

KEYPER TERMS AND CONDITIONS

1 DEFINITIONS

1.1 In these Terms:

Applicable Requirements means all statutes, regulations, statutory instruments, delegated or subordinated legislation, codes of practice and standards (both general and industry specific) that are applicable to the Property.

Business Day means a day that is not a Saturday, Sunday or a statutory holiday in New Zealand or any province in New Zealand as applicable.

Fees has the meaning given to it in clause 11.1.

Force Majeure Event means an event that is beyond the reasonable control of a party excluding:

- a. an event to the extent that it could have been avoided by a party taking reasonable steps or reasonable care; or
- b. a lack of funds for any reason.

Inspections has the meaning given to it in clause 8.1.

Keyper means Warm Fuzzies Limited (Company No. 6343350).

Owner means any owner of the Property or its authorised representatives (but excluding Keyper).

Personnel includes directors, employees, contractors and agents (but a reference to the Owner's personnel do not include Keyper).

Property means each property or properties that the Owner owns, occupies or manages (as applicable) that is managed by Keyper under these Terms.

Property Information Summary means the summary information relating to each Property provided by the Owner to Keyper in the form required by Keyper from time to time.

Services has the meaning given to it in clause 4.1.

Terms means these Terms and Conditions together with any special terms agreed in writing between Keyper and the Owner.

2 APPOINTMENT OF PROPERTY MANAGER

2.1 The Owner appoints Keyper to act as the Owner's agent to provide the Services on the terms and conditions set out in these Terms.

3 PROPERTY DETAILS

3.1 The address and relevant details of each Property are set out in the Property Information Summary provided by the Owner.

3.2 If the Property is part of a Unit Title property the Owner shall provide Keyper with the latest version of the Body Corporate rules and any amendments or variations that are made from time to time and the Body Corporate contact details.

4 SERVICES

- 4.1 Keyper will provide the asset management services notified to the Owner in writing prior to the Owner's acceptance of these Terms (the **Services**).
- 4.2 For the Keyper Management LITE package, the Services will consist of 4 Inspections to assess the condition of the Property in every 12 month period and the organisation of any repairs and maintenance to the Property on behalf of the Owner.
- 4.3 Except for the Services to be provided by Keyper, the Owner acknowledges that the Owner is responsible for all other aspects of management of the Property and any tenancies of the Property.

5 ACCEPTANCE

- 5.1 These Terms will apply to all Services that Keyper supplies to the Owner.
- 5.2 Without limiting any other methods of acceptance, the Owner's request for Keyper to provide the Owner with the Services will constitute the Owner's acceptance of these Terms.
- 5.3 Where there is more than one Owner, these Terms will bind those persons jointly and severally. For the avoidance of doubt, reference to Owner in these terms will include any agent acting on behalf of the Owner (but excluding Keyper) and these terms will bind the agent and the Owner jointly and severally.
- 5.4 Keyper may vary these Terms from time to time by giving no less than 20 Business Days written notice to the Owner. Unless the Owner notifies Keyper in writing within the notice period referred to above that the Owner does not accept the variations, then any varied Terms will apply to the provision of all Services to the Owner after such notice period.

6 TERM

- 6.1 These Terms will start on the date agreed between the parties and continue for a period of 12 months unless terminated earlier in accordance with these Terms.
- 6.2 After that 12 month period these Terms will automatically renew for an additional 12 months unless the Owner notifies Keyper in writing before the then current 12 month period ends.
- 6.3 If the Owner has elected to pay the Fees on a monthly basis then the Owner can terminate the arrangements under these Terms at any time by giving Keyper no less than 20 Business Days notice in writing.
- 6.4 If the Owner has elected to pay the Fees upfront for a 12 month period then the Owner has committed to that 12 month period and any notice of termination by the Owner will only take effect at the expiry of the then current 12 month period.

7 ACCESS TO THE PROPERTY

- 7.1 The Owner represents that it has the legal right to provide Keyper and its Personnel with access to the Property to carry out the Services.
- 7.2 The Owner Customer will co-operate with Keyper in arranging access to the Property (including providing keys (e.g. by access to a lock box) on the Property).

8 INSPECTIONS

- 8.1 Keyper will carry out 4 inspections to assess the condition of the Property in every 12 month period as follows:
- a. the first inspection shall be carried out within 5 weeks of the start date; and
 - b. the remaining 3 inspections will be carried out approximately every 3 months after that,
- (the **Inspections**).
- 8.2 The Owner authorises Keyper to act as the Owner's agent to give any tenants in the Property notice of the proposed time that an Inspection will be carried out and arrange access.
- 8.3 After Keyper completes an Inspection it will provide the Owner with a written inspection report indicating whether the Property is, or is at risk of being, non-compliant with certain legislative standards applicable as at the date of the inspection (including under the Residential Tenancies Act 1986, Residential Tenancies (Smoke Alarms and Insulation) Regulations 2016) and/or Healthy Homes Guarantee Act 2017 (including the Healthy Homes Standards).
- 8.4 Any such report is not a compliance inspection or certification for past or present standards, codes or regulations. Keyper makes no representation or warranty and gives no guarantees that the Property is compliant with any Applicable Requirements. The Owner agrees to rely on their own judgement when considering the inspection report and whether to proceed with any repairs or maintenance.
- 8.5 Keyper cannot assess with any degree of accuracy or include within its inspection report any areas that are concealed (either fully or partly), contained or generally inaccessible or cannot be sighted (whether due to ceiling linings, flooring, furniture, stored items, vehicles, or any other object which obscures clear viewing of the subject matter).
- 8.6 Keyper will not:
- a. dismantle any components, move any unreasonable items of furniture, stored possessions or vehicles while carrying out an inspection; or
 - b. carry out any destructive or invasive inspections while carrying out an inspection,
- unless otherwise requested by the Owner and agreed to in writing by Keyper. If Keyper does agree it is on the basis that the Owner will be responsible for any damage or loss or liability that results from such actions.
- 8.7 Keyper may in its sole discretion immediately delay or cancel any Inspection by giving written notice to the Owner. Keyper will not be liable for any loss or damage arising from such delay or cancellation.

9 REPAIRS AND MAINTENANCE

- 9.1 The Owner authorises Keyper to act as the Owner's agent to arrange repairs and maintenance of any improvements on the Property (including any repairs or maintenance that may be identified in the course of carrying out an Inspection). Any such repairs and maintenance will require the prior approval of the Owner except:
- a. if the cost of the repairs and maintenance do not exceed \$500 plus GST (in aggregate during any 12 month period) and the repairs and maintenance are required to ensure the Property complies with Applicable Requirements for residential tenancies; or
 - b. if in the opinion of Keyper (acting reasonably) emergency repairs are necessary for the protection of the Property or supply of essential services to tenants and the

Owner is unavailable to promptly approve such emergency repairs. Any emergency repairs under this clause are capped to \$500 plus GST.

- 9.2 The following terms will apply to any repairs and maintenance of the Property that are organised by Keyper under clause 8.1 of these Terms:
- a. Keyper will source quotes from contractors for approval by the Owner (unless an exception applies), facilitate the creation and administration of a contract between the Owner and the contractor and act as a liaison contact point between the Owner and the contractor;
 - b. the Owner will rely on their own judgement when considering to engage any particular contractor and not in reliance on any recommendation or representation by Keyper;
 - c. the legal contract for the repairs and maintenance will be between the Owner and the contractor. For the avoidance of doubt, Keyper will not be a party to any such contract and neither Keyper nor its Personnel will have any responsibility or liability to the Owner or the contractor in connection with any such contract;
 - d. the Owner authorises Keyper to act as the Owner's agent to give any tenants in the Property notice of the proposed time that the repairs or maintenance will be completed and arrange access for the contractors;
 - e. the Owner acknowledges that Keyper will be eligible to receive a commission payment from any contractor for any referrals of work that result in a contract between the Owner and contractor.

10 PERMISSION TO CONTACT THIRD PARTIES

- 10.1 The Owner acknowledges that on occasion it may be necessary for Keyper to request information from or provide information to third parties in connection with the Property (e.g. utility providers, the Owner's insurance company, Body Corporate, council or other territorial authority in respect of the Property). The Owner authorises Keyper to communicate with such third parties on the Owners behalf.

11 FEES AND PAYMENT

- 11.1 The fees for the Services and method and timing of payment will be as notified to the Owner prior to acceptance of these Terms (**Fees**).
- 11.2 If the Owner has elected to pay the Fees on a monthly basis then all Fees are payable monthly in advance with the first payment due on acceptance of these Terms and all subsequent monthly payments due on the same monthly reoccurring date after that.
- 11.3 Keyper will provide a statement to the Owner from time to time setting out any costs or expenses incurred on the Owner's behalf in accordance with these Terms and the Owner agrees to pay any such expenses to Keyper on request.
- 11.4 Keyper may charge default interest of up to 10% per annum compounding monthly on all amounts that are not paid on time. If any amount that is owed to by the Owner continues to remain unpaid, Keyper may also take action to recover that amount and charge the costs incurred in doing so.

12 INSURANCE

- 12.1 The Owner will insure the Property and its contents for either replacement value or an appropriate sum insured amount against all normal risks (including fire cover). In addition the Owner will carry landlord protection insurance in respect of loss of rental, damage to the

Property, legal liability and unlawful substance cover. The Owner will provide Keyper with evidence of that cover on request.

13 WARRANTIES

13.1 The Owner warrants that:

- a. the Property and the fittings and fixtures at the Property are in a safe and sanitary condition and are not in a dangerous condition and that if any of the fixtures and fittings become unsafe, unsanitary or dangerous the Owner will notify Keyper as soon as the Owner becomes aware of that fact;
- b. if any damage occurs to any person because of the dangerous condition of the Property, the Owner indemnifies Keyper and any sub-contractors or contractors against all legal claims, actions, costs, fines and proceedings which may arise because of such dangerous or unsafe or unsanitary condition;
- c. they are the Owner of the Property and/or are duly authorised to accept these Terms and appoint Keyper;
- d. unless otherwise stated in the Property Information Summary, the Owner warrants that the Property is to the best of the Owner's knowledge compliant with all Applicable Requirements and has all relevant building and resource consents and complies with all council requirements as to building, including town planning requirements, health and safety requirements in respect of the premises and fencing in respect of any swimming pool requirements; and
- e. the Owner warrants that any information supplied to Keyper is true and correct to the best of the Owner's knowledge.

14 LIMITATION OF LIABILITY

- 14.1 All warranties and representations (including those expressed or implied by law) in respect of Keyper's Services are excluded to the extent permitted by law. The provisions in the Consumer Guarantees Act 1993 do not apply to the extent the Owner is acquiring services from Keyper for the purposes of a business in terms of section 2 and 43 of that Act.
- 14.2 Keyper's liability to the Owner (whether in relation to contract, tort (including negligence) or otherwise) in respect of any Services provided to the Owner is limited to the total Fees paid by the Owner in the six months prior to the event giving rise to the liability.
- 14.3 Keyper is not liable to the Owner for any special, indirect or consequential damage or loss of any kind under any cause of action arising under or in connection with Keyper's Services to the Owner.
- 14.4 The Owner indemnifies Keyper and its Personnel against any costs, loss or liability suffered or incurred at any time by Keyper or its Personnel arising out of the exercise of any of the powers, duties or authorities of Keyper under these Terms or caused by a breach of the Owner's obligations under these Terms.

15 TERMINATION

- 15.1 Keyper may terminate the arrangements under these Terms at any time by giving the Owner no less than 20 Business Day's notice in writing.
- 15.2 If the Owner has elected to pay the Fees on a monthly basis then the Owner can terminate the arrangements under these Terms in accordance with clause 6.3.

- 15.3 If the Owner has elected to pay the Fees upfront for a 12 month period then the Owner can terminate the arrangements under these Terms in accordance with clause 6.4.
- 15.4 Either party may, by notice to the other party, immediately terminate the arrangements under these Terms if the other party:
- a. breaches any material provision of these Terms and the breach is not:
 - i. remedied within 10 Business Days of the receipt of a notice from the first party requiring it to remedy the breach; or
 - ii. capable of being remedied;
 - b. becomes insolvent, liquidated or bankrupt, has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, becomes subject to any form of insolvency action or external administration, or ceases to continue business for any reason; or
 - c. is unable to perform a material obligation under these Terms for 20 Business Days or more due to Force Majeure.
- 15.5 Termination or expiry of these Terms does not affect either party's rights and obligations that accrued before that termination or expiry.
- 15.6 On termination or expiry of these Terms, the Owner must pay all Fees for Services provided prior to that termination or expiry.

16 HEALTH AND SAFETY

- 16.1 Keyper and the Owner are each a (Person in Charge of a Business or Undertaking (PCBU) as defined in section 17 of the Health and Safety at Work Act 2015 and must comply at all times with that Act and its regulations (**HSWA**). Where each party has a duty in relation to the same matter imposed by or under the HSWA, then each party must, so far as is reasonably practicable, consult, cooperate and coordinate activities with each other.

17 INTELLECTUAL PROPERTY

- 17.1 Keyper retains all intellectual property/copyright in all documents, drawings or deliverables prepared by Keyper in the course of providing the Services to the Owner. The Owner is entitled to use them or copy them only for the purpose for which they are intended and only if they have paid the Fees.

18 PRIVACY ACT 1993

- 18.1 Any personal information received by Keyper will be used, processed, transmitted, and disclosed to the extent necessary to perform the Services and in accordance with Keyper's privacy policy and the Privacy Act 1993. The Owner agrees that Keyper may:
- a. collect, retain and use any personal information about the Owner and the Property for the purpose of providing the Services to the Owner;
 - b. collect, retain and use any information about the Property and any personal information about the Owner but only on an anonymous and aggregated basis and the Owner grants Keyper an unrestricted, non-exclusive, perpetual, transferable and royalty free licence to copy, use and disclose that information to any third parties for Keyper's business purposes; and
 - c. disclose any necessary personal information about the Owner to any third parties or credit agencies for the purpose of carrying out credit enquiries about the Owner to

assess the Owner's credit worthiness and to provide credit reporting services or to exercise any power of enforcement under these Terms.

- 18.2 Where the Owner is a natural person the authorities under clause 18.1 are authorities or consents for the purposes of the Privacy Act 1993.

19 DISPUTE RESOLUTION

- 19.1 If a party considers that there is a dispute in respect of any matters arising out of or in connection with these Terms, then unless other provisions of these Terms govern the manner in which that dispute is to be resolved, that party shall immediately give notice to the other party setting out details of the dispute. The parties will endeavour in good faith to try to resolve the dispute between themselves within 10 Business Days of receipt of the notice. Neither party will commence legal proceedings against the other before following the procedure above except that this clause does not affect any party's right to seek urgent interlocutory and/or injunctive relief.

20 GENERAL

- 20.1 To waive a right under these Terms that waiver must be in writing and signed by the waiving party.
- 20.2 Keyper may assign novate, subcontract or transfer its rights and obligations under these Terms at any time without the consent of the Customer.
- 20.3 If there is any conflict between these Terms and any other agreement between the parties then the provisions of these Terms will prevail unless Keyper agrees otherwise in writing.
- 20.4 Any benefits expressly conferred on any third parties named or referred to in these Terms (including Keyper's Personnel) are intended to be enforceable by those third parties for the purposes of section 12 of the Contract and Commercial Law Act 2017.
- 20.5 Any illegality, unenforceability or invalidity of a provision of these Terms does not affect the legality, enforceability or validity of the remaining provisions of these Terms.
- 20.6 These Terms and any agreement to which they apply are be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.