

CPA PROCUREMENT MANDATE

SCHEDULE TO THE MANDATE

1.1	The Property Practitioner (Estate Agency)		
	Registration number/identity number		
	VAT registration number		
	Fidelity fund certificate number		
1.2	The Landlord		
	Registration number/identity number		
1.3	The Premises		
1.4	Mandate period from:		To:
1.5	Payment date		
1.6	Reasonable penalty (excluding VAT) payable on early termination of Mandate		
1.7	Procurement commission (excluding VAT)		
1.8	Sales commission (excluding VAT)		
1.9	The Landlord's address(es)		
	Physical		
	Postal		
	Contact number		
	E-mail		

1.10	The Property Practitioner's address(es)			
	Physical			
	Postal			
	Contact number			
	E-mail			
1.11	Was the Landlord approached directly by the Agent with a view to concluding this mandate?		YES <input type="checkbox"/>	NO <input type="checkbox"/>
1.12	Other provisions			

X X

THE MANDATE

DEFINITIONS AND EXPLANATIONS

1. In this Mandate, the words below mean the following:
 - 1.1 “**Business Day**” means any day of the week, excluding Saturdays, Sundays, and public holidays;
 - 1.2 “**Consumer Protection Act**” means the Consumer Protection Act (No 68 of 2008);
 - 1.3 “**Landlord**” means the person in 1.2 of the Schedule;
 - 1.4 “**Mandate**” means the mandate contained in this agreement, together with any annexures hereto;
 - 1.5 “**Parties**” means the Property Practitioner and Landlord together and “**Party**” shall mean any one of them as determined by the context;
 - 1.6 “**PayProp**” means Property Payment Solutions (Pty) Limited, Registration Number 2005/001364/07, with its registered offices situated at 38 Dorp Street, Stellenbosch;
 - 1.7 “**Premises**” means the premises in 1.3 of the Schedule;
 - 1.8 “**Property Practitioner**” means the Estate Agency in 1.1 of the Schedule;
 - 1.9 “**Property Practitioners Act**” means the Property Practitioners Act (No 22 of 2019);
 - 1.10 “**Protection of Personal Information Act**” means the Protection of Personal Information Act (No 4 of 2013);
 - 1.11 “**Rental Housing Act**” means the Rental Housing Act (No 50 of 1999);
 - 1.12 “**Schedule**” means the schedule on the covering page of this Mandate;
 - 1.13 “**Signing**” or “**sign**” means a handwritten signature, an advanced electronic signature, or an electronic signature as defined in the Electronic Communications and Transactions Act (No 25 of 2002).
2. Any reference to one gender includes the other gender.
3. Any reference to the singular includes the plural and any reference to the plural includes the singular.
4. No provision of this Mandate must be interpreted to contravene or limit the applicable provisions of the Consumer Protection Act, Protection of Personal Information Act, Property Practitioners Act or any other applicable legislation. Therefore, in the event of any conflict between the provisions of this Mandate and such legislation, the provisions of the relevant legislation will prevail.
5. A reference to any statutory enactment shall be construed as a reference to that enactment as at the date of signature of this Mandate by the Party last signing and as amended or substituted from time to time.

INTRODUCTION

6. The Landlord hereby appoints the Property Practitioner exclusively and the Property Practitioner accepts its appointment to procure a tenant for the Premises, subject to the Landlord providing the Property Practitioner with a fully completed and signed property condition disclosure form, as prescribed by the Property Practitioners Act, attached hereto marked Annexure “A”.
7. This Mandate will commence and terminate on the dates as stated in 1.4 of the Schedule or upon the date that a tenant is successfully procured for the Premises and a rental agreement is entered into, subject to the right of the Parties to renew the Mandate where agreed to in writing between them.

DUTIES OF PROPERTY PRACTITIONER

8. The Property Practitioner will be responsible for:
- 8.1 providing a copy of the property condition disclosure form, fully completed and duly signed by the Landlord, to any prospective tenant;
 - 8.2 ensuring that a tenant is secured for the Premises and signs a lease;
 - 8.3 carrying out the necessary checks, such as employment checks and credit checks, in respect of the tenant, in order to verify that the tenant is financially able to make payment under the lease, and for securing any consents from a tenant or prospective tenant, to the extent required, in order to perform such checks;
 - 8.4 marketing and advertising the Premises to potential tenants, and affixing a "To Let" sign on or near the Premises, which cost of advertisements shall be for the Property Practitioner's account, unless otherwise agreed in writing between the Parties;
 - 8.5 showing the Premises to potential tenants;
 - 8.6 advising the tenant who the contact person on behalf of the Landlord is, if the tenant has any queries in respect of the Premises once the lease has been signed;
 - 8.7 ensuring that the lease with the tenant is negotiated and finalised on terms which are acceptable to the Landlord;
 - 8.8 ensuring that the deposit which the Tenant is obliged to pay is invested in an interest-bearing account with a bank, as required by the Property Practitioners Act and Rental Housing Act, and which deposit may be invested by the Property Practitioner making use of PayProp's deposit management service.

COMMISSION DUE TO PROPERTY PRACTITIONER

- 9. In return for meeting the obligations set out above, the Property Practitioner will be entitled to a procurement commission as stated in 1.7 of the Schedule (excluding any value-added tax or other costs). The value of the commission is calculated by multiplying the commission percentage with the total value of the rental due over the lease period.
- 10. The Landlord agrees to pay the full commission to the Property Practitioner within 30 (thirty) days of the successful placement of the Tenant in the Premises.

CONCLUSION OF AGREEMENT OF SALE

- 11. If the tenant signs a sale agreement with the Landlord in relation to the Premises at any time during the period of the lease, during renewal of the lease, or within 12 (twelve) months after the lease terminates, the Property Practitioner will be regarded as having had a mandate from the Landlord to market the Premises, and as having been the effective cause of the sale, and will be entitled to payment by the Landlord of a sales commission in an amount as stated in 1.8 of the Schedule.

LIABILITY OF THE PROPERTY PRACTITIONER

- 12. The Property Practitioner is not liable, except in the case of gross negligence or a wilful act or omission, for damage, loss, or destruction in relation to any property of the Landlord, or any claim of a third party against the Landlord, whether caused by fire, burglary, an act, or omission on the part of the tenant or any other cause howsoever arising.
- 13. To the extent legally permissible, the Property Practitioner will not be liable for any indirect, special, consequential, or punitive damages arising out of this Mandate and the Property Practitioner's liability shall accordingly be limited to actual, proven direct damages.

RIGHT OF CANCELLATION BY LANDLORD WITHOUT REASON OR PENALTY IN TERMS OF SECTION 16 OF THE CONSUMER PROTECTION ACT

14. If the Property Practitioner first approached the Landlord directly with a view to concluding this Mandate, and such approach resulted in the conclusion of this Mandate, the Landlord has the right to cancel this Mandate without reason or penalty within 5 (five) Business Days of signing this Mandate, by giving the Property Practitioner written notice of cancellation. The Landlord is entitled to a refund of any payments made to the Property Practitioner in terms of this Mandate within 15 (fifteen) Business Days after the Landlord has given notice.
15. If the Property Practitioner did not first approach the Landlord directly with a view to concluding this Mandate, and instead the Landlord contacted the Property Practitioner of their own accord to discuss the marketing and procurement of a tenant and management of the Premises, the Landlord does not have the above right to cancel this Mandate without reason or penalty within 5 (five) Business Days of signing this Mandate.

RIGHT OF LANDLORD TO CANCEL THIS MANDATE BEFORE THE MANDATE PERIOD ENDS

16. If the Landlord chooses to cancel this Mandate for any reason other than a material breach of this Mandate by the Property Practitioner, the following will apply:
 - 16.1 the Landlord must give the Property Practitioner at least 20 (twenty) Business Days' prior written notice of cancellation; and
 - 16.2 the Property Practitioner shall be entitled to recover any loss suffered as a result of the early cancellation of this Mandate by charging the Landlord a reasonable cancellation penalty, which will be no less than the amount stated in 1.6 of the Schedule, and may be a higher amount depending on the circumstances of the cancellation. The Landlord agrees this is a fair and reasonable cancellation penalty.

PROPERTY PRACTITIONER'S DUTY TO NOTIFY LANDLORD BEFORE END OF MANDATE PERIOD

17. Unless the Mandate Period is less than 40 (forty) days, the Property Practitioner will notify the Landlord in writing, between 40 (forty) and 80 (eighty) Business Days before the end of the Mandate Period, of the following:
 - 17.1 the date on which the Mandate Period ends and whether the Property Practitioner wants the Mandate term to continue. The Landlord shall inform the Property Practitioner whether it wishes to offer a renewed Mandate Period. In the event of the Property Practitioner wanting to accept a renewed Mandate Period offered by the Landlord, the Property Practitioner must notify the Landlord, in writing, by no later than 30 (thirty) days before the end of the Mandate Period;
 - 17.2 that the Mandate will be automatically continued on a month-to-month basis after the Mandate Period ends, unless the Landlord expressly in writing directs the Property Practitioner not to continue this Mandate, or the Parties enter into a new mandate for a fixed period; and
 - 17.3 any material changes that will apply if this Mandate is automatically continued on a month-to-month basis after the end of the Mandate Period.
18. If the Mandate is continued on a month-to-month basis in terms of the above clause 17, either Party may terminate this Mandate without reason or penalty, provided that such Party gives the other Party a calendar month's written notice of termination.

BREACH OF THIS MANDATE BY EITHER PARTY

19. In the case of a material breach of this Mandate by either Party ("**defaulting Party**"), then without prejudice to any other rights which the other Party ("**non-defaulting Party**") may have at law or in terms of this Mandate, such non-defaulting Party may cancel this Mandate (with or without claiming damages) if the defaulting Party does not remedy such breach within 20 (twenty) Business Days (or such other time period as the Parties may agree in writing) of written notification being sent to the defaulting Party instructing the defaulting Party to so remedy ("**Notice Period**"). In the event that the breach is remedied during the Notice Period but a further material breach occurs at any subsequent time during the Mandate Period, this Mandate may be cancelled immediately by the non-defaulting Party.

20. A breach will be deemed to be a material breach if:
- 20.1 it is capable of being remedied, but is not so remedied within the Notice Period; or
 - 20.2 it is incapable of being remedied, and payment in money will compensate for such breach but such payment is not made within the Notice Period.
21. The Property Practitioner may institute Court action:
- 21.1 where the breach involves non-payment of commission by the Landlord, for the recovery of any commission which the Landlord has not paid; and/or
 - 21.2 for the recovery of damage suffered by the Property Practitioner as a result of the breach.
22. Either Party may institute Court action for the recovery of any damage suffered by such Party as a result of a material breach; and for specific performance by the other Party of any obligation under this Mandate.

LETTERS AND NOTICES

23. All letters or notices envisaged in this Mandate will be delivered by hand, electronic transmission, or facsimile.
24. If delivered during the receiving Party's business hours, letters or notices will be or will be considered to be received on the date of delivery or transmission, even if the Party is not present at the address at the time. If the letter or notice is delivered after the receiving Party's business hours, it will be presumed to have been received on the following Business Day from date of delivery or transmission.
25. For purposes of the above clauses, the contact details of the Landlord and the Property Practitioner will be as stated in 1.9 and 1.10 of the Schedule.

SURETYSHIP

26. If the Landlord is a body corporate, partnership, association, company, close corporation or trust, the trustees, partners, directors, or members (as the case may be) confirm in writing that they agree to be personally liable under this Mandate, together with the Landlord, and undertake to sign the annexure "B" hereto, titled "Suretyship".
27. If the person signing this Mandate is not the Landlord, the person signing confirms they have the authority to do so and accepts their liability jointly and severally with the Landlord as surety and co-principal debtor for amounts which the Landlord may owe the Property Practitioner under this Mandate. The person waives the benefits of excussion and division.

PARTIES MARRIED IN COMMUNITY OF PROPERTY

28. If any person signing this Mandate is married in community of property, they confirm that their spouse gave them permission to sign this Mandate.

APPLICABLE LAW

29. This Mandate will in all respects be governed by and construed under the laws of the Republic of South Africa.
30. The Parties hereby consent to the jurisdiction of the Magistrates Court, notwithstanding the fact that such action may otherwise be beyond the jurisdiction of such Court, and this clause will be regarded as constituting the necessary written consent granting jurisdiction to the Magistrates Court in terms of Section 45 of the Magistrates Court Act (No 32 of 1944).

PROTECTION OF PERSONAL INFORMATION

31. The Parties acknowledge that, where relevant, the other Party may be required to process their personal information insofar as is necessary for such Party to comply with its obligations and exercise its rights in terms of the Mandate, in law and/or as authorised by the Protection of Personal Information Act or other applicable laws. Each Party shall treat any personal information of the other Party that comes to its knowledge or into its possession as confidential and shall comply with the Protection of Personal Information Act where the Party processes the other Party's personal information.
32. In respect of the personal information of a tenant, prospective tenant, or that of the Landlord, the Property Practitioner shall:
 - 32.1 process the personal information strictly in compliance with the Protection of Personal Information Act;
 - 32.2 at all times treat the personal information as confidential and not disclose it without the relevant data subject or Landlord's consent, except where the Property Practitioner is required and/or authorised to so disclose it in terms of the Protection of Personal Information Act or other applicable laws;
 - 32.3 notify the Landlord immediately where there are reasonable grounds to believe that personal information has been accessed or acquired by any unauthorised person;
 - 32.4 only process the personal information for purposes strictly connected with the Property Practitioner's performance under this Mandate, except where expressly requested to do otherwise by the Landlord or the relevant data subject or where required and/or authorised by the Protection of Personal Information Act or other applicable laws;
 - 32.5 comply with all reasonable, lawful directions and instructions which may be given by the Landlord or the relevant data subject regarding the processing of the personal information;
 - 32.6 at all times have due regard to generally accepted information security practices and procedures which apply to the Property Practitioner;
 - 32.7 secure the integrity and confidentiality of the personal information in the Property Practitioner's possession or under its control by taking appropriate, reasonable technical and organisational measures to prevent loss of, damage to, or unauthorised destruction of the personal information and/or unlawful access to or unlawful processing of the personal information; and
 - 32.8 procure the consent of a tenant or prospective tenant where required under the Protection of Personal Information Act, including for purposes of clause 8.2.
33. In order to give effect to clause 32, the Property Practitioner shall take reasonable measures to:
 - 33.1 identify all reasonably foreseeable internal and external risks to Personal Information in the Property Practitioner's possession or under its control;
 - 33.2 establish and maintain appropriate safeguards against the risks identified;
 - 33.3 regularly verify that the safeguards are effectively implemented; and
 - 33.4 ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards.
34. The terms of clauses 31 to 33 shall survive the termination, cancellation, or expiry of this Mandate.

GENERAL

35. This Mandate constitutes the whole of the agreement between the Parties relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term, or condition relating to the subject matter of this Mandate not incorporated in this Mandate will be binding on either of the Parties.
36. This Mandate supersedes and replaces any and all agreements between the Parties in relation to the subject matter hereof.
37. No addition to or variation, deletion, or agreed cancellation of all or any clauses or provisions of this Mandate will be of any force or effect unless in writing and signed by the Parties.
38. If either Party for any reason chooses not to act against the other in the event of a breach of any provision of this Mandate, this will not constitute a waiver of any of the rights of such Party and such Party may still demand compliance with the provisions of this Mandate at a later stage.
39. No waiver, suspension, or postponement by either Party of any right arising out of or in connection with this Mandate will be of any force or effect unless in writing and signed by that Party. Any such waiver, suspension or postponement will be effective only in the specific instance and for the purpose given.

40. All provisions and the various clauses of this Mandate are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or clause of this Mandate, which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatsoever, will, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as not having been written, and the remaining provisions and clauses of this Mandate will remain in full force and effect. The Parties declare that it is their intention that this Mandate be executed without such unenforceable provision once they became aware of such unenforceability at the time of execution thereof.
41. The expiration or termination of this Mandate will not affect any provisions, which of necessity must continue to have effect after its expiration or termination, notwithstanding any failure of the clauses to expressly provide for this.
42. Neither this Mandate nor any part, share or interest herein nor any rights or obligations hereunder may be ceded, delegated, or assigned by either Party without the prior signed written consent of the other, save as otherwise provided herein.
43. If this Mandate (or any part of it) is signed by the Landlord and Property Practitioner on different copies, it will be valid despite the fact that the signatures of the Parties do not appear on a single document.
44. The Landlord confirms they have read and understand this Mandate, that the Property Practitioner has explained all necessary clauses and advised them of all their rights in terms of this Mandate, and of the relevant sections of the Consumer Protection Act, where applicable, and moreover signs this Mandate freely and voluntarily.
45. The Parties will comply with applicable laws at all times.

GENERAL

46. The Property Practitioner makes use of the services of PayProp to manage the tenant's damage deposit and rental payments. PayProp is a registered property practitioner and payment processing agent under the provisions of the Property Practitioners Act, as well as a third-party payment provider registered with the Payments Association of South Africa, that processes all rental monies through properly constituted trust accounts, which are subject to annual audits and are protected by the Fidelity Fund operated by the Property Practitioners Regulatory Authority. By signing this Mandate, the Landlord agrees to the Property Practitioner using the services of PayProp to manage the tenant's damage deposit.
47. As part of its services, PayProp invests the tenant's damage deposit in a specifically designated trust account, which account is interest-bearing at the best rate available in the circumstances, as negotiated from time to time by PayProp with its financial services providers.
48. Although PayProp's damage deposit service is used by the Property Practitioner for the benefit of the Landlord, it is intended that the tenant will be liable for PayProp's monthly deposit management fee raised in relation to the services provided by it in respect of the damage deposit. Accordingly, both the Property Practitioner and the Landlord must ensure that the lease agreement between the tenant and the Landlord expressly provides that PayProp's monthly deposit management fee in respect of the damage deposit, which fee will be at a rate not exceeding 0,311% per month, will be borne by the tenant and may be deducted by PayProp from the interest accruing on the damage deposit from time to time.
49. All contracting Parties agree to be bound by the additional provisions specified in 1.12 of the Schedule.

SIGNED BY LANDLORD ON THIS THE _____ DAY OF _____ 20____

AS WITNESSES:

1. _____ 2. _____
Witness 1 signature Witness 2 signature

The Property Practitioner (as defined in this Agreement) hereby warrants the validity of his / her / its Fidelity Fund Certificate as at the date of signature of this Agreement.

SIGNED BY PROPERTY PRACTITIONER ON THIS THE _____ DAY OF _____ 20____

AS WITNESSES:

1. _____ 2. _____
Witness 1 signature Witness 2 signature

ANNEXURE "A": PROPERTY CONDITION DISCLOSURE	YES	NO	N/A
I am aware of the defects in the roof			
I am aware of the defects in the electrical systems			
I am aware of the defects in the plumbing system, including in the swimming pool (if any)			
I am aware of the defects in the heating and air conditioning systems, including the air filters and humidifiers			
I am aware of the defects in the septic or other sanitary disposal systems			
I am aware of any defects to the property and/or in the basement or foundations of the property, including cracks, seepage and bulges. Other such defects include, but are not limited to, flooding, dampness or wet walls and unsafe concentrations of mould or defects in drain tiling or sump pumps			
I am aware of structural defects in the Property			
I am aware of boundary line dispute, encroachments or encumbrances in connection with the Property			
I am aware that remodelling and refurbishment have affected the structure of the Property			
I am aware that any additions or improvements made to or any erections made on the property, have been done or were made, only after the required consents, permissions and permits to do so were properly obtained.			

ANNEXURE “B”: SURETYSHIP

I, the undersigned,

[Insert full name and identity number]

(“the Surety”)

do hereby bind myself as surety and co-principal debtor, jointly and severally with the Landlord to the Property Practitioner for the due and proper fulfilment of all the obligations of the Landlord and for the punctual payment of all sums which are or may become due by the Landlord arising out of this Mandate or the renewal of this Mandate between the Landlord and the Property Practitioner in respect of the Premises described in 1.3 of the Schedule, hereby waiving the benefits of excussion and division.

Surety

DATE: _____ PLACE: _____

TIME: _____

WITNESS _____