



# CAPE TOWN VACATIONER

ACCOMMODATION & RENTALS

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## **STANDARD TERMS AND CONDITIONS**

### **1. RESERVATION OF PREMISES**

The Parties agree that -

1.1 the Occupants will occupy the Premises for the duration of the period between the Occupation Date and the Termination Date ("Occupation Period");

1.2 in consideration for the reservation of the Premises the Tenant shall pay, by way of electronic transfer or such other manner as agreed to by the Agent, into the Nominated Account the Rental as follows –

**1.2.1 if the Reservation Agreement is concluded more than 8 (eight) weeks prior to the Occupation Date,**

1.2.1.1 50 % (fifty percent) of the Rental ("the Deposit") within 5 (five) business days of receipt of Invoice from the Agent; and

1.2.1.2 50% (fifty percent) thereof by no later than the Final Payment Date; 8 weeks prior to the occupation date.

**1.2.2 if the Reservation Agreement is concluded within 8 (eight) weeks of the Occupation Date,** 100% (one hundred percent) of the Rental within 5 (five) business days of receipt of Invoice from the Agent.

1.3 the occupation of the Premises will be subject to the terms and conditions of occupation annexed hereto as **Appendix 1**;

1.4 this Agreement is between the Tenant and the Owner, represented by the Agent, and comes into effect and will be binding on the Tenant and the Owner as contemplated in 1.1 of Annexure 1;

1.5 this Agreement is also binding on all persons who occupy the Premises and who are hereby represented by the Tenant;

1.6 in the event of any credit card transaction/s made by/on behalf of the Tenant in respect of any monies or deposit payable to the Owner or the Agent, the Tenant specifically confirms that under no circumstances whatsoever shall the Tenant at any time authorise and/or instruct any reversal and/or cancellation of credit card transactions payable to the Owner or the Agent.

## 2. CANCELLATION

### 2.1 By Tenant

2.1.1 If the Tenant at any time lawfully cancels this Agreement as a result of a breach of this Agreement by the Owner, the Owner shall not be entitled to the Rental, which shall be repaid to the Agent on demand;

2.1.2 If the Tenant cancels this Agreement for any reason other than as contemplated in 2.1.1, the Tenant shall forfeit all amounts paid by the Tenant in terms of this Agreement, provided that if the Owner or the Agent is able to find and book alternative occupants, the Tenant shall be entitled to a refund of an amount equal to all amounts paid, less the amount of the Deposit, but limited to the amount of rental that the Owner is entitled to from the alternative occupants. The Owner shall repay any such amount to the Agent on demand who shall refund same to the Tenant;

### 2.2 By Owner

2.2.1 If the Owner, or the Agent on behalf of the Owner, cancels this Agreement as a result of a breach of this Agreement by the Tenant, the Tenant shall forfeit all amounts paid by it in terms of this Agreement;

2.2.2 The Owner shall not be entitled to cancel this Agreement once same is confirmed as contemplated in 1.1 of **Appendix 1**, other than where the Tenant is in breach of this Agreement.

### 2.3 By Agent Where Premises Unsuitable for Occupation

2.3.1 If the Agent, in its sole discretion, deems the Premises unsuitable for occupation, the Agent shall be entitled to cancel this Agreement and the Owner shall not be entitled to the Rental and shall repay same (or any portion thereof) to the Agent on demand;

2.3.2 If the Premises should be unsuitable for occupation as a result of any events beyond the reasonable control of a party and which could not reasonably have been foreseen by it at the date of signature of the Agreement including, but not limited, fire, flood, inclement weather, act of God, the enactment of any legislation or the act of any other legally constituted authority ("**event of Force Majeure**"), the Agent shall be entitled to cancel this Agreement and if the event of *Force Majeure* arose -

2.3.2.1 prior to the Occupation Date, the Owner shall not be entitled to the Rental and shall repay same (or any portion thereof) to the Agent on demand; or

2.3.2.2 after the Occupation Date, the Owner shall only be entitled to the Rental for the period during which the Tenant remained in occupation of the Premises and accordingly the Owner shall repay to the Agent on demand that *pro rata* portion of the Rental relating to the remainder of the Occupation Period during which the Tenant is not in occupation.

### 2.4 Alternative Accommodation

2.4.1 Notwithstanding anything to the contrary herein contained, the Tenant hereby agrees and authorises the Agent, in the event of the Tenant cancelling this Agreement as a result of a breach by the Owner or in the event that the Premises, for any reason whatsoever, are not suitable for occupation by the Tenant, resulting in the cancellation of this Agreement as contemplated in 2.3.1 and 2.3.2 above, to arrange such alternative accommodation (on the same or similar terms and

conditions contained in this Agreement) for the duration or remainder of the Occupation Period. The Parties further agree that -

2.4.1.1 the Agent shall not be liable in any manner whatsoever for any inconvenience and/or loss that the Tenant may suffer as a result of any such relocation;

2.4.1.2 the Agent shall use its best endeavours to arrange alternative accommodation that is substantially similar to the Premises;

2.4.1.3 the costs of any such relocation and alternative accommodation arising from an event of *Force Majeure* shall be settled from the funds repaid by the Owner to the Agent as contemplated in 2.3.1, 2.3.2.1 or 2.3.2.2 and should such funds not be sufficient to cover such costs, the balance will be for the account of the Tenant; and

2.4.1.4 the costs of any such relocation and alternative accommodation arising from the Owner being in breach of this Agreement shall be settled from the funds repaid by the Owner to the Agent as contemplated in 2.1.1.

### 3. NOTICES AND DOMICILIA

3.1 The Parties choose as their *domicilia citandi et executandi* their respective addresses set out in 1.3 and 2.2 of the

Schedule for all purposes arising out of or in connection with this Agreement at which addresses all processes and notices arising out of or in connection with this Agreement, its breach or termination may validly be served upon or delivered to the Parties.

3.2 Any notice given in terms of this Agreement shall be in writing and shall -

3.2.1 if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;

3.2.2 if posted by prepaid registered post be deemed to have been received by the addressee on the 8<sup>th</sup> (eighth) day following the date of such posting;

3.2.3 if transmitted by facsimile be deemed to have been received by the addressee on the day following the date of dispatch, unless the contrary is proved.

3.3 Notwithstanding anything to the contrary contained or implied in this Agreement, a written notice or communication actually received by one of the Parties from another including by way of facsimile transmission shall be adequate written notice or communication to such party.

### 4. BREACH

4.1 If any party commits any breach of any of the terms and conditions of this Agreement ("**the defaulting party**") then the remaining party ("**the aggrieved party**") shall be entitled to give the defaulting party 24 hours notice to remedy such breach, and if the defaulting party fails to comply with such notice then the aggrieved party shall be entitled, but not obliged, without prejudice to any other rights which the aggrieved party may have in law, including the right to claim damages -

4.1.1 to cancel the Agreement; or

4.1.2 claim immediate performance and/or payment of all the defaulting party's obligations in terms hereof.

4.2 Should the aggrieved party institute action against the defaulting party pursuant to a breach by the defaulting party of this Agreement, then without prejudice to any of the rights which the Owner may have, the aggrieved party shall be entitled to recover from the defaulting party all costs incurred by it including legal costs (on the scale as between attorney and own client), tracing fees and such collection commission as the aggrieved party is obliged to pay to its attorneys.

## **5. INDEMNITY**

The Agent is acting as agent for and on behalf of the Owner and accordingly if any dispute arises as between the Owner and the Tenant, the Agent will endeavour to assist in any dispute between the Owner and the Tenant in order to resolve the dispute and the Tenant indemnifies the Agent, its employees, members and agents against any claims, loss, damage, harm or expenses (including legal costs on a scale as between attorney and own client) incurred by the Agent as a result of any such dispute and any assistance given in respect thereof.

## **6. GENERAL**

6.1 No alteration, cancellation, variation of, or addition hereto shall be of any force or effect unless reduced to writing and signed by all Parties to this Agreement or their duly authorised representatives.

6.2 This Agreement cancels and supersedes the terms and conditions of all prior negotiations and Agreements between the Parties.

6.3 This document contains the entire Agreement between the Parties relating to these presents and no party shall be bound by any undertakings, representations, warranties, promises or the like not recorded herein.

6.4 No indulgence, leniency or extension of time which any party may grant or show, shall in any way prejudice such party or preclude it from exercising any of its rights in the future.

6.5 In this agreement, unless the context indicates otherwise, any reference to –

6.5.1 the singular includes the plural and *vice versa*;

6.5.2 any reference to natural persons includes legal persons and *vice versa*;

6.5.3 any reference to gender includes the other genders.

6.6 If any period is referred to in this agreement *by way of* reference to a number of days, the days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a business day, in which case the day shall be the next succeeding business day.

6.7 This agreement shall be governed by and construed and interpreted in accordance with the law of the Republic of South Africa. The rule of construction that this Agreement shall be interpreted against the party responsible for the drafting of this Agreement, shall not apply.

## **APPENDIX 1 - TERMS AND CONDITIONS OF OCCUPATION**

## 1. CONDITIONS OF RESERVATION

1.1. The reservation of the Premises shall only be confirmed once the duly signed copy of the Reservation Agreement together with proof of payment (to be effected by electronic transfer or as otherwise agreed to by the Agent) of the deposit is returned in writing to the Agent and once the booking has been vetted and acknowledged as confirmed by Cape Town Vacationer.

1.2. Should the full Rental not be paid by the due date for payment, the Agent shall be entitled to cancel this Agreement on behalf of the Owner should the Tenant not pay the full Rental within 24 (twenty four) hours of receiving written notice from the Agent that such amount is due and payable.

1.3. Any changes to a confirmed reservation shall be subject to an administration fee of R350.00 (Three Hundred and Fifty Rand). Should the number of occupants be increased, then in addition to any such administration fee, the Tenant shall be obliged to pay the Agent, over and above the Rental, the agreed rate per night per additional occupant.

**1.4. The check-in time for the Premises shall be at or after 14h00 on the Occupation Date and the check-out time shall be at or before 10h00 on the Termination Date. After hours check-ins incur an additional charge of R200.00 (Two Hundred Rand)**

1.5. The Tenant will not have any right to claim damages or withhold any monies otherwise due to the Agent and/or the Owner on account of an alleged breach of this Agreement, any act or omission by the Agent, its employees, members and agents and/or the Owner, the condition of the premises (provided they are suitable for beneficial occupation by the Tenant), the failure or suspension of electricity, water or any other amenity or any other equipment or machinery on the premises, or any interruption or disturbance not attributed to the Agent's willful misconduct or that of the Owner.

## 2. REFUNDABLE BREAKAGE AND SECURITY DEPOSIT

2.1. The Tenant hereby authorises The Agent to charge or hold an amount set out in 5.1 of the schedule ("the breakage and security deposit") on the Tenant's credit limit pertaining to either a Visa or Master Credit Card held by the Tenant. Accordingly, the Tenant undertakes and agrees to sign any documentation required by the Agent in order to freeze the breakage and security deposit. Upon the expiry or earlier termination of this Agreement, the Agent shall be entitled to debit the Credit Card with any amount owing by the Tenant to the Owner (which amount shall include, but not be limited to, any amount owing by the Tenant to the Owner in terms of clauses 1.3, 3.1.8, 3.1.10 or 3.1.18 of this Appendix 1) for any reason whatsoever, and thereafter release any remaining funds frozen as security. The Tenant undertakes and agrees to bear the costs of any bank charges or credit card commissions that result from the Agent having to debit the Credit Card for any amount owing by the Tenant to the Owner.

2.2. The Tenant may not under any circumstances whatsoever set-off monies owing by him under the agreement against the breakage and security deposit.

2.3. Should the Tenant cancel the agreement at any time after the Occupation Date but prior to the Termination Date, then in such event the deposit shall be released to the Tenant within 21 (twenty one) days of such cancellation, less any deductions contemplated in terms of clause 2.1 above.

2.4. The breakage and security deposit is held by the Agent or Property. This amount will be held against the cost of any damage or breakages to the Property or its contents, as well as any telephone charge/lost keys. Any charges to be deducted from the breakage and security deposit will be notified to the tenant within 14 days of the end of the occupation period, after which the remainder of the deposit shall be returned. Should the damage cost take longer to establish due to

quotaion delays the 14 day period may extend until the agent or owner is able to furnish reliable quotes to repair the damage.

### **3. TENANT'S DUTIES, RIGHTS AND OBLIGATIONS**

3.1. The Tenant shall -

3.1.1. allow the Agent, at all reasonable times and on 24 (twenty four) hours' notice, permission to enter the Premises to inspect same in order to view the condition and state of repair thereof;

3.1.2. not sub-let the whole or any part of the Premises to any third party save with the express written permission of the Agent, which permission may be withheld at the Agent's sole and absolute discretion;

3.1.3. not make any alterations or additions to the Premises;

3.1.4. not do, or omit to do anything, which could damage the Premises, or render any insurance policy in respect of the Premises void or voidable;

3.1.5. refrain from doing anything which is illegal and/or causing any noise or nuisance that would in any way disturb the quiet and peaceful occupation enjoyed by the neighbours of the Premises;

3.1.6. comply with the rules of the Body Corporate (if applicable);

3.1.7. use the Premises (including, but not limited to, the garden and/or any portion of the land upon which the Premises is situated) only for residential accommodation and the parking bays only for the parking therein of a motor vehicle;

3.1.8. bear all outgoing telephone call charges in respect of the Premises with effect from the Occupation Date. All such telephone charges shall be determined by deducting the telephone meter reading as at the Occupation Date from the telephone meter reading as at the Termination Date. It is recorded that all telephone calls are charged at the prevailing Telkom rates applicable from time to time;

3.1.9. keep and maintain the interior of the Premises in good order and condition;

3.1.10. make good any damage caused to the Premises;

3.1.11. notify the Agent in writing, within 2 (two) days after the Occupation Date, of any defects in the Premises, failing which the Tenant shall be deemed to have acknowledged that the Premises was received in good order and condition. The incidence of any defects in the Premises will not entitle the Tenant to cancel the agreement other than where such defects have not been remedied to the reasonable satisfaction of the Agent within a period of 24 (twenty four) hours as from the time the absence is notified to the Agent;

3.1.12. notify the Agent in writing, within 2 (two) days after the Occupation Date, of the absence of any of the items on the inventory, failing which the Tenant shall be deemed to have acknowledged that the inventory is true and correct. The incidence of any absence of items on the inventory will not entitle the Tenant to cancel the agreement other than where such absence has not been remedied to the reasonable satisfaction of the Agent within a period of 24 (twenty four) hours as from the time the absence is notified to the Agent;

3.1.13. not cede and/or delegate any of his rights and/or obligations under this Agreement;

- 3.1.14. ensure that refuse does not remain on or outside the Premises, save in the place provided therefore;
- 3.1.15. not keep any animals or pets on the Premises;
- 3.1.16. not make duplicates of any of the keys in respect of the Premises, and shall on termination of this Agreement, forthwith deliver all keys (including any duplicates thereof) and remote control units to the Agent;
- 3.1.17. on termination of this Agreement, return and deliver to the Owner the Premises in good order and condition (fair wear and tear excepted); and
- 3.1.18. bear the costs of any additional services requested by the Tenant and provided by the Owner and/or Agent which services are not recorded in 4.2 to this Appendix 1.
- 3.2. The Tenant shall advise the Agent immediately of any intended increase in the number of occupants who are to occupy the Premises at any time during the Occupation Period, as well as the duration of their proposed occupancy of the Premises. It is recorded that any such additional occupants shall only be entitled to occupy the Premises with the express written consent of the Agent, which consent may be withheld by the Agent in its sole and absolute discretion, and upon payment of the additional charge per person as set out in the Schedule.
- 3.3. If the Tenant wishes to extend the Occupation Period, and subject to the Premises being available, this can be arranged with the Agent for an agreed additional Rental. Such additional Rental shall also be required to be paid in advance and the breakage and security deposit shall not be used to pay for such additional Rental.
- 3.4. Should the Tenant be an alien as defined in terms of the Alien Control Act 96 of 1991, he/she warrants that he/she is in possession of a legal permit issued in terms of said act, which qualifies him/her to rent the Premises. The Tenant hereby indemnifies the Manager and the Owner against any penalty and/or fine arising from such breach of the Tenant's warranty contained in this clause.
- 3.5. The tenant shall undertake to activate the alarm when leaving the premises unattended for any period of time during the occupation period. It is the tenants responsibility, and that of each of the persons named on the Guest list to pay for any losses or damages to the property or premises, however caused. It is the responsibility of the primary tenant named on the reservation form to insure that the all exteriors doors, windows are closed every time the property is left unoccupied.
- 3.6. The tenant and all of the guests are strongly advised to arrange comprehensive insurance against travel and other related risks as any loss or damage including theft of personal items cannot be claimed against the property insurance. It is the responsibility of the tenant and those accompanying them to fully insure their personal items and also to keep the property secured by setting any alarm and securing all doors, windows and gates when going out.
- 3.7. acknowledge that any non normal power consumption will be for the account of the tenant. Electricity consumption of R75 per day is seen as adequate. Anything above R75 per day needs to be agreed to with the owner or agent.
- 3.8. make themselves familiar with the housekeepers responsibilities and limit thereof, the agent will inform the client of this upon or before the occupation date.

## **OWNER'S DUTIES, RIGHTS AND OBLIGATIONS**

4.1. The Agent, duly authorised by the Owner, reserves the right to terminate any bookings/stay, should the Tenant or any occupant behave in a manner, which in the Agent's sole and absolute discretion, is unacceptable or offensive.

**4.2. The Owner undertakes to, at its own cost, and for the duration of the Occupation Period -**

4.2.1. ensure that the Premises is clean, in good order and condition and suitable to be let as executive accommodation including electricity for the full rental period unless agreed otherwise with the tenant;

4.2.2. ensure that the Premises (including all contents therein) is adequately insured against damage, destruction, and/or any loss which the Owner and/or occupants may suffer as a result of theft or break-in during the Occupation Period. This insurance should include SASRIA, malicious and accidental damage;

4.2.3. ensure that the Premises is let with all the furnishings, fittings, appliances, equipment and amenities represented by the Owner as being on or forming part of the Premises;

**4.2.4. provide a housekeeping service 3 (three) times a week on Business Days only**

4.2.5. ensure that linen is changed at least once a week;

4.2.6. provide a pool service (where necessary) not less than once a week;

4.2.7. provide a gardening service (where necessary) not less than once a week.

4.2.8. the Premises shall be made available in a good and clean condition and all fittings, appliances, equipment and amenities shall be in sound and good working order.

4.3. The Owner further undertakes to and in favour of the Tenant that it has and/or will, as soon as is reasonably possible, advise and/or inform the Tenant, via the Agent, of any facts and/or changes in circumstances which are material to, and/or may affect the Tenant's use and enjoyment of the Premises. This includes, but is not limited to, any alterations or changes to the Premises or neighbouring properties (including renovations, refurbishing, constructions or reconstructions) which may in any way or manner inconvenience, dissatisfy and conflict with the original expectation of the Tenant.

**5. DESCRIPTION OF PREMISES**

5.1. Minor differences between the actual Premises and any description or illustration thereof may exist. While the Agent and the Owner take all reasonable steps to ensure the accuracy of such descriptions and illustrations, they will not be liable for any non-material errors or differences or for the results thereof.

5.2. Non-material differences in the description of the Premises will not amount to a breach of the Agreement and will not entitle the Tenant to cancel the Agreement.

**6. TENANT'S AUTHORITY**

6.1. The Tenant hereby warrants to and in favour of the Owner and the Agent that he/she is duly authorised to enter into the Reservation Agreement and to bind the occupants to the Reservation Agreement and the Terms and Conditions of Occupation as set out herein.

6.2. The Tenant assumes full responsibility for the obligations of the occupants under this Agreement.

## **7. NON-LIABILITY OF AGENT**

7.1. For the avoidance of any doubt it is recorded that the Agent is acting as Agent for the Owner and, accordingly it is agreed that neither the Owner, nor the Tenant, shall have any claim against the Agent arising out of, or pursuant to, the provisions of this Agreement.

7.2. The Agent will endeavour to assist in any dispute between the Owner and the Tenant and the Owner and the Tenant will be jointly and severally liable to the Agent for any fees (including any legal fees on an attorney and own client scale), cost expenses or charges incurred by the Agent in relation such dispute. The Owner and/or the Tenant shall reimburse any such fees, costs, expenses or charges to the Agent on demand.

## **8. JURISDICTION**

8.1. This agreement shall be interpreted and governed in accordance with the laws of the Republic of South Africa. The parties hereby consent to the non-exclusive jurisdiction of the High Court of South Africa, Cape of Good Hope Provincial Division.

8.2. Notwithstanding the provisions of 8.1 above, the Tenant hereby, in terms of section 45 of the Magistrates Court Act 32 of 1944 (as amended), consents to the jurisdiction of the Magistrates Court in respect of any action or proceedings which may be instituted against him/her in terms of or arising out of this Agreement.

## **9. EXCLUSION OF LIABILITY AND INDEMNIFICATION**

9.1. The Agent, its employees, members and agents and the Owner will not be liable for any loss, damage, theft, harm or injury to the person and/or property of the Tenant or and of the Occupants or their visitors to the Premises arising from any cause whatsoever arising from any cause whatsoever including, without limitation, fire, theft, accident, intrusion or otherwise, whether arising through the negligent or wrongful act of the Agent, its employees, members and agents and/or the Owner or any other person or cause.

9.2. The Tenant herewith indemnifies the Owner and the Agent in respect of any claim whatsoever for any loss, damage, theft, accident or injury to the property and/or person of the Tenant or any other person in occupation of the Premises pursuant to the provisions of this Agreement, or his/her relative or any third party arising out of the occupation of, or occurring at the Premises during the period which the Tenant/occupants remain in occupation of the Premises.

9.3 The Tenant herewith accepts liability for all minors and all visitors to the property.