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Northern Ireland

Tenancy Deposit Protection



You hold



Insurance

You hold
the deposit

Scheme Rules for Insurance Based Tenancy Deposit Protection

2nd Edition – August 2014

Insurance-Based Tenancy Deposit Protection for Northern Ireland Approved under the Tenancy Deposit Schemes (Northern Ireland) Regulations 2012

Dear Member

Thank you for choosing **my|deposits Northern Ireland** to Protect Deposits on behalf of your Tenants.

From 1st April 2013 all deposits taken on Private Tenancies require Protecting with an approved tenancy deposit scheme.

It is a condition of you agreeing to use the Scheme that you agree to abide by these Scheme Rules, as a legally binding contract between the Scheme and you, the Member. The undertakings and conditions contained in the Membership Application Form also form part of the contract. You are asked on the Membership Application Form to confirm that you have read and understood these Scheme Rules. If you have any doubts about what you are signing, you should seek independent legal advice.

Landlords (both private and corporate) and Agents may become Members of **my|deposits Northern Ireland**. Agent Members must have authority to Protect Deposits on behalf of their Landlord Clients. Landlords of Residential Property must protect a Tenant's Deposit in accordance with the Tenancy Deposit Schemes (Northern Ireland) Regulations 2012. This includes a requirement to provide the Tenant with the Regulation 12 Information. If the Landlord fails to protect the Deposit or provide the Regulation 12 Information, he is guilty of an offence and may be liable for a fine up to a maximum of £20,000.

Members must note that the timescales set out in these Scheme Rules are critical and many are set down by the Regulations. We will rely on the accuracy and authenticity of the Contact Details provided to us and Members will be responsible for the consequences of delayed responses when required to respond within the timescales.

You will notice that we have separated the rules relating to Deposit Disputes into its own document entitled the Conditions of Deposit Disputes. This document is an addendum to the Scheme Rules and Members and Tenants agree to abide by them in relation to Deposit Disputes dealt with by the Scheme.

A Landlord Client who instructs an Agent Member must be aware that we will be entitled to assume that the Agent Member has general authority to deal with and contract on all matters relating to the Tenant's Deposit. Wherever possible we will deal with the Agent Members in Protecting Deposits and in any Deposit Dispute. Notwithstanding the appointment of the Agent, the Landlord Client must be aware that he remains ultimately responsible for the Tenant's Deposit and for the actions and defaults of the Agent he appoints.

Whenever you, the Member, protect a Deposit with the Scheme, we must receive any required fees in cleared funds for the Protection to be valid.

These Scheme Rules will be updated from time to time. It is important to visit our website for the most recent version. We will adopt the latest set of Scheme Rules when considering a Deposit Dispute.

We aim to provide a friendly and efficient service at all times. I would like to welcome you as a Member of the Scheme, and hope that the service you receive meets your expectations and our aspirations and aims.

Eddie Hooker

Eddie Hooker

Chief Executive Officer - **my|deposits Northern Ireland**

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Definitions

Wherever the following words and phrases appear in the Scheme Rules they have the following meanings to interpret and enforce the Scheme Rules.

All references to persons, agents, landlords, and tenants in these Scheme Rules shall include, a company, partners and both male and female genders, and both the singular and plural.

NB notes are intended to assist and only provide information and explanation.

Actual End Date Of Tenancy

The date the Tenant leaves the Residential Property with or without the agreement of the Member.

Adjudicator

The qualified person appointed by the Scheme to make a decision through our Dispute Resolution Mechanism.

Agent

A letting or managing agent acting with the authority of Landlord Clients to take and hold Deposits.

Application Form

The Application Form which a prospective Member completes.

NB: The Application Form and these Scheme Rules form a Membership contract.

Calendar Day(s)

Any calendar day of the year (See definition of 'Working Day').

Client Money Account

A segregated and ring-fenced 'in trust' client money account, with a UK clearing bank or a Building Society. The account must be free of lien, charge or adverse claim and be retained for the specific purpose of holding client money only.

NB: Unlawful interference with a Client Money Account is a criminal offence.

Company Landlord

A public or private limited company (PLC or LTD), or a limited liability partnership (LLP) that Owns and lets Residential Property on a Private Tenancy with the Landlord being the name of the company or LLP.

Contact Details

The contact information we request for the Tenant(s) and, if relevant, any Interested Party, which the Member provides to the Scheme at the time of Protecting a new tenancy.

Scheme Note: The Contact Details will include the full name, correspondence address and a mobile number for the Tenant, any authorised Representative and in the case of Joint Tenancies, the full names of all Tenants party to the Joint Tenancy including where possible mobile phone numbers or email addresses for all the Joint Tenants. The Member must keep the Contact Details up to date during and at the end of the Tenancy. Where the Contact Details are incorrect, incomplete or missing, the Member must demonstrate that the information that they provide to the Scheme was, to the best of their knowledge, accurate.

Default DRM

DRM initiated by us when the Member fails to respond to notification of a Deposit Dispute in accordance with Regulation 25.

Deposit

In relation to a private tenancy, means any money intended to be held (by the Member or otherwise) as security for:

- (a) the performance of any obligations of the Tenant arising under or in connection with the Private Tenancy, or
- (b) the discharge of any liability of the Tenant so arising.

Deposit Dispute

When the division of the Deposit is being disputed, using the Scheme.

Deposit Protection Certificate (DPC)

A certificate produced by us confirming the Protection of the Deposit.

Deposit Protection Fee

The fee payable by the Member to us to Protect the Deposit.

Designated Account

Our bank account designated to hold Disputed Deposit Amounts pending agreement between the parties, or a decision by DRM or the Court.

Dispute Notification Claim Form (DNCF)

A Scheme Form to initiate a Deposit Dispute for completion by the Tenant.

Dispute Papers

The DNCF (with supporting evidence from the Tenant) initiating the Deposit Dispute, the Dispute Rebuttal Form and any Rebuttal Evidence submitted by the Member.

Dispute Rebuttal Form

A Scheme Form to allow a Member to respond to the Tenant's DNCF.

NB: Rebuttal Evidence is to be submitted with this form.

Dispute Resolution Mechanism (DRM)

An impartial and legally binding service offered by us to our Members and their Tenants as an alternative to Court action for resolving Deposit Disputes, as defined by Regulation 30 (1).

Disputed Deposit Amount

The amount of the Deposit which is the subject of a Deposit Dispute.

Interested Party

A third party who has contributed to the Deposit and is named on the DPC.

Joint Tenancy Agreement

When more than one Tenant enters into a Private Tenancy and all the tenants are jointly and severally responsible for the terms.

Joint Tenancy Information Form

A Scheme form to assist the Member if they Protect a Deposit relating to Joint Tenants (see C2.1).

Joint Tenants

The Tenants named on a Joint Tenancy Agreement and who have their Deposit Protected by the Scheme.

Landlord

An individual(s) who Owns and lets Residential Property on a Private Tenancy.

Landlord Client

A Landlord who instructs an Agent Member to hold their Tenant's Deposit(s).

NB: The Landlord Client must be registered with us by the Agent Member.

Landlord Registration Number

The registration number allocated to the Landlord when he registers as a Landlord with a local authority in Northern Ireland.

Scheme Note: A mandatory landlord registration scheme will be enacted in Northern Ireland in the middle of 2013.

– for further information please refer to the Landlord Registration Scheme (NI) Regulations 2012.

A Landlord may have more than one Landlord Registration Number so must provide the correct number depending on the location of the Residential Property to which the Deposit Protection relates.

Lead Tenant

One Tenant who is authorised by all Joint Tenants. We will be entitled to accept in good faith the nominated Lead Tenant in respect of all dealings regarding the Deposit, and in particular we will be entitled to accept as binding a validly executed tenancy agreement which nominates such a person.

Member/Scheme Member

A Landlord or Agent who is a Member of the Scheme.

Membership Fee(s)

Joining or renewal fees payable by the Member for Scheme Membership.

Membership Period

The period of Agent Membership (usually twelve months) for which Membership Fees have been paid.

NB: See B2 for Membership cancellation.

The Order

The Private Tenancies (Northern Ireland) Order 2006 (as amended) and including any statutory instruments made there under.

Own(s)

Any legal estate in possession of property in Northern Ireland. For the avoidance of doubt, a tenancy is not a legal estate for the purpose of these Rules.

Periodic Tenancy

A periodic tenancy is one which runs from week to week, month to month, or quarter to quarter. It can be ended by giving the required notice to the other party. Any tenancy can be created to be a periodic tenancy, although most

periodic tenancies arise when the initial fixed term of a tenancy has ended and the parties continue the tenancy without signing a new tenancy agreement.

Private Tenancy

Any tenancy as defined by paragraph 3 of the Private Tenancies (Northern Ireland) Order 2006.

Protect/Protection/Deposit Protection

The Protection of a Deposit by a Member, with the Scheme.

Rebuttal Evidence

The evidence to support the Rebuttal Form (must include a copy of the tenancy agreement).

The Regulations

The Tenancy Deposits Schemes Regulations (Northern Ireland) 2012.

Regulation 12 Information

The information a Landlord must provide to the Tenant with regards to the Deposit Protection in accordance with The Tenancy Deposit Schemes Regulations (Northern Ireland) 2012.

Regulatory Requirement

Statutory regulations imposed by legislation.

Residential Property

Any property in Northern Ireland used as a dwelling including but not limited to, a flat, maisonette, part of a building, house or set of rooms let under a Private Tenancy.

Review (of Adjudication)

Following receipt of an Adjudication Decision a party to the Deposit Dispute may request a review in accordance with Section F.

Risk Assessment

The checks we carry out on all Agent Member applications and at renewal including a credit check and also monitoring reports carried out during Membership.

Scheme

The **my|deposits Northern Ireland** Tenancy Deposit Protection Scheme approved by Northern Ireland executive and administered by us pursuant to the Regulations.

Sub-let

A Private Tenancy where a person (usually a Tenant) acts as a Landlord without Owning the Residential Property and creates a tenancy to a sub-tenant.

NB: The Scheme will not Protect a Deposit taken on a Sub-letting.

Tenant

A person who takes a letting and pays rent to a Landlord/ Agent under a Private Tenancy.

Three Months

Three months means three calendar months, for example; 1st January to 31st March or 15th January to 14th April.

UK Resident

A person with an address at which they are permanently resident in the United Kingdom (excluding the Isle of Man but including the Channel Islands) or a serving member of HM Forces stationed outside the United Kingdom for operational purposes.

Un-Protect/Un-Protection/Un-Protecting (of the Deposit)

The ending of Deposit Protection following the Member's notification to us that there has been an agreement between the Member and Tenant as to the retention and/or return of the Deposit, the settling of a Deposit Dispute through Court Order/DRM or if the Tenant has left the Residential Property and cannot be traced.

We/Us/Our

The **my|deposits Northern Ireland** Insurance Based Tenancy Deposit Protection Scheme.

Working Day

Any Calendar Day excluding Saturdays, Sundays, Christmas Day, Good Friday and any day which, under the Banking and Financial Dealings Act 1971, is a bank holiday in Northern Ireland.

NB: Also see definition of 'Calendar Day'.

Section A: Membership

A1 Membership Acceptance Criteria

A **Landlord** (either private or company) can apply by paper Application Form, online through our website or an associated website or by telephone. The Landlord must agree to be bound by the terms of the Scheme Rules and Application Form as a contract of Membership.

An **Agent** must complete a signed paper Application Form and confirm agreement to the Scheme Rules and the Conditions of Deposit Disputes both of which form the contract of Membership. The Scheme carries out a Risk Assessment on Agents.

The contract of Membership includes conditions and undertakings by the Member. The conditions are continuing obligations to which Members are contractually bound. The Member must tell the Scheme about any relevant changes to the Membership conditions. The Scheme relies on the accuracy of the information provided.

A1.1 The Member, as Landlord must:

- A1.1.1 Complete the Landlord Membership Application Form;
- A1.1.2 Own and let Residential Property in Northern Ireland and be named on the tenancy agreement (of the Protected Deposit) as Landlord;
- A1.1.3 Always hold and remain accountable for Protected Deposits;
- A1.1.4 If an individual, not be a patient under the Mental Health Act or subject to any bankruptcy, receivership or insolvency order;
- A1.1.5 If a company then be free of any petition to wind up, liquidation, receivership or insolvency orders;
- A1.1.6 The Landlord's address for service cannot be an address which is the subject of a live Deposit Protection.

A1.2 In addition to the relevant clauses of A1.1, the Member, as Company Landlord must:

- A1.2.1 Be incorporated and registered in the UK, Channel islands or Isle of Man and provide the full registered company name and company registration number;
- A1.2.2 Provide the full names, addresses and dates of birth for two officers of the company (where possible);
- A1.2.3 Always hold and remain accountable for Protected Deposits;
- A1.2.4 Be free of any petition to wind up, liquidation, receivership or insolvency orders.

A1.3 The Member, as Agent must:

- A1.3.1 Use our Application Form to join the Scheme
- A1.3.2 Let and/or manage Residential Property in Northern Ireland with the continuing authority of Landlord Client(s);
- A1.3.3 Always hold Deposits on behalf of Landlord Client(s) and ensure that such Deposits never form part of the Agent's money or assets;
- A1.3.4 Always hold Deposits in a Client Money Account and agree to provide evidence of this Client Money Account when requested by us (See B1);
- A1.3.5 Be free of any petition to wind up, liquidation, receivership or insolvency orders;
- A1.3.6 Only Protect Deposits which they hold. If any Deposit is held by a Landlord Client then the Landlord Client must become a Member of the Scheme to Protect the Deposit with us.

NB: Agent Members can only Protect Deposits which they hold. If any Deposit is held by a Landlord Client then the Landlord Client must become a Member of the Scheme to Protect the Deposit with us.

A1.4 Agent Members Registration of Landlord Clients:

A1.4.1 With regards to the registration of a Landlord Client, the Agent Member must:

- A1.4.1.1 Fully complete the Landlord Client Registration Form to register Landlord Clients with us;
- A1.4.1.2 Give the Landlord Client a copy of the latest Scheme Rules and the Conditions of Deposit Disputes;
- A1.4.1.3 Tell the Landlord Client that he is ultimately responsible for the Deposit and that he has obligations to the Tenant regarding the Deposit paid under the terms of the Private Tenancy (even if the Agent acts fraudulently or becomes bankrupt).

A1.4.2 With regard to the registration of Landlord Clients, the Agent Member must NOT:

- A1.4.2.1 Use the Agent Member's own address or telephone number as Contact Details for the Landlord Client;
- A1.4.2.2 Register Landlord Clients with us who are based overseas, unless we have given permission;
- A1.4.2.3 Attempt to register a Landlord Client who would not be accepted if the Landlord applied for Membership.

NB: If an Agent Member has doubts about this, he should check with us first and provide full disclosure.

A1.5 All Members must:

- A1.5.1 Not set up a Membership on behalf of another person or company including a family member.
- A1.5.2 Not have been refused or excluded Membership of, this or any other tenancy deposit protection scheme whether insurance based or custodial in their own name(s) or in any other name or capacity as principal, agent, joint applicant or nominee;
- A1.5.3 Not have been convicted of any criminal offence or have any criminal prosecutions pending;

NB: At our discretion we will consider less significant criminal convictions or those which occurred several years ago. Minor motoring convictions will be disregarded. We will NOT consider any application where financial offences have occurred.

A1.5.4 Always provide (and keep updated with the Scheme):

- A1.5.4.1 Always provide a correspondence address in Northern Ireland;
- A1.5.4.2 A working telephone contact number for themselves;
- A1.5.4.1 A working email address (if applicable) for themselves;
- A1.5.4.4 A residential address for Landlord Members or a trading address for Company Landlord and Agent Members (for the service of documents to such address);

A1.5.5 Respond to Scheme communications when requested to do so;

A1.5.6 Undertake to reimburse the Scheme, in respect of any amounts paid to a Tenant by the Scheme in accordance with Regulation 8 (c).

- A1.5.7 Agree the Membership terms and conditions under these Scheme Rules which require observance by all individuals, traders, companies, or officers of any company (including Limited Liability Partnerships) or partners in a partnership, employees and agents, in regard to each Membership contract;
- A1.5.8 If being a company or trading entity requiring registration and compliance, observe all Regulatory Requirements;
- A1.5.9 Agree that they can be contacted by email and telephone (including text message). We will rely on the Contact Details we have been provided with by the Member.

A2 Payment of Membership Fees

- A2.1 The Member agrees to pay all Membership Fees as required. Membership of the Scheme will only commence or be renewed when we have received cleared payment of Membership Fees.
- A2.2 Payment of Membership Fees must be made in accordance with the Application or Renewal Forms. A2.3 Cash will not be accepted for payment of Membership Fees.
- A2.4 Where a Member has used a discount code to receive a discounted Membership, this will only be bound to one Membership and cannot be used on multiple Memberships.

A3 Changes to Membership and/or Membership Data

- A3.1 Membership is not transferable. If an Agent Member or Company Landlord changes its legal status then the Member must inform us and obtain a new Membership using the correct company information and paying the specified fee.

NB: Please note clause C1.6 – Deposit Protections are not transferrable so the Member must re-Protect all of his Protected Deposits using the new Membership.

- A3.2 The Member must tell us immediately in writing of changes in any circumstances in respect of the Membership criteria as detailed in A1 and the information supplied in the Membership application form.
- A3.3 Non-disclosure or misrepresentations by a Member may result in Membership cancellation under B2. We may need to change the terms and conditions of Membership based on any non-disclosure of misrepresentation made by the Member.
- A3.4 In the unfortunate event of a Member's death, it is the responsibility of the executor or a beneficiary under the Member's Will to contact the Scheme, providing us with a copy of the death certificate and if applicable the grant of probate, along with a completed Membership application form to transfer the Membership into the relevant person's name.

A4 Agent Member Renewal

- A4.1 If an Agent Member has Protected Deposits at the end of a Membership period, then the Agent Member will be required to renew Membership for the Deposits to remain Protected.
- A4.2 If Membership is not renewed with the Scheme, either voluntarily or because we are not prepared to offer new Membership terms following a renewal application by the Agent Member then clause B4 will apply.
- A4.3 The Agent Membership renewal process may change from time to time. The Agent Member agrees to provide any information requested as part of the renewal process at the time of renewal.

A5 Declining Membership

We may decline an application or renewal of Membership at our discretion.

Section B: Audit, Breach of Contract and Cancellation of Membership

B1 Member Risk Assessments

- B1.1 We may undertake a Membership Risk Assessment at any time to ensure a Member's compliance with the Scheme Rules.
- B1.2 The Member agrees to comply with all reasonable requests of the Scheme in relation to a Risk Assessment.
- B1.3 On a Landlord Membership the Risk Assessment will involve, at the least, the Scheme undertaking a credit reference (with further monitoring), and also on a Company Landlord Member, a request for the Member to provide the address, date of birth and the contact details of all the owners, principals or directors of the company.
- B1.4 On an Agent Membership, the Risk Assessment will be the same as for a Company Landlord Membership except it will include a request for evidence that the protected Deposit money is being kept in a segregated Client Money Account (as defined) and may also include an unannounced visit to the Member's trading address to obtain the required information.

B2 Breach of Contract and Cancellation of Membership by my|deposits Northern Ireland

- B2.1 We may serve a 14 Calendar Day written notice to suspend Membership, which may lead to Membership cancellation, in the event of any of the following occurring, which we consider to be breaches of the Member's relevant obligations of the Scheme:
 - B2.1.1 Non-payment of any fees or other money requested and due to us; B2.1.2 Failure to lodge a Disputed Deposit Amount when required;
 - B2.1.3 Any statement made by the Member or information given which we discover to be a misrepresentation or fraudulent;
 - B2.1.4 A Member's failure to comply or pass a Risk Assessment carried out by the Scheme.
 - B2.1.5 A Member, in all cases if subject to a financial judgement, or the appointment of a liquidator or (LPA) receiver over properties Protected. If a company, being subject to a petition to wind up, an administrator, an administrative receiver, a proposal to strike off or if the Member ceases to carry on business or under the name he has registered with us. If an individual, becoming or being declared bankrupt, insolvent, or convening a meeting of or making or proposing to make any arrangement with creditors;
 - B2.1.6 The Scheme discovering that a Landlord Member does not Own or is Sub-letting the Residential Property of the Deposit Protection;
 - B2.1.8 Where the Member acts in an aggressive or abusive manner to any of our officers or staff;
 - B2.1.9 Any breach of the Scheme Rules, a Member's failure to respond to a Scheme request or information which we subsequently receive from a Member or Tenant which we deem to be of sufficient seriousness to warrant Membership cancellation (including re-occurring breaches).
 - B2.1.10 The Member becoming or being declared bankrupt, insolvent, or convening a meeting of or making or proposing to make any arrangement with creditors;
 - B2.1.11 The Member has been living outside of the UK for a period of at least three months from the date a Deposit is Protected;
- B2.2 Within the 14 Calendar Days of the date of the notice in B2.1, the Member must:
 - B2.2.1 Make good the breach described in B2.1; or
 - B2.2.2 Give us acceptable written reasons why the Membership should not be cancelled.

NB: During this 14 Calendar Day notice period the Member will not be able to Protect or Un-Protect any Deposits.

B2.3 At the end of the 14 Calendar Day period stated in the notice of suspension we will write to the Member giving our decision as to whether the Membership will be cancelled or not.

NB: Our decision on cancellation of Membership is final. There is no right of appeal against our decision.

B2.4 The Member will not be entitled to a refund of any Membership Fees or any Deposit Protection Fees following Cancellation of Membership in B2.3 unless the Membership is cancelled within 14 Days of a Membership or Protection Fee being paid.

B3 Cancellation of Membership by the Member

B3.1 A Member may cancel Membership at any time by providing us with 14 Calendar Days prior written notice

B3.2 Following receipt of a notice under B3.1 we will write to the Member's Tenant(s) and the Landlord Client(s) of Agent Members advising them that the Membership has been cancelled.

B3.3 If there are any outstanding or on-going Deposit Disputes at the time of cancellation, or if any new Deposit Disputes are raised within the three month period stated in B4, the Member agrees to comply with our instructions. The instructions may be made by us or the Adjudicator.

B3.4 The Member will not be entitled to any refund of Membership Fees or Deposit Protection Fees following Cancellation of Membership in B3.1 unless the Membership is cancelled within 14 Days of a Deposit Protection or Membership Fee being paid.

B3.5 Notwithstanding the notice under B3.1 Protected Deposits will remain Protected in accordance with B4.1.

B4 Protection of Deposits following Membership Cancellation

B4.1 Following the Membership cancellation decision in B2.3, or B3.1 we will give written notices to the Member's Tenant or Lead Tenant in a Joint Tenancy Agreement and the Landlord Client(s) in the case of an Agent Member, informing them that all Deposits will cease to be Protected after Three Months from the date of the first notice in B2.1, or B3.1, or from the date the Deposit(s) is/are Protected in another scheme, whichever is the earlier.

B4.2 The Scheme will only accept a Tenant's Deposit Dispute after Membership cancellation if the Actual End Date of Tenancy is within Three Months of the Membership being cancelled. If the Member is no longer trading the Tenant can still raise a Deposit Dispute and it will be dealt with in the same way as if a current Member had not submitted the Disputed Deposit Amount.

B4.3 The Landlord remains responsible and accountable to the Tenant for the Deposit notwithstanding the Un-Protection of the Deposit.

Section C: Deposit Protection (During and at the End of Tenancy)

C1 Deposit Protection Conditions

- C1.1 The Member must take responsibility for Protecting the Deposit correctly under the Regulations. We will not Protect a Deposit if the Member is aware that there will be or is likely to be a Deposit Dispute with the Tenant(s).
- C1.2 When Protecting a Deposit the Member must provide us with the information we request in accordance with, but not confined to, the requirements of Regulation 12.
- C1.3 We will then supply written confirmation of the Regulation 12 Information in the form of a DPC and Information for Tenants leaflet to the Member.

NB: The Landlord is responsible for providing the Regulation 12 Information to the Tenant. We strongly recommend Agent Members provide a copy of the DPC to all Landlord Clients. The Landlord Client will be named on the tenancy agreement and he is ultimately responsible for Protecting the Deposit and providing the Regulation 12 Information to the Tenant even if he instructs an Agent.

- C1.4 We will rely on the information contained in the DPC throughout the Protection. It is the Member's responsibility to ensure that the information provided is the same as that contained in the tenancy agreement.
- C1.5 The full envisioned amount of the Deposit as stated in the tenancy agreement must be protected by the Member of the Scheme. If the Tenant does not pay the full amount of the envisioned amount of the Deposit then the Member must keep evidence to show how much was provided.
- C1.6 A Deposit Protection Fee is payable for each Deposit we Protect. In a Joint Tenancy Agreement this will be the total Deposit taken.

NB: Failure to pay any Protection fee will invalidate the DPC and any Deposit Dispute will not be accepted even if the Tenant has received the DPC and the Prescribed Information. We will invoke Clause B2.1.

- C1.7 If the Member makes an administrative mistake when Protecting a Deposit the Member may request changes to the Deposit Protection if they inform us in writing (letter/email) of the changes required and provide a copy of the tenancy agreement to show that the changes are necessary. We may charge an administration fee for any changes to the DPC.
- C1.8 Deposit Protections are not transferable or assignable. Protections are granted to a Member in respect of each Deposit on each tenancy agreement.

C2 Deposit Protection for Joint Tenancy Agreements

- C2.1 When a Deposit relating to a Joint Tenancy Agreement is being Protected, the Member must, in addition to the requirements of C1.2, inform us which Tenant is to be named as the Lead Tenant. The Member must ensure that the Lead Tenant is authorised by all the Joint Tenants to accept service of all documents on behalf of all the Joint Tenants. The Member must obtain the consent of all the Joint Tenants before nominating the Lead Tenant.

NB: To assist the Member the Scheme has produced a 'Joint Tenancy Information Form' which can be downloaded from the Member's area of the Scheme website. We recommend that the Member should adopt this form for the following reasons:

- To provide evidence that the Member has received the consent of the Joint Tenants to the nomination of the Lead Tenant.*
- To obtain alternative addresses for each of the Joint Tenants for use as part of the Prescribed Information requirements.*
- To register new Joint Tenants and when Joint Tenants leave or are replaced during the fixed term of the tenancy agreement. The relevant information can be updated on the form. Please remember to update us on any changes as required by C2.2.3.*

- *If necessary, at the Actual End Date of Tenancy, this form can be updated by the Member with a new alternative address for any of the Joint Tenants.*
- *The information on this form can be provided to the Scheme as part of a Member's Rebuttal Evidence to a Deposit Dispute.*

C2.2 The Member must also:

C2.2.1 Correctly register the full names of all the Joint Tenants to be included on the DPC;

C2.2.2 Provide a signed copy of the DPC, and the "Information for Tenants" leaflet to the Lead Tenant.

The Lead Tenant should sign the DPC to confirm the details are correct;

C2.2.3 Notify us if any Joint Tenants leave or are replaced during the fixed term of the tenancy agreement so that the DPC can be amended. We may require proof of each change in the form of a signed document which states the name of the Joint Tenant leaving and the Joint Tenant joining. We reserve the right to charge an administration fee for changing our records and issuing a revised DPC.

C2.2.4 A new Protection MUST be purchased if all the original Joint Tenants to a tenancy agreement leave during the fixed term period of the tenancy agreement or if any Joint Tenants leave or are added after the expiry of the fixed term of the tenancy agreement.

NB: Please see Joint Tenant Transfer Form available on the Scheme website for Members to download and use when Joint Tenants change during the term of the tenancy agreement. This is not a legal document and is to be used for information purposes only.

C2.3 If a Deposit Dispute is raised by a Tenant who is not named on the DPC but is named on the tenancy agreement then the Member will be in breach of C2.2. If we accept the Deposit Dispute then we will hold the Member responsible for providing any Disputed Deposit Amount and we may also cancel the Member's Membership under B2.1.10.

C2.4 Joint Tenant Deposit Protections must be Un-Protected in accordance with C4.

C3 Member sells, transfers or no longer Owns Residential Property to which a Deposit Protection relates before the Actual End Date of Tenancy

C3.1 The Member must inform us and explain what has happened to the tenancy agreement and the Deposit (and provide evidence if requested).

C3.2 A Member cannot Un-Protect a Protected Deposit before the Actual End Date of Tenancy unless the Member has the Tenant's written agreement or provides proof that the Deposit has been returned to the Tenant(s), or re-Protected with us or another tenancy deposit protection scheme.

C3.3 We will hold the Member responsible for providing a Disputed Deposit Amount to us if a Tenant raises a Deposit Dispute and we have not been informed by the Member that ownership of the Residential Property has changed and the Member has passed the Deposit back to the Tenant or the new property owner.

C4 Earliest End Date of the Tenancy

C4.1 Prior to the end date of the fixed term AST, as provided to the Scheme at Protection, you must inform us whether the AST is due to terminate, continue on an SPT or be renewed with a new fixed term . If the Member does not update the Protection by 30 Calendar Days after the end date of the tenancy, then the Scheme may automatically Un-Protect the Deposit and inform the Tenant.

C4.2 A new Protection is **NOT** required if the original fixed term of the tenancy continues as a Periodic Tenancy.

- C4.3 A new Protection IS required when a new fixed term is granted by a Member, even if it is issued to the same Tenant(s) with the same Deposit. We will not continue to Protect a Deposit when the original fixed term tenancy is replaced with a new fixed term by letter, transfer, assignment, memorandum, agreement, or any other device. The Deposit must be renewed/re-Protected and the relevant Protection Fee paid

NB1: Once the Deposit has been automatically Un-protected it cannot be reinstated by the Scheme. The Member will have to purchase a new Protection.

NB2: Members who use our online system will be provided with a number of notifications that the AST (and Deposit Protection) is due to end. If the Member has not provided us with an email address then they will receive postal reminders. We will not automatically Un-protect a Deposit without notifying the Member first.

C5 Actual End Date of the Tenancy

- C5.1 At the Actual End Date of the Tenancy the Member must:

- C5.1.1 Un-Protect the Deposit and provide us with an alternative address and mobile number for the Tenant.
- C5.1.2 Contact the Tenant(s) to negotiate the return of the Deposit.

NB: We recommend that Members keep copies of all attempts to contact the Tenant(s), Members should be aware that a Tenant has a statutory limitation period of six years from the Actual End Date of Tenancy to issue a claim in the Courts for the Deposit. Agent Members should inform Landlord Clients of this.

- C5.1.3 Pay the Tenant any **undisputed** Deposit amount within 5 Working Days of a request being made by the Tenant for the return of the Deposit.

- C5.2 If a Member cannot contact the Tenant(s) or has not agreed the division of the Deposit with the Tenant(s) then the Member remains liable for paying any Disputed Deposit Amount to us if we accept a Deposit Dispute from the Tenant. The Tenant will have three months from the Actual End Date of the Tenancy to raise a Deposit Dispute subject to D1.5.
- C5.3 The Agent Member must consider his responsibilities in lodging the Disputed Deposit Amount to us before returning any Deposit amount to the Landlord Client.

C6 Members on our annual account model

- C6.1 We may offer Members an annual account model to cover all their Deposit Protections.
- C6.2 The Scheme Rules relating to paying for renewals of initial fixed term tenancies do not apply to Members on the annual account model. All tenancies registered with us by the Member remain Protected while the Member is a Member of our Scheme (or until the Member Un-Protects them if earlier).
- C6.3 If the Membership is not renewed (for any reason) we will Un-protect all Deposits and write to the Tenants informing them that the Deposit will remain Protected for Three Months from the end date of the Member's Membership. If the Actual End Date of Tenancy is during this Three Month period the Tenant will still be able to raise a Deposit Dispute unless the Deposit has been Protected with another Scheme.
- C6.4 The Agent Member is required to manage the portfolio of Deposit Protections including Un-Protecting Deposits at the Actual End Date of Tenancy. This enables us to contact the Tenant(s) to inform them of the Un-Protection and to monitor the number of Protected Deposits.

Section D: Disputes between Member and Tenant over the return of the Deposit

- D1** The Member should take responsibility to negotiate the amount of the deposit to be returned to the Tenant at the end of the tenancy.
- D2** The Act requires the Scheme to provide a Dispute Resolution Mechanism (DRM) and actively encourages its use as a method of Deposit Dispute resolution if both the Member and the Tenant agrees to its use.
- D3** Whilst there is no obligation for the Tenants to use the Scheme's DRM mechanism, it is available at no additional cost and is designed to allow easy and quicker access to a resolution of the Deposit Dispute.
- D4** The Scheme has a separate document entitled the **my|deposits Northern Ireland** Conditions of Deposit Disputes. These Conditions set out how the Scheme deals with Deposit Disputes including, acceptance, process and resolution.
- D5** All Members are contractually bound to agree to abide by the latest edition of the Conditions of Deposit Disputes as an addendum to the **my|deposits Northern Ireland** Scheme Rules. The Rules Conditions of Deposit Disputes are available online in the public area of the Scheme's website or can be posted to the Member if a request is received over the telephone or by letter.

Section E: Miscellaneous Rules and Provisions

- E1** The terms of the Scheme, Scheme Rules and Rules of Deposit Disputes may need to be updated from time to time. Notices of any significant changes will be posted on our website, in newsletters, and by email where the Member has provided us with an email, or direct mail if not.
- E2** The Member agrees to abide by the latest version of the Scheme Rules and the Conditions of Deposit Disputes notwithstanding any earlier version of the Scheme Rules which were in force when a Protection was purchased.
- E3** We may delay action if we have any concerns about a Member's compliance with the Scheme Rules, identity, fraud or money laundering.
- E4** We cannot be held responsible for intervening events beyond our control which prevent, delay or impede our ability to operate the Scheme or these Rules.

NB: This includes (not exclusively) events such as fire, flooding, strike or terrorism.

- E5** The Scheme will not be responsible for the Member missing an email from us when the message was received into the Member's spam email inbox. The Member is responsible for adding Scheme email addresses to their 'safe sender' lists if necessary.
- E6** These Scheme Rules and the Conditions of Deposit Disputes are governed by and shall be construed in accordance with the Act, and the laws of England and Wales.
- E7** Our previous ADR decisions may not be relied upon as precedent or authority for deciding any following Deposit Dispute. Each Deposit Dispute is addressed on its own individual merits and supporting evidence submitted by both parties.
- E8** Any claim that a Member may have against us for our breach of the Scheme Rules is limited to the Protected Deposit amount plus interest at 2% above HSBC base rate from the date of the liability being proven against us.

Section F: Complaints Procedure

F1 Our aim is to provide a first class service to all Members and Tenants and to do everything we can to ensure that you are satisfied. If you feel that we have fallen short of this standard and you wish to complain, you should do so in writing at:

mydeposits Northern Ireland Insurance
Ground Floor
Kingmaker House
Station Road
New Barnet
Hertfordshire
EN5 1NZ

Or by email at: complaints.insurance@mydepositsni.co.uk

F2 To aid resolution of any complaint, the complaint must be made within six months of the event occurring. We will only deal with a complaint from a Member or Tenant of a Protected Deposit, if a Landlord Client wishes to make a complaint this must be provided through the Agent Member.

F3 The timescales for dealing with a complaint are as follows:

F3.1 You will receive a response from us within 1 Working Day

F3.2 If we are unable to resolve the matter within 1 Working Day, we will provide a substantive response within 5 Working Days.

F3.3 After sending this response we may deem the complaint closed. If we deem the matter closed then we reserve the right not to enter into any further correspondence.

F4 **This Complaints Procedure cannot be used to appeal against an Adjudication decision or a Review decision as agreeing to use DRM to resolve a Deposit Dispute means agreeing to be bound by the decision of the Adjudicator.**

F5 **my|deposits Northern Ireland** is not regulated by the Financial Conduct Authority (FCA). The Department for Social Development are supporting the Tenancy Deposit Protection Schemes in Northern Ireland.

Appendix 1: Data Protection Notice

The Scheme is operated for the Northern Ireland Assembly by Tenancy Deposits (Northern Ireland) Limited trading as **my|deposits Northern Ireland**.

This Data Protection Notice applies to **my|deposits Northern Ireland** with regards to personal information and data collected about Landlords, Agents and Tenants in connection with a Tenancy Deposit Scheme under The Tenancy Deposit Schemes (Northern Ireland) Regulations 2012.

Personal Information

my|deposits Northern Ireland collects the information Members are asked to provide during the Scheme Account Set-Up and which is supplied during the period that any Deposit is Protected by a Member.

Our websites and e-mails use common internet tools such as cookies and beacons.

my|deposits Northern Ireland sometimes collect information about the parties from other sources, such as Tenants, land registry data, postal services data, credit checking organisations or other sources necessary to confirm identity or the instructions provided.

For more information on the Scheme's information, and collection practices (including how to delete or refuse cookies), please contact us.

Uses and Sharing

Personal information will only be handled for the purposes of the Tenancy Deposit Scheme. This includes providing Dispute Resolution Mechanism and administering the Scheme, although **my|deposits Northern Ireland** may be required to disclose details of your Scheme activities to regulators, industry bodies and other organisations for the purpose of fraud prevention and money-laundering, or if there are concerns of a criminal nature regarding your activities.

A condition of using the Scheme is that Members consent to **my|deposits Northern Ireland** sharing Member details and data, including Deposit Protection details, to the relevant Local Authorities when required. The information gathered may also be used for research, historical & statistical purposes. We may be required to generate and supply anonymous data to the Northern Ireland Assembly via quarterly and annual reports.

We process data to run the Scheme. In the event of a Deposit Dispute, information and data may also be processed by an Dispute Resolution Mechanism service provider instructed by the Scheme. These organisations are required to protect data for us and cannot apply personal information for purposes unconnected with the Scheme.

Personal information may be transferred outside the UK or European Union for the purpose of providing access to the information from a website outside the European Union. We must process data in accordance with the Data Protection Act 1998.

Your Rights

Under the Data Protection Act 1998 Landlords, Agents and Tenants have the right to access any data that we hold about them. Contact us to correct any errors in the information or for more information on your rights.

Contact details

We can be contacted at:

mydeposits Northern Ireland, Third Floor, Kingmaker House, Station Road, New Barnet, Herts EN5 1NZ

by telephone on 0333 321 9403 (note that calls may be recorded)

or by email on customerservices@mydepositsni.co.uk

Appendix 2: List of Scheme Forms

The following is a list of some of the forms that Members may need in order to join, renew or manage their Membership of the Scheme and details of how and/or when the form can be obtained:

Name of Document	How to obtain a copy
Application for Membership – Landlords/Agents	Apply to us or download from Scheme website
Deposit Protection Certificate	Available from Member's area online or sent by us when a Member protects a Deposit
Deposit Protection Request Form	Available from Member's area online or apply to us
Dispute Acknowledgement Form	Issued by us to a Member or filled in online
Dispute Notification Claim Form (DNCF)	Issued by us to a Tenant or filled in online
Dispute Rebuttal Form	Issued by us to a Member or filled in online
Guide for Landlords using an Agent	Issued by us to Landlord Clients. Agent Members can download extra copies from the Scheme website
Information for Tenants	Apply to us or download from Scheme website
Joint Tenancy Information Form	Available from Member's area online or apply to us
Joint Tenant Transfer Form	Apply to us or download from Scheme website
Landlord Registration Form (for Agent Members)	Issued online for Agent Members
Dispute Resolution Mechanism (DRM) Member and Tenant Guides	Available online or apply to us
Request to Un-Protect Deposit Form	Available from Member's area online or apply to us

Appendix 3 The Tenancy Deposit Schemes Regulations (Northern Ireland) 2012

These can be found on the legislation.gov.uk website by searching for: The Tenancy Deposit Schemes Regulations (Northern Ireland) 2012.

my|deposits

Northern Ireland

Tenancy Deposit Protection



You hold



Insurance

You hold
the deposit

Insurance based deposit protection Conditions of Deposit Disputes

1st Edition - August 2014

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Introduction

These Conditions of Deposit Disputes are an addendum to the **my|deposits Northern Ireland** Insurance Scheme Rules and set out the process and practice that will occur when a Deposit Dispute is raised with the Scheme. The definitions from the Scheme Rules follow to these Conditions of Deposit Disputes.

These Conditions of Deposit Disputes set out the legislative requirements related to the raising of a Deposit Dispute, the responsibilities of a Member when the Deposit Dispute is raised, during and how the Scheme will deal with the Deposit Dispute including its resolution.

The Tenant will be required to agree to comply and abide by these Conditions of Deposit Disputes when raising a Deposit Dispute with the Scheme.

The Scheme offers a free Dispute Resolution Mechanism (DRM) which is an alternative method to the Tenant and Member resolving the dispute through the Court.

The Scheme actively encourages its use as a method of Deposit Dispute resolution.

By accepting to use the Scheme's DRM (and having the Deposit Dispute accepted by the Scheme) the parties will be given the opportunity to present their case and evidence to a fully trained and qualified Adjudicator. The Adjudicator will analyse the evidence submitted and make a binding decision as to how the Deposit should be distributed.

Section A: Best Practice at the Actual End Date of the Tenancy

A1 At the end of the tenancy the Tenant should ensure that:

- A1.1 They have paid all rent up to date;
- A1.2 They have returned the keys to the Member or the Member's representative;
- A1.3 They have informed the Member of their alternative contact details;
- A1.4 They have formally requested the return of the Deposit and be able to provide proof of this if asked;
- A1.5 If they are in contact (or have actively tried to have contact) with the Member, attempted to negotiate the return of the Deposit with the Member, and waited a minimum of 5 Working Days before contacting the Scheme to raise a Deposit Dispute. The Tenant must be able to provide proof of this if asked by the Scheme;
- A1.6 Only after the above has occurred and the Tenant is still unhappy with the amount of the Deposit being returned to them, should they consider raising a Deposit Dispute with the Scheme.

A2 At the Actual End of the Tenancy, the Member should:

- A2.1 Un-protect the Deposit with the Scheme;
- A2.2 Ensure they obtain the forwarding contact details for the Tenant;
- A2.3 Arrange for a check out of the Residential Property to be carried out;
- A2.4 Within 5 Working Days of the Tenant requesting the return of the Deposit in writing:
 - A2.4.1 Return any amount of the Deposit they do not intend to withhold;
 - A2.4.2 Inform the Tenant of the breakdown of deductions that are to be made from the Deposit. If the Member is not sure of the deductions within 5 Calendar Days then inform the Tenant when they will be provided with the breakdown giving a reasonable timeframe and reasons for the delay;
 - A2.4.3 Where possible negotiate over any disputed deductions from the Deposit with the Tenant.

A3 If a Member is unable to contact the Tenant at the end of the Tenancy then we recommend that the Member:

- A3.1 Arranges a check out of the Residential Property as usual and makes a note of any deductions that should be made from the Deposit;
- A3.2 Using any contact details the Member holds for the Tenant, attempts to contact them to inform them of the proposed deductions;
- A3.3 At the end of the three months that the Tenant can raise a Deposit Dispute make a decision whether to allocate the Deposit amounts as per the proposed deductions. If this includes an amount to the Tenant then the amount should be transferred into a suitably designated bank account;
- A3.4 Keep a record of all actions taken in relation to the Deposit.

Section B: Deposit Dispute Acceptance Criteria

- B1** The Tenant must have:
 - B1.1 Vacated the Residential Property;
 - B1.2 Paid all rent owing under the Tenancy Agreement;
 - B1.3 Requested the return of the Deposit back in writing, be able to supply proof of this and have allowed a minimum of 5 Working Days from the request;
 - B1.4 If in contact with the Member, attempted to negotiate the return of the deposit with the Member, and be able to provide proof, if asked;
 - B1.5 Fully completed and submitted the Scheme's Deposit Dispute Notification Claim Form (DNCF) within three months of vacating the Residential Property or of being provided with notification that the Deposit Protection was to end (whichever is the sooner);
 - B1.6 Complied with B6 to B8 if a Joint Tenant.

If any of the above has not occurred and/or the Tenant cannot provide us with evidence to clarify any of the above points as reasonably requested, the Scheme is likely to reject the Deposit Dispute at that time.

- B2** On receipt of a Deposit Dispute the Scheme will check the following:
 - B2.1 That the details on the DPC are the same as those on the Tenancy Agreement relating to the Deposit Dispute;
 - B2.2 That a new Protection has been purchased should a Tenancy Agreement be renewed; even if it is issued to the same Tenant(s) with the same Deposit. We do not continue to Protect a Deposit when the original fixed term Tenancy agreement is replaced with a new fixed term by letter, transfer, assignment, memorandum, agreement, or any other device;
 - B2.3 The Deposit was not Protected after the Member was already aware of a potential Deposit Dispute with the Tenant(s)

If there are problems with any of the above which we discover when the Tenant raises a Deposit Dispute then the Scheme may reject the Deposit Dispute and the Member will be responsible to the Tenant for not having Protected the Deposit properly in accordance with Section C of the Scheme Rules. The Scheme takes no responsibility for the Member not Protecting the Deposit properly in accordance with the Scheme Rules or the Act. These provisions may not relate to Members on the annual model (see Scheme Rule C6.2).

- B3** The Scheme may not accept a Deposit Dispute, when after investigation the Scheme discovers the matters are outside its remit because:
 - B3.1 The Deposit Dispute relates to matters other than the return of the Protected Deposit;
 - B3.2 Court proceedings have been issued regarding any matter related to the Tenancy Agreement in question (unless they have been withdrawn or are stayed for mediation purposes or the court has subsequently directed that the matter be dealt with by the Scheme's DRM);
 - B3.3 There are allegations of fraud, police involvement, criminal activities, duress or harassment by either party to the Deposit Dispute;
 - B3.4 The Deposit Dispute being raised is vexatious, frivolous or being raised unreasonably by the Tenant.
 - B3.5 It would be more appropriate for the Deposit Dispute to be dealt with through the Courts. The Scheme would rely on this clause if the Deposit Dispute included matters that could not reasonably be decided by an Adjudicator using paper based evidence or the Deposit Dispute contains complex matters of law.
- B4** If at any stage, further information regarding a Deposit Dispute comes to the Scheme's attention that affects the reasons why a Deposit Dispute was either accepted or rejected, the Scheme reserves the right to change the initial decision and will provide full written reasons why the position has changed. The Scheme's decision on accepting or rejecting a Deposit Dispute is always final.

B5 Notwithstanding B4 the Scheme may accept a Deposit Dispute at our discretion in any circumstance and at any time if a Tenant provides us with compelling evidence as to why the Deposit Dispute is being raised at that specific time. This will include when we are provided with evidence that the Member has unreasonably delayed providing reasons for making deductions to the Deposit to the Tenant or has not been contactable after the Tenancy agreement ends.

Joint Tenants

B6 If the Deposit Dispute relates to a Joint Tenancy Agreement then only one Tenant, who must be named on the DPC, may raise the Deposit Dispute. This Tenant does not need to be the Lead Tenant. The Tenant who raises the Deposit Dispute must confirm the following to the Scheme:

[a] They will personally conduct all aspects of the Deposit Dispute pursuant to [b] to [e] inclusive;

[b] They have authority to act for all the Joint Tenants;

[c] They agree to fairly distribute the money which may be returned to the other Joint Tenants;

[d] They agree to indemnify the Scheme against any claims or loss by the other Joint Tenants; and

[e] They will notify all the Joint Tenants that the Scheme cannot resolve any disputes between the Joint Tenants.

B7 The Joint Tenant who submits the Deposit Dispute must fully complete and return the 'Joint Tenancy Authorisation' Form to confirm that they have permission to act on behalf of all Tenants. If the Tenant who is raising a Deposit Dispute cannot obtain confirmation from all the Joint Tenants in accordance with B6 then they may still submit the Deposit Dispute but if the Scheme is subsequently made aware (by a Tenant or the Member) that not all the Joint Tenant's agree to the use of the Scheme's DRM mechanism then we may not proceed with the Deposit Dispute.

B8 Any dispute between the Joint Tenants must be dealt with themselves through the Courts if necessary.

Authorised Parties

B9 At our discretion we may allow a Deposit Dispute to be raised and handled on behalf of a Tenant by an Interested Party as already advised to us or someone acting as an 'authorised representative' of the Tenant.

B10 To act on their behalf, the Tenant and/or the authorised party must inform us in writing and provide reasons and evidence, which may, but not exclusively, include the Tenant's difficulty with language or understanding the issues, disability or sickness.

B11 Our decision to accept or acknowledge a third party to take responsibility for the Deposit Dispute is final and we may require submission of identification or other evidence and documentation including any 'enduring power of attorney', 'lasting power of attorney' or other agency agreement.

B12 If we accept the authorised representative then these Conditions will be interpreted so that the definition of 'Tenant' will extend to the authorised representative.

B13 If a solicitor or any other professional representative is instructed by a party then the costs must be paid by the instructing party. The Scheme will not make any award for the costs related to the representation.

B14 We may allow a Deposit Dispute to be handled on behalf of a Private Landlord Member by an authorised representative. The Member and/or the authorised representative must inform us in writing and provide reasons and evidence, which may, but not exclusively include:

- Members difficulty with language or understanding the issues;
- Members disability or sickness;

- B15** We will not allow a Company Landlord or Agent Member to grant authority for another party to act on their behalf in regards to a Deposit Dispute

Miscellaneous Provisions in Relation to Deposit Disputes

- B16** The DRM will not resolve any Deposit Dispute in excess of the amount of the Protected Deposit or Disputed Deposit Amount and at no time will we pay a sum in excess of the Protected Deposit amount as Protected with the Scheme.
- B17** Each party is responsible for any costs and/or expenses incurred as a result of the DRM mechanism. The Scheme cannot make any award of costs related to the preparation of a Deposit Dispute.
- B18** The parties are able and encouraged to settle the Deposit Dispute before the Adjudicator makes a decision. Both parties must provide proof of their agreement to us by way of a written and signed instruction. We may independently check the authenticity of the signed agreement.
- B19** The Scheme may be required to make amendments to the Disputed Deposit Amount at any time during a Deposit Dispute. The Member is required to lodge whatever amount the Scheme deems to be the Disputed Deposit Amount whenever the Scheme requests the Member to do so.
- B20** The Scheme will pay back the Disputed Deposit Amount in accordance with a fully signed agreement, an Adjudication decision or a Court Order we accept within 5 Working Days of receipt.

Section C: Tenant Raising a Dispute

- C1 To raise a Deposit Dispute with the Scheme the Tenant is required to:
 - C1.1 Complete and submit a DNCF ('the Deposit Dispute'), by paper to the Scheme setting out clearly the reasons for the Deposit Dispute, why they believe they are entitled to Deposit money back and how much money the Tenant believes to be in dispute ('Disputed Deposit Amount');
 - C1.2 Inform the Scheme whether they wish for the Deposit Dispute to be resolved using the Scheme's DRM or through the Courts;
 - C1.3 Lodge all evidence in support of the Deposit Dispute with the Scheme on submitting the DNCF or within 10 Working Days;
 - C1.4 Submit evidence that they have requested the return of the Deposit in writing and waited a minimum of 5 Working days before raising the Deposit Dispute and provide a copy of the Tenancy Agreement (if possible);
 - C1.5 Provide evidence that they have tried to negotiate the return of the Deposit if requested by the Scheme.

If the Tenant cannot comply with any of the above then it is unlikely the Scheme will accept the Deposit Dispute.

- C2 The Deposit Dispute will not have been submitted with the Scheme until the Tenant receives confirmation of a unique reference number (URN) given to the Deposit Dispute.
- C3 Should the Tenant wish to submit the Deposit Dispute using the Scheme's paper DNCF, the Deposit Dispute will not be considered as submitted by the Scheme until the form has been fully completed, returned and uploaded by us on to the Scheme's DRM electronic system and the Tenant is informed that the Deposit Dispute has been given a URN.
- C4 After giving the Deposit Dispute a URN the Scheme will then check the Deposit Dispute to confirm that it is valid in accordance with the acceptance criteria set out in section B. The Scheme may be required to obtain information from both the Tenant and Member to decide whether the Deposit Dispute is valid.
- C5 If the Deposit Dispute is not considered valid by the Scheme the Tenant will be informed as soon as is reasonably practicable. The Decision of the Scheme is final at that stage but the Tenant will still have until the deadline as set out in B1.5 to have a Deposit Dispute accepted by the Scheme if there is any change in the reasons why the Deposit Dispute was rejected.

Section D: Member's Response to a Deposit Dispute

- D1** If the Deposit Dispute is accepted in the first instance, the Scheme will notify the Member. The Member will then be required to do the following within 10 Working Days of the date of the notification from the Scheme of the Deposit Dispute:
- D1.1 Lodge the Disputed Deposit Amount in cleared funds with the Scheme;
- D1.2 Confirm whether they wish to resolve the Deposit Dispute using the Scheme's DRM or through the Courts.
- D2** The Member may accept the Tenant's evidence and agree that the Disputed Deposit Amount should be returned to the Tenant. The Member can return the Disputed Deposit Amount directly to the Tenant or lodge it with the Scheme and give us instructions to pay the Tenant. Either the Scheme or the Tenant must receive the Disputed Deposit Amount within 10 Working Days from the Member being notified of the Deposit Dispute.

Failure to lodge Disputed Deposit Amount

- D3** If we are satisfied that the Member has received our notification of a Deposit Dispute and fails to lodge the Disputed Deposit Amount within the 10 Working Days then the Member will be in breach of these Conditions, the Scheme Rules and the Act. The Scheme is likely to initiate the discipline process as set out in Section B of the Scheme Rules.

Default Adjudication

- D4** If the Member fails to comply with either or both of D1.1 and D1.2 above we shall:
- D4.1 Treat the lack of response as an indication that the Member does not accept that the Tenant should be repaid any of the Disputed Deposit Amount;
- D4.2 Proceed as though the Member had given consent for the Deposit Dispute to be resolved through the DRM;
- D4.3 Inform the Member and the Tenant that the DRM is to proceed;
- D4.4 Pass all evidence received to an Adjudicator to make a decision on the return of the Disputed Deposit Amount;
- D4.5 The Adjudicator will make a decision based on the evidence submitted;
- D4.6 Send out the Disputed Deposit Amount in accordance with the decision within 5 Working Days of receipt of the decision.
- D5** If the Scheme's insurers have provided the Disputed Deposit Amount in accordance with D4.4 then they are entitled to, and will proceed to recover the money from the Member through legal means.
- D6** The provisions of section D4-D5 are in accordance with Regulation 12.

Using the Scheme's DRM Mechanism

- D7** The Member must send us a copy of the relevant Tenancy Agreement (if the Tenant has not already submitted it) or any other document related to the Tenancy Agreement the Scheme reasonably requests.
- D8** The Member will have 20 Working Days from the date of the notification of the Deposit Dispute, to submit their rebuttal and all evidence.
- D9** It is the Member's responsibility to ensure that their rebuttal and supporting evidence is received by the Scheme by the end of the 20th Working Day in D8.
- D10** The Member is responsible for clarifying whether and why it has been agreed for any amount of the Deposit to be returned to the Tenant. If it is not clear what the agreed sum relates to then the Adjudicator will either make a request for further information, or using the evidence provided, make a decision as to why any amount has been returned to the Tenant, based on a balance of probabilities.
- D11** After the 20 Working Days the Deposit Dispute will continue to proceed to Adjudication even if the Member has failed to submit evidence within the required timeframe. Late evidence may only be accepted at the discretion of the Scheme.

Section E: Choosing Court

- E1** Tenants have the option to choose to use the Courts to resolve the Deposit Dispute.
- E2** If the Tenant wishes to use the Courts then the Scheme must be informed when the Tenant submits the Deposit Dispute.
- E3** If a party issues Court proceedings against the other in relation to the Deposit Dispute then the Scheme must not be added as a defendant to the Court proceedings in any circumstance. If a party does include the Scheme (**my|deposits Northern Ireland** or Tenancy Deposit Solutions Ltd) as a party to the proceedings then the Scheme will be required to make an application to the Court to remove itself from the Court proceedings and will request its costs from the claimant for having to do so.
- E4** The Tenant will be required to provide evidence that court proceedings has been issued within six months of being notified of the Deposit Dispute. This is to prevent a party frustrating the process or taking advantage of the other party who may not be able to afford to issue Court proceedings.
- E5** At the discretion of the Scheme:
- E5.1** We may request the full Deposit amount be lodged with the Scheme if the matter is proceeding through the Courts;
- E5.2** If the Tenant cannot provide evidence in accordance with E5 the Scheme may release the Disputed Deposit Amount held with the Scheme to the other party;
- E5.2** The party receiving the Disputed Deposit Amount will be required to sign a declaration agreeing that if the party who declined the use of the DRM does proceed through the Courts to resolve this Deposit Dispute and obtains a Court Order stating that they are entitled to a sum of the disputed amount they agree to satisfy the Court Order within 14 days of a request under that Court Order (or other timeframe as set out in the Court Order);
- E5.3** See E4 with regards to the Scheme's position on being added as a defendant to Court proceedings related to Deposit Disputes.
- E6** If evidence that Court proceedings have been initiated is received within 6 months of the Deposit Dispute being raised the Scheme will hold the Disputed Deposit Amount until a Court Order is received.
- E7** We may retain the Disputed Deposit Amount after receipt of a Court Order for a time to allow any appeal or leave to appeal, out of time.
- E8** On receipt of a Court Order we will pay the Tenant what they are entitled to from the Deposit amount. If the amount the Tenant is entitled to is more than the Disputed Deposit Amount we are holding then the Member must make up any shortfall directly to the Scheme within 10 Calendar Days of a request for the extra amount. If there is any amount remaining from the Disputed Deposit Amount we are holding after paying back the Tenant, then this will be returned to the Member.
- E9** A Court Order provided to the Scheme should specifically refer to the distribution of the Disputed Deposit Amount and give instructions for the Scheme to carry this out.
- E10** We may request any further information or documentation we deem appropriate before releasing the Disputed Deposit Amount we are holding to the Member or Tenant. We recommend that a claimant's Court claim form makes it clear that the claimant is applying for a Court Order for the return of a Disputed Deposit Amount held by the Scheme (**my|deposits Northern Ireland** or Tenancy Deposit Solutions Ltd).

Section F: Deposit Dispute Evidence

- F1** The Tenant will raise the Deposit Dispute by setting out their claim for the return of the Deposit and providing any paper based evidence they feel is relevant to the Deposit Dispute.
- F2** In law, the Deposit remains the property of the Tenant unless the Member proves entitlement; the onus is on the Member to demonstrate and prove that they are entitled to any amount they are claiming. The Member is required to rebut any of the Tenant's assertions and provide reasons and evidence as to why they are entitled to deduct an amount from the Tenant's Deposit.
- F3** Both parties to the Deposit Dispute are responsible for setting out their position clearly. This includes pointing the DRM, both parties accept that the Adjudicator acts as an impartial party, and will have total discretion to assess the evidence as such. Whilst the Member will be provided with sufficient information in which to rebut the Tenant's claim, neither party will be entitled to cross examine or be involved in the Adjudication once the initial submissions have been made, unless specifically requested by the Adjudicator.
- F4** All evidence submitted must be relevant and proportional to the issues in dispute. The parties can contact the Scheme by telephone or email to discuss how to submit Files via email. We will seek to remedy any issue informed to us before the relevant deadlines set by the Scheme, however if these deadlines are exceeded we cannot extend these except in exceptional circumstances.
- F5** Tenants and Members are reminded that if the issues are particularly complicated or involve issues unrelated or exceeding the amount of the Deposit or where there is a large or complex amount of evidence then they may obtain a better result if the matter is resolved at Court.
- F6** Neither the Scheme nor an Adjudicator will be liable for any error or omission in an Adjudication if the error or omission arose because the claim or rebuttal or supporting evidence was incomplete, illegible, confusing, contradictory or misleading, as long as the Adjudicator has taken reasonable care with regards to the consideration of the position and evidence particularly when a large amount of evidence has been supplied by a party.
- F7** The Scheme recommends that all Tenants, Members and Landlord Clients of Agent Members read the relevant DRM guide (Tenant, Landlord or Agent), the Deposits, Disputes and Damages guide released in association with all the tenancy deposit schemes, and the other specific guidance and case studies available on the Scheme website to learn more about how to set out their claim or rebuttal and how evidence will be considered by an Adjudicator. The guides and case studies can also be posted if a request is made through our call centre or by letter.
- F8** The most important documents in a Deposit Dispute are the Tenancy Agreement, check in and check out reports (including inventory and statement of condition) and also photographic/video evidence. Any costs incurred by the Member should be supported by valid invoices, receipts or estimates.
- F9** The guides provided by the Scheme give detailed information on how the evidence is considered by an Adjudicator but as a summary:
- F9.1** The dated check in/out report will be given more evidential weight by an Adjudicator if it has either been signed by the Tenant or conducted by an independent third party inventory clerk. If there is a doubt as to the independence of the report the party relying on it should set out why they believe it to be independent. If the report has not been signed by the Tenant the Member should explain why not and provide evidence that the Tenant was given the opportunity to do so.
- F9.2** With photographic and video evidence this should be used to support the party's position as set out in the claim or rebuttal. If the photographic or video evidence is not date stamped then the Adjudicator cannot be sure when it was taken. If a party intends to rely on the electronic properties of a photographic or video file the Scheme recommends the files are emailed rather than uploaded.

Returning Evidence

- F10** The Scheme will not return any evidence unless we are informed on submission that the party requires it back. Any physical evidence held by the Scheme for over two weeks from receipt will be destroyed or shredded.
- F11** The Scheme cannot be held liable for any loss suffered as a result of us not returning the evidence when we were not informed on submission that it is required back.
- F12** The Scheme will arrange with the party how to return the evidence. If it requires special delivery then the amount required to send the evidence back must be paid in advance by the party requesting the evidence back.

Section G: The Adjudication

- G1** When the Scheme has received the Member's evidence in accordance with D8 the Scheme will forward the following Dispute Papers to the Adjudicator:
- G1.1 The Tenant's claim and evidence;
 - G1.2 The Member's rebuttal and evidence;
 - G1.3 Any other information we believe is relevant to the Deposit Dispute that has been communicated to us.
- G2** The Adjudicator has 28 Calendar Days to make a decision from the date of receiving the Dispute Papers from us.
- G3** On receipt of the Adjudication decision the Scheme will:
- G3.1 Inform the parties and provide a copy of the decision;
 - G3.2 Allow 10 Working days for each party to submit an appeal, if required, before making a payment to the parties in accordance with the decision within a further 5 Working Days. Please refer to Section H.
- G4** The Adjudicator may ask for further information from either party should they be unable to reach a decision based upon the evidence initially provided, further clarification is required or they have reason to believe a further piece of evidence exists. However, as the Adjudicator is required to work under tight government monitored timescales, if the Adjudicator can make a decision based on the evidence provided at that point there is no requirement on the Adjudicator to request further evidence.
- G5** The Adjudicator may decide it is not possible to make a decision based on the evidence provided and in that situation will have to award the amount back to the Tenant as the Member has not persuaded the Adjudicator that they were entitled to make the deduction from the deposit.
- G6** Adjudicators are required to consider a number of issues when making decisions on the amount of compensation a Member should receive for repairing or replacing the contents or structure during the tenancy.
- G7** The Adjudicator has to take fair wear and tear of the Residential Property and its contents into account and cannot make an award which would result in the Member receiving new for old, also known as 'betterment'.
- G8** The Scheme's 'Fair Wear and Tear' guide provides further information on how an Adjudicator calculates fair wear and tear but they will take the following into account:
- G8.1 The age of the item (or when decoration last occurred);
 - G8.2 The quality and condition of the item at the start of the tenancy;
 - G8.3 The length of the tenancy;
 - G8.4 The permitted number of occupants (and to a lesser extent the type of occupants).
- G9** Any financial award made by an Adjudicator is to compensate the Member for a breach of the Tenancy Agreement by the Tenant. This will generally be a breach which has resulted in the Residential Property not being returned in the condition it was in at the beginning of the tenancy (taking fair wear and tear into account).
- G10** All of the Scheme's Adjudicators are independent from the running of the Scheme, experienced, are legally trained and/or hold membership of the Chartered Institute of Arbitration and have the training and ability to deliver Adjudication decisions in accordance with legislative requirements governing the Scheme.
- G11** The Scheme's Adjudicators are trained to follow a consistent approach to regularly occurring issues. This does not however mean that an Adjudicator (or Adjudicators) will find in exactly the same way in different cases. Although cases may seem the same to a Member or Tenant, every case is different and the evidence provided will be slightly different depending on the specific circumstances of that case. Adjudicators have discretion to decide what they believe to be fair in the circumstances. If one Adjudicator considers a certain course of action to be fair in a case, a different Adjudicator may consider a slightly different course to also be fair. Like a Judge in the Courts the Adjudicator has discretion to make a decision based on the evidence submitted. As long as the Adjudicator has followed the correct approach and explained the reason(s) for coming to a decision, then that decision will be correct even if a party is not happy with the decision (see F6).

Section H: Review of Adjudication

- H1** Either the Member or the Tenant may apply to the Scheme within 10 Working Days of notification of an Adjudicator's Decision from the Scheme for a Review, but may only do so on the grounds that the Adjudicator has erred in fact or in law (or both).
- H2** If a review request has been received by the 10th Working Day:
- H2.1 The Scheme will invite written representations from the other party to the Deposit Dispute to enable the Scheme to consider whether the Adjudicator may have erred in fact or in law;
- H2.2 The written representations must be returned by the other party within 3 Working Days of being requested;
- H2.3 On receipt of the written representations the Scheme will decide whether to accept or reject the application.
- H3** Where an application is rejected by the Scheme:
- H3.1 The requesting party may not make a further application for Review of the Adjudicator's Decision.
- H3.2 The Scheme will release the Deposit as soon as is reasonably practicable in accordance with the original Adjudication Decision, but not before the expiry of time in accordance with H1.
- H4** If the Scheme decides that there is a reasonable ground for believing that the Adjudicator may have erred in fact or in law, the Scheme will accept the application and refer the Adjudication Decision for Review by an Adjudicator who was not involved in deciding the original Adjudication Decision ("Review Adjudicator").
- H5** The Review Adjudicator will:
- H5.1 Affirm the Adjudication Decision; or
- H5.2 Substitute the Adjudication Decision with a different decision ("Review Decision");
- H6** The Review Adjudicator's decision will set out:
- H6.1 The facts on which the decision is based;
- H6.2 The reasons for the decision; and
- H6.3 The amounts of Deposit to be released by the Scheme to the parties.
- H7** The Review Adjudicator will make the decision in accordance with H6 within 10 Working Days of receipt of instructions from the Scheme in H4.
- H8** The decision of the Review Adjudicator is final.
- H9** The parties will receive the Review Adjudicator's decision from the Scheme within 5 Working Days of the Review Adjudicator making his decision.
- H10** The Scheme will repay the Deposit in accordance with the Review Adjudicator's decision within 5 Working Days of sending notification of the decision.

Section I: Miscellaneous Provisions

- I1** Like the Scheme Rules these Conditions of Deposit Disputes may need to be updated from time to time. Notices of any changes will be posted on our website, in newsletters and by email where the Member has provided us with an email address, or direct mail if not.
- I2** If the Scheme makes an incorrect payment to any party to a Deposit Dispute as a result of an administrative error then that party is required to immediately return the amount upon request by the Scheme. Failure to return the amount in accordance with a request is likely to result in:
- I2.1 If a Member, the discipline process being initiated under B2.1.1 of the Scheme Rules and legal proceeding being instigated to retrieve the outstanding amount;
- I2.2 If a Tenant, legal proceeding being instigated to retrieve the outstanding amount.
- I3** In accordance with Schedule 10 paragraph (7) (2) of the Act, the Scheme is entitled to retain any interest earned holding Disputed Deposit Amounts. Such interest will be at normal commercial contract rate in line with Bank of England interest rates.
- I4** The Scheme's complaints procedure cannot be used to complain against or appeal an Adjudication decision as any party agreeing to use the Scheme's DMR mechanism to resolve a Deposit Dispute means agreeing to be bound by the decision of the Adjudicator.
- I5** **my|deposits Northern Ireland** is not regulated by the Financial Conduct Authority. The Department for Social Development are supporting the tenancy deposit protection schemes in Northern Ireland.

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