



# BROKER MANDATE

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EMIRA  
PROPERTY FUND

# BROKER MANDATE

- (a) This mandate sets out the standard terms and conditions upon which Emira Property Fund Limited, any of its subsidiaries and/or any of its associated entities appoints brokers.
- (b) By using the information set out in the vacancy schedule, it is implied that:
  - (i) you have voluntarily given your consent and agree to be legally bound by the terms and conditions recorded in this mandate
  - (ii) you are legally competent and duly authorized to enter into and be bound by the provisions set out below.
- (c) You can only participate in the incentive programs organized by or on behalf of Emira Property Fund Limited if you comply with the provisions of this mandate.
- (d) All references to the Landlord shall include any duly authorized property manager appointed by the Landlord to manage the properties listed in the vacancy schedule.

## 1. APPOINTMENT

- 1.1 Emira Property Fund Limited, its subsidiaries and/or its associated entities ("Landlord") hereby gives the Broker the mandate to provide all services required and incidental to marketing the properties listed on the Landlord's vacancy schedule, introduce potential tenants to the vacant premises and conclude Lease Agreements in respect of the vacant premises. The mandate given to the Broker is subject to the terms and conditions recorded in this Broker Mandate.
- 1.2 The mandate above is only given to Brokers who have a valid Fidelity Fund Certificate issued by the Estate Agency Board (or any successor regulatory agency with competent jurisdiction). By using any information on the Landlord's vacancy schedule, the Broker warrants that he is in possession of a valid Fidelity Fund Certificate.
- 1.3 The appointment of the Broker is not exclusive and the Landlord shall be entitled to appoint as many brokers for the same property as it deems fit.
- 1.4 The Landlord reserves its right to amend, withdraw and/or terminate its mandate to the Broker at any time acting in its sole and absolute discretion. The Landlord also reserves its right to:
  - 1.4.1 withdraw, update or in any other manner amend the vacancy schedule as and when it deems fit; and
  - 1.4.2 adjust the rentals and related charges applicable to any property listed in the vacancy schedule as and when it deems appropriate.

## 2. OFFER TO LEASE

- 2.1 No commission is payable in respect of any verbal or written introduction of a prospective tenant to the Landlord or any person appointed to manage the property. A prospective tenant will only be considered to be introduced to the Landlord if the Broker provides the Landlord with the Landlord's standard Offer to Lease signed by the tenant and all the documents and information required in terms of the Offer to Lease.
- 2.2 The Broker must be the "Effective Cause" of concluding the Lease Agreement and ensuring that the tenant takes occupation of the leased premises. Effective Cause means that the Broker's efforts were the most important and decisive factor that lead to introducing the prospective tenant, entering into the Offer to Lease, concluding the Lease Agreement and the tenant taking occupation of the leased premises. No commission is payable to a Broker if the Broker was not the Effective Cause of the leasing transaction.
- 2.3 Presentation of the Offer to Lease does not oblige the Landlord to enter into a Lease Agreement with the prospective tenant. The Landlord shall be entitled to reject any Offer to Lease that has been presented to it for any reason whatsoever, including that the prospective tenant is unsuitable for the premises.

## 3. COMMISSION

- 3.1 Conditions to Payment of the Commission
  - 3.1.1 The Broker will only be entitled to be paid a commission by the Landlord if and only if the following conditions are met to the satisfaction of the Landlord:
    - 3.1.1.1 the prospective tenant has passed all the credit vetting and other assessments and evaluations performed by or on behalf of the Landlord;
    - 3.1.1.2 both the Landlord and the tenant have signed a Lease Agreement;
    - 3.1.1.3 all the FICA and other documents that the Landlord may require have been provided in clear and legible form;
    - 3.1.1.4 all the conditions precedent listed in the Lease Agreement have been fulfilled to the Landlord's satisfaction;
    - 3.1.1.5 all the security required to be provided, including valid and binding suretyship(s) and/or bank guarantee(s) acceptable to the Landlord have been provided and if consents are required to make the security valid, binding and effective (i.e. spousal consent), such consents have been provided;
    - 3.1.1.6 all deposits, administration fees and other amounts payable prior to the tenant taking occupation of the leased premises have been paid in full;
    - 3.1.1.7 all other documents that the Landlord may require have been provided to the Landlord;
    - 3.1.1.8 the tenant has taken occupation of the leased premises and all amounts that are due to be paid by the tenant for the first month of the lease period have been paid in full; and
    - 3.1.1.9 the Broker has provided the Landlord with a valid tax invoice clearly indicating the manner in which the invoiced amount was calculated. The Broker shall also state his Fidelity Fund Certificate Number clearly on the invoice.
  - 3.1.2 No commission will be payable under the following circumstances:
    - 3.1.2.1 if the Broker was not the "Effective Cause" of the tenant and Landlord entering into the Lease Agreement;
    - 3.1.2.2 if the tenant leases additional space after conclusion of a signed Lease Agreement;
    - 3.1.2.3 if the tenant renews, or exercises any right he has to renew, the Lease Agreement;
    - 3.1.2.4 if the tenant and the Landlord enter into a new Lease Agreement during a lease period;
    - 3.1.2.5 if the tenant pays any additional amounts during a lease period;
    - 3.1.2.6 if the property is sold or the leased premises are sold by the Landlord to the tenant;
    - 3.1.2.7 if any unknown additional rental, such as turnover rental or any future escalations, become payable by the tenant.

3.2 Calculation of the Commission

- 3.2.1 Unless the Landlord and the Broker agree otherwise, payment of the commission shall be 100% of the tariff below. This percentage is calculated on the total annual income of the Lease Agreement, being gross rental and gross rental payable in respect of parking and any storerooms, as indicated below, but shall exclude any period during which the tenant is not obliged to pay rent ("rent-free period") and shall be subject to the provisions of clause 3.3. below.
- 3.2.2 Commission is payable from the commencement date of the Lease Agreement and will not include any rent-free periods.
- 3.2.3 Commission payable on:
  - 3.2.3.1 a monthly Lease Agreement will be calculated on a pro rata basis of 2 months, being 1 month in occupation and 1 month notice period;
  - 3.2.3.2 any Lease Agreement that is for a period that is less than 12 months will be calculated on a pro rata basis;
  - 3.2.3.3 any Lease Agreement for a period of 12 months shall be 5% of the annual income;
  - 3.2.3.4 any Lease Agreement for a period longer than 12 months will be calculated as follows:

YEARS	% of the Total Annual Income
1	5%
2	5%
3	2.5%
4	2.5%
5	2.5%
6	1.5%
7	1.5%
8	1.5%
9	1%
10	1%
In respect of any period thereafter will be 1%	

**ALL AMOUNTS QUOTED ARE EXCLUSIVE OF VAT**

3.3 Break Clause

- 3.3.1 The guiding principle of this clause is that the Landlord will only pay commission in respect of lease periods where the tenant does not have a right to terminate the Lease Agreement.
- 3.3.2 If, in terms of a Lease Agreement, the tenant is given the right to terminate the Lease Agreement before the end of the lease period, then the Landlord will only pay commission for the period up to the date on which the tenant is entitled to terminate the Lease Agreement.
- 3.3.3 If the tenant does not terminate the Lease Agreement, then the Landlord will pay the Broker the commission for the balance of the remaining lease period; provided that the tenant does not have any further right to terminate the Lease Agreement before the end of the remaining lease period. If such a right exists, then the Landlord will only pay commission up to the date on which the tenant is entitled to terminate the Lease Agreement. If the tenant does not exercise this further right of termination at the time that he is entitled to do so, then the Landlord will pay the commission due for the balance of the lease period.
- 3.3.4 By way of example, if a tenant enters into a 10 year Lease Agreement but he is entitled to terminate the Lease Agreement in year 3, then commission will only be paid for the 3 years. If the tenant does not terminate the Lease Agreement in year 3, then commission will be paid for the balance of the lease period. However, if after year 3, the tenant is given another right to terminate the Lease Agreement, then commission will only be paid up to the date when the tenant is entitled to terminate the Lease Agreement.

**4. DISCLOSURE IN TERMS OF THE PROTECTION OF PERSONAL INFORMATION ACT, NO: 4 OF 2013 ("POPIA")**

- 4.1 The Broker acknowledges and agrees that, in undertaking its obligations arising in terms of this Broker Mandate, it collects, receives, records, organizes, disseminates and otherwise processes ("Processing") personal information of the tenant on behalf of the Landlord. As such, the Broker, in relation to the Landlord, is an "Operator" (as this term is defined in POPIA). In this regards, the Broker undertakes and warrants to the Landlord that it will, in Processing personal information of the tenant on behalf of the Landlord, comply in all respects with the provisions of POPIA, including (without derogating from the foregoing), making all disclosures required to be made to the tenant and Processing the personal information only in relation to the purpose for which it is being collected.
- 4.2 The Broker represents and warrants to the Landlord that it is an expert in rendering the services contemplated herein. Accordingly, the Broker warrants that it will at all times comply with all applicable laws (including POPIA) regulating the provision of the services to the Landlord. Furthermore, the Broker hereby, unconditionally and irrevocably, indemnifies the Landlord and holds the Landlord harmless against any and all expenses, loss, fees, damages, claims and/or any other liability of any nature whatsoever that the Landlord may suffer as a result of the Broker failing to comply in all respects with all laws applicable to it rendering the services specified in this Broker Mandate.

**5. GENERAL PROVISIONS**

- 5.1 Every Tenant Installation Allowance offered by the Landlord is subject to negotiation and is dependent on the rental amounts payable and the lease period but it is generally one month's gross rental per year on a 3 to 5 year Lease Agreement for office space.
- 5.2 The following clauses are standard in all our Lease Agreement:
  - 5.2.1 Deposit Guidelines
    - 5.2.1.1 If the tenant is a close corporation or a private company then the deposit is calculated as follows:
      - 5.2.1.1.1 3 month gross exit rental including parking and storeroom(s); or
      - 5.2.1.1.2 2 months gross exit rental including parking, storeroom(s) and a suretyship (provided that the surety has an acceptable asset holding value)
    - 5.2.1.2 If the tenant is a sole proprietor (provided that the Landlord has approved the tenant), the deposit is 3 months gross exit rental including parking and storeroom(s).
    - 5.2.1.3 If the tenant is a company listed on a stock exchange or has a national footprint, unless the Landlord and tenant agree otherwise, no deposit is required.

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Deposit requirement may vary depending on the results of a credit checks and/or other assessments done by the Landlord.

**5.2.2 Consumption Charges**

The tenant will also be liable for the payment of water, electricity, 3 phase capacity charge (where applicable), refuse and sewage in respect of the property.

**5.2.3 Lease Fees**

Lease fees are payable by the tenant and will be collected by the Broker at the same time that the Broker collects the deposit, and other amounts payable prior to the tenant takes occupation of the leased premises.

**5.2.4 Rates and Taxes**

In the event that assessment rates and/or other municipal charges are increased during the currency of the Lease Agreement, the Landlord shall be entitled to charge the tenant such increase, as determined by the relevant municipality, with effect from the date on which such increase became effective. The tenant's pro rata share is reflected as a percentage and stated in the schedule of the Lease Agreement. Where applicable, the tenant shall pay or reimburse the Landlord VAT at the prescribed rate in terms of the relevant legislation on any amounts payable to the Landlord in respect of the assessment rates and/or other municipal charges.

5.3 This Broker Mandate applies to each and every transaction contemplated herein, including in respect of each and every property leased by the Broker and any potential leasing transaction that was not concluded.

5.4 In this Broker Mandate: (i) reference to one gender shall include other genders; (ii) the singular includes the plural; (iii) natural persons includes created entities (incorporated or unincorporated); (iv) the rule of construction that this Broker Mandate shall be interpreted against the person responsible for drafting it shall not apply; and (v) the words "include" or "including" do not imply any limitation and the *eiusdem generis* rule shall not be applied.

5.5 Notwithstanding any contrary provision set out elsewhere in this Broker Mandate, a termination of this Broker Mandate, for any reason, shall not affect: (i) the rights and obligations of either party that had already accrued as at the time of termination; or (ii) those provisions that are expressly or by necessary implication intended to survive termination.

5.6 This Agreement shall, in all respects, be interpreted and implemented in accordance with the laws of the Republic of South Africa.

By signing this Broker Mandate, the Broker acknowledges that it has read the contents of this Broker Mandate, warrants (unconditionally and irrevocably) that he understands the import thereof and agrees to be bound, in all respects, by the provisions of this Broker Mandate.

SIGNED AT \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

SIGNATURE: \_\_\_\_\_

NAME: \_\_\_\_\_

CAPACITY: \_\_\_\_\_

(who warrants that s/he is duly authorized hereto)

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