

**CONSUMER GUIDE TO SCA (VIC) COPYRIGHT CONTRACT OF APPOINTMENT
– SERVICE COMPANY & COMPANY SHARE BASIS FLAT SCHEME MANAGER
SEPTEMBER 2011**

Strata Community Australia (Vic) [SCA (Vic)] has prepared this guide with a view to providing consumers a better understanding of the terms and conditions of the SCA (Vic) Copyright Contract of Appointment- Service Company Manager & Company Share Basis Flat Scheme Manager [“SCA (Vic) CoA”] that you have received.

This publication is not intended as legal advice, nor should it be interpreted as such.

This guide does not include comments with regard to every sub clause in the SCA (Vic) CoA.

Users of this guide are encouraged to seek their own independent legal advice before they enter into any contract, including the SCA (Vic) CoA with a Registered Manager who is a member of SCA (Vic).

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The Reference Schedule includes:

- Identification of the parties to the SCA (Vic) CoA;
- Contact details of the parties, including the Director of the Company;
- The term of appointment. Note the automatic annual renewal provision that if no notice is given it continues for another year.

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Clause 1 Insurance details are provided including:

- The Manager’s professional indemnity insurance details;
- The Manager’s Australian financial services licence and authorisations. The Company must insure as a basic function, and this is one of the key functions the Manager performs. To do this the Manager must by law be a trained Authorised Representative who can maintain claims history collect and pay premiums and attend to administration of claims;
- Details of the Manager’s entitlement to insurance agency fees and commissions. It is the Company not the Manager that decides where to place the insurance. Insurance commissions are the result of an administrative cost saving. Management fees are currently subsidised by insurance commissions. Premiums are the same for the Company whether the Company deals directly with the insurer or uses the services of the Manager to arrange the insurance;
- Current practice for insurance commissions as endorsed by SCA (Vic). Conditions applicable to the Manager receiving commission include that the interest of the client is the paramount criterion.

Pages 4 & 5

Clause 2.1 The Manager’s annual fee is specified and how it is to be paid.

A description of the services to be provided by the Manager in respect of the annual fee payment is listed including:

- Accounting & Compliance;
- Insurance for the Company;
- Documentation of records and maintenance of the share register of the Company and the register of Directors;
- Annual general meeting;
- Maintenance;
- Guidance to the Company on compliance;
- General implementation of decisions of the Company.

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Clause 2.2 Additional tasks which may be performed by the Manager and charged by hourly rate or fixed fee are listed. These are payable on presentation of invoice.

Page 7

Clause 2.3 Amounts that may be claimed for disbursements paid by the Manager are listed.

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Clause 2.4 This clause provides for the Manager’s fees and additional fees to be reviewed and increased annually by the AWOTE index or 5% whichever is greater; and disbursement fees to be reviewed and increased annually.

Clause 3 This clause provides that the Company delegates to the Manager all powers and functions of the Company that are necessary to enable the Manager to perform the duties under the SCA (Vic) CoA. This is essential for the Company to function in a timely and effective manner.

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Clause 4 Authority is provided to the Manager to disperse Company funds for the purposes specified in the SCA (Vic) CoA.

Pages 8 & 9

Clause 5 The duties and obligations of the Manager are listed including:

- The functions of the Manager;
- The duties of the Manager;
- The obligations of the Manager;
- Warranties given by the Manager.

Page 10

Clause 6 This clause deals with assignment of the SCA (Vic) CoA to a new Manager. The Company must not unreasonably withhold consent to the appointment of the new Manager. If a proposed new Manager provides written evidence of registration as a Manager pursuant to Part 12 of the Owners Corporations Act 2006 and that the new Manager is a current member in good standing of SCA (Vic), then the Company must approve the assignment of the Appointment to the new Manager. The new Manager must also covenant to comply with the SCA (Vic) CoA.

Clause 7 In this clause the Company gives a number of indemnities to the Manager for loss or damage including negligence except to the extent that any loss is caused by or contributed to by the Manager's dishonesty or fraud. The Manager is an administrator providing secretarial type services not, for example, an expert provider of essential services, OH&S, or the assessment of works.

Further the Company indemnifies the Manager for all reasonable costs reasonably incurred in connection with any matter relating to the Company or its property or in consequence of the Manager being a party to any proceeding relating to the Company. Managers implement the decisions of the Company, they do not make decisions, but nonetheless are sometimes joined in proceedings when there is a dispute within the Company.

Page 11

Clause 8 A variety of mechanisms are provided to enable the Company to terminate the Manager's services including:-

- termination for fundamental breach after written notice;
- termination after the initial term by the Company at a general meeting only – the Company by this clause agrees and resolves that the representative does not have power or function to terminate the SCA (Vic) CoA. The SCA (Vic) CoA can accordingly

only be terminated by resolution at a general meeting of the Company.

Clause 8.5 provides that the Manager must within 28 days of lawful termination return all records and funds relating to the Company.

Pages 12 & 13

Clause 9 Sets out the obligations of the Company under the SCA (Vic) CoA and includes provisions among others that the Company must:-

- At all times have a Director to deal with the Manager;
- Give the Director or substitute representative appropriate powers;
- Make the Manager aware of any defects or hazards in the Company property;
- Resolve that the SCA (Vic) CoA can only be terminated at a general meeting;
- Read the insurance product disclosure statement;
- Obtain valuations of cost of reinstatement and replacement of the Company buildings;
- Not issue notice convening an AGM or EGM or arrange a resolution in writing for signature by all Directors or all members of the Company, without giving notice to the Manager.

Clause 9.3 Notice of meetings of Directors must be provided to the Manager. Copies of minutes of the meetings of Directors must be provided to the Manager.

Clause 9.4 The Director must be appointed as Representative and binding instructions to the Manager may only be given by the Representative or Substitute Representative.

Clause 9.5 Responsibility for repairs and maintenance under this clause rests with the Company. The Manager is not liable for any defects in the Company property. This clause also provides among other matters that:-

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- The Manager is not required to inspect Company property or attend itself to any repairs and maintenance or other works;
- The Company acknowledges that it is the entity in control of the premises and accepts obligations to ensure safety of any persons at the premises;
- The Company will ensure compliance under the Occupational Health and Safety Act 2004 (Vic) (“OHS Act”);
- The Company indemnifies the Manager against claims for the loss or damage as a result of any breach by the Company under the OHS Act. For example, there are OH&S risks with holding meetings on site.

Pages 14 & 15

Clause 10 Dispute resolution involving the Company, Directors or members of the Company, but not involving complaint against the Manager, is dealt with. This clause provides that the Manager is entitled to payment of additional fees and charges if required to participate in such dispute resolution process.

Clause 10.2 provides for dispute resolution involving complaints against the Manager and sets out the procedure to be adopted. It defines the process and parties.

Clause 10.3 gives the parties the opportunity to refer the dispute to an expert for determination.

Clause 10.5 This clause provides for determination and recovery of the costs and expenses incurred by the Company arising out of any breach of the Service Agreement from the party in default or breach and evidences the Company resolution to recover such costs and expenses.

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Clause 11 Sets out additional conditions including:

- an Entire Agreement provision;
- a Severance provision;
- a Director’s Guarantee; and

- If agreed, amendments may be made by including Special Conditions.

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Clause 12 sets out a dictionary of defined terms used in the SCA (Vic) CoA.

Clause 13 provides for payment of GST.

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Clause 14

Operates to appoint the Manager and provides for declarations and signature of the Company under seal.

Conclusion

SCA (Vic) hopes that you find this consumer guide useful to better understand the SCA (Vic) Contract of Appointment for Service Company Manager & Company Share Basis Flat Scheme Manager. You are however reminded that while this guide is intended to give consumers of service company and company share management services a better understanding of the terms and conditions of the SCA (Vic) Contract of Appointment and to help you work better with your manager, this guide is not intended as legal advice, nor should it be interpreted as such.

Consumers are encouraged to seek their own independent legal advice before they enter into and sign any contract, not just to the SCA (Vic) Contract of Appointment between their Company and their Manager.