

# Terms and Conditions of Membership

All prices quoted by us are exclusive of VAT unless stated otherwise. Please retain a copy of these Conditions for Your own records. Issue Date: 1st October 2010.

Red Admiral Lettingsearch Limited Core Terms and Conditions Lettings © Red Admiral Lettingsearch Ltd 2010

## A DEFINITIONS

- Agent** means any person, firm or corporate entity primarily in the business of letting residential or commercial properties.
- Agreement** means the agreement for membership between You and Red Admiral Lettingsearch Limited.
- Landlord** means any person, firm or corporate entity marketing and/or managing property they own for let.
- Conditions** means these terms and conditions of Your Membership.
- We, Us, Our and Red Admiral Lettingsearch Limited** means Red Admiral Lettingsearch Limited, Canterbury House, Waterside Court, Neptune Way, Medway City Estate, Rochester Kent ME2 4NZ. Registered in England no. 06933758 or any entity which is from time to time its holding company, a subsidiary or a subsidiary of any such holding company (within the meaning of section 1159 of the Companies Act 2006 as amended at the date of these Conditions) or any successor in business to Red Admiral Lettingsearch Limited.
- You and Your** refers to the person, firm or corporate entity who has applied for membership of Our Website.
- Your Client** means an Agent or Landlord who has instructed You to market property on their behalf.
- Our Website** means Our consumer facing website located at [www.lettingsearch.co.uk](http://www.lettingsearch.co.uk).
- Our Users** means visitors to Our Website.
- User Data** means information provided by or derived from Our Users and their activities on Our Website.
- Your Data** means all information and any part thereof provided to Us by You either directly or indirectly, including Data supplied or available by way of a URL link, or information provided or displayed on Your behalf by a third party.
- Term** means the initial period of Your Membership set out in Our notice to You confirming acceptance of Your application.
- Location(s)** means the place(s) that You nominated on Your membership application form and/or added by Us from which You operate, promote or manage Your activities, that are displaying Your Data on Our Website and the contact details You provide to Us where We will direct enquiries about Your Data.
- If Your application is accepted by Us, **Your Membership** means membership of and access, ONLY for valid Locations, to those Lettingsearch services appropriate to Your business as an Agent.

## B OUR COMMITMENT TO YOU WE:

- Will provide an internet property listing service for displaying Your Data to visitors to Our Website and may also offer You other relevant additional features and services to help manage Your advertising and promote Your membership;
- Will use reasonable endeavours to ensure that, except where We are manually updating Your Data pursuant to Your instructions, updates to Your Data provided automatically to Us will appear on Our Website within 24 hours of receipt or if You make changes to Your Data via the control panel.
- Will, subject to Your Membership type, use reasonable endeavours to provide access for You to add, amend or remove Your Data via Lettingsearch control panel 24 hours a day, 7 days a week;
- Will use reasonable endeavours to maintain the availability and performance of Our Website;
- Will maintain the integrity of Your Data but accept no responsibility for checking the accuracy of Your Data and have no obligation to edit or review Your data, although We reserve the right to edit, review, suppress or remove Your Data if We believe it is inaccurate, inappropriate or in Our opinion contravenes these Conditions or any applicable law in any way. If We have to make changes We will notify You of them within 1 working day;
- Will use reasonable endeavours to ensure that Your Data is not altered in such a way as to misrepresent any of the information contained in it;
- Will notify You of changes to the specification and/or format in which You must provide Your Data at least 30 days in advance, except where changes are essential to the proper operation of Our Website, in which case We will notify You as soon as reasonably practicable;
- Will forward all potential customer enquiries, generated from Our Website, to the contact details We have for Your Locations as soon as reasonably practical. In the event of Our failure to do so, We will notify You within 2 working days of becoming aware of such failure;
- Will comply with the Data Protection Act 1998 to the extent that it affects Our business and with any guidance applicable to Our business issued from time to time by the Information Commissioner;
- Will use reasonable endeavours to market Our Website to prospective sellers, buyers and renters located in the UK;
- Warrant that, subject to Our privacy policy published on Our Website, no third party (excluding at Our sole discretion Your customers or Your Client's customers) will, without Your consent be provided with:
  - Web traffic or performance data associated directly with either Your Locations or Your Data; or
  - User Data associated with You or with Your Data if the User did not consent to Our use of such data;
- Grant You the non-exclusive right to use Our logo, name and Our Website address in any advertising, promotional material and displays in accordance with any instructions that We may issue from time to time and/or display upon Our Website and in a manner that does not bring Us into disrepute or misrepresent Your relationship with Us;
- Will, subject to Your Membership type and Our discretion, provide You with a profile page or pages on Our Website, the entire content of which shall be subject to Our approval.

## C YOUR COMMITMENT TO US YOU:

- Warrant that You or Your Client primarily operate as an Agent, are providing the services normally associated with these operations and have not or will not, in Our opinion, misrepresent the nature of Your business to Us;
- Warrant that unless You are a Landlord, neither You nor Your Client are dealing as a consumer for the purposes of the Unfair Contract Terms Act 1977, Section 12, as amended;
- Warrant that Your Data will only include information on unlet property appropriate to Your Membership;
  - where You or Your Client received the original instruction from a third party at one of Your Locations to let such property prior to providing it to Us;
  - For the avoidance of doubt Your Data must not include details of any property that You are not properly authorised to let;
- Will provide Your Data to Us in accordance with any specifications and/or in the format that We specify and in such a way as not to interfere with the operation of Our Website, compromise Our Users experience or have a detrimental effect on the quality of Our Website;
- Will provide Us with a valid working email address for each of Your Locations and will immediately advise Us of any changes or technical problems that would prevent Your Locations receiving emails from Us (if any of Your nominated email addresses are not capable of receiving Our messages We will not be liable for any lost business);
- Will comply and You will procure that Your Client complies with all UK legislation and other regulatory and compliance standards that are applicable to a business of the same or a similar nature to Yours or Your Client's business within the UK (such as, without limitation, The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 and if You or Your Client or both (as appropriate) operate outside the UK, within that jurisdiction as well);
- Warrant that You will comply with all reasonable requests and preferences expressed by Our Users; will comply fully with Your obligations under the Data Protection Act 1998 with respect to personal data We send or make available to You; and will not make available any personal data to third parties without explicit consent;
- Will act and You will procure that Your Client acts in accordance with the best practice of a supplier with experience and expertise in carrying on business in the same or similar area of business as Yours or Your Client's business, within the UK and if You or Your Client or both (as appropriate) operate outside the UK, within that jurisdiction as well;
- Will ensure that Your Data complies with all UK legislation (such as, without limitation, the Property Misdescriptions Act 1991 and The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007) that applies to the marketing of property and any other regulatory and compliance standards that may from time to time apply in respect of Your Data, regardless of whether such legislation directly applies to You;
- Warrant that You have good title to Your Data and that Your Data: is accurate, relevant and complete; is of a professional and inoffensive nature; is to the best of Your knowledge free from known viruses, disabling programs and devices; is not in breach of any obligations of confidentiality or privacy; is not being displayed against the wishes of whom You or Your Client acquired it; and does not include details of Your commission, fees, specific comparisons with third parties who We perceive to be competitors of You or Your Client, any links or references to any website or any other information that is specifically excluded by these Conditions or that We deem to be inappropriate to Your Membership;
- Warrant that where You provide images to be shown with the property You or Your client are marketing, such images are only of the property being offered, the occupier lifestyle and immediate locale;
- Warrant that when reproduced or published by Us, Your Data will not: breach any contract; fail to comply with any applicable law or regulation; infringe any copyright, trade mark, intellectual property or any other personal or proprietary right of any person, firm or corporate entity; render Us liable to any claim whatsoever; and that You will indemnify Us against any resulting third party claim, legal action or penalty should Your Data not meet these Conditions;
- Will use all reasonable endeavours to help Us identify and remedy unauthorised copying and storage of Your Data;
- Will use, and will procure that Your Client uses reasonable endeavours to respond to emails sent to Your Locations on the day of receipt if that day is a working day and in any event by noon the following working day;
- Will use, and will procure that Your Client uses reasonable endeavours to respond to telephone calls from Our Users to Your Locations within 2 working hours of receipt and in any event by noon the following working day;
- Will make all payments due to Us pursuant to Our charging structure, as notified from time to time, promptly in accordance with Section E below;
- Acknowledge and agree that We may enter into agreements with third parties whereby Your Data can be published or accessed through mediums not belonging to Us and/or through channels other than Our Website;
- Will seek Our written approval of any advertising materials (except those referred to in Condition B12) that You intend to use in Your business containing data sourced from Us or referencing Your relationship with Us;
- Will warrant that You will not without Our written permission directly or indirectly sell on the services and features of Your Membership or provide access to the services and features of Your Membership to third parties.

## D GENERAL

- Your Membership is subject to these Conditions to the exclusion of all other terms and conditions express or implied and any variation to the conditions of Your Membership (other than as described in Condition D2) shall have no effect unless expressly agreed in writing and signed by an authorised senior representative of Us.
- The current version of Our conditions of membership (as posted on Our Website) will apply at all times to Your Membership and will supersede all previously published conditions of membership.
- Where You purchase additional products or services from Us, or from partners supplying such products and services on Our behalf, any associated conditions, including those of Our partners, shall form part of Your terms and conditions of membership.
- You acknowledge that You have not relied upon any statement or representation made by Us when applying for membership of the Lettingsearch services unless expressly set out in these Conditions or subject to Condition D1.
- If any provision contained in these Conditions is for any reason held to be invalid or unenforceable in any respect, that invalidity or unenforceability will not affect any other provision of these Conditions and these Conditions will be construed as if that invalid or unenforceable provision had not been contained herein.
- No application for membership of Our services placed by You will be deemed to be accepted by Us until We confirm Your Membership. We are not obliged to accept any application for membership by You nor give You reasons for declining Your Membership.
- No forbearance or delay by either party in enforcing its respective rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any Condition will be deemed to be a waiver of any other right or of any later breach.
- We may immediately terminate Your Membership on notice to You if You enter into any form of insolvency including without limit liquidation, bankruptcy, receivership, administration or You are unable to pay Your debts as and when they fall due, or anything analogous to the foregoing occurs in any jurisdiction.
- We may immediately terminate or suspend without notice Your Membership if We believe You are in breach of any term, condition or warranty in these Conditions.
- If at any time We have reason to doubt Your ability to comply with any term, condition or warranty in these Conditions, We will give You notice and reserve the right to: refuse Your application for Membership; immediately suspend or terminate Your Membership; and audit Your processes, property details and practices and charge You for Our costs and time in doing so;
- If when compared with the majority of Our other members, Your Locations market or Your Data includes high volumes of property and/or Your properties are spread over a wide geographical area or We believe Your Data includes details of property not from one of Your Locations, then in accordance with any guidelines that We may set and communicate to You from time to time, We reserve the right to charge You for additional locations or in a manner We deem equivalent to Your volume or to charge You on a per property basis.
- Conditions D12-16 set out Our entire financial liability (including any liability for the acts or omissions of Our employees, agents and sub-contractors) to You in respect of any liability of Us arising as a result of or in connection with Your Membership.
- All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from these Conditions.
- Nothing in these Conditions excludes or limits Our liability for death or personal injury caused by Our negligence or for Our fraudulent misrepresentation.
- Subject to Condition D12, We will not be liable to You for:
  - any indirect, consequential, special or punitive loss, damage, costs and expenses;
  - loss of profit;
  - loss of business;
  - loss of reputation;
  - depletion of goodwill; or
  - loss of, damage to or corruption of data;
- Subject to Condition D12, Our total liability to You under or connected with Your Membership shall not exceed a sum equal to 125% of the fees attributable to the 90 day period of Your Membership prior to the claim arising.
- A person, firm or corporate entity who is not a party to the agreement for membership between You and Lettingsearch has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of these Conditions but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- We will not be held liable if events outside Our control prevent Us fulfilling Our obligations to You.
- These Conditions and Your completed membership form when accepted by Us contain the whole agreement between You and Us relating to Your Membership and supersede all prior agreements, arrangements and understandings between You and Us relating to Your Membership.
- We retain the right at any time during the course of Your Membership to vary these Conditions and We will give You 30 days prior notice by email to Your Locations of any such variation. You may subsequently terminate Your Membership by giving 30 days notice in writing to Us if the changes to the Terms and Conditions materially and adversely affect You and Your business.
- Your Membership will continue for the Term and, subject to these Conditions, shall continue thereafter unless or until terminated by either You or Us giving prior written notice of at least; 30 days Or 1/3rd of the Term of any fixed term agreement You have with Us in the absence of any other specified notice period, whichever is the greater. The final day of Your Membership must coincide with the last day of a calendar month.
- You must give notice in accordance with Condition D21, for each Location You wish to remove from Our Website.
- Upon termination of Your Membership for any reason, You will pay all sums due to Us at the date of such termination. We will not make any partial or full refunds for products or services You have paid for prior to termination.
- We reserve the right to employ User Data and Your Data in Our marketing activities, other products and services offered by Us or to make it available to selected third parties, subject to the Data Protection Act 1998 and the privacy policy on Our Website.
- These Conditions shall be governed by and construed in accordance with the laws of England and Wales and any disputes arising in respect of Your Membership will be submitted to the exclusive jurisdiction of the English Courts. Judgment may be enforced in any court of competent jurisdiction and You and Lettingsearch waive any right to object to the exclusive jurisdiction of the courts of England and Wales.
- If You or Your Client are advertising multiple properties similar in price or type, We reserve the right to group them into one advertisement.
- We retain the right to edit, suppress, remove or amend any links or similar to third party sites, documents or associated data if, in Our opinion, the operation of such links will adversely affect in any way the performance of Our Website or the user experience of using Our Website.
- We may assign, sub-contract or transfer Our rights and obligations to any entity within the Red Admiral Lettingsearch Group at any time. You agree that You may not assign, subcontract or transfer any of Your rights or obligations under this Agreement without the prior written consent of Red Admiral Lettingsearch Limited. You shall remain liable to Lettingsearch for any breach of this Agreement by Your assignees, sub-contractors or transferees.

## E PAYMENT TERMS

- If Your Membership is accepted, for the duration of the Term and thereafter You will pay Our membership charges for the Lettingsearch services You select and use. After expiry of the Term, Our charges may be varied from time to time subject to Us providing 30 days prior notice to You of the date the change will take effect. Further, without prejudice to any of Our other rights in these Conditions, where Your Data does not comply with Condition C3 or does not in Our opinion originate from one of Your Locations, You will also pay Us for the equivalent Lettingsearch services You are using and for any additional locations We deem appropriate at Our then prevailing prices.
- You can make payments to Us by the method that You select on Your membership form and those payments will be made in accordance with Conditions E2 to 8 (as applicable).
- Unless otherwise specified, invoices will be raised in advance.
- If You pay Us by Direct Debit, We will collect the payment from Your nominated bank account not less than 14 days from the issue of the invoice in accordance with the Direct Debit Scheme.
- If You pay Us by Credit Card, We will charge Your nominated credit card in advance of the period to which the payment relates.
- If We invoice You, unless You tell Us within 10 days of any mistakes, We will deem the invoice amount agreed and must receive payment within 14 days of the date of the invoice.
- If We are unable to collect a Direct Debit, or charge to Your Credit Card, or You have not paid Our invoice within the credit terms, then We may charge You interest on Your outstanding balance at 3% above the prevailing base rate of National Westminster Bank plc per month. We also reserve the right to immediately remove Your Data and Your Locations from Our Website and suspend Your Membership. Unpaid invoices will be referred to Our Debt Collection Agency and We or they may share Your payment history and default with other companies which may subsequently affect Your credit record and ability to secure credit.
- Should Your Membership cease and subsequently You wish to rejoin, You will be charged at Our then prevailing prices.

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