

## COGENT TERMS OF BUSINESS

The relationship between Cogent and the Client is subject to the following terms and conditions (the '**Cogent Terms of Business**') or these '**Conditions**'). These Conditions shall operate to the exclusion of all terms advanced by the Client, which shall be of no effect. These terms are dated 1<sup>st</sup> June 2023 (v1.0) and, unless superseded, apply to all Contracts entered into on or after this date.

### 1. ACCEPTANCE OF THESE CONDITIONS

- 1.1. Without prejudice to the generality of the preamble to these Conditions, the Client shall be deemed to have accepted these conditions on the earliest of:
  - a) informing any Cogent Party of an Intended Transaction;
  - b) requesting details from a Cogent Party of one or more Properties or Prospective Counterparties;
  - c) including any Cogent Party in the circulation list of an email pertaining to a new Intended Transaction;
  - d) entering into direct correspondence with, or meeting anyone Introduced by, a Cogent Party (including but not limited to a Prospective Counterparty); or
  - e) making an offer for any Property or otherwise taking active steps to pursue an Intended Transaction of which the Client has otherwise made Cogent directly aware,each of which shall constitute an '**Instruction**'.
- 1.2. Each Instruction constitutes an offer by the Client to purchase the Services from Cogent in accordance with these Conditions.
- 1.3. The Instruction shall only be deemed to be accepted on the sooner of:
  - a) a Cogent Party responding to any such Instruction (otherwise than to decline to provide Services); or
  - b) the Client signing a Written Instruction;at which point and on which date (the '**Commencement Date**'), a Contract shall come into existence, engaging Cogent to provide the Services (the '**Engagement**').
- 1.4. These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate (including but not limited to any terms contained in the Instruction), or which are implied by law, trade custom, practice or course of dealing, save only where the Client enters into a Written Instruction, whereupon these Conditions shall be deemed modified to the minimum extent necessary to give effect to the terms of that Written Instruction.
- 1.5. The provision by Cogent of a draft, unsigned Written Instruction shall be an invitation to treat and shall not constitute an offer, and shall only be valid for a period of 10 Business Days from its date of issue, after which time Cogent reserves the right to modify it or withdraw it without penalty.
- 1.6. The Client irrevocably waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained within any Instruction that is inconsistent with these Conditions.

### 2. THE CLIENT'S OBLIGATIONS

- 2.1. The Client warrants that it deals with Cogent in the context of a business and does not deal as a consumer.
- 2.2. The Client shall provide, free of charge, all the information in its possession or reasonably obtainable, which is necessary for the proper and timely performance of the Services, and Cogent shall be entitled to rely on such information.
- 2.3. The Client shall take decisions and give approvals and take all such other actions necessary for the proper and timely performance of the Services. Where the Client is requested by Cogent to provide information about confirmation of, approval of, or consent to any matter, the Client shall do so without delay.
- 2.4. In the event that the Client considers that Cogent is not performing the Services adequately, the Client shall inform Cogent without delay on [info@cogentre.co.uk](mailto:info@cogentre.co.uk).
- 2.5. The Client shall be responsible for, and Cogent accepts no liability in respect of, all matters and costs relating to the condition of any Property, any taxes (including but not limited to VAT, tax on enveloped dwellings, stamp duty and all other Property-related taxes), business rates, services charges, licences, permissions, energy performance, listed building, planning, conservation, utilities, access, third party rights, easements, tenancies and other legal matters. The Client warrants that it has sought its own independent expert advice (and that it does not rely on any representations made by Cogent) in respect of any of these.
- 2.6. In respect of Disposals, the Consumer Protection from Unfair Trading Regulations Act 2008 prohibits the marketing of any false or misleading statements, written, verbal, or photographic about the property. Cogent will issue the Client a copy of any such details for approval and the Client warrants that the same represent a true and accurate reflection of the Property and that it will advise Cogent immediately of any discrepancies or if any part of the description of information relating to the Property changes.

### 3. COGENT'S OBLIGATIONS

- 3.1. Cogent warrants and undertakes that it shall use all the reasonable skill, care and diligence to be expected of an experienced member of its profession undertaking the Services.
- 3.2. Unless otherwise set out in a Written Instruction, Cogent provides its services for commercial and business purposes only (and not for private or consumer purposes) and shall carry out the Services on this basis.

3.3. The Client warrants that they are not aware of any relationship which should be disclosed under the provisions of the Estate Agents Act 1979 and hereby undertakes to inform Cogent without delay if it becomes aware of any such relationship.

3.4. Cogent shall provide a copy of its complaints handling procedure to the Client on request.

#### 4. CLIENT'S RELATIONSHIP WITH COGENT

4.1. Unless otherwise set out in a Written Instruction:

a) in respect of an Instruction relating to a Disposal, Cogent is engaged as sole agent with sole Disposal rights until termination of the Engagement in accordance with clause 8; and

b) in respect of an Instruction relating to an Acquisition, Cogent is engaged as sole agent with sole Acquisition rights until termination of the Engagement in accordance with clause 8; and

c) in respect of any other Engagement, Cogent is engaged on a non-exclusive basis.

4.2. Cogent acts as an experienced and professional broker, offering its considered opinion based on this experience and its appraisal of local market conditions.

4.3. Cogent does not:

a) provide formal valuation advice (any valuation reflects its professional opinion only and should not be taken as formal valuation advice);

b) undertake analysis of the strength of covenant or financial position of any Counterparty;

c) undertake analysis of wider market or economic conditions which may impact on the viability and/or profitability of a Client's Transaction; or

d) offer any warranty regarding any of the matters set out in clause 2.5.

#### 5. CLIENT'S RELATIONSHIP WITH A COGENT BROKER

5.1. Cogent Brokers are independent contractors who manage relationships between Cogent and its clients and are not agents, joint-venturers, employees, distributors, partners or franchisees of Cogent.

5.2. Otherwise than by carrying out conduct that amounts to accepting an Instruction, the Cogent Broker has no authority to bind Cogent, incur any debt, obligation or liability on Cogent's behalf or to make any promise on behalf of Cogent.

5.3. No fee shall be payable by the Client to any Cogent Broker under any Contract (which, for the avoidance of any doubt, shall in each case be between the Client and Cogent), and the Client shall not directly contract with any Cogent Broker for the provision of Services or otherwise.

5.4. The Client shall pay Cogent an introduction fee if during the period of 36 months from the Commencement Date the Client contracts (directly or indirectly) with any Cogent

Broker other than through Cogent without Cogent's written consent.

5.5. The introduction fee for the employment of a Cogent Broker is 50% of everything the Client pays or agrees to pay (directly or indirectly) in connection with the services that person delivers to the Client during the 36 months starting the day that Cogent Broker starts providing those services.

#### 6. FEES

6.1. Unless the Client can demonstrate to Cogent's reasonable satisfaction that it had already been in *bona fide* discussions with a Prospective Counterparty in relation to an Intended Transaction prior to the Commencement Date, the Client shall pay Cogent the Fee for every Transaction Concluded within 36 months of the later of the Termination Date and the last date on which Cogent provided Services to the Client in respect of a Contract.

6.2. Unless otherwise agreed in a Written Instruction, the Fee shall be calculated as follows:

a) for leasehold Acquisitions 10% of the Effective Rent;

b) for freehold or long leasehold Acquisitions, 1% of the Effective Price;

c) for leasehold Disposals 10% of the Effective Rent;

d) for freehold or long leasehold Disposals, 1% of the Effective Price;

e) for Occupational Agency Advice, 10% of the Effective Price; and

f) for leasehold renewals, regears or renegotiations, 5% of the new Effective Rent.

6.3. Subject to clause 6.4, in respect of a Transaction, the Fee shall become due and payable to Cogent when it is 'Concluded', which means:

a) in respect of an Acquisition or a Disposal, upon the earlier of the exchange of any unconditional contract giving effect to the Transaction or the occupation of the Property by the incoming occupier; and

b) in respect of a Disposal only, if a Potential Counterparty who is ready, willing and able to exchange contracts in respect of a Property at an Effective Rent or an Effective Price (as applicable) that the Client had indicated would be acceptable at the Commencement Date.

6.4. In respect of a Disposals or Acquisitions, the Client shall not be liable to pay the Fee if the Disposal or Acquisition takes place after the termination of the Contract and the Counterparty was not Introduced to the Client (in respect of this or any other Engagement) before its termination.

6.5. Unless Cogent otherwise notifies the Client in writing, the Client shall make all payments electronically to the bank account details set out on Cogent's invoice.

6.6. All fees due under this agreement are exclusive of VAT which shall, where applicable, be paid by the Client at the



prevailing rate on the due date for payment or receipt of the relevant invoice from Cogent (as the case may be).

## 7. MARKETING COSTS & DISBURSEMENTS

- 7.1. The Fee does not include any provision for marketing expenses, costs or disbursements.
- 7.2. Any marketing expenses shall be agreed between the Client and Cogent from time to time and, unless otherwise agreed, shall be invoiced to the Client on an *ad-hoc* basis.
- 7.3. Disbursements, including but not limited to travel expenses, messenger/courier services, photography, professional printing and/or copying and online portal fees shall be payable by the Client at cost and invoiced to the Client on an *ad-hoc* basis.
- 7.4. Invoices for marketing expenses, costs and/or disbursements shall be payable by the Client within 14 days of the date of the invoice.

## 8. TERMINATION

- 8.1. Either party may terminate Cogent's engagement under a Contract:
  - a) immediately by notice if the other party becomes insolvent as defined in section 113 of the Housing Grants, Construction and Regeneration Act 1996; or
  - b) otherwise by giving 1 calendar month's notice in writing to the other,in each case the expiry of which notice shall be the '**Termination Date**'.

## 9. CONSEQUENCES OF TERMINATION

- 9.1. Termination of Cogent's engagement under a Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to payment of any Fee, or any right to claim damages in respect of any breach of these terms which existed at or before the date of termination.
- 9.2. Upon termination of a Contract, all outstanding Fees in respect of that Contract and all other Contracts between Cogent and the Client shall become immediately due and payable.

## 10. COMPLIANCE WITH LAWS AND POLICIES

- 10.1. Each party shall at its own expense comply with all laws and regulations relating to its activities under this agreement, as they may change from time to time, and with any conditions binding on it in any applicable licences, registrations, permits and approvals.
- 10.2. The Client agrees to provide Cogent with such information as it may reasonably request to enable it to comply with its legal, regulatory, anti-money laundering, know-your-client, counter-terrorist financing and other compliance obligations, warranting that such information shall be true and accurate in all material respects.

## 11. INTEREST

- 11.1. If the Client fails to make a payment to Cogent by the due date for payment then, without limiting Cogent's other remedies, the Client shall pay interest on the overdue amount at the rate of 8% per annum. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount.
- 11.2. In relation to payments disputed in good faith, interest under this clause is payable only after the dispute is resolved, on sums found or agreed to be due, from the due date until payment.

## 12. LIMITATION OF LIABILITY

- 12.1. Nothing in this agreement shall limit or exclude the liability of either party for:
  - a) death or personal injury caused by its negligence, or the negligence of its employees, agents or sub-contractors (as applicable);
  - b) fraud or fraudulent misrepresentation; or
  - c) any matter in respect of which it would be unlawful to exclude or restrict liability.
- 12.2. Subject to clause 12.1 above, Cogent shall not be liable under any circumstances whatsoever to any other person, whether in contract, tort, negligence, breach of statutory duty or otherwise for:
  - a) loss of profits;
  - b) loss of sales or business;
  - c) loss of agreements or contacts;
  - d) loss of anticipated savings;
  - e) loss of use or corruption of software, data or information;
  - f) loss of or damage to goodwill; or
  - g) indirect or consequential loss.
- 12.3. Subject to clause 12.1 above, the total liability of Cogent to any other party for damage to property caused by the negligence of its employees, agents or sub-contractors in connection with this agreement shall be limited to £1,000,000 for any one claim. The Client warrants that it has reviewed Cogent's professional indemnity insurance policy and has made its own arrangements to cover any excess losses.
- 12.4. Subject to clause 12.1 above, the total liability of Cogent to any other party in respect of all breaches of duty occurring within any Contract Year shall not exceed the Cap.
- 12.5. In this clause:

**Cap** unless otherwise set out in a Written Instruction means the greater of £10,000 and 75% of the Total Amounts in the calendar year in which the breaches occurred.

**Total Amounts** means all sums paid and payable by the Client to Cogent, whether or not invoiced to the Client, under any Contracts.

**Total Liability** includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this agreement.

### 13. GENERAL

13.1. **Force Majeure.** Neither party shall be in breach of a Contract nor liable for delay in performing, or failure to perform, any of its obligations under a Contract if such delay or failure results from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for 3 months, the party not affected may terminate this agreement by giving 28 days' written notice to the affected party.

#### 13.2. Confidentiality.

- a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 13.2.b).
- b) Each party may disclose the other party's confidential information:
  - i) to its employees, officers, representatives, sub-contractors or advisors who need to know such information for the purposes of exercising that party's rights or carrying out its obligations under a Contract. Each party shall ensure that its employees, officers, representatives, sub-contractors or advisors to whom it discloses the other party's confidential information comply with this clause 13.2.b); and
  - ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- c) No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with a Contract.

13.3. **Entire agreement.** In respect of an Engagement, each Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understanding between them, whether written or oral, relating to its subject matter.

13.4. **Variation.** No variation of a Contract shall be effective unless it is in writing and signed by the parties or their authorised representatives.

13.5. **No waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

- a) waive that or any other right or remedy; or
- b) prevent or restrict the further exercise of that or any other right or remedy.

13.6. **Severance.** If any provision or part-provision of a Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to, or deletion of, a provision or part-provision of a Contract shall not affect the validity and enforceability of the rest of the Contract.

13.7. **No third-party rights.** No-one other than a party to a Contract, their successors and permitted assignees shall have any right to enforce any of its terms.

13.8. **No partnership or joint venture.** Nothing in a Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party. Each party confirms that it is acting on its own behalf and not for the benefit of any other person.

### 14. ALTERNATIVE DISPUTE RESOLUTION

14.1. If any dispute arises in connection with a Contract, these Conditions, or their performance, validity or enforcement (a 'Dispute'), the parties will attempt to settle it in accordance with the following protocol:

- a) Either party shall give the other a written notice of the Dispute, setting out its nature and full particulars (a 'Dispute Notice'), together with relevant supporting documents; and
- b) The parties will attempt, in good faith, to resolve the Dispute promptly through negotiation between representatives of the respective parties who have authority to settle.

14.2. If the Dispute is not resolved within 30 days of the Dispute Notice, it shall be finally resolved by arbitration in accordance with the Expedited Arbitration Rules of LCAM for the time being in force, which rules are deemed incorporated by reference into this clause. The seat of the arbitration shall be London and either party may appear by video conference. The tribunal shall consist of one arbitrator and the language of the arbitration shall be English.

### 15. GOVERNING LAW

15.1. Each Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.



## 16. JURISDICTION

16.1. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with a Contract or its subject matter or formation (including non-contractual disputes or claims).

## 17. DEFINITIONS & INTERPRETATION

17.1. The following definitions and rules of interpretation in this clause apply in these Conditions:

<b>Acquisition</b>	means the purchase, lease, letting or other assumption or acquisition of rights of occupation of any Property.
<b>Acting in Concert</b>	has the meaning given to it in the City Code on Takeovers and Mergers published by the Panel on Takeovers and Mergers (as amended).
<b>Affiliate</b>	any entity that directly or indirectly controls, is controlled by, or is under common control with another entity or anyone Acting in Concert with an entity.
<b>Business Day</b>	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
<b>Client</b>	means any legal person to whom Cogent provides Services and any of its Affiliates.
<b>Cogent</b>	means Cogent Real Estate Services Limited or any member of its Group.
<b>Cogent Broker</b>	any duly-authorized broker of Cogent's Services.
<b>Cogent Party</b>	means Cogent or any Cogent Broker.
<b>Concluded</b>	has the meaning given in clause 6.3.
<b>Counterparty</b>	each counterparty to any contract or contracts entered into by the Client in respect of a Transaction. Where there is more than one counterparty, this defined term shall be deemed to include all such counterparties.
<b>Disposal</b>	means the sale, letting, sub-letting, creation of a lease over, assignment, transfer, surrender or other disposal of rights of occupation of any Property.
<b>Effective Price</b>	means: <ul style="list-style-type: none"> <li>- in respect of a Disposal, the price (exc. VAT) payable by the Counterparty to the Client;</li> <li>- in respect of an Acquisition, the price (exc. VAT) payable by the Client to the Counterparty; and</li> <li>- in respect of Occupational Agency Advice where the Client already owns the Property, its present open market value or, where the Client does not already own the</li> </ul>

Property, the price payable (exc. VAT) for its Acquisition.

<b>Effective Rent</b>	the annual cost of occupation payable by or on behalf of the occupier, excluding any incentives, stepped rent, rent-free periods, utilities, contributions to sinking funds or service charges.
<b>Fee</b>	any fee payable by the Client to Cogent in accordance with clause 6 and any expenses, costs or disbursements payable by the Client to Cogent in accordance with clause 7.
<b>Group</b>	in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company.
<b>Intended Transaction</b>	a Transaction contemplated by the Client.
<b>Introduction</b>	the provision to the Client of the details of any Property, Transaction opportunity or Prospective Counterparty.
	<b>Introduce, Introduces and Introduced</b> shall be interpreted accordingly.
<b>Occupational Agency Advice</b>	means the provision by Cogent of its opinion on the open market rental potential of a Property, including an indication of any incentives, deductions or similar concessions that a landlord may need to offer.
<b>Property</b>	any freehold, leasehold, agreement to create a lease, commonhold or analogous interest in land, real estate or property worldwide.
<b>Services</b>	means any services, Introductions, advice, communications (including email, meetings and/or calls) provided by Cogent to the Client.
<b>Transaction</b>	an Acquisition or a Disposal by the Client or any of its Affiliates.
<b>VAT</b>	value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement or additional tax.
<b>Written Instruction</b>	a written Engagement on Cogent's standard form from time to time, executed both by the Client and by Cogent.

17.2. In these Conditions:

- a) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- b) a reference to legislation or a legislative provision is a reference to it as amended or re-enacted;
- c) any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the

sense of the words, description, definition, phrase or term preceding those terms; and

- d) the headings are inserted for convenience only and shall not affect their construction; and
- e) references to written or in writing shall include email.