

# Henry & James

Est. 1950

## TERMS OF BUSINESS



1 Motcomb Street SW1X 8JX  
T +44 (0)20 7235 8861  
E [belgraviaoffice@henryandjames.co.uk](mailto:belgraviaoffice@henryandjames.co.uk)  
W [henryandjames.co.uk](http://henryandjames.co.uk)



## Table of Contents

<b>General</b> .....	3
Summary Schedule .....	3
Information.....	3
Acts of Third Parties .....	3
Jurisdiction and Service .....	3
Termination.....	4
Assignment.....	4
Data Protection.....	4
<b>Schedule 2: Agents Obligations</b> .....	5
Sole Agency .....	5
Commission.....	5
VAT .....	6
Renewal Commission .....	6
Letting & Rent Collection Service.....	6
Full Management Service .....	6
Commission Due .....	6
Refund of Commission.....	7
Additional Services .....	7
Sub Agency .....	7
Management Services (if applicable) .....	10
<b>Schedule 3: Renewal</b> .....	11
<b>Schedule 4: Landlord’s Undertakings</b> .....	12
Consent for Letting .....	12
Mortgage .....	12
Sub-letting .....	12
Insurance.....	12
Taxation.....	12
Rent Arrears or Breach of Covenant.....	13
Reimbursement of the Agent .....	13
Sub-Contractors.....	13
Housing Act 2004 .....	13
Indemnity.....	13
<b>Schedule 5: Deposit Handling</b> .....	14
Agent to Hold through Tenancy Deposit Scheme (TDS) .....	14
No Scheme applicable .....	15
Landlord Handling of the Deposit.....	15
<b>Schedule 6: Safety Legislation</b> .....	16
The Furniture and Furnishings (Fire) (Safety) (Amendment) Regulations 1993 ..	16
Electrical Equipment (Safety) Regulations 1994 .....	16
Gas Safety (Installation and Use) Regulations 1998 .....	16
Part “P” Building Regulations (Electrical Safety in Dwellings) .....	16
Smoke Alarms and Carbon Monoxide Alarms.....	16
Energy Performance Certificate (“EPC”) .....	16
Legionnaire’s Disease .....	17
<b>Signatures</b> .....	18

**GENERAL**

**Summary Schedule**

**Agent** HENRY & JAMES (Estate Agents) LIMITED  
**Company Registration Number** 00485145  
**Registered Office Address** 1 MOTCOMB STREET LONDON SW1X 8JX

**Landlord Name / Company Name**

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**Landlord / Registered Office Address**


**Premises Address**


**Lettings & Rent Collection** 10% (12% Including Vat)

**Full Management** 5% (6% Including Vat)

**Authorisation to Commence Marketing** (During 14 Day Cooling Off Period)

**Information**

1. We trade as a limited company registered at Companies House Reg. No 08482773.
2. Our VAT number is 174904980.
3. We are members of the dispute and compensation scheme operated by The Property Ombudsman ([www.tpos.co.uk](http://www.tpos.co.uk)) and our registration number is D02198.
4. We are members of Propertymark (formally the Association of Residential Lettings Agents, ARLA) and we subscribe to their codes of conduct.

**Acts of Third Parties**

5. We will not be responsible for any loss or damage that you suffer through the act, default or negligence of any third party which may arise other than through our negligence, omission or failure.
6. Nothing in this Agreement shall have the effect of excluding or limiting any liability for death or personal injury caused by negligence or for fraud.
7. The Contract (Rights of Third Parties) Act 1999 does not apply to this Agreement.

**Jurisdiction and Service**

8. This Agreement shall be governed by and construed in accordance with the law of England and Wales and the Courts of England and Wales shall have exclusive jurisdiction in respect of any dispute under it.
9. Any legal proceedings to be served in respect of this Agreement which are to be served outside the jurisdiction shall be deemed to be sufficiently served if they are sent by ordinary first-class or airmail post or its equivalent and it is agreed that all legal proceedings may be served in English without the necessity for translation into any other language.
10. The provisions for the service of notices are that if either party deliver by hand any notices or documents which are necessary under the Agreement, or any Act of Parliament to the other party by 5pm or the last known address of the other party; the documents or notices will be deemed delivered on the next working day which excludes Saturdays Sundays and Bank Holidays; or if any documents or notices are sent by registered, or recorded delivery post the documents will be deemed delivered upon proof of delivery being obtained; or if the documents or notices are sent by ordinary first class post addressed to the other party or the last known

address of the other party; the documents or notices will be deemed delivered two working days later, which excludes Saturdays, Sundays and Bank Holidays. The address for service for the Landlord will be the contact address specified in this Agreement and the address for service for us will be 1 Motcomb Street London SW1X 8JX.

### **Termination**

11. Either party may terminate this Agreement by giving 30 days' written notice to the other party:
  - a. Upon the Occupier's vacation of the Premises;
  - b. If the other party commits a material breach of any material term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so and monetary compensation is inadequate compensation for that breach;
  - c. If the other party carries out or suggests that a party should carry out any form of unlawful discrimination.
12. We may terminate this Agreement if you are in major breach of any of the terms contained in this Agreement or if you do or do not do something which makes it impossible, impracticable or illegal for us to continue to perform our obligations under this Agreement.
13. If we terminate this Agreement for any reason, you will remain liable for our Commission at the Let only percentage as described in Schedule 1 and for any fees or costs we might incur on your behalf in transferring our obligations to you or to someone you might nominate.

### **Notice of Right to Cancel**

14. You may cancel this agreement by sending us the notice of cancellation to the address provided or by email to [lettings@henryandjames.co.uk](mailto:lettings@henryandjames.co.uk). A Cooling Off Period shall come into effect from the date this agreement is signed outside of a Henry & James office. The Cooling Off Period shall continue for 14 days starting from the date of the agreement.
15. The notice of cancellation is deemed to be served as soon as it is posted or if sent by email on the date sent. You may use the cancellation form attached to these conditions or follow this link: [http://www.henryandjames.co.uk/downloads/Notice\\_of\\_the\\_Right\\_to\\_Cancel.pdf](http://www.henryandjames.co.uk/downloads/Notice_of_the_Right_to_Cancel.pdf).

### **Assignment**

16. We reserve the right to assign our rights and or obligations under this Agreement upon giving you 30 days written notice.

### **Data Protection**

17. When you instruct us to act on your behalf, we will collect personal data from you (including your contact details, proof of address, photographic ID and bank details).
18. We will hold your personal data, and the personal data of any Tenant or Occupier, confidential and secure.
19. We will process all personal data in accordance with applicable data protection law.
20. In particular we will use the personal data provided to us in relation to yourself and any Tenant or Occupier to:
  - a. provide our services under this Agreement;
  - b. process payments for such Services;
  - c. keep our records up to date; and
  - d. meet our legal and regulatory obligations.
21. This may include providing your personal data, or the personal data of any Tenant or Occupier, to:
  - a. a credit reference agency and they may keep a record of any search they carry out;
  - b. a debt collector or solicitor;
  - c. any person to whom we are specifically required to disclose such information by law;
  - d. a utility provider or local authority in order to change account details; or
  - e. a contractor if their invoice has not been settled by you.
22. We will only send you general literature about our business and services if you have expressly consented to us doing so and you may withdraw your consent at any time.
23. Further information is set out in our privacy policy [www.henryandjames.co.uk/privacy](http://www.henryandjames.co.uk/privacy).

24. If you have any questions about the privacy of your personal data, please contact us by email at [belgraviaoffice@henryandjames.co.uk](mailto:belgraviaoffice@henryandjames.co.uk) or by telephone (0)20 7235 8861.

#### **Interest on Clients' Monies and Commission**

25. Any interest accrued on monies that we hold on your behalf will be retained by us to cover bank and administration charges etc. Any commission earned from a third party arising out of the Agreement will be retained by us while acting on your behalf to cover costs.

#### **Money Laundering**

26. In order to comply with the Proceeds of Crime Act 2002 and the Money Laundering Regulations 2007 we require you to provide us with one proof of identity and one proof of residence from the list below. You should either send us the original documents for copying and returning to you; or provide us with copies certified by a solicitor as genuine. We cannot accept printouts of online bank statements or utility bills.

##### List A: Proof of Identity

- Full Passport
- National Identity Card
- Full Driving Licence
- Cheque (please mark this as "Void")

##### List B: Proof of Residence

- Council Tax bill
- Utility bill
- Mortgage statement
- Bank Statement
- Credit or Charge Card Statement.

If you are a public limited company we will require a certified copy of the Certificate of Incorporation. If the company is not quoted we require certified copies of any two of the following documents:

- Memorandum and Articles of Association
- Certificate of Incorporation
- A set of the latest accounts
- The most recent annual Companies House return.

In addition we require proof of identity and residence of one of the directors of the company.

**YOU SHOULD PAY PARTICULAR ATTENTION TO THE FOLLOWING PARAGRAPHS WHICH DETAIL OUR FEES, COMMISSION AND CHARGES FOR ADDITIONAL SERVICES WHICH MAY BE PAYABLE BY YOU WHETHER OR NOT WE ARE INSTRUCTED TO ACT ON YOUR BEHALF**

#### **Schedule 1: Fees and Commissions**

##### **Sole Agency**

1. By appointing us, you agree that we shall have sole agency to market the Premises. The sole agency may be terminated by giving us two weeks' written notice. If you do not terminate the sole agency it will continue until we receive your written instructions.

**OR**

##### **Multiple Agency**

By appointing us, you agree that we shall act on a multiple agency basis to market the Premises. The multiple agency can be terminated by giving us two weeks written notice. If you do not terminate the multiple agency it will continue until we receive your written instructions.

##### **Commission**

2. You are responsible for paying our Commission **at the rate of 12% including VAT of the gross annual rent** when any person, company or other organisation enters into a binding contract for the occupation of the Premises where they do so as a result of:
- a. a viewing conducted by us;
  - b. sight of any marketing or advertising material produced by us or by our instructions;
  - c. by way of an introduction from an existing Occupier for which we have previously charged a Commission; or

- d. through the work of any other agent where this occurs during our period of sole agency;

Example Rental of £3,000 per calendar month at a Commission rate of 12% = £4,320 payable. Should the agreed rental rate be higher or lower than in the example above, the commission payable will be correspondingly higher or lower.

This Commission remains due and payable in relation to any extension, renewal or continuation of the Occupancy Agreement whether or not we are the effective cause of the said extension, renewal or continuation and for the period of time any such party or their assignees, subtenants or successors in title continue to reside in the Premises. Our Commission is payable whether or not we are the effective cause of the transaction.

**Please note that our fee structure means that you may be required to continue paying us a fee for as long as any Tenant we find for you is occupying your Premises even if you have no direct ongoing relationship with us.**

By signing this Agreement the Landlord gives us the authority to deduct our Commission, fees, expenses and any other costs from any monies belonging to the Landlord or any deductions from the Deposit agreed by the Tenant for any property owned by the Landlord where we are or were acting on the Landlord's behalf.

#### **VAT**

3. Value Added Tax will be chargeable on all Commission at the prevailing rate (currently 20%). All fees contained within this Agreement are **inclusive** of VAT.

#### **Renewal Commission**

4. You will have to pay us a Renewal Commission **at the rate of 10% including VAT of the gross annual rent**, premium or other money payable throughout the initial fixed Term and any continuation, extension or renewal of it whether fixed Term or periodic whether or not we are instructed to act on your behalf (the "Renewal Commission").

#### **Letting & Rent Collection Service**

5. If instructed to collect the rent or other monies for the Premises the cost for this service shall be included in the rate of Commission agreed. If our instructions to collect the rent or other monies are terminated our Commission remains payable at the Commission percentage outlined in Section 2 of Schedule 1 of this agreement and shall remain payable throughout the initial fixed Term and any continuation, extension or renewal of it whether fixed Term or periodic, whether or not we are instructed to act on your behalf.

#### **Full Management Service**

6. If we are instructed to manage the Premises then further to our Letting & Rent Collection Service you will have to pay us an additional Commission at the Full Management Commission percentage **at a rate of 6% including VAT**, subject to a minimum management fee of £1,500 including VAT, plus the Commission due for the Letting & Rent Collection Service being a total of **16% including VAT** of the gross Rent premium or other money payable throughout the initial fixed Term and any continuation, extension or renewal of it whether fixed Term or periodic whether or not we are instructed to act on your behalf.

The minimum Management Service period is six months. Thereafter, either party may terminate the Management Service by giving not less than one month's written notice to the other. If our instructions to manage are terminated our Commission remains payable at the Letting & Rent Collection Commission percentage throughout the initial fixed Term and any continuation, extension or renewal of it whether fixed Term or periodic whether or not we are instructed to act on your behalf.

#### **Commission Due**

7. Our Commission payment will become due at the agreed start date of each Occupation Agreement and we will take payment from the monies received in relation to the Occupation Agreement until our Commission and any other fees and disbursements have been paid. Or we will divide our Commission into equal amounts and take them from the payments received in relation to the Occupation Agreement at the intervals agreed in the Occupation Agreement.

If we facilitate the sale of the Property a Commission of 2.4% (inclusive of VAT) of the sale price of the Property is payable to Henry & James (Estate Agents) Ltd.

### **Refund of Commission**

8. We will refund Commission pro rata if the Tenancy terminates by the use by you or by the Tenant of any contractual break clause in the Tenancy Agreement. We will not make any refund of our Commission if the Tenancy terminates before the originally agreed date whether this occurs due to an agreed surrender, repudiation, rescission, frustration or forfeiture of the lease, through any court proceedings, or if your interest in the Premises is assigned to another party.

### **Withdrawal from an Agreed Offer**

9. If you instruct us to proceed with a proposed Tenancy and subsequently withdraw your instructions you agree by signing this Agreement to meet some of the costs and the expenses incurred up to the sum of **£250** including VAT and pay us the amount equivalent to **3 months'** Commission at the Letting & Rent Collection percentage.

### **Additional Services**

10. The following services are in addition to the above and are subject to an additional charge.
  - a. Consultancy is available on request at the rate of £175 per hour including VAT, plus travel and other reasonable expenses and costs. This service is applicable when instructed for the Letting and Rent Collection only and during void periods, this service could include and is not limited to:
    - Additional visits to the Premises
    - Service of any notices or certification
    - Waiting time or Inspections
    - Arranging key cutting, cleaning, safety checks or contractor visits
    - Installation of smoke alarms or carbon monoxide alarms
    - Obtaining consent from a lender or a Superior Landlord
  - b. Preparation of an Inventory and checking the condition of the Premises on behalf of the Landlord by an inventory clerk will depend on the size and style of the Premises. The cost of the preparation of the Inventory is borne by the Landlord, please see our table below for an indication of the price of the Inventory and Check-In:
    - STUDIO/1BED £160 (£192.00 Including VAT)
    - 2 BEDROOMS £170 (204.00 Including VAT)
    - 3 BEDROOMS £190 (£228 Including VAT)
    - 4 BEDROOMS £200 (£240 Including VAT)
    - 5 BEDROOMS £250 (£300 Including VAT)
  - c. Preparation of our standard Tenancy Agreement is £240 including VAT for a new Tenancy and £120 including VAT for a Memorandum of Agreement prepared for extending a Tenancy or after a rent review.
  - d. Alterations to our standard Tenancy Agreement will be £60 including VAT per hour subject to a minimum charge of one hour.
  - e. If the Landlord is not resident in the UK we will charge an administration fee of £360 including VAT each quarter for tax retention and completion of the documentation required by the Centre for Non Residents.
  - f. Preparation of documentation for County Court proceedings or TDS adjudication will be £195 including VAT plus our reasonable costs and expenses and attendance at court or any tribunal on your behalf will be charged at £195 including VAT per member of staff, per hour plus other reasonable expenses and costs.
  - g. Duplicate statements can be provided for a fee of £12 including VAT per statement or £120 including VAT for all the statements covering in one tax year.
  - h. An Energy Performance Certificate (EPC) can be arranged for a cost of £90 including VAT. The report will remain valid for ten years.

### **Sub Agency**

11. We may give details of your Premises on a Commission sharing basis to other agents unless we receive your specific written instructions to the contrary. This involves you in no additional expense and increases the chance of letting the Premises promptly.

## Schedule 2: Agent Obligations

1. Visit the Premises to provide an indication of the achievable current market rent.
2. We may advertise your Premises by erecting a To-Let board at the Premises. You must notify us in writing if you have previously agreed not to erect a To-Let board with the Superior Landlord, freeholder or other interested party, or local byelaws or conservation area restrictions prevent the erection of a board.
3. Each appointment to view your Premises will be accompanied by a member of staff.
4. Advise you of any formal offers made by prospective Tenants. Should you inform us that you wish to withdraw from an agreed offer and proposed Tenancy, the Tenant could take legal action against you for any losses suffered. You should expect to meet reasonable costs and expenses incurred by the Tenant if the Tenancy is cancelled.
5. Negotiate any offers received on your behalf and confirm all the terms in writing.
6. Provide each Tenant with a sample Tenancy Agreement on request.
7. Take up references upon each applicant whenever possible.
8. Use an external referencing agency to obtain a report checking the financial standing of a potential Tenant including income and credit rating, previous Landlord details (if appropriate) and contact details for a personal referee if applicable. We will send the completed references to you for approval before the Tenant takes occupancy. If we receive a Landlord's signed copy of the Tenancy Agreement and the necessary funds we will proceed with the Tenancy. If proceeding with the Tenancy we will do so without prejudice or responsibility for the accuracy of the references or the information contained in them, unless it is due to our negligence or breach of contract. We will not warrant the Tenant as suitable.
9. An inventory and check-in is essential for the proper conduct of the Tenancy, whether the Premises is let furnished or unfurnished, to reduce the risk of a dispute arising about the Deposit. Inventories should where applicable, show that furnishings and electrical equipment comply with current legislation. If you do not have an Inventory and check-in report you may not be able to obtain compensation from the Tenant either through any Tenancy Deposit Protection Scheme or through the County Court. We accept no liability for any loss suffered if you do not have a fully comprehensive Inventory report.
10. If agreed, instruct an inventory clerk on your behalf subject to a fee for which you will be liable as shown in Additional Services. The fees of the Inventory clerk will be given to you prior to instruction. We are not liable for any error or omission made by the Inventory clerk.
11. Deduct payment for the inventory and check-in report at the start of the Tenancy. The Tenant is obliged to pay for the check out report which will be sent to both you and the Tenant for comment at the end of the Tenancy.
12. We will prepare a comprehensive Tenancy Agreement setting out the rights and obligations of both parties including any special terms agreed.
13. It will be your responsibility to notify the electricity, gas, water and telephone companies and the local authority when the Tenant occupies your Premises. If you fail to do so, the liability for the utilities may remain in your name.
14. We will arrange the cleaning of the Premises if instructed and deduct payment from the rental income received.
15. Collect the first rent payment and if necessary subsequent payments together with the Deposit which is usually equivalent to six weeks' rent.
16. For Common Law Tenancy Agreements, we will hold the Deposit paid by the Tenant as Stakeholder against damage, breach of the Tenancy Agreement or any other outstanding charges owed by the Tenant **OR** accept the Deposit from the Tenant on your behalf and pass it to you for registration according to the clause below.
17. For Assured Short-hold Tenancy Agreements (ASTs), we will register the details of the Deposit and with the Tenancy Deposit Scheme **OR** send the Deposit to the Landlord to register the

amount with a Tenancy Deposit Protection Scheme within thirty days of the Tenancy starting or the Deposit being taken whichever is the earlier.

18. Request an appropriate number of sets of keys from the Landlord prior to the Tenancy commencing. If you do not comply and we have additional sets cut to enable you to comply with this obligation charges will be incurred as outlined in the Additional Services.
19. Arrange for a Gas Safe engineer to check the gas appliances and installations and provide a Gas Safety Certificate ("GSC") if we have not received a copy of a current GSC five days before the Tenancy commences we will arrange for independent certification and deduct the invoice from the initial payment of rent. If we do not manage the Premises it is the legal responsibility of the Landlord to arrange all future gas checks. We accept no liability if you fail to do so.
20. Serve notice to end the Tenancy if requested in writing and you do not wish to renew or extend the Tenancy as shown under Renewals below. If we are appointed for the Lettings and Rent Collection Service only, you will be subject to an administration fee as shown in Additional Services. You must provide us with at least ten weeks written notice that you wish to end the Tenancy. We cannot be held liable for any delay in getting possession if you provide insufficient time for service of the notice.
21. Arrange a check out of the Inventory if we manage the Premises. If we do not manage the Premises a check-out can be arranged subject to an administration charge plus the cost of the check-out charged by the inventory clerk as shown in Additional Services.
22. Inform you that you must notify us of any change in your residency.
23. Notify you that it is not part of our normal function to forward the Client's mail. No responsibility can be taken for mail sent to you at the Premises. We recommend that you arrange for a Post Office redirection.
24. Advise that if you use the Letting and Rent Collection Service it will be your responsibility to arrange repairs and to provide the Tenant with copies of all instruction books, guarantees and maintenance contracts. If you fail to do so, additional costs may be incurred and the Tenant may be entitled to compensation.
25. Advise that if the Tenant leaves the Premises of their own accord prior to the expiration of the Tenancy it is your responsibility to take the appropriate action to recover any outstanding rent from the former Tenant.
26. Rental payments received will be sent to you within 10 working days after receipt of cleared funds, less our agreed fees and expenses into your nominated bank or building society account.
27. You should set up a facility with your bank to ensure payment of all regular outgoings to take into account of alterations to the payment dates, void periods or failure by the Tenant to pay any sums due.
28. We cannot be held responsible if the Tenant fails to pay any sum due under the Occupancy Agreement unless it is due to our negligence or breach of contract. We will take action in your name to recover unpaid monies by serving the appropriate letter requesting payment to the Occupier. If this is not successful we will advise you to instruct specialist solicitors to take further action. You will be responsible for any legal charges and expenses incurred.

### **Management Services (if applicable)**

1. Pay and account for outgoings such as ground rent if applicable, any service charge and/or maintenance charge or similar contribution to shared expenses providing we hold sufficient funds. The Landlord gives authority for Henry & James to pay, without question, demands and accounts that appear to be in order. We cannot accept responsibility for the verification of any service or maintenance charge demands or estimates where applicable and have no liability for discrepancy in invoices paid on your behalf to or any dispute with any third parties unless the loss is due to our negligence or breach of contract. It is the responsibility of the Landlord to send the relevant invoices and demands to Henry & James.
2. Attend to day-to-day management matters, including minor repairs up to a maximum cost of £250.00 except in an emergency with risk of significant damage to your Premises or to the life of an individual, or to enable you to comply with statute where the cost is unlimited. Wherever practical, an estimate will be obtained and submitted for approval for works. You agree that we can instruct contractors on your behalf and deduct the cost of repairs and maintenance from the rent or the Repair Fund. You remain liable for the payment of all invoices to tradesmen.
3. Retain from the first payment made by the Occupier after all our Commission, fees, costs and expenses the sum of £350.00 if the rent is paid monthly, or £1,500.00 if the rent is paid quarterly, six monthly or annually for the Repair Fund. If required we will retain funds from subsequent payments to subsidise the Repair Fund and ensure it remains at the same level throughout the Tenancy.
4. Advise you that we are not liable for any loss or damage suffered by you if we are unable to carry out repairs or maintenance because we do not hold any or sufficient funds unless the loss or damage is due to our negligence or breach of contract.
5. Visit the Premises a minimum of two times for each year of the Tenancy and provide a written report for the Landlord on the visual condition providing the Tenant grants access. If the Tenant does not grant access, we will contact you for advice on the appropriate action. These visits are of a limited nature in order to verify the general good order of the Premises and the proper conduct of the Tenancy by the Tenant. Each visit will enable us to note any lack of repair or maintenance that should be brought to your attention and does not constitute a complete check of every part of or every item in the Premises. A visit will note repairs of which we are informed or which are clearly visible and Henry & James are not liable for any loss or damage due to hidden or latent defects.
6. Vacant Management is available to all owners, please see list of included services on Page 14. Henry & James can manage your Premises during a void period. We will visit the Premises bi-weekly during office hours being Monday to Friday between 9am and 5pm. We will inform you of any lack of repair or maintenance and will not instruct a contractor unless we hold cleared funds. You agree in writing to pay our administration fee as shown in Schedule 1.
7. Forward the correspondence address given by the tenant to the water company to comply with the Flood and Water Management Act 2010 and compliance payment of the final water account the liability of the Landlord if no forwarding address is provided. We cannot be held liable if the Tenant does not provide an address or gives an address that is not deemed acceptable by the water company.
8. Arrange for all required certification and inspections due under Schedule 7: Safety Legislation of this agreement. The Landlord will be responsible for payment of the contractors' invoices, deducted from the initial rent received or Repair Fund.
9. On receipt of the inventory and check-out report to act as mediator between Landlord and Tenant over damage or breach of the Tenancy and either reaching agreement on the sum due or referring the matter to an arbitrator or Independent Case Examiner of the Tenancy Deposit Scheme as appropriate. The liability for any subsequent costs will be dependent upon the award made by the arbitrator.
10. All Full Management Services shall include the Vacant Management Service.

### **Schedule 3: Renewal**

The Landlord should be aware that renewal or continuation as a periodic Tenancy is subject to an additional Fee plus VAT whether or not we as your Agent negotiate on your behalf. We will:

1. Contact you towards the end of the initial fixed Term to find out if the Tenancy should be renewed and to agree any renewal instructions. We will review the rent and advise you if a rent increase is possible or desirable depending upon current market conditions. You must confirm to us in writing if you wish the Tenancy to be renewed, continue as a periodic Tenancy or notice served. We do not serve notice on the Tenant unless you instruct us to do so in writing. If we are not managing the Premises service of notice is subject to a charge as shown in Additional Services. If you prefer to negotiate direct with the Tenant our fees as shown at Section 1 continue to be payable.
2. Write to the Tenant once written confirmation has been received from you requesting the Tenancy to be renewed or extended as a periodic Tenancy asking if they wish to renew the Tenancy and advising of any proposed rent increase if a new fixed Term is agreed. We will then negotiate between the two parties if requested. We will prepare the extension document for both parties where requested including drafting any new or special clauses agreed between the parties varying the terms of the original Tenancy. The extension documents will be sent to both parties for signature.
3. Try to ensure both parties sign the documentation by the start date of the new period of the Tenancy. However if the Tenant fails to return the extension documents the Tenancy will continue as a periodic Tenancy until either party gives notice in writing. Our Commission will be payable whether the Tenancy continues as a fixed Term or a periodic Tenancy whether or not we are instructed to act on your behalf. While we will make every effort to obtain the signed extension documents we have no liability if the Tenant fails to return them.
4. Date the signed documents once we have received them to complete the contract and send the documents received to the relevant party. You will receive the copy signed by the Tenant and the Tenant receives the copy signed by you.
5. Inform you that if the Tenant has an Assured Shorthold Tenancy and it continues to roll-on on a month to month basis (i.e. a periodic Tenancy) rather than agreeing a new fixed Term then the rent can only be lawfully increased on an annual basis if we serve the Tenant with a valid notice under Section 13(2) of the Housing Act 1988. This notice advises the Tenant that they have a right to challenge the increase by serving you with a counter notice and ultimately referring the increase to the Rent Assessment Committee. This could result in a hearing. If the Tenant makes a counter proposal we will ask you whether you wish to accept it or whether you wish to pursue the issue to a hearing. If you want to do the latter we can arrange for solicitors to act on your behalf. You will be responsible for their charges.
6. If you prefer to negotiate any renewal personally our fees for the Letting Service will continue to be payable according to Schedule 1 above for the duration of the time the Tenant occupies the Premises.

**PLEASE PAY PARTICULAR ATTENTION TO THE FOLLOWING UNDERTAKINGS**

**Schedule 4: Landlord's Undertakings**

**Consent for Letting**

1. By signing these Terms and Conditions you warrant to us that you are the owner of the Premises, or otherwise lawfully entitled to enter into an Occupation Agreement. You may be asked to provide us with sufficient documentary evidence to satisfy us and the Occupier that you are entitled to do so. You will be liable to provide us with a full indemnity for any costs, losses, or other expenses we may bear due to you not having the right to enter into an Occupation Agreement.

**Mortgage**

2. If the Premises is subject to a mortgage, you will need your mortgagee's written consent to the proposed letting. By signing this Agreement you confirm that you have your mortgagee's consent to grant a Tenancy. The mortgagee may want to see a copy of the Tenancy Agreement, which can be supplied upon written request. The mortgagee may charge you a fee for giving their permission. If your mortgagee has any special conditions relating to the Tenancy or type of Tenant you must provide them to us prior to the start of the Tenancy to be included within the Tenancy Agreement. Conditions cannot be imposed upon a Tenant at a later date. You provide us with a full indemnity for any costs, losses, or other expenses we may bear due to you not having the proper consent from your mortgagee to enter into an Occupation Agreement.

**Sub-letting**

3. If you are a leaseholder, you will may require the consent from your Superior Landlord, freeholder or their managing agent before you can sub-let the Premises. In giving consent the Superior Landlord or their managing agent may require you to provide references for your Tenant and for you and your Tenant to enter into an agreement to observe the covenants contained in your head lease. You may be liable for a fee charged for granting the consent to sub-let and the licence granted prior to the start of the Tenancy and upon renewal. We will require a copy of any sections of the head lease that impose restrictions on the behaviour of the Occupier together with any schedules referred to therein so that we can attach a copy of this to the Occupancy Agreement. If the Occupier is not given a copy of the relevant sections of the head lease you cannot impose any obligations contained in it upon them. This could lead to a breach the terms of your lease. You provide us with a full indemnity for any costs, losses, or other expenses we may bear due to you not having the proper consent from your Superior Landlord to enter into an Occupation Agreement.

**Insurance**

4. It is essential that the Premises and the contents included in the Inventory and check-in report are adequately insured and that your insurers are aware that the Premises is let. Failure to do so may invalidate your insurance. You must inform your insurers whenever the Premises remain vacant for a period greater than specified in your insurance policy. You should also check that your insurance policies include third party liability to protect you if the Tenant or a visitor to the Premises is injured. You must give us copies of any section of your insurance policies that impose restrictions on the behaviour of any Occupier of the Premises to attach to the Occupancy Agreement at its commencement, including any conditions for vacant premises. If these are not given to the Occupier then they have no obligation to comply, which could be breach of your insurance contract rendering any claim void. We strongly recommend you arrange for an insurance policy that covers loss of rent and contents, and legal expenses.

**Taxation**

5. You will be liable for tax on income arising from letting the Premises and you must inform Her Majesty's Revenue and Customs ("HMRC") that you are letting the Premises. There are a number of allowances that you can claim against this income. You should seek advice on these allowances from your accountant or from the HMRC website which can be accessed on [www.hmrc.gov.uk](http://www.hmrc.gov.uk). You must also keep all your invoices for six years for tax purposes. You should be aware that we forward a form to the HMRC annually detailing all landlords whose Premises we have let and the rental income they have received, regardless of the country of residence of that landlord.
6. The HMRC has special rules regarding the collection of tax on rental income if you are a landlord who is resident overseas for a period of more than six months in any tax year, or you subsequently move abroad. If you fall into this category it is your responsibility to obtain a tax approval number from HMRC. The relevant form and guidance notes can be downloaded from [www.hmrc.gov.uk/cnr/nr\\_landlords.htm](http://www.hmrc.gov.uk/cnr/nr_landlords.htm). Until that approval number is given to us by the HMRC we are legally obliged to deduct tax from your rental income at the prevailing rate, which is

currently 20%. This money is forwarded to HMRC on a quarterly basis. For any period during which we deduct tax from your lettings income due to you not providing us with an Approval Number or you are not being accepted into the Non Resident Landlord Scheme we shall make an administration charge as shown in Schedule 1. If the Tenant pays you directly, you are non-resident in this country and no approval from HMRC has to pay the gross Rent has been received the tax must be deducted and sent to HMRC. No person or organisation is exempt from this scheme.

#### **Rent Arrears or Breach of Covenant**

7. It is your responsibility to take all necessary steps to ensure that actions are taken to protect your interests, including instructing solicitors and commencing legal proceedings to preserve your rights and recover arrears of rent and to defend all actions or other legal proceedings and arbitrations that may be brought against you in connection with the Premises. All costs and disbursements incurred including legal costs and disbursements will be payable by you.

#### **Reimbursement of the Agent**

8. You will keep us reimbursed and indemnified for and against any claim, damage, expense or liability whether criminal or civil suffered by us from and during the time that we are or were acting on your behalf unless it is due to our negligence or breach of contract. For the avoidance of any doubt we reserve the right to have work carried out on your behalf and to charge you for that work to ensure that you fulfil your contractual and statutory obligations as a Landlord. If any notice is served on the Agent under the Housing Health and Safety Rating Scheme of the Housing Act 2004 requiring the Agent to carry out any work, repairs or maintenance of the Premises the Landlord will reimburse the Agent promptly on demand for all costs expenses and fees incurred.

#### **Water Rates**

9. You should endeavour to obtain a forwarding address from the Tenant at the end of the Tenancy if we do not manage the Premises to give to the water company to comply with the Flood and Water Management Act 2010 which makes payment of the final water account the liability of the Landlord as from October 2011 if no forwarding address is provided. We cannot be held liable if the Tenant does not provide an address or gives an address that is not deemed acceptable by the water company.

#### **Sub-Contractors**

10. Any other party, including but not limited to, external inventory clerks, gas, electrical or water engineers, builders or surveyors, Domestic Energy Assessors, or solicitors who we instruct on your behalf. This means that you are the contacting party and that you have the primary liability for the payment of that sub-contractor's invoices, fees, charges or other expenses and that they, not we owe you a liability for the quality of their work.

#### **Housing Act 2004**

11. Due to this Act certain types of Premises may require a licence before they can be let. These properties are primarily Houses of Multiple Occupation ("HMOs") occupied by three or more people who are not related but, in certain areas, licences can be required for non-HMO property. It is your responsibility to determine whether you need a property licence and to obtain that licence. You agree to keep us fully indemnified against all losses, costs or damages we might incur, whether criminal or civil, due to your failure to obtain an adequate licence for the letting of your Premises. If we become aware that the Premises is let in a manner which requires a licence and you refuse to obtain one we reserve the right to terminate our instruction immediately and to inform any Occupiers of the Premises and the Local Housing Authority of the situation.

As part of the Housing Act 2004 private dwellings must comply with the Housing Health and Safety Rating System ("HHSRS") which is a means of measuring hazards and risk of injury at the Premises. The responsibility for ensuring that the Premises complies is entirely yours. If we accept an instruction to let the Premises and subsequently an order is served to comply with the HHSRS or if we incur any costs for compliance due to an order being served upon us you agree to reimburse us within fourteen days of written demand or by way of deduction from monies paid to us for any property owned by you where we collect or hold sums on your behalf.

#### **Indemnity**

12. If you ask us to do anything we consider a higher risk to us or to you or which is outside our normal procedure we may ask you for a written agreement to indemnify us against any loss, damage or other costs which we might incur as a result of following your instructions. If you refuse to provide this to us then we reserve the right to refuse your instructions and to terminate this Agreement.

## **Schedule 5: Deposit Handling**

### **Agent to Hold through Tenancy Deposit Scheme (TDS)**

1. We will collect the Deposit together with the initial rent payment from the Tenant at the commencement of the Tenancy and regardless of the service used by the Landlord hold the Deposit in a Stakeholder capacity. As Stakeholder we will be unable to release the Deposit or any part of it to you or the Tenant without the other party's written consent. The Deposit or any balance payable will be paid to the Tenant or Landlord as appropriate at the end of the Tenancy. The Deposit will be held in an interest bearing client account. Accrued interest will cover any bank and administration costs incurred by us.

After the Tenancy ends you are entitled, with the written consent of the Tenant to ask us to deduct from the Deposit money to compensate for damage or any breach of the Tenancy Agreement. You will need to specify the amounts to be deducted and the reasons for any deductions to be made. Provided both parties agree to the deductions we will send you the amount agreed between the parties for damage, cleaning, unpaid bills, or unpaid rent and pay the balance if any to the Tenant. If the amount of compensation you seek exceeds the amount held as the Deposit, you may require the Tenant to pay that additional sum within fourteen days of the Tenant receiving that demand in writing.

### **Tenancy Deposit Scheme**

2. To comply with Tenancy Deposit Protection legislation the Agent is a member of the Tenancy Deposit Scheme, which is administered by:

The Dispute Service Ltd  
PO Box 1255  
Hemel Hempstead  
Herts  
HP1 9GN

Phone 0845 226 7837  
Web [www.thedisputeservice.co.uk](http://www.thedisputeservice.co.uk)  
Email [deposits@tds.gb.com](mailto:deposits@tds.gb.com)  
Fax 01442 253193

If we are instructed by you to hold the Deposit for an Assured Shorthold Tenancy, we shall do so under the Terms of the Tenancy Deposit Scheme.

### **End of the Tenancy - Tenancy Deposit Scheme**

3. If there is no dispute we will keep any amounts agreed as deductions where expenditure has been incurred on behalf of the Landlord, or repay the whole or the balance of the Deposit according to the conditions of the Tenancy Agreement with the Landlord and the Tenant. Payment of the Deposit will be made within 10 working days of written consent from both parties.

If, after 10 working days\* following notification of a dispute to the Agent and reasonable attempts have been made in that time to resolve any differences of opinion, there remains an unresolved dispute between the Landlord and the Tenant over the allocation of the Deposit it will (subject to the clause below) be submitted to the ICE for adjudication. All parties agree to co-operate with any adjudication. The statutory rights of either you or the Tenant to take legal action against the other party remain unaffected.

It is not compulsory for the parties to refer the dispute to the ICE for adjudication. The parties may, if either party chooses to do so seek the decision of the Court. However, this process may take longer and may incur further costs. Judges may, because it is a condition of the Tenancy Agreement signed by both parties, refer the dispute back to the ICE for adjudication. If the parties do agree that the dispute should be resolved by the ICE, they must accept the decision of the ICE as final and binding.

If there is a dispute we must remit to The Dispute Service Ltd the full Deposit, less any amounts already agreed by the parties and paid over to them. This must be done within 10 working days of being told that a dispute has been registered whether or not you or we want to contest it. Failure to do so will not delay the adjudication but The Dispute Service Ltd will take appropriate action to recover the Deposit and discipline us. We must co-operate with the ICE in the adjudication of the dispute and follow any recommendations concerning the method of the resolution of the dispute.

Dealing with disputes from non-ASTs: The Independent Case Examiner (ICE) may agree to resolve any disputes over the allocation of these Deposits, by arrangement. If he does:

- a. The ICE will propose their most effective method of resolving the dispute.
- b. Landlord, Tenant and Agent must consent in writing to his proposal.
- c. Disputes will be subject to a fee of £500 plus VAT, or 10% of the Deposit plus VAT, whichever is the greater.
- d. The resolution process will not start until the parties' consent, the disputed amount and the fee have been submitted.

By signing this Agreement you agree to abide by the regulations of the TDS of which we are a member.

If we do not manage your Premises we will charge an administration fee as shown in Additional Services to cover costs for holding the Deposit and passing it to any relevant dispute service at the end of the Tenancy if you the Landlord and the Tenant do not agree deductions. The Deposit will be released when we receive written confirmation from both parties. Unless we manage the Premises we will not negotiate on your behalf unless requested by you in writing together with your cheque for our fees in the sum of £500 including VAT to resolve any dispute.

If we have to prepare documentation in the form of photocopies or other relevant publishing material we will charge a fee as shown in Additional Services. If we have to attend court on your behalf as a witness we will charge a fee as shown in Additional Services.

#### **Incorrect Information**

4. The Landlord warrants that all the information he has provided to the Agent is correct to the best of his knowledge and belief. If the Landlord provides incorrect information to the Agent which causes the Agent to suffer loss or causes legal proceedings to be taken the Landlord agrees to reimburse and compensate the Agent for all losses suffered.

*\* These time scales can be changed by agreement with the Tenant which means the deposit clause within the Tenancy Agreement would be altered in individual cases or by the contract used as standard by the Agent.*

#### **No Scheme applicable**

5. We will collect the Deposit together with the initial rent payment from the Tenant at the commencement of the Tenancy and regardless of the service used by the Landlord hold the Deposit in a Stakeholder capacity. As Stakeholder we will be unable to release the Deposit or any part of it to you or the Tenant without the other party's written consent. The Deposit or any balance payable will be paid to the Tenant or Landlord as appropriate at the end of the Tenancy. The Deposit will also be held in an interest bearing client account. Any accrued interest will be used to cover any bank and administration costs incurred by us.

After the Tenancy ends you are entitled with the written consent of the Tenant to ask us to deduct from the Deposit money to compensate for damage or any breach of the Tenancy Agreement. You will need to specify the amounts to be deducted and the reasons for any deductions to be made. Provided the two parties agree to the deductions we will send you the amount agreed between the parties for damage, cleaning, unpaid bills, other costs or unpaid rent and pay the balance if any to the Tenant.

If the amount of compensation you seek exceeds the amount held as the Deposit, you may require the Tenant to pay that additional sum within fourteen days of the Tenant receiving that demand in writing.

#### **Landlord Handling of the Deposit**

6. If the Landlord decides to hold the Deposit we will transfer it to you within fifteen days of receiving it in cleared funds. You must register it with another Tenancy Deposit Protection Scheme within a further fifteen days of the Tenancy starting or the Deposit being received if the Tenancy is an Assured Shorthold Tenancy. If you fail to do so the Tenant can take legal action against you in the County Court.

The court will make an order stating that you must pay the Deposit back to the Tenant or lodge it with the custodial scheme which is known as the Deposit Protection Scheme. In addition a further order will be made requiring you to pay compensation to the Tenant of an amount between one and three times the Deposit the sum being up to the discretion of the judge. You will be unable to serve or enforce a Section 21 Notice on your Tenant until compliance with the

above conditions and the court will not grant you a possession order. We accept no liability for any loss suffered if you fail to comply.

If you accept the Deposit for an Assured Shorthold Tenancy you must specify to us prior to the start of the Tenancy under which other Tenancy Deposit Protection Scheme the Deposit will be covered. If the Deposit is covered by mydeposits you must provide proof of membership, together with a copy of the insurance policy before the Deposit can be released.

## **Schedule 6: Safety Legislation**

### **The Furniture and Furnishings (Fire) (Safety) (Amendment) Regulations 1993**

1. It is a criminal offence to let Premises with upholstered furniture or soft furnishings containing foams that cannot be proven to comply with the above Regulations. By signing this Agreement you give us authority to remove any item that does not have a fire label attached to it. The Regulations require that specified items must be match resistant, cigarette resistant and carry a permanent label.

### **Electrical Equipment (Safety) Regulations 1994**

2. You are responsible for providing instruction books for all items of electrical equipment and for ensuring that all electrical appliances within the Premises comply with the above Regulations. You should also ensure that all electrical installations are safe and have them checked regularly. If we need to arrange for a safety check under these Regulations there will be an administration charge as shown in Schedule 1 in addition to the cost of the safety check itself.

### **Gas Safety (Installation and Use) Regulations 1998**

3. It is a criminal offence to let Premises with gas appliances, installations and pipe-work that have not been checked by a Gas Safe Registered Engineer. You must provide us with a copy of a Gas Safety Certificate (GSC) carried out no more than twelve months previously. If this GSC is not sent to us when you return this Agreement you give us authority to arrange for a gas safety check. The GSC must be renewed every twelve months. If we manage the Premises we will arrange for a new GSC automatically at your expense if you do not provide us with a new one at least 5 working days before the existing one expires. If we arrange for a GSC there will be an administration charge as shown in Schedule 1 in addition to the cost of the GSC. We must give your Tenant documentary proof of your compliance with these Regulations at the commencement of the Tenancy and within twenty-eight days of the GSC being renewed. If you use your own contractor we will need proof of their Gas Safe registration. No Tenancy can commence until we are in receipt of a valid GSC. If we do not manage the Premises it is the legal responsibility of the Landlord to arrange for the gas safety check and for a copy of the Gas Safety Certificate being given to the Tenant annually. We accept no liability if the Landlord fails to comply with the Regulations. Gas Safe now recommends that a carbon monoxide detector is installed in all properties.

### **Part "P" Building Regulations (Electrical Safety in Dwellings)**

4. From January 1 2005 the above Regulations came into force requiring qualified personnel to carry out certain electrical work at premises. To ensure compliance with the Regulations we will only use a competent person to carry out any electrical work at the Premises. If the Landlord wishes to use his own contractor we will need written proof that he is currently registered with an approved self-certification scheme before issuing instructions. In the absence of such proof we will instruct our own contractor if managing the Premises.

### **Smoke Alarms and Carbon Monoxide Alarms**

5. Under the Building Regulations 1991 all new build premises from June 1992 must have mains fitted smoke alarms with battery back up. Under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 all premises require Landlords to install smoke alarm(s) and carbon monoxide detector(s). The Landlord must ensure the smoke alarm(s) and carbon monoxide detector(s) are in working order at the commencement of each new tenancy and throughout the tenancy if the property is not managed by the Agent. If you would like us to arrange the fitting of alarms and detectors at your expense you must advise us in writing.

### **Energy Performance Certificate ("EPC")**

6. All properties on the market for letting must have an EPC. A copy must be given to the Tenant with written details or prior to the first viewing. The Landlord must provide us with an EPC when first giving instructions. The Premises cannot be marketed without an EPC as the first page must be provided to the applicant with written instructions. A fixed penalty for every property marketed without an EPC may be imposed by the Trading Standards Officer. We can arrange an EPC subject to the charge shown in Additional Services as well as the cost of the EPC.

### **Legionnaire's Disease**

7. In order to comply with the Health and Safety Executive's Code of Practice landlords are strongly advised to carry out a risk assessment at their premises prior to letting especially if there are open water tanks, cooling systems or a swimming pool. We request that a copy of any written risk assessment is provided upon instruction. By signing these Terms of Business the Landlord acknowledges his responsibility for the safety of the tenant at the Premises and confirms he has considered all risks regarding Legionnaires Disease.

### **Definitions:**

In this Agreement the following Definitions and Interpretations apply:

- a. Use of the singular includes the plural and use of the masculine includes the feminine and vice versa.
- b. "Agent" "we" or "us" means the Agent trading from the Registered Office Address as described in the Summary Schedule.
- c. "Agreement" means this Terms of Business signed between the Agent and the Landlord.
- d. "Commission" means the Commission due to be paid to us by you as set out in Schedule 1 of this Agreement.
- e. "Deposit" means the money held by the Agent in a Stakeholder capacity during the Tenancy in case the Tenant fails to comply with the Terms of the Tenancy Agreement.
- f. "ICE" means the Independent Case Examiner of The Dispute Service Limited.
- g. "Inventory" or "Inventory and Schedule of Condition" means the document drawn up prior to the commencement of the Tenancy by the Landlord or the Agent, which includes the fixtures and fittings in the Premises.
- h. "Jointly and severally liable" means that each person will be responsible for complying with the obligations of and paying all charges and costs under this Agreement, both individually and together.
- i. "Landlord" "you" or "your" means the Landlord as described in the Summary Schedule above and any other person owning a reversionary interest in the Premises, whether freehold or leasehold, entitling them to possession of it upon the Termination or expiry of the Tenancy and anyone who later owns the Premises.
- j. "Occupancy Agreement" means any Agreement between you and any Occupier which permits them to occupy the Premises whether or not it constitutes a Tenancy Agreement.
- k. "Occupier" means a Tenant or any other person or organisation entitled to occupy the Premises under a Tenancy, Licence or any other form of Agreement or contract.
- l. "Premises" means any part or parts of the building boundaries fences garden and outbuildings belonging to the Landlord at the Premises Address set out in the Summary Schedule above. When the Premises are part of a larger building the Premises include the use of common access ways and facilities.
- m. "Stakeholder" means that deductions can only be made by the Agent from the Deposit at the end of the Tenancy with the written consent of both parties.
- n. "Superior Landlord" means the person company or organisation to whom ownership of the Premises reverts at the end of the lease.
- o. "TDS" means The Dispute Service whose details are shown in the Tenancy Agreement.
- p. "Tenancy Agreement" means the contract drawn up between the Landlord and the Tenant specifying the obligations of the two parties.
- q. "Tenant" means anyone entitled to possession of the Premises under a Tenancy Agreement.
- r. "Term" or "Tenancy" means the fixed Term of the Tenancy Agreement and any extension or continuation of the Tenancy whether fixed Term or periodic arising after the expiry of the original Term.

**Signatures**

I/We accept the above Terms and Conditions including Schedules 1 to 7 inclusive and I/we instruct **Henry & James** to act on my/our behalf.

**For the Agent**

Name: **HENRY & JAMES (Estate Agents) Ltd**

Signature:

Position:

Date:

**For the individual Landlord  
or group of individual Landlords**

Landlord 1 Signature:

Date:

Landlord 2 Signature:

Date:

**For the Landlord's Authorised Signatory  
where the Property is owned by a company**

Company Name:

LTD / PLC

Company Reg. Number:

Authorised Signatory:

Signature:

Position:

Date:

Witnessed Name:

Signature:

Occupation:

Date:

# Henry & James

Est. 1950

**Cancellation Notice**

If you wish to cancel your Agreement, you must do so in writing and deliver the cancellation notice to us by post or email as per Section 14 of the Summary Schedule of this Agreement. You may use this form for this purpose but you do not have to.

Complete and return this form ONLY IF YOU WISH TO CANCEL THE AGREEMENT:

I/We (delete as appropriate) hereby give notice that I/we (delete as appropriate) wish to cancel my/our Agreement.

**Signed**.....

**Name**.....

**Address**.....

**Date**.....