



**ANDERTON
McCLEMENTS**

Residential Lettings &
Property Management

TERMS AND CONDITIONS

SERVICE SUPPLY

1 INTERPRETATION

1.1

Definitions:

Additional Services: has the meaning given in clause 16.5.

AMc: the partnership carried on by Emma McClements and Amy Anderton under the trading name Anderton McClements whose address is at Office 1, Concept Business Centre, Kettlestring Lane, York, YO30 4XF.

Applicable Laws: all applicable laws, statutes, regulations from time to time in force in relation to the Premises, the Occupancy Agreement, the Landlord and/or the Services.

Applicant: a person who instructs AMc that they are interested in entering into an Occupancy Agreement as a tenant in relation to the Premises.

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Cancellation Form: the cancellation form set out in the Schedule.

Cancellation Period: the period beginning on the Commencement Date and ending on the date being 14 days after the Commencement Date.

Commencement Date: has the meaning given in clause 2.3

Commission: the percentage of the Rent as specified in the Services Summary, or, if not in the Services Summary, in AMc's published Specification in force as at the date of the Contract.

Conditions: these terms and conditions as amended from time to time in accordance with clause 28.

Consumer Landlord: a Landlord who is an individual acting for purposes which are wholly or mainly outside their trade, business, craft or profession.

Contract: the contract between AMc and the Landlord for the provision of the Services in accordance with these Conditions.

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

Data Protection Legislation: 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); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

Deliverables: any deliverables set out in the Services Summary.

Deposit: a rent deposit paid by the Tenant in relation to the Occupancy Agreement in accordance with the Tenant Fee Bill June 2019.

Distance Contracts: where the Contract is concluded between AMc and the Landlord under an organised distance sales or service-provision scheme without the simultaneous physical presence of AMc and the Landlord, with the exclusive use of one or more means of distance communication up to and including the time at which the Contract is concluded.

Fees: the fees payable by the Landlord for the Services, including (but without limitation) the Set Up Fee, the Commission (if applicable), and any Additional Services fees charged in accordance with clause 16.5 (if applicable).

Fixed Term: has the meaning given in clause 19.1.

Force Majeure Event: has the meaning given in clause 22.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Inventory and Schedule of Condition: an inventory of the fixtures and fittings within the Premises and schedule of condition of the fixtures and fittings within the Premises.

Landlord: the person or firm who purchases the Services from AMc.

Landlord's Preferred Tradesman: the Landlord's preferred tradesman as detailed in the Services Summary (if any).

Multiple Agency: where more than one agent, including AMc, is instructed to market the Premises for rent **Occupancy Agreement:** an agreement between the Landlord and the Tenant entitling the Tenant to occupy the Premises.

Off-Premises Contract: means a Contract between AMc and the Landlord which is any of the following:

- a) a Contract concluded in the simultaneous physical presence of AMc and the Landlord, in a place which is not the business premises of AMc;
- b) a Contract for which an Order was made by the Landlord in the simultaneous physical presence of AMc and the Landlord, in a place which is not the business premises of AMc;
- c) a Contract concluded on the business premises of AMc or through any means of distance communication immediately after the Landlord was personally and individually addressed in a place which is not the business premises of AMc in the simultaneous physical presence of AMc and the Landlord;
- d) a Contract concluded during an excursion organised by AMc with the aim or effect of promoting and selling services to the Landlord.

Order: either a Services Summary signed by the Landlord or otherwise the Landlord's acceptance of a Services Summary in a form and manner which clearly indicates an acceptance by the Landlord of the Services Summary.

Premises: the premises described in the Services Summary.

Premises Details: any details of or relating to the Premises that AMc may reasonably require in order to supply the Services, including (without limitation), the Premises address and the number of bedrooms in the Premises.

Rent: a sum equivalent to the total rent, premium or other money payable by the Tenant to the Landlord for the term of their occupancy of the Premises under the Occupancy Agreement.

Repairs and Maintenance Limit: the sum equal to the repairs and maintenance limit as set out in the Services Summary (if any).

Rightmove: <https://www.rightmove.co.uk/>.

Services: the services, including the Deliverables, to be supplied by AMc to the Landlord as set out in the Services Summary and any Additional Services either set out in the Services Summary or otherwise agreed between AMc and the Landlord.

Services Summary: the services summary or other written description of the Services as provided by AMc to the Landlord and any other document specifically referred to therein.

Set Up Fee: the set up fee for any Services.

Sole Agency: where AMc only is instructed to market the Premises for rent

Specification: the description or specification of Services set out in the AMc services specification document in force at the Commencement Date.

TDS: as defined in clause 12.2.

TDS Scheme Administrator: the scheme administrator of the TDS chosen by AMc in accordance with clause 12.2.

Tenant: the person entitled to occupy the Premises under the Occupancy Agreement.

UK Data Protection Legislation: 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.

Website: <https://andertonmcclements.co.uk/>.

Interpretation:

- 1.2 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.1 a reference to a party includes its successors and permitted assigns;
- 1.2.2 a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 1.2.3 any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- 1.2.4 a reference to **writing** or **written** includes faxes and emails.

2 BASIS OF CONTRACT

- 2.1 These 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.
- 2.2 The Order constitutes an offer by the Landlord to purchase the Services in accordance with the Services Summary and these Conditions. The Landlord is responsible for ensuring that the terms of the Order is complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when AMc confirms acceptance of the Order or commences performance of the Services, at which point and at which date the Contract shall come into existence (**Commencement Date**).
- 2.4 The Landlord waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Landlord that is inconsistent with these Conditions.
- 2.5 In the event that these Conditions conflict with the provisions of the Services Summary, the terms of these Conditions will prevail.
- 2.6 Any quotation given by AMc shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.
- 2.7 Unless otherwise stated in writing, these Conditions shall apply to all future Orders by the Landlord.

3 SUPPLY OF SERVICES

- 3.1 AMc shall supply the Services to the Landlord in accordance with the Specification in all material respects.
- 3.2 Unless otherwise expressly agreed in writing, time shall not be of the essence for performance of the Services and any stated date shall be an estimate only.
- 3.3 AMc reserves the right to amend the Specification if necessary to comply with any Applicable Law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services.
- 3.4 AMc is not obliged to begin providing the Services until it has received all information and materials as may be required to provide the Services, acting reasonably, including (but without limitation) the disclosure under clause 14.1.7, and is satisfied with the information and materials provided.

- 3.5 Where the Contract is made between AMc and a Consumer Landlord and the Contract is a Distance Contract or an Off-Premises Contract, AMc shall not begin providing the Services before the end of the Cancellation Period unless:
- 3.5.1 the Landlord has made an express request for AMc to begin providing the Services before the end of the Cancellation Period; and
- 3.5.2 where the Contract is an Off-Premises Contract, the request under clause 3.5.1 is made in writing.
- 4 ADVERTISING THE LETTING**
- 4.1 Where the Services include advertising the Premises for letting, this clause 4 shall apply.
- 4.2 Unless otherwise agreed, AMc shall market the Premises on the Website and shall take reasonable steps to market the Premises on an appropriate property portal in AMc's sole discretion.
- 4.3 AMc shall use reasonable efforts to ensure the Website is in working order for the purpose of providing the Services but AMc makes no warranty that the Website will be in working order without interruption or downtime.
- 4.4 In the event that there is an interruption to the use of the Website for the purpose of providing the Services, AMc shall take reasonable steps to address the interruption to the Website as soon as reasonably practicable after becoming aware of the interruption.
- 4.5 AMc will not be liable for:
- 4.5.1 any interruption to the Services relating to Rightmove under any circumstances; and
- 4.5.2 any interruption to the Services relating to the Website if such interruption is caused wholly or in part by any loss of connectivity or interruption of services by any third party.
- 5 RENT INDICATION**
- Any market rent indication given by AMc in relation to the Premises is not a guarantee of the rent achievable, it is an estimate only. The Landlord does not rely on any such indication and AMc shall not be liable for any difference in their rent indication and the Rent.
- 6 INVENTORY AND SCHEDULE OF CONDITION**
- 6.1 Unless otherwise agreed, an Inventory and Schedule of Condition must be prepared prior to the commencement of the Occupancy Agreement.
- 6.2 The Landlord may either:
- 6.2.1 prepare or organise the preparation of the Inventory and Schedule of Condition itself; or
- 6.2.2 request AMc to instruct an inventory clerk to prepare the Inventory and Schedule of Condition.
- 6.3 The Landlord must provide the Inventory and Schedule of Condition to AMc or make a request in accordance with clause 6.2.2 in writing to AMc (as appropriate) at least 15 Business Days prior to the commencement of the Occupancy Agreement.
- 6.4 In the event that the Landlord does not comply with clause 6.3 or its Inventory and Schedule of Condition is, in the reasonable opinion of AMc, not of a satisfactory quality, AMc has the right to instruct an inventory clerk to prepare the Inventory and Schedule of Condition.
- 6.5 The Landlord shall be responsible for any fees incurred in relation to the preparation of the Inventory and Schedule of Condition, including where such fees are incurred on the instruction of AMc under clause 6.4.
- 7 APPLICANT REFERENCES**
- 7.1 This clause 7 applies where the Services include obtaining references for Applicants.
- 7.2 AMc shall take reasonable steps to obtain an appropriate reference for the Applicant in AMc's sole discretion, including without limitation details of an Applicant's financial circumstances, a reference from the Applicant's last landlord (if any) and a reference from the Applicant's current employer (if any). AMc shall provide the Landlord with a copy of such reference only if requested to do so in writing by the Landlord.
- 7.3 The Landlord will be deemed to have accepted the references unless it notifies AMc in writing to the contrary within 5 Business Days of receipt of the references. AMc shall take reasonable steps to obtain further information from the Applicant if, within the time frame specified under this clause 7.3, the Landlord notifies AMc that it does not accept the references or would like further information in order to determine the suitability of the Applicant as a Tenant.
- 7.4 Unless otherwise agreed or included in the Services, it is the Landlord's responsibility to:
- 7.4.1 obtain references for any additional or new Tenant or occupier of the Premises during the term of the Occupancy Agreement (save that AMc can provide such references on written request for an agreed fee); and
- 7.4.2 check a Tenant's identity documents and compliance with Visa requirements (if applicable).
- 7.5 The Landlord shall be responsible for payment of the reference fee charged per Applicant as set out in the Specification.
- 8 REPAIR AND MAINTENANCE**
- 8.1 This clause 8 applies where the Services include arranging the repair and maintenance of the Premises.
- 8.2 AMc has the right in its reasonable discretion to make or procure the repair and maintenance of the Premises without first referring to the Landlord, and where there is a Repair and Maintenance Limit in place then AMc shall ensure that the cost of such repair and maintenance does not exceed any such Repair and Maintenance Limit. An administration fee may apply to such services as set out in the Specification.
- 8.3 The Landlord authorises AMc to instruct contractors to undertake repairs and maintenance of the Premises on its behalf. AMc shall take reasonable steps to instruct the Landlord's Preferred Tradesman (if any). AMc is not obliged to instruct the Landlord's Preferred Tradesman if:
- 8.3.1 in its reasonable opinion, the Landlord's Preferred Tradesman is not suitable for the required works; or
- 8.3.2 it is unable to contact the Landlord's Preferred Tradesman having made a reasonable attempt.
- 8.4 Except in the event of an emergency, where repairs and maintenance works to the Premises are reasonably likely to exceed the Repairs and Maintenance Limit, AMc shall seek authorisation from the Landlord to instruct a contractor to carry out the works prior to instructing a contractor.
- 8.5 The Landlord is responsible for the cost of all and any repair and maintenance works done to the Premises.
- 8.6 AMc may require the Landlord to pay it an amount equal to the Repairs and Maintenance Limit in order to hold such sum on account. In such circumstances AMc may use all or any of this money to pay for the cost of any repair and maintenance works.
- 8.7 AMc has the right in its reasonable discretion to charge a commission fee to any contractors which it instructs to undertake repairs and maintenance of the Premises, provided that any such commission does not increase the amount payable by the Landlord in relation to such repairs and maintenance.
- 9 SUPERVISION OF REFURBISHMENT**
- 9.1 In the event that AMc agrees to supervise the full or partial refurbishment of the Premises, the Landlord shall be liable for all costs of refurbishing the Premises.
- 9.2 In addition to the costs of refurbishment, unless otherwise agreed, the Landlord shall be liable to pay AMc a sum equal to a percentage of the costs or an agreed fee to carry out the refurbishment works as set out in the Specification.
- 10 PREMISES VISITS**
- 10.1 This clause 10 shall apply where the Services include carrying out Premises visits.
- 10.2 The purpose of the Premises visits is to check the general condition of the Premises and the Tenant's general compliance with the Occupancy Agreement. The visits do not constitute a complete check of the Premises and/or an absolute determination of the Tenant's compliance with the Occupancy Agreement.
- 10.3 Premises visits shall be subject to the Tenant allowing AMc access to the Premises. AMc shall use all reasonable endeavours to gain access to the Premises, however if they are unable to access the Premises for any reason whatsoever then AMc is not obliged to carry out the Premises visits. In such circumstances, AMc shall notify the Landlord and it is for the Landlord to decide and be responsible for any next steps that are taken.
- 10.4 Any Premises visits carried out by AMc in addition to the number of Premises visits included as part of the Services shall be charged at the price set out in the Specification in force from time to time.
- 11 DEPOSITS: GENERAL**
- 11.1 Clauses 11 and 12 apply where the Services include dealing with the Deposit.
- 11.2 In the event that AMc receives a Deposit, it shall hold the Deposit as stakeholder on behalf of the Tenant and the Landlord.
- 11.3 In the event that the Deposit is held by AMc in an interest bearing account, any interest accrued on the Deposit shall belong to the party entitled to it under the Occupancy Agreement. If there is no such provision in the Occupancy Agreement, AMc may retain such interest.
- 11.4 Where the Occupancy Agreement is not being renewed in accordance with clause 13 and AMc holds the Deposit in accordance with clause 11.2, on or before the expiry of the Occupancy Agreement, AMc shall request the Landlord to provide confirmation of any deductions from the Deposit that it proposes to make. When providing information on such deductions, the Landlord must give sufficient details to identify the amount and reasons for the deductions, including (but without limitation) providing a check-out report on the condition of the fixtures and fittings in the Premises.
- 11.5 If, having made the request pursuant to clause 11.4, AMc either receives confirmation from the Landlord that no deductions are to be made from the Deposit or it does not receive any of the requested information from the Landlord within 10 Business Days of its request, AMc shall pay or, where clause 12 applies, take reasonable steps to procure payment of, the full Deposit to the Tenant as soon as reasonably practicable.
- 11.6 If, following receipt of the request pursuant to clause 11.4, the Landlord confirms that it would like to make deductions from the Deposit, AMc shall notify the Tenant of these deductions and will request the Tenant to confirm in writing its instructions in relation to the Landlord's proposed deductions.
- 11.7 AMc cannot transfer or, where clause 12 applies, procure the transfer of the Deposit to the Tenant and/or the Landlord (as the case may be) until the

- Landlord and Tenant have agreed how much of the Deposit they are each entitled to and both parties have confirmed this in writing to AMc.
- 11.8 As soon as reasonably practicable following receipt of the confirmation under clause 11.7, AMc shall transfer the Deposit to the Landlord and/or Tenant (as the case may be) in accordance with their agreement or, where clause 12 applies, notify the TDS Scheme Administrator of the Landlord and Tenant's agreement and request the TDS Scheme Administrator to transfer the Deposit to the Landlord and/or Tenant (as the case may be) in accordance with their agreement.
- 11.9 In the event that AMc holds the Deposit and the Landlord and Tenant cannot agree on how the Deposit should be repaid (**Deposit Dispute**), AMc shall continue to hold the Deposit until the Deposit Dispute is resolved.
- 12 DEPOSITS: ASSURED SHORTHOLD TENANCY**
- 12.1 This clause 12 only applies where the Occupancy Agreement is an assured shorthold tenancy.
- 12.2 The parties acknowledge that the Deposit must be held in a government-backed tenancy deposit scheme (**TDS**). Unless otherwise agreed, if AMc receives a Deposit, it shall pay the Deposit into a TDS of its choice within 30 days of receipt. Unless otherwise agreed, if AMc receives a Deposit, it shall be responsible for providing the Tenant with the prescribed information in relation to the Deposit and the TDS as required by the Applicable Laws within 30 days of receipt of the Deposit.
- 12.3 If AMc has agreed to provide the prescribed information and fails or is delayed in providing the prescribed information and such failure or delay is caused wholly or in part by the actions or omissions of the Landlord or a third party:
- 12.3.1 AMc shall not be liable for any costs or losses sustained or incurred by the Landlord arising directly or indirectly from such failure or delay; and
- 12.3.2 the Landlord shall indemnify AMc for any costs or losses sustained or incurred by AMc arising directly or indirectly from such failure or delay.
- 12.4 Unless otherwise agreed, if AMc do not receive the Deposit, the Landlord is responsible for paying the Deposit into a TDS and providing the Tenant with the prescribed information in relation to the Deposit and TDS as required by the Applicable Laws within 30 days of receipt of the Deposit.
- 13 RENEWAL OF THE OCCUPANCY AGREEMENT**
- 13.1 The Landlord must confirm to AMc in writing whether or not it would like to renew the Occupancy Agreement and any specific renewal terms at least ten calendar weeks before any renewal notice requirements under the Occupancy Agreement or, if there are no such requirements, at least ten calendar weeks before the expiry of the Occupation Agreement (whether the expiry of its initial term or a renewed term).
- 13.2 If AMc does not receive notice from the Landlord in accordance with clause 13.1, it shall be deemed that the Landlord does not wish to renew the Occupancy Agreement.
- 13.3 If the Landlord confirms that it does not wish to renew the Occupancy Agreement in accordance with clause 13.1 or clause 13.2 applies, AMc will notify the Tenant that the Landlord does not wish to renew the Occupancy Agreement. AMc shall not be liable for any delay in serving this notice in the event that the Landlord has not complied with the requirements under clause 13.1.
- 13.4 If the Landlord confirms that it would like to renew the Occupancy Agreement in accordance with clause 13.1, AMc shall within a reasonable time:
- 13.4.1 review the Rent and advise the Landlord whether a rent increase is possible, based on current market rates, subject to clause 5; and
- 13.4.2 contact the Tenant to take instructions on whether they wish to renew the Occupancy Agreement and to advise on any specific renewal terms.
- 13.5 In the event that the Tenant agrees to the renewal of the Occupancy Agreement, if requested in writing, AMc shall organise the preparation of the renewal documents and organise the execution of the documents by the Landlord and the Tenant.
- 13.6 Unless otherwise agreed in writing, the Landlord shall be liable to pay AMc the price for the tenancy renewal services set out in the Specification in force from time to time for performing its obligations under clause 13.5.
- 13.7 Notwithstanding clause 13.6, the Landlord shall indemnify AMc for any costs or losses sustained or incurred by AMc arising directly or indirectly from the performance of its obligations under clause 13.5, including but without limitation any legal fees.
- 13.8 Whether or not AMc is engaged to deal with a renewal of the Occupancy Agreement, in the event that the Occupancy Agreement is renewed, the Landlord shall be liable to pay the Fees in relation to the renewal. Such Fees shall become due and payable on the start date of the renewed term of the Occupancy Agreement.
- 14 LANDLORD'S OBLIGATIONS**
- 14.1 The Landlord shall:
- 14.1.1 ensure that the Order clearly indicates which Services the Landlord requires;
- 14.1.2 co-operate with AMc in all matters relating to the Services;
- 14.1.3 provide AMc with such information and materials as AMc may reasonably require in order to supply the Services, including (but without limitation) the Premises Details, and shall ensure that such information is accurate in all respects;
- 14.1.4 obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are due to start, and provide AMc with information and materials on any specific conditions of the licences, permissions and consents;
- 14.1.5 as soon as reasonably practicable after the Landlord becomes, or should reasonably be, aware that any of the warranties and representations in clause 15 has been breached, is untrue or misleading, or has a reasonable expectation that any of these things might occur, it shall:
- a) notify AMc of the relevant occurrence in sufficient detail to enable AMc to make an accurate assessment of the situation; and
- b) if requested by AMc, use all reasonable endeavours to prevent or remedy the notified occurrence;
- 14.1.6 comply with all Applicable Laws;
- 14.1.7 disclose any information and materials which in the reasonable opinion of the Landlord may impact on a prospective tenant's decision to enter an Occupancy Agreement, or a tenant's enjoyment of the Premises, including (but without limitation) any planning permission applications relating to the Premises or land in the reasonable vicinity of the Premises, or any maintenance or repairs to be carried out to the Premises or buildings in the reasonable vicinity of the Premises, or disclose that no such matters exist;
- 14.1.8 provide AMc with the number of keys for the Premises as requested by AMc acting reasonably;
- 14.1.9 notify AMc of any restrictions on erecting to let boards on the Premises; and
- 14.1.10 provide AMc with access to the Premises as reasonably required by AMc for the purpose of providing the Services.
- 14.2 If AMc' 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**):
- 14.2.1 AMc shall, without limiting its other rights or remedies, have the right to 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 to the extent the Landlord Default prevents or delays AMc's performance of any of its obligations;
- 14.2.2 AMc shall not be liable for any costs or losses sustained or incurred by the Landlord arising directly or indirectly from AMc's failure or delay to perform any of its obligations as set out in this clause 14.1; and
- 14.2.3 the Landlord shall indemnify AMc for any costs or losses sustained or incurred by AMc arising directly or indirectly from the Landlord's Default.
- 14.3 In the event that the Landlord does not comply with an obligation under the Contract, AMc shall, without limiting its other rights or remedies, have the right to, acting reasonably, takes steps to remedy or ensure compliance with such obligation.
- 14.4 The Landlord shall indemnify AMc against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by AMc in connection with the following:
- 14.4.1 any claim made against AMc for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the supply of the Services; and
- 14.4.2 AMc exercising its right under clause 14.3.
- 14.5 Where the Landlord is more than one person, each of them shall be jointly and severally liable for the Landlord's obligations under the Contract.
- 15 LANDLORD WARRANTIES AND REPRESENTATIONS**
- 15.1 The Landlord warrants and represents to AMc that at the Commencement Date:
- 15.1.1 it is the owner of the Premises and/or is lawfully authorised to enter into an Occupancy Agreement;
- 15.1.2 it has obtained all necessary licences, consents and permissions to enter into an Occupancy Agreement (including without limitation and if applicable, written consent from any mortgagee of the Premises) and has provided AMc with all material information and materials detailing any conditions for such licences, consents and/or permissions;
- 15.1.3 all fixtures and fittings in the Premises are in full working order and have been regularly maintained; and
- 15.1.4 the Premises and all fixtures and fittings are adequately insured and the insurers have been notified that the Premises is being let.
- 16 FEES**
- 16.1 The Fees payable by the Landlord to AMc for the Services shall be as set out in the Services Summary, or, if no price is quoted, the price set out in the Specification in force as at the date of the Contract.
- 16.2 Where the Fee includes Commission, the Commission shall only be payable in the event that an Occupancy Agreement is entered into, or the Tenant otherwise occupies the Premises, as a result of:
- 16.2.1 the provision of the Services; and/or
- 16.2.2 an introduction from an existing occupier for which AMc have previously provided Services in relation to;
- 16.2.3 the Landlord or another agent's actions during the period of Sole Agency; and/or
- 16.2.4 the Landlord's actions during the period of Multiple Agency.
- 16.3 AMc shall be entitled to charge the Landlord for any expenses reasonably incurred by AMc during the course of providing the Services.

- 16.4 AMc reserves the right to increase its charges on three months' notice in writing before the proposed date of the increase is to take effect. If such increase is not acceptable to the Landlord, it shall notify AMc in writing within three weeks of the date of AMc' notice and AMc shall have the right, without limiting its other rights or remedies, to terminate the Contract at the end of the three months' notice by giving written notice to the Landlord.
- 16.5 If the Landlord requests the provision of any services which are not included in the Services Summary (**Additional Services**, each an **Additional Service**), AMc is not obliged to provide the Additional Services. If AMc agrees to provide some or all of the Additional Services, unless otherwise agreed, the Landlord may be charged at the price set out in the Specification in force at the date AMc agrees to provide the Additional Services, or, if no price is quoted for an Additional Service, at AMc' normal hourly charge rate, from time to time, for such individuals involved in the provision of such Additional Service.
- 16.6 The Fees for the Services:
- 16.6.1 excludes amounts in respect of value added tax (**VAT**). In the event that AMc is registered for VAT, it reserves the right to charge VAT to the Landlord at the prevailing rate, subject to receipt of a valid VAT invoice, in addition to the Fees; and
- 16.6.2 excludes third party fees reasonably incurred in the course of providing the Services, including but without limitation, contractors, builders or surveyors, and such fees shall be payable by the Landlord.
- 17 PAYMENT OF FEES**
- 17.1 AMc may invoice the Landlord for the Fees for the Services, other than the Commission, on the Commencement Date. Where Commission is payable by the Landlord for the Services, it becomes due on the earlier of the start date of the Occupancy Agreement and the actual date the Tenant begins occupying the Premises.
- 17.2 AMc shall be entitled, but not obliged, to use any monies belonging to the Landlord (including without limitation monies received from the Tenant and/or any deductions from the Deposit agreed by the Tenant) to satisfy payment of all or any of the Fees.
- 17.3 Unless the parties agree otherwise in writing, payment of an invoice shall be due immediately. Payment shall be made to the bank account nominated in writing by AMc. Time for payment is of the essence.
- 17.4 If the Landlord fails to make any payment due to AMc under the Contract by the due date for payment, then the Landlord shall pay interest on the overdue amount at the rate of 5% per annum above HSBC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Landlord shall pay the interest together with the overdue amount.
- 18 CONSUMER LANDLORD'S RIGHT TO WITHDRAW AND CANCEL**
- 18.1 This clause 18 only applies where the Contract is made between AMc and a Consumer Landlord and the Contract is a Distance Contract or Off-Premises Contract.
- 18.2 The Landlord has the right to withdraw their Order to enter into a Contract at any time before the Contract is made in accordance with clause 2. The Landlord is not required to provide any reasons for withdrawing their Order.
- 18.3 The Landlord has the right to cancel the Contract at any time in the Cancellation Period without giving any reason.
- 18.4 In order to the cancel the Contract in accordance with clause 18.3, the Landlord must notify AMc of its decision to cancel the Contract (**Cancellation Notice**) by either:
- 18.4.1 serving a completed Cancellation Form on AMc; or
- 18.4.2 making any other clear statement setting out its decision to cancel the Contract.
- 18.5 In the event that the Landlord withdraws its Order or cancels the Contract pursuant to this clause 18, AMc shall reimburse the Landlord for all payments received from the Landlord under the Contract.
- 18.6 Reimbursement in accordance with clause 18.5 shall be made without undue delay and in any event shall be made not later than the end of 14 days after the day on which AMc is informed of the Landlord's decision to withdraw the Order or cancel the Contract. Unless the Landlord provides otherwise, AMc shall reimburse the Landlord using the same method of payment as the Landlord used in the initial transaction.
- 18.7 Where AMc receives a Cancellation Notice and provision of the Services has commenced before the end of the Cancellation Period in accordance with a request to do so pursuant to clause 3.5, the Landlord shall pay AMc an amount:
- 18.7.1 for the supply of the Services for the period which it was supplied ending with the time when AMc received the Cancellation Notice; and
- 18.7.2 which is in proportion to what has been supplied, in comparison to the full coverage of the Contract.
- 18.8 The amount under clause 18.7 is to be calculated:
- 18.8.1 on the basis of the total Fees under the Contract; or
- 18.8.2 if the total Fees under the Contract is excessive, on the basis of the market value of the Services that have been supplied, calculated by comparing prices for equivalent services supplied by other traders.
- 19 TERMINATION OF SOLE OR MULTIPLE AGENCY**
- 19.1 Whether AMc is engaged by the Landlord to act on a Sole Agency or Multiple Agency basis to market the Premises, unless the Landlord has other rights to do

so, the Landlord cannot terminate the Contract until the expiry of a period of 12 weeks from the Commencement Date (**Fixed Term**).

19.2 Following the expiry of the Fixed Term, the Landlord may terminate the Contract on two weeks' written notice to AMc.

20 TERMINATION

- 20.1 Without limiting its other rights or remedies, either party may terminate the Contract:
- 20.1.1 subject to, clause 19 with one months' notice in writing;
- 20.1.2 with immediate effect by giving written notice to the other party:
- a) Upon the Tenant's vacation of the Premises;
- b) if the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or having a trustee in bankruptcy appointed or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or
- c) if the other party suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business.
- 20.2 Without limiting its other rights and remedies, AMc may terminate the Contract with immediate effect by giving written notice to the Landlord if:
- 20.2.1 the Landlord commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 10 Business Days of that party being notified in writing to do so;
- 20.2.2 the Landlord fails to pay any amount due under the Contract on the due date for payment; or
- 20.2.3 the Landlord's financial position deteriorates to such an extent that in AMc' opinion the Landlord's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 20.3 Without limiting its other rights or remedies, AMc may suspend provision of the Services under the Contract or any other contract between the Landlord and AMc if the Landlord becomes subject to any of the events listed in clause 20.2.1 to clause 20.2.3, or AMc reasonably believes that the Landlord is about to become subject to any of them, or if the Landlord fails to pay any amount due under this Contract on the due date for payment.
- 20.4 On termination of the Contract for any reason the Landlord shall immediately pay to AMc all of AMc' outstanding unpaid invoices in respect of Fees and any other costs, together with all interest due thereon and all reasonable costs and expenses incurred by AMc in relation to transferring the Services to another party.
- 20.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.
- 20.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

21 LIMITATION OF LIABILITY

- 21.1 Nothing in these Conditions shall limit or exclude AMc's liability for:
- 21.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- 21.1.2 fraud or fraudulent misrepresentation; or
- 21.1.3 any matter in respect of which it would be unlawful for AMc to exclude or restrict liability.
- 21.2 Subject to clause 21.1:
- 21.2.1 AMc shall not be liable to the Landlord in any respect, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, if the Landlord does not notify AMc of a potential claim against AMc within 1 calendar month of identifying the claim subject matter;
- 21.2.2 AMc shall under no circumstances whatsoever be liable to the Landlord, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- 21.2.3 AMc's total liability to the Landlord in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Fees. In the event that the Services consist of more than one Service, AMc's total liability to the Landlord shall be limited to the price of the Service to which the claim is most related.

22 FORCE MAJEURE

Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure results from events, circumstances or causes beyond its reasonable control (**Force Majeure Event**). If the period of delay or non-performance continues for 1 calendar month, the party not affected may terminate this Contract by giving 1 calendar months' written notice to the affected party.

23 ASSIGNMENTS AND OTHER DEALINGS

- 23.1 AMc may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 23.2 The Landlord may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of AMc.

24 DATA PROTECTION

AMc will comply with all applicable requirements of the Data Protection Legislation.

25 COMPLAINTS

In the event of a query or complaint this should be sent in writing and addressed to Anderton McClements, Office 1, Concept Business Centre Kettlestring Lane, York, YO30 4XF. You will receive a reply in writing within 3 Business Days with an investigation to follow where a full response will be sent to you within 8 weeks. Complaints that are not resolved to your satisfaction can be sent to The Property Redress Scheme <https://www.theprs.co.uk/consumer> of which AMc are members.

26 CONFIDENTIALITY

- 26.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group to which the other party belongs, except as permitted by clause 26.2. For the purposes of this clause, **group** means, in relation to a party (where it is a company), that party, any subsidiary or holding company from time to time of that party, and any subsidiary from time to time of a holding company of that party.
- 26.2 Each party may disclose the other party's confidential information:
- 26.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 26.2; and
- 26.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 26.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

27 ENTIRE AGREEMENT

- 27.1 This 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.
- 27.2 Each party agrees that it 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.

28 VARIATION

No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

29 WAIVER

No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

30 SET-OFF

- 30.1 AMc may at any time, without notice to the Landlord, set off any liability of the Landlord to AMc against any liability of AMc to the Landlord, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. Any exercise by AMc of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.
- 30.2 All amounts due under the Contract from the Landlord to AMc 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).

31 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.

32 NOTICES

- 32.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its address provided in the Contract or such other address as that party may have specified to the

other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or fax or email.

- 32.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 32.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, one Business Day after transmission.
- 32.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

33 NO PARTNERSHIP OR AGENCY

Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of the other party. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

34 THIRD PARTY RIGHTS

It is intended that no one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.

35 GOVERNING LAW AND JURISDICTION

- 35.1 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.
- 35.2 Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.

**Schedule
Cancellation Form**

To: Anderton McClements, Office 1, Concept Business Centre, Kettlestring Lane, York YO30 4XF:

I/ we _____, *(please print your name(s))*

Hereby give notice that I/ we wish to cancel my/ our contract for service relating to:

_____ *(please provide a short description of premises)*

Having provided our order on: _____ *(please insert the date on which you provided us with your order).*

Signed: _____

Date: _____