



MANDATE AGREEMENT

Natural Person Version

[Ask TPN: 248]

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1. SCHEDULE

1.1	The Agent		
	Registration number / identity number		
	VAT registration number		
	Fidelity Fund Certificate number		
1.2	The Landlord		
	Registration number / IT number / identity number		
	VAT registration number		
	Income tax registration number		
1.3	The Premises		
	Stand / Erf		
	Township		
	Being (street address)		
1.4	Rental (monthly)	R	
	Deposit	R	
	Rental payment date		Deposit payment date
1.5	Procurement Commission (excluding VAT)		%
		R	Amount
	Second Year's Procurement Commission (excluding VAT)		%
		R	Amount
	Additional Year's Procurement Commission (excluding VAT)		%
		R	Amount
1.6	Management Commission (excluding VAT)		%
		R	Amount
1.7	Sale Commission (excluding VAT)		%
		R	Amount

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1.8 The Landlord's nominated bank account

Name of account holder	
Bank	
Bank branch	
Branch code	
Account number	
Reference	

1.9 The Landlord's contact details

Physical	
Postal	
Telefax	
Email	
Phone number	

1.10 The Agent's contact details

Physical	
Postal	
Telefax	
Email	
Phone number	

1.11	Has the Agent approached the Landlord by way of Direct Marketing? (tick appropriate box)	<input type="checkbox"/> Yes	<input type="checkbox"/> No
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1.12	I, the Landlord, as the owner of the Premises set out in item 1.3, nominate my Agent set out in item 1.1 to be my Agent from the Signature Date for the term set out in clause 10 of this Mandate Agreement for the purposes of:
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1.12.1	finding a Tenant only (Procurement);	
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and / or

1.12.2	managing any Tenant on the Premises (Management)	
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Tick *either* 1.12.1 or 1.12.2 or both

1.13	Specific requirements in respect of a potential Tenant as recorded by the Landlord:	

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2. DEFINITIONS

- 2.1. In this Mandate Agreement, unless the context requires otherwise, the words below mean the following:
- 2.2. **"Agent"** means the party set out in item 1.1;
- 2.3. **"Business Day"** means any day other than a Saturday, Sunday, or official public holiday in South Africa;
- 2.4. **"Commission"** means Procurement Commission, Management Commission, Sale Commission or any other commission payable to the Agent in terms of this Mandate Agreement;
- 2.5. **"CPA"** means the Consumer Protection Act 68 of 2008;
- 2.6. **"Deposit"** means the amount payable by the Tenant to the Landlord prior to the Tenant moving in to the Premises as set out in item 1.4;
- 2.7. **"Direct Marketing"** means to approach a person, either in person or by mail or electronic communication, for the direct or indirect purpose of: promoting or offering to supply, in the ordinary course of business, any goods or services to the person; or requesting the person to make a donation of any kind for any reason;
- 2.8. **"EAAA"** means the Estate Agency Affairs Act 112 of 1976;
- 2.9. **"EAAB"** means the Estate Agency Affairs Board, as established in terms of the EAAA;
- 2.10. **"ECTA"** means the Electronic Communications and Transactions Act 25 of 2002;
- 2.11. **"Fidelity Fund Certificate"** means a fidelity fund certificate issued in terms of the EAAA;
- 2.12. **"Juristic Person"** means any juristic person of whatever nature including a body corporate, association, company, close corporation, trust or partnership (whether or not having separate legal personality);
- 2.13. **"Landlord"** means the Party set out in item 1.2;
- 2.14. **"Lease Agreement"** means the subsequent lease agreement concluded between the Landlord and Tenant pursuant to this Mandate Agreement;
- 2.15. **"Management Commission"** means the commission payable to the Agent as set out in item 1.6;
- 2.16. **"Management Mandate"** means the mandate imposed on the Agent in terms of this Mandate Agreement to manage a Tenant as set out in item 1.12.2;
- 2.17. **"the/this Mandate Agreement"** means this agreement together with all its Annexures and Schedules, as amended from time to time;
- 2.18. **"Month"** means a calendar month, commencing on the 1st (first) day of such a month and terminating on the last day of such month;
- 2.19. **"Parties"** means the Agent and the Landlord and "Party" means either one of them, as the context may indicate;
- 2.20. **"POPIA"** means the Protection of Personal Information Act 4 of 2013, once all of its sections are fully operational";
- 2.21. **"Premises"** means the premises set out in item 1.3;
- 2.22. **"Procurement Commission"** means the commission payable to the Agent as set out in item 1.5;
- 2.23. **"Procurement Mandate"** means the mandate imposed on the Agent in terms of this Mandate Agreement to find a Tenant as set out in item 1.12.1;
- 2.24. **"Rental"** means the monthly rental payable by the Tenant to the Landlord for the rental of the Premises as set out in item 1.4;
- 2.25. **"Rental Housing Act"** means the Rental Housing Act 50 of 1999;
- 2.26. **"Sale Agreement"** means an agreement entered into by the Landlord for the sale of the Premises;
- 2.27. **"Sale Commission"** means the commission payable to the Agent as set out in item 1.7;
- 2.28. **"Sign"** means a handwritten signature or advanced electronic signature as defined by ECTA;
- 2.29. **"Signature Date"** means the date of signature of this Mandate Agreement by the last Party signing;
- 2.30. **"South Africa"** means the Republic of South Africa, as constituted from time to time;
- 2.31. **"Specific Performance"** means the fulfilment of either Party's obligations in terms of this Mandate Agreement;
- 2.32. **"Tenant(s)"** means the party(ies) identified by the Agent for the Landlord in terms of this Mandate Agreement;
- 2.33. **"Trust Account"** means an interest bearing account with a banking institution, as required by the Rental Housing Act, as read with the EAAA;
- 2.34. **"VAT Act"** means the Value-added Tax Act 89 of 1991;
- 2.35. **"VAT"** means the value-added tax imposed in terms of the VAT Act, including any similar tax which may be imposed in place thereof from time to time;
- 2.36. **"Writing"** means any mode of reproducing information or data in physical form and includes hard copy printouts, handwritten documents and facsimile transmissions, together with information or data in electronic form.

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3. INTERPRETATION

- 3.1. Any reference in this Mandate Agreement to:
 - 3.1.1. a **clause** is, subject to any contrary indication, a reference to a clause of the main body of this Mandate Agreement;
 - 3.1.2. an **item** is, subject to any contrary indication, a reference to an item in the Schedule to this Mandate Agreement;
 - 3.1.3. **law** means any law including common law, statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order or any other measure of any government, local government, statutory or regulatory body or court having the force of law; and
 - 3.1.4. **person** means, unless the context indicates otherwise, any natural or Juristic Person, government, state, agency or organ of a state.
- 3.2. Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning
- 3.3. The headings do not govern or affect the interpretation of this Mandate Agreement.
- 3.4. If any provision in a definition confers rights, or imposes obligations on any Party, effect is given to it as a substantive provision of this Mandate Agreement.
- 3.5. Unless the context indicates otherwise, an expression which denotes any gender includes the other gender; reference to a natural person includes a Juristic Person; the singular includes the plural, and the plural includes the singular.
- 3.6. Any number of days prescribed in this Mandate Agreement excludes the first day and includes the last day.
- 3.7. The words “including” and “in particular” are without limitation.
- 3.8. Any reference to legislation is to that legislation as at the Signature Date, as amended or replaced from time to time, and includes all Regulations and schedules to such legislation.
- 3.9. Any reference to a document or instrument includes the document or instrument as ceded, delegated, novated, altered, supplemented or replaced from time to time.
- 3.10. A reference to a Party includes that Party’s successors-in-title and permitted assigns.
- 3.11. A time of day is a reference to Johannesburg time.
- 3.12. The rule of interpretation that, in the event of ambiguity, the contract must be interpreted against the party responsible for the drafting of the contract does not apply.
- 3.13. The cancellation or termination of this Mandate Agreement does not affect those of its provisions which expressly provide that they will operate after cancellation or termination, or which must continue to have effect after cancellation or termination, or which must by implication or by their nature continue to have effect after cancellation or termination.
- 3.14. No provision in this Mandate Agreement is intended to contravene or limit any applicable provisions of the CPA, POPI or the Rental Housing Act.

4. NATURE OF MANDATE AGREEMENT AND RECORDAL

- 4.1. The Landlord as the owner of the Premises hereby instructs the Agent to perform the functions of an estate agent as defined in the EAAA.
- 4.2. The Agent is instructed to perform either a Procurement Mandate or a Management Mandate, or both a Procurement and Management Mandate, in relation to a Tenant for the Premises; depending on which option is selected in item 1.12.
- 4.3. The Agent acknowledges that his specific rights and duties will depend on the type of instruction given as contemplated by the provisions of clause 4.2.
- 4.4. The Agent warrants that he is registered as an estate agent with the EAAB and that he is in possession of a valid Fidelity Fund Certificate.
- 4.5. Should the Agent be found to be in breach of clause 4.4:
 - 4.5.1. this Mandate Agreement shall be immediately terminable by the Landlord;
 - 4.5.2. the Landlord shall be entitled to claim back any amount or Commission paid to the Agent; and
 - 4.5.3. the Landlord shall be entitled to claim damages from the Agent.

5. PROCUREMENT MANDATE RIGHTS AND DUTIES (See item 1.12.1)

- 5.1. The Agent is tasked with finding a suitable Tenant to lease the Premises from the Landlord. In so doing the Agent has the rights and duties set out in the Addendum, in addition to being responsible for the following:
 - 5.1.1. Advertising, marketing and otherwise exposing the Premises to potential Tenants;
 - 5.1.2. Arranging for potential Tenants to view the Premises by making arrangements with the Landlord or current occupant of the Premises to have access to the Premises at all reasonable times for this purpose;
 - 5.1.3. Performing all vetting, including credit, employment and other reference checks on potential Tenants who have applied to lease the Premises and ensuring that the Tenant can afford the Rental;
 - 5.1.4. Informing the Tenant that the Landlord will be the contact person once the Lease Agreement is signed regarding any matters concerning the Premises; and

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5.1.5. Ensuring that any specific requirements in relation to a potential Tenant, as communicated to the Agent by the Landlord, have been met and that, in the event that a Tenant that does not meet those specific requirements, such Tenant does not take occupation of the Premises.

5.2. In the event that the Tenant has been correctly screened and placed by the Agent in terms of this Mandate Agreement, the Agent cannot be held liable to the Landlord for any loss or damages including the Tenant not paying Rental or vacating the Premises before the Lease Agreement expires.

6. MANAGEMENT RIGHTS AND DUTIES (See item 1.12.2)

6.1. The Agent is tasked with administering and managing the Lease Agreement, as well as the Premises. In doing so, the Agents has the rights and duties set out in the Addendum, in addition to being responsible for the following:

6.1.1. Ensuring that all suspensive and resolutive conditions set out in the Lease Agreement have been fulfilled and that the Deposit is received immediately from the Tenant and is transferred to the Agent's Trust Account.; provided that this clause 6.1.1 will only apply if the Agent has also entered into a Procurement Mandate. If the Agent has only entered into a Management Mandate, the provisions of clause 2.1.3 of the Addendum will apply;

6.1.2. Collecting payments of all amounts due and owing to the Landlord in terms of the Lease Agreement and keeping a complete, correct and up-to-date record of such payments;

6.1.3. Attending timeously, and with due diligence, to all queries and complaints by the Tenant and informing the Landlord of any queries or complaints that requires his intervention;

6.1.4. Attending to all defaults and breaches of the Lease Agreement and informing the Landlord promptly of these defaults and breaches; and

6.1.5. Inspecting the Premises as per the Lease Agreement.

6.2. The Agent cannot be held liable to the Landlord for any loss or damages including the Tenant not paying Rental or vacating the Premises before the Lease Agreement expires.

7. COMMISSION

7.1. Should the Agent operate under a Procurement Mandate:

7.1.1. the Agent is entitled to an upfront Procurement Commission from the Landlord, based on the value or percentage as set out in item 1.5 on the value of the Lease (which is calculated by taking the length of the Lease and multiplying it by the Rental payable) for procuring the Tenant.

7.2. Should the Agent operate under a Management Mandate:

7.2.1. the Agent is entitled to a Management Commission from the Landlord based on the value or percentage as set out in item 1.6, per Month on the total Rental collected, together with all such other costs and amounts which the Landlord may owe the Agent. Such amounts may be deducted from the Rental collected by the Agent; and

7.2.2. should the Landlord cancel this Mandate Agreement for any reason whatsoever during the term of the Lease Agreement, the Landlord will still be liable to pay the Agent the Management Commission that the Agent would have earned for the remaining term of the Lease Agreement, which must be paid by the Landlord to the Agent immediately after this Mandate Agreement is cancelled by the Landlord; and

7.2.3. should the Agent be authorised or instructed to call out a service provider to effect repairs or maintenance at the Premises, the Agent shall be entitled to 10% (Ten Percent) of the value of the repairs/maintenance to the Premises.

7.3. Should the Agent operate under both a Procurement Mandate and a Management Mandate, then the provisions of both clauses 7.1 and 7.2 will apply.

7.4. It is specifically recorded that, regardless of whether the Agent operates under a Procurement Mandate or a Management Mandate, should the Tenant renew the Lease Agreement or conclude a further lease agreement after the termination or cancellation of the Lease Agreement with or without the assistance of the Agent; then the Agent will be regarded as the effective cause of the conclusion of the renewal or further lease agreement and the Agent will be entitled to payment of commission by the Landlord, equal to the percentage or value as referred to in item 1.5 and calculated as set out in clause 7.1.1 above.

8. SALE OF PREMISES

8.1. If the Tenant signs a Sale Agreement with the Landlord at any time during the period of Lease Agreement, or any renewal of the Lease Agreement, or within 12 (Twelve) months after the Lease Agreement has terminated, then the Agent will be regarded as the effective cause of the Sale Agreement and will be entitled to payment by the Landlord of Sale Commission equal to the percentage or value as set out in item 1.7.

8.2. Should a Sale Agreement be concluded during the period of the Lease Agreement with any person other than the Tenant, all remaining fees that would have been collected by the Agent under the Lease Agreement will be paid, without deduction or set-off to the Agent at the date of the Premises being registered in the name of the purchaser under the Sale Agreement, or will be deducted by the Agent from any monies that are owed to the Landlord.

8.3. The Landlord agrees that when a Sale Agreement is concluded, the Landlord will notify the Agent immediately if the sale occurs during the periods contemplated in clauses 8.1 or 8.2.

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9. BREACH

9.1. In the event that either Party breaches the terms of this Mandate Agreement ("Defaulting Party"), and:

9.1.1. the provisions of section 14 of the CPA apply, and the Defaulting Party remains in breach of such term for a period of 20 (Twenty) Business Days after dispatch of a written notice calling upon the Defaulting Party to remedy such breach; or

9.1.2. the provisions of section 14 of the CPA do not apply, and the Defaulting Party remains in breach of such term for a period of 7 (Seven) calendar days after dispatch of a written notice calling upon the Defaulting Party to remedy such breach,

then the innocent Party shall be entitled to, at his sole discretion and without prejudice to any other rights that he may have in law, either claim Specific Performance or to cancel this Mandate immediately and without further notice, and to claim damages from the Defaulting Party.

10. TERM

10.1. In the event that the Agent operates under both a Procurement and Management Mandate, the provisions of clause 10.2 will apply.

10.2. If the Agent operates under a Procurement Mandate, this Mandate Agreement will terminate on the payment of all Procurement Commission set out in item 1.5 and the Agent's liability under this Agreement will terminate, provided that he has duly exercised his duties in terms of clause 5; and provided further that, notwithstanding the termination of this Mandate Agreement, any clause that makes provision for the payment of further amounts to the Agent after termination of this Mandate Agreement, such as clause 7.4, shall remain of force and effect.

10.3. If the Agent operates under a Management Mandate, this Mandate Agreement will continue for the period of the Lease Agreement, or any further period that the Lease Agreement is renewed. This Mandate Agreement will then continue on a Month to Month basis after its termination, subject to any material changes agreed between the Parties in Writing and Signed, unless the Landlord gives the Agent 1 (One) Months' notice, in Writing, before the expiry date of the Lease Agreement or any renewal thereof, of his intention not to continue with this Mandate Agreement. In such an event, the Mandate Agreement will terminate on the 1st (First) day of the Month immediately following the end of the 1(One) Month notice period.

11. LIMITATION OF LIABILITY

Neither Party shall be held liable for any loss, damage or injury which either Party may suffer unless such loss, damage or injury is as a result of the breach of this Mandate Agreement, gross negligence of the defaulting Party or the defaulting Party breaching the provisions of the CPA.

12. COOLING OFF PERIOD

Should the Agent have approached the Landlord by way of any means of Direct Marketing, the Landlord shall have the option to cancel this Mandate Agreement within 5 (Five) Business Days of the Signature Date without facing any penalty or subsequent legal liability.

13. LETTERS AND NOTICES

13.1. Any letter or notice given in terms of this Mandate Agreement shall be in Writing and shall:

13.1.1. if delivered by hand, be deemed to have been duly received by the addressee on the date of delivery;

13.1.2. if posted by prepaid registered post, be deemed to have been received by the addressee on the 5th (Fifth) Business Day following the date of such posting; and

13.1.3. if transmitted by facsimile or email, be deemed to have been received by the addressee 1 (One) calendar day after dispatch.

13.2. For purposes of the clause 13.1, the contact details are:

13.2.1. The Landlord, as set out in item 1.9; and

13.2.2. The Agent, as set out in item 1.10.

13.3. Notwithstanding anything to contrary contained herein, a Written notice of communication actually received by a Party shall be an adequate Written notice or communication to it notwithstanding that it was not sent to or delivered to its chosen address in terms of this Mandate Agreement.

14. PROCUREMENT MANDATES AND MANAGEMENT MANDATES: DUTIES IN TERMS OF DATA PRIVACY

14.1. For purposes of this clause 14, the words "data subject", "operator", "personal information", "process" and "responsible party" have the meanings given to them in POPIA.

14.2. In respect of all personal information processed by the Agent for or on behalf of the Landlord in terms of this Mandate Agreement:

14.2.1. The Landlord is the responsible party; and

14.2.2. the Agent is an operator for the Landlord.

14.3. The Agent will:

14.3.1. process such personal information for the sole purpose of providing the services contemplated by the provisions of this Mandate Agreement, unless otherwise permitted by law; and

14.3.2. treat all such personal information as confidential and not disclose it, unless required by law or for the proper performance of the Agent's obligations under this Mandate Agreement.

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- 14.4. The Agent will implement and maintain appropriate and reasonable technical and organisational measures to protect the personal information loss, damage, unauthorised destruction and unlawful access or processing.
- 14.5. The Agent will not subcontract any of its obligations under this Agreement or transfer any personal information outside of South Africa.

15. GOVERNING LAW AND GENERAL

- 15.1. This Mandate Agreement shall be Signed in Writing and may be executed in counterparts, each of which will be an original and which together constitute the same agreement.
- 15.2. This Mandate Agreement is governed by South African law.
- 15.3. Not limiting the jurisdiction that any other court may have, the Parties consent in terms of section 45 of the Magistrates' Courts Act 32 of 1944 (or any similar section of an act replacing such act) to the jurisdiction of the Magistrate's Court for the purpose of any proceedings in terms of or incidental to this Mandate Agreement, notwithstanding that the amount claimed or the value of the matter in dispute may exceed such jurisdiction.
- 15.4. The Parties specifically agree that the Magistrates' Court closest to where the Premises are situated is the court that shall be used to resolve all disputes under this Mandate Agreement.
- 15.5. No addition to or variation or consensual cancellation of this Mandate Agreement, including this clause 14, has effect unless it is in Writing and Signed by both Parties.
- 15.6. The Landlord and the Agent agree that this Mandate Agreement is the whole agreement between them in regards to its subject matter.
- 15.7. The Parties undertake at all times to do all such things, to perform all such acts and to take all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and import of this Mandate Agreement.
- 15.8. No indulgence by one Party to the other Party, or failure to strictly enforce the terms of this Mandate Agreement is to be construed as a waiver or a basis for raising estoppel in any way.
- 15.9. Each provision in this Mandate Agreement is severable from all others, notwithstanding the manner in which they may be linked together or grouped grammatically, and if in terms of any judgment or order, any provision, phrase, sentence, paragraph or clause is found to be defective or unenforceable for any reason, the remaining provisions, phrases, sentences, paragraphs and clauses shall nevertheless continue to be of full force. In particular, the Parties acknowledge their intention to continue to be bound by this Mandate Agreement notwithstanding that any provision may be found to be unenforceable or void or voidable, in which event the provision concerned shall be severed from the other provisions, each of which shall continue to be of full force.
- 15.10. In the event that the Landlord consists of more than one party, each of the parties comprising the Landlord shall be liable to the Agent jointly and severally for the performance by the Landlord of its obligations in terms of the Mandate Agreement and a discharge of any obligation by the Agent against any one of the Landlords in terms of this Mandate Agreement shall be a valid discharge of such obligation against both of them.

16. SPECIAL CONDITIONS

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FICA DOCUMENTS TO BE ATTACHED WITH THIS MANDATE

Financial Intelligence Centre Act, 2001, all accountable institutions which includes estate agents have a duty to know their clients and keep a record of the identity, address and income tax documents.

Where Landlord is a natural person

RSA ID Document / Passport

Proof of current address

Proof of SARS Income tax number

ADDENDUM

1. PROCUREMENT MANDATE: ADDITIONAL RIGHTS AND DUTIES (tick applicable)

1..1 The Agent is responsible for the following:

1.1 Negotiating the Lease Agreement with potential Tenants and ensuring that all suspensive and resolute legal formalities pertaining to the Lease Agreement are complied with;

1.2 Informing the Tenant of all rights and duties in terms of the Lease Agreement including the Tenant's duties to pay the Rental on time and to look after the Premises;

1.3 Initiating and performing the incoming snag list or initial inspection of the Premises and recording all existing damages or defects to the Premises;

1.4 Initiating and performing the outgoing snag list or exit inspection of the Premises and recording all damages and defects to the Premises; and

1.5 Explaining to the Tenant that the Tenant may be asked by the Agent to pay a portion of the Rental directly to the Agent if the Landlord does not pay the Agent a portion or the full amount of any Commission due to the Agent.

2. MANAGEMENT MANDATE: ADDITIONAL RIGHTS AND DUTIES (tick applicable)

2.1 The Agent is responsible for the following:

2.1.1 Paying the Landlord to his Nominated Bank Account as set out in item 1.8 by the date referred to in item 1.4, all Rental and ancillary expenses payable by the Tenant, as well as VAT thereon;

2.1.2 Instructing responsible attorneys to institute all legal proceedings, including issuing an application or summons, defending any legal action, settling any matter and/or evicting the Tenant. The Agent will prior to instructing the attorneys:

2.1.2.1 contact the Landlord and inform him of the legal situation;

2.1.2.2 provide the Landlord with the contact details of the preferred attorney; and

2.1.2.3 ask the Landlord for consent to refer the matter to the attorney in question.

The costs of the attorney will be for the Landlord's account. Should a power of attorney be concluded in for this purpose, the Agent may act as a representative for the Landlord.

2.1.3 Should the Agent have entered into a Management Mandate only, the Agent shall procure the Deposit from the:

2.1.3.1 Landlord or;

2.1.3.2 previous rental agent; or

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another third party. (Specify)		
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The Agent shall after procuring the Deposit transfer the Deposit to its Trust Account.

SIGNED AND DATED BY THE AGENT AT THE UNDERMENTIONED PLACE AND ON THE UNDERMENTIONED DATE, IN THE PRESENCE OF THE UNDERMENTIONED WITNESSES, HE/SHE BEING DULY AUTHORISED THERETO.

Signed by the AGENT at		on this the	day of	20
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AGENT

WITNESS 1

NAME OF SIGNATORY

WITNESS 2

SIGNED AND DATED BY THE LANDLORD AT THE UNDERMENTIONED PLACE AND ON THE UNDERMENTIONED DATE, IN THE PRESENCE OF THE UNDERMENTIONED WITNESSES, HE/SHE BEING DULY AUTHORISED THERETO.

Signed by the LANDLORD at _____ on this the _____ day of _____ 20____

LANDLORD

WITNESS 1

NAME OF SIGNATORY

WITNESS 2