

NEWQUAY HOLIDAY RENTALS

TERMS AND CONDITIONS OF BUSINESS

BACKGROUND

- (A) The Owner is the freehold/leasehold owner of the Property (as defined below) and wishes to let the Property for holiday purposes.
- (B) NHR has agreed to act as the Owner's agent on the terms of this agreement.

AGREED TERMS

1 DEFINITIONS AND INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Booking Conditions NHR's booking conditions as set out in Schedule 2 and as varied from time to time by NHR;

Changeovers where one Customer leaves the Property and another Customer enters the Property;

Commission an amount equivalent to 15% of the Letting Fee;

Customer the people renting the Property from the Owner through NHR;

Insolvent Event means in relation to either Party: (a) an administrator is appointed over any of the property or assets of that party; or (b) that party makes any voluntary arrangement with his or her creditors or becomes subject to a bankruptcy order; or (c) that party has no reasonable prospect of paying or being able to pay his or her debts the amount or aggregate amount of which exceeds the bankruptcy level (within the meaning of the Insolvency Act 1986 section 267) or enters into any compromise for the benefit of his or her creditors generally; or (d) that party

ceases or threatens to cease to carry on business; and

means in relation to the Owner: that the mortgagee of the Property has taken steps to enforce its security.

Letting Fee the total fee payable by the Customer for use of the Property;

Maintenance arranging or carrying out any cleaning, repairing and gardening in relation to the Property; and

Property the property (or properties) as described in Schedule 1.

1.2 References to clauses and schedules are to the clauses of and schedules to this agreement.

1.3 Headings are for convenience only and shall be ignored in interpreting this agreement.

1.4 Words importing one gender shall be construed as importing any other gender.

1.5 Words importing the singular shall be construed as importing the plural and vice versa.

1.6 Where any party comprises more than one person the obligations and liabilities of that party under this agreement shall be joint and several obligations and liabilities of those persons.

2 APPOINTMENT

2.1 The Owner hereby appoints NHR as its agent to promote and let the Property for holiday lettings and NHR agrees to act as its agent on the terms and subject to the conditions of this agreement.

2.2 The Owner hereby confirms that NHR is authorised to:

- (a) promote and market the Property for holiday lettings;
- (b) take bookings from Customers; and

- (c) create legally binding relations between the Owner and the Customer for the purposes of letting the Property for holidays.

2.3 The Owner warrants and represents to NHR that:

- (a) the Owner has the requisite authority to enter into this agreement;
- (b) there are no restrictions on letting the Property for holiday purposes; and
- (c) the consent of any third party is not required.

2.4 The Owner hereby authorises NHR or its approved agent to enter on to the Property at all reasonable times for the purposes of fulfilling its obligations under this agreement.

3 DURATION

This agreement shall commence with effect from the date of this agreement and shall continue in force until terminated in accordance with clause 11.

4 NHR'S OBLIGATIONS

4.1 NHR is the Owner's agent and will perform the following duties only if requested by the Owner and with our prior agreement:

- (a) advertise the Property for holiday letting in any way it deems appropriate (at NHR's sole discretion);
- (b) arrange bookings with Customers (including taking payments);
- (c) organise the Changeovers; and
- (d) carry out Maintenance.

4.2 NHR shall not be required to undertake any other duties whatsoever.

5 LETTING AVAILABILITY

Unless otherwise agreed, the Owner shall ensure that the Property is available for letting by NHR for the entire duration of this agreement.

6 THE OWNER'S OBLIGATIONS

6.1 The Owner shall be solely responsible for the Property.

- 6.2 The Owner must ensure that:
- (a) the Property is in a good and habitable condition at all times;
 - (b) the cleaning of the Property is organised and is completed between the hours of 10:00am and 3:00pm on each Changeover day;
 - (c) all of the necessary tests of the services at the Property have been carried out and are up to date and that:
 - (i) the Property complies with all applicable statutory regulatory requirements in this respect; and
 - (ii) the Owner has all relevant certificates where applicable.
 - (d) someone is available 24 hours a day while the Property is being let. That person must be aged 18 years or over and have keys to all doors and windows associated with the Property and must use their best endeavours to reach the Property as soon as is reasonably practicable when requested;
- 6.3 The Owner will provide, where applicable, emergency numbers, security alarm arrangements, notification to third parties and instructions in relation to particular equipment.
- 6.4 The Owner undertakes and agrees with NHR during the term of this agreement to:
- (a) Deal with all complaints or comments made by Customers;
 - (b) act at all times in his relations with NHR in all good faith;
 - (c) indemnify and keep indemnified NHR against all or any liabilities which NHR may incur as a result of acting with reasonable care and skill within the scope of its authority under this agreement as agent for the Owner;
 - (d) supply to NHR (at the Owner's expense) such documentation or information as NHR may from time to time reasonably require for the purposes of promoting and letting the Property and to enable it properly and efficiently to discharge its duties under this agreement;
 - (e) insure the Property in accordance with clause 10. Failure to do so will be regarded as a material breach of this agreement; and
 - (f) to meet all reasonable requests of NHR to meet the obligations set out in the Booking Conditions.

7 NHR'S OBLIGATIONS

NHR undertakes and agrees with the Owner at all times during the term of this agreement:

- (a) to act towards the Owner conscientiously and in good faith and not to allow its interests to conflict with the duties that it owes to the Owner under this agreement and the general law;
- (b) except as authorised by the Owner, not to act in a way which will incur any liabilities on behalf of the Owner nor to pledge the credit of the Owner;
- (c) to promote and let the Property with all due care and diligence and, without prior reference to the Owner, to negotiate and conclude contracts for the letting of the Property on behalf of the Owner;
- (d) to inform the Owner promptly of any complaint or after-sales enquiry concerning the Property received by NHR.

8 LETTING FEE

8.1 NHR shall be entitled to receive Commission on all lettings of the Property.

8.2 All fees due to NHR shall be deducted from Letting Fees prior to remitting the balance to the Owner.

8.3 NHR shall:

- (a) be entitled to deduct from any payments due to the Owner all or any additional sums due or payable to NHR pursuant to the provisions of this Agreement; and
- (b) shall not be obliged to pay the balance of the Letting Fee to the Owner until NHR is in receipt of cleared funds.

9 COMPLIANCE WITH LAWS AND REGULATIONS

The Owner warrants and represents to NHR that:

- (a) the Property does or will (prior to any holiday letting) comply with all current legislation and applicable regulations concerning construction, health and safety, and disability discrimination, being those in force at the date of this agreement and during the continuance of this agreement; and
- (b) the Property will at all times during the continuance of this agreement be lawfully let for holiday purposes.

10 INSURANCE

- 10.1 The Owner shall at all times maintain appropriate insurance cover (that must be adequate for the Property) to include occupiers' liability insurance for the duration of this agreement with a reputable insurer.
- 10.2 The Owner shall indemnify, and keep NHR indemnified, against any liability incurred by NHR in respect of damage to property, death or personal injury arising from any fault or defect in the Property and any reasonable costs, claims, demands and expenses arising out of or in connection with that liability, except to the extent that the liability arises as a result of the action or omission of NHR.

11 TERMINATION

Either party shall be entitled to terminate this Agreement with immediate effect:

- 11.1 on the provision of one calendar month's notice to the other;
- 11.2 the other party commits any serious breach of any of the terms of this agreement and that breach (if capable of remedy) is not remedied within fifteen (15) working days of notice being given by the innocent party requiring it to be remedied; or
- 11.3 either party suffers an Insolvent Event

12 EFFECTS OF TERMINATION

- 12.1 Termination of this agreement, however caused, shall be without prejudice to any rights or liabilities accrued at the date of termination.
- 12.2 On termination of this agreement for any reason
- (a) NHR shall cease to promote, market, advertise or let the Property;
 - (b) clauses 10.2, 13.2 and this clause 12, which shall remain in full force and effect; and
 - (c) subject to the provisions of this clause 12.2, the obligations of the parties to one another shall cease.

13 LIABILITY

- 13.1 Subject to condition 13.2, NHR shall not accept liability for any act, neglect or default on NHR's part or the part of the Owner or any other person not within their employ or otherwise under their control, nor for any accident, damage, loss, damage, costs, expenses, injury, expense or any other inconvenience or claim for compensation whatsoever, whether to person or property and whether caused by NHR, its employees or agents, or otherwise, which the Owner or any other person may suffer or incur arising out of, or in any way connected with the letting. In addition, NHR accepts no liability for loss of or damage to possessions in the Property or land, nor for credit, debit card, cheque or other payment fraud committed by a Customer.
- 13.2 Nothing in these conditions excludes or limits the liability of NHR:
- (a) for death or personal injury caused by NHR's negligence; or
 - (b) under section 2(3), Consumer Protection Act 1987; or
 - (c) for any matter which it would be illegal for NHR to exclude or attempt to exclude their liability; or
 - (d) for fraud or fraudulent misrepresentation.
- 13.3 In all cases, except for personal injury or death, our liability to you for the total of all claims arising out of the letting is limited to the cost of the booking fees less any insurance or cancellation charges.

14 FORCE MAJEURE

- 14.1 The obligations of each party under this agreement shall be suspended during the period and to the extent that that party is prevented or hindered from complying with them by any cause beyond its reasonable control, including (insofar as beyond such control but without prejudice to the generality of the foregoing expression) strikes, lock-outs, labour disputes, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, difficulty or increased expense in obtaining workmen, materials, goods or raw materials in connection with the performance of this agreement.
- 14.2 In the event of either party being so hindered or prevented, the party concerned shall give notice of suspension to the other party as soon as reasonably possible, stating the date and extent of the suspension and its cause, and the omission to give such notice shall forfeit the rights of that party to claim suspension. Any party whose obligations have been suspended as aforesaid shall resume the performance of those

obligations as soon as reasonably possible after the removal of the cause and shall so notify the other party. In the event that the cause continues for more than six months, either party may terminate this agreement by giving the other party 30 days' notice.

15 GENERAL

15.1 Both parties agree to comply with the Data Protection Act 1998 with respect to customers.

15.2 This agreement constitutes the entire understanding between the parties with respect to the subject matter of this agreement and supersedes all prior agreements, negotiations and discussions between the parties relating to it.

15.3 Save as expressly provided in this agreement, no amendment or variation of this agreement shall be effective unless in writing and signed by a duly authorised representative of each of the parties to it.

15.4 The parties declare that they each have the right, power and authority and have taken all action necessary to execute and deliver, and to exercise their rights and perform their obligations under this agreement.

15.5 The failure of a party to exercise or enforce any right under this agreement shall not be deemed to be a waiver of that right, nor operate to bar the exercise or enforcement of it at any time or times thereafter.

15.6 If any part of this agreement becomes invalid, illegal or unenforceable, the parties shall in such an event negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for the invalid, illegal or unenforceable provision which as nearly as possible gives effect to their intentions as expressed in this agreement. Failure to agree on such a provision within six months of commencement of those negotiations shall result in automatic termination of this agreement. The obligations of the parties under any invalid, illegal or unenforceable provision of the agreement shall be suspended during such a negotiation.

15.7 Rights of Third Parties

(a) No term of this agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party, but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.

(b) Notwithstanding that any term of this agreement may be or become enforceable by a person who is not a party to it, the terms of this agreement or any of them may be varied, amended or modified or this agreement may be suspended, cancelled or terminated by agreement in writing between the parties, or this agreement may be rescinded (in each case) without the consent of any such third party.

15.8 Any notice required to be given pursuant to this agreement shall be in writing and shall be given by delivering the notice by hand at, or by sending the same by prepaid first class post (airmail if to an address outside the country of posting) to the address of the relevant party set out in this agreement, or such other address as either party notifies to the other from time to time. Any notice given according to the above procedure shall be deemed to have been given at the time of delivery (if delivered by hand) and when received (if sent by post).

15.9 This agreement shall be governed by and construed in accordance with English law and each party hereby irrevocably submits to the jurisdiction of the English Courts.

This agreement has been entered into on the date stated at the beginning of it.

Schedule 1 The Property

Schedule 2 Booking Conditions