

8.3 The Agent will not be liable for any failure on the part of any third party contractor or supplier who is instructed on the Landlord's behalf or failure to comply with the required legislation

8.4 The Agent shall not be liable for any losses or fines the Landlord may suffer

8.5 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:

8.5.1 death or personal injury caused by negligence;

8.5.2 fraud or fraudulent misrepresentation; and

8.5.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

8.6 Subject to clause 8.5, the Agent's total liability to the Landlord shall not exceed £250,000.

8.7 This clause 8.7.1 sets out specific heads of excluded loss :

8.7.1 Subject to clause 8.5, the types of loss listed in clause 8.7.2 are wholly excluded by the parties.

8.7.2 The following types of loss are wholly excluded: (a)

loss of profits

(b) loss of sales or business.

(c) loss of agreements or contracts. (d)

loss of anticipated savings.

(e) loss of use or corruption of software, data or information. (f)

loss of or damage to goodwill; and

(g) indirect or consequential loss.

8.8 This clause 8 shall survive termination of the Contract.

8.9 Each condition in these Terms and Conditions excluding or limiting liability operates separately. If any part is held by a court to be unreasonable or inapplicable the other parts shall continue to apply

9. CANCELLATION FOR CONSUMER

9.1 If this Contract is not concluded at the Agent's offices, and the Landlord is a consumer (being an individual acting wholly or mainly outside his trade or business), the Landlord has a right to cancel this Contract within fourteen days starting on the date out Schedule of Instruction for was signed.

9.2 If the Landlord wishes to cancel in accordance with 9.1 a notice of cancellation must be confirmed in writing and delivered to the Agent's address or emailed to info@astonvaughan.co.uk

9.3 If the Landlord instructs the Agent to commence provision of the Services during the fourteen day cancellation period and a Tenancy Agreement is concluded with a Tenant introduced by the Agent then the all Fees will be payable

10. GENERAL

10.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

10.2 Entire agreement.

10.2.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

10.2.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in the Contract.

10.3 **Variation.** Except as set out in these Terms and Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

10.4 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

10.5 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

10.6 Notices.

10.6.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by fax to its main fax number or sent by email to the address info@astonvaughan.co.uk

10.6.2 Any notice or communication shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
- (b) if sent by pre-paid first-class post or other next working day delivery service, at the time recorded by the delivery service; and
- (c) if sent by fax or email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause (c), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

10.6.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

10.7 **Third party rights.**

10.7.1 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

10.8 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

10.9 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.