



LITTLE PROPERTY MAINTENANCE SERVICE TERMS & CONDITIONS

www.littlerealestate.com.au/maintenance

1 Definitions

In this document:

Act means the *Corporations Act 2001* (Cth);

Affiliates means, in respect of a party, that party's Personnel and Related Bodies Corporate;

Agent means Little Real Estate (VIC & NSW) Pty Ltd ACN 100 949 166;

Agreement means these Terms and any agreement for the provision of Services;

Claim includes any claim, notice, demand, debt, action, cost, loss, expense, liability, litigation (including legal costs), investigation, judgment or damages of any kind;

Confidential Information means the Agreement and any other information which a party gives to the other party under or in connection with the Agreement or the Managing Authority that is non-public, confidential or proprietary in nature;

Force Majeure Event means any act, event, omission or circumstance which, in LPM's opinion:

- (a) is not within the reasonable control of LPM; and
- (b) alone or when taken together with any other Force Majeure Event, prevents LPM from performing any obligations owed to the Owner including but not limited to the provision of the Services to the Owner,

including but not limited to act of God, lightning, storm, fire, flood, earthquake, explosion, strike, lockout or other labour difficulty, compliance with any law or governmental order, rule, regulation or direction, embargo, inability to obtain any necessary materials, equipment or facilities, power shortages or lack of transportation;

GST has the meaning given to that term in s195-1 of the GST Act;

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Insolvency Event means, for a person, bankruptcy, being in liquidation or provisional liquidation or administration, having a controller (defined in the Act) or similar appointed to it or its property, being taken under s459F(1) of the Act to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent, dying, ceasing to be of full legal capacity or becoming incapable of managing its affairs for any reason, taking any step that could result in it becoming insolvent under administration (defined in the Act), entering a compromise or arrangement with or

assignment for the benefit of its members or its creditors or any analogous event;

Intellectual Property Rights means all intellectual property rights (including without limitation patents, copyright, rights in circuit layouts, registered designs, trade marks, trade secrets and the right to have Confidential Information kept confidential) and any application or right to apply for registration of any of those rights;

LPM means Maintenance Matcher Pty Ltd ACN 115 089 819 trading as Little Property Maintenance;

Managing Authority means the exclusive leasing and managing authority between the Agent and the Owner pursuant to which the Owner has appointed the Agent to lease and manage the Owner's property or properties under an exclusive authority;

Owner means the owner set out in the Managing Authority;

Personnel means in respect of a party, that party's officers, employees, agents, advisers, contractors and subcontractors (including their respective personnel).

Related Body Corporate has the same meaning as under the Act;

Service Fees means the fees for the Services;

Services has the meaning given to that term in clause 2.1; and

Terms means these terms and conditions.

2 Application

2.1 Unless otherwise agreed in writing by LPM and the Owner and subject to the requirements of relevant legislation, the Agreement applies to all services provided by LPM to the Owner (**Services**). To the extent of any inconsistency between the documents constituting the Agreement, unless expressly set out to the contrary these Terms will prevail.

2.2 The Agreement constitutes the entire understanding between the parties as to the subject matter set out in the Agreement and supersedes any prior agreement or understanding concerning that subject matter. All other terms and conditions are excluded to the fullest extent permitted by law including any terms and conditions which the Owner may from time to time seek to impose.

3 Performance of the Services

LPM must provide the Services:

- (a) in a timely, proper and professional manner, with due care and skill; and
- (b) in compliance with all applicable laws and standards.

4 Access

The Owner must procure that LPM and its Personnel are given access to the property or properties the subject of the Managing Authority for the purposes of carrying out the Services.

5 Payment of Service Fees

5.1 In consideration for the provision of the Services, the Owner must pay to LPM the Service Fees.

5.2 The Owner irrevocably authorises and directs the Agent to deduct from any rent and to pay to LPM on the Owner's behalf all Service Fees properly incurred by LPM. This authority may only be modified with the written consent of the Agent.

5.3 The parties acknowledge and agree that LPM holds the benefit of clause 5.2 on trust for the Agent and is able to be enforced by LPM against the Owner on behalf of the Agent.

5.4 If for any reason the Service Fees are not deducted from rent in accordance with clause 5.2, the Owner must pay the Service Fees to LPM within 30 days of receipt of an invoice from LPM.

6 Variation of Service Fees

6.1 LPM reserves the right to vary the Services Fees from time to time at its discretion, provided that LPM has first given the Owner at least 2 months' written notice of the proposed variation to the Service Fees.

6.2 If the Owner rejects a variation to the Services Fees, it may terminate the Agreement on 28 days' notice to LPM and clause 7.2 will apply to such termination.

7 Termination

7.1 A party may terminate the Agreement:

- (a) by giving a minimum of 4 months' notice in writing to the other party;
- (b) immediately if the other party breaches the Agreement and, where capable of remedy, fails to remedy the breach within 14 days of receiving written notice requesting it to do so; or
- (c) immediately if the other party suffers an Insolvency Event.

7.2 Termination of the Agreement will not extinguish or effect any accrued rights or remedies of the parties.

8 Insurance

LPM must hold and maintain insurance policies with reputable insurers appropriate for the conduct of its business.

9 Indemnity

The Owner agrees to indemnify and holds harmless LPM and each of its Affiliates from and against all Claims in connection with or arising out of:

- (a) any negligent or unlawful act or omission of the Owner; or
- (b) any breach of the Agreement or any applicable laws by the Owner.

10 Limitation of Liability

10.1 Unless prohibited by law, no term, condition or warranty is implied except as expressly provided in the Agreement.

10.2 Where legislation implies into the Agreement any condition or warranty, and that legislation avoids or prohibits provisions in an agreement excluding or modifying the application of, or exercise of, or liability under such condition or warranty, the condition or warranty will be deemed to be included in the Agreement. To the extent permitted by law, LPM's liability for any breach of such condition or warranty will be limited to the resupply of the Services or, at the discretion of LPM, the payment to the Owner of the costs of having the Services resupplied.

10.3 Neither party will be liable to the other party in any circumstances for any indirect, economic, special or consequential loss or damage, including but not limited to loss of revenue, loss of opportunities, loss of goodwill, loss of production or loss of profit.

11 Confidential Information

11.1 A party must not, without the prior written consent of the other party, disclose to any person any Confidential Information of the other party.

11.2 Upon a party's request, the other party must promptly return all Confidential Information of the requesting party that has been provided to it.

12 Intellectual Property

12.1 All rights, title and interest in and to any Intellectual Property Rights which a party creates or develops are hereby vested in that party immediately upon its creation.

12.2 All Intellectual Property Rights owned by a party which were created prior to the date of the Agreement will be retained by that party.

13 Force Majeure

13.1 LPM will have no liability to the Owner for any Claim incurred by the Owner as a result of a Force Majeure Event.

13.2 Subject to clause 13.3, for the duration of the Force Majeure Event, LPM's obligations, to the extent they are affected by the Force Majeure Event, are suspended.

13.3 Where a Force Majeure Event has occurred and continues for 60 days, LPM may terminate the provision of the Services by 14 days' notice in writing to the Owner and clause 7.2 will apply to such termination.

14 GST

If a party makes a supply under or in connection with the Agreement that is a taxable supply for the purposes of *A New Tax System (Goods and Services Tax) Act 1999* (Cth), as amended from time to time, the consideration for that taxable supply (other than to the extent that the consideration is expressed to be GST inclusive) is to be increased by an amount calculated as $A \times R$ where A is the GST exclusive consideration and R is the rate of GST prevailing at the time of supply (ie. 10%).

15 General

15.1 The law of Victoria governs the Agreement and LPM and the Owner submit to the jurisdiction of the courts of Victoria.

15.2 The Agreement may only be varied or replaced by written agreement between LPM and the Owner.

15.3 The Owner must not assign any of its rights under the Agreement without LPM's prior written consent.

15.4 LPM's obligations under the Agreement may be subcontracted in whole or in part.

15.5 Any provision in the Agreement which is invalid or unenforceable is to be read down if possible so as to be valid and enforceable and if that is not possible the provision will, to the extent that it is capable, be severed to the extent of the invalidity or unenforceability without affecting the remaining provisions.

15.6 The legal relationship between LPM and the Owner is that of principal and independent contractor and not that of employer and employee, partnership or joint venture.

15.7 Time is of the essence of the Agreement.

15.8 A right of a party may only be waived in writing, signed by that party. No other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver or prevents the exercise of the right. A waiver of a right of a party on one or more occasions does not operate as a waiver of that right if it arises again.