

An agreement between the Agent and the Seller ("the Agreement") authorising the Agent to offer the Property for sale on the following terms and conditions:

<p><b>1A. SELLER'S NAME:</b> ..... ("the Seller")</p> <p>Address: ..... Post Code: .....</p> <p>Tel: ..... Fax: .....</p> <p>Mobile: ..... Email: .....</p>	<p><b>SELLER:</b></p> <p><input type="checkbox"/> is the Owner</p> <p><input type="checkbox"/> has given Power of Attorney to .....</p> <p><input type="checkbox"/> is a Mortgagee in Possession</p> <p><input type="checkbox"/> is an Executor/Administrator</p>
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<p><b>1B. ADDRESS OF PROPERTY TO BE SOLD</b> .....</p> <p>.....</p> <p>Whole/Part Lot ..... on Deposited/Diagram/Survey/Strata/Plan No. ....</p> <p>Whole/Part Volume: ..... Folio: ..... ("the Property")</p>	<p><b>LISTING PRICE</b></p> <p>\$ ..... Auction <input type="checkbox"/></p> <p>\$ ..... to \$ .....</p>
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**1C. AGENT**

Name of Licenced Real Estate and Business Agent: .....

.....

Trading as ..... ("the Agent")

Address: .....

.....

**2. AGENT'S SELLING FEE**

**NOTICE: Fees charged by real estate agents are not fixed by law and are to be agreed between seller and agent.**

If the Seller disputes the fee payable to the Agent on the grounds that it is unjust the Seller may refer the dispute to the Real Estate and Business Agents' Supervisory Board or REIWA for adjudication.

The following Agent's Selling Fee has been agreed:

\* (i) The Agent's Selling Fee inclusive of GST is \$ ..... **OR** [.....] initials

\* (ii) The Agent's Selling Fee inclusive of GST, being ..... % of the actual selling price of the property.

(For example, if the actual selling price is \$ ..... then the Agent's Selling Fee inclusive of GST is \$ ..... **OR** [.....] initials

\* (iii) As set out in the attached schedule: ..... [.....] initials

(\*delete or complete as appropriate whenever asterisk (\*) appears)

**3. EXCLUSIVE RIGHTS PERIOD**

IT IS AGREED:

The Seller authorises the Agent to find a buyer for the Property

for an Exclusive Rights Period from and including ..... / ..... / ..... until midnight on ..... / ..... / ..... Inclusive.

**("the Exclusive Rights Period")**

Signature of Seller ..... Date: ...../...../.....

Signature of Seller ..... Date: ...../...../.....

Signature of Agent or Agent's Representative: ..... Date: ...../...../.....

**COMPETITION IN MARKETING CHARGES AND THE BENEFITS OF THE EXCLUSIVE AGENCY SYSTEM**

REIWA is of the view that the exclusive agency system provides the best professional incentive for agents to sell properties vigorously. Further, agents compete with each other with respect to the amounts charged for marketing and advertising charges and it should be noted that agents may agree not to require payment of separate marketing charges and expenses in agreements such as the one contained in this form.

**4. Agent's Entitlement to the Agent's Selling Fee**

- (a) The Selling Fee will be payable upon settlement of a transaction if during the Exclusive Period:
- (i) the Property is sold or exchanged;
  - (ii) at any time a Buyer introduced by the Agent to the Seller or the Property, contracts to buy the Property, or gets another person or entity to buy the Property or otherwise becomes a legal or beneficial owner of the Property; or
  - (iii) the Property is sold to a Buyer in any of the above circumstances but Settlement does not occur due to the fault of the Seller.
- (b) If after the end of the Exclusive Period the Seller enters into a Selling Agency Agreement to sell the Property through another lawfully authorised Real Estate Agent, and where the new listing agent is entitled to a selling fee, then the Agent will not be entitled to a Selling Fee and clauses 4(a)(ii) and 13 will not apply.

**5. Agent's Selling Fee Payable on Settlement**

The Agent's Selling Fee will only be payable to the Agent on the settlement of the transaction that gives rise to the Agent's entitlement to that fee, PROVIDED THAT if there is a failure to settle the transaction and that failure is due to the fault of the Seller the fee will be payable immediately. In this clause, "settlement", in relation to a transaction:

- (a) where the transaction is to be completed by the payment of the purchase price by way of a single payment (over and above the deposit) means the payment of the purchase price; or
- (b) where the buyer is obliged to make two or more payments to the Seller (over and above any deposit paid within 28 days of the execution of the contract) before the buyer is entitled to a conveyance or transfer of the subject of the contract, means the time at which the buyer is entitled to possession, occupation or control of the subject matter or the time at which the buyer has paid at least 10% of the purchase price, whichever is the latter.

**6. Disputes**

The Seller has the right to refer any dispute that arises with the Agent to a number of different institutions. Depending upon the nature of the dispute these institutions may include the Real Estate and Business Agents Supervisory Board, the civil and criminal legal systems, the Western Australian Department of Commerce, the Australian Competition and Consumer Commission, and The Real Estate Institute of Western Australia (Inc.).

**7. Marketing Charges and Expenses**

- (a) If the Property is sold, any balance retained in the Agent's Trust Account (after deducting all outstanding agreed Marketing Charges and Expenses) will be refunded in full to the Seller at settlement.
- (b) The Seller agrees to pay the Agent at or prior to settlement all agreed Marketing Charges and Expenses incurred by the Agent in promoting the Property.
- (c) The Agent will submit to the Seller an itemised account of all agreed Marketing Charges and Expenses claimed at the conclusion of this Agreement, or as reasonably required.
- (d) If the Seller withdraws the Property from sale, sells the Property to a buyer introduced to the Property by the Seller and/or terminates this authority prior to the expiration of the Exclusive Rights Period, the Seller must immediately reimburse the Agent for the agreed Marketing Charges and Expenses incurred by the Agent up until the date of withdrawal or termination.
- (e) If the Property is not sold within the Exclusive Rights Period the Seller will reimburse the Agent on demand all outstanding agreed Marketing Charges and Expenses.
- (f) The Agent may charge interest on the agreed Marketing Charges and Expenses if an account has been rendered to the Seller and is unpaid for longer than 30 days after the date of the account. The rate of interest will be the Prescribed Rate as defined in the most recently approved Joint Form of General Conditions for the Sale of Land by the Real Estate Institute of Western Australia (Inc.).

**8. Agent's Authority**

- (a) The Agent may engage other licensed Real Estate Agents to find a buyer. If so, the Agent may pay a fee to the other Agent.
- (b) The Agent is authorised to accept any deposit paid by a buyer and to hold it as a stakeholder, or in the case of Strata Titled Property being sold before registration of the Strata Plan, as Trustee for the buyer in accordance with Section 70 of the Strata Titles Act, 1985.
- (c) If the Property is sold, the Agent is authorised to give appropriate instructions to aid settlement to the nominated conveyancer of both the Seller and buyer.
- (d) The Agent is authorised at or prior to settlement to remit the balance of the deposit to the Seller or to the Seller's nominated conveyancer for the purpose of completing the sale after deducting the Agent's Selling Fee and any outstanding agreed Marketing Charges and Expenses. The Agent's Selling Fee will be held on trust pending settlement.
- (e) If the Property is sold and there is no deposit, or the deposit held by the stakeholder is insufficient to cover the Agent's Selling Fee and outstanding agreed Marketing Charges and Expenses, the Seller must pay on demand any shortfall and the Seller authorises the Agent to obtain payment of the shortfall out of purchase monies held or to be received by the Seller's conveyancer.
- (f) The Seller authorises the Agent to sign the certificate for the giving of compulsory disclosure material for and on behalf of the Seller (Strata property only).

**9. Access**

The Seller agrees to allow appropriate access by the Agent to the Property and to provide all necessary keys and security details.

**10. Seller's Warranty**

The Seller warrants that the Seller has the authority to enter into this Agreement and that no other person holds an agency agreement for the Property.

**11. Seller's Acknowledgement**

The Seller acknowledges:

- (a) having been informed by the Agent, before signing this authority, that the Agent's Selling Fee is subject to agreement;
- (b) having read and understood and agreed to the terms and conditions of this Agreement;

**12. Definitions**

"GST" means the Goods and Services Tax introduced pursuant to *A New Tax System (Goods and Services Tax) Act 1999*.

"Introduce", "introduced" and/or "introduction" used in this form means, whether in the context of an introduction by the Agent or the Seller, that the entity who claims to have introduced the buyer concerned has been an effective cause of the relevant sale.

"sold" includes the disposition of the Property in any manner whatsoever or any part of the legal or beneficial ownership of the Property.

.....  
If this agreement is to be facsimiled then this page should be signed



SELLER

ADDRESS OF PROPERTY TO BE SOLD

13. Sale Takes Place after the Exclusive Rights Period

The Seller AGREES/DOES NOT AGREE (cross out whichever does not apply) to pay to the Agent the Agent's Selling Fee in circumstances where the sale of the Property to a buyer introduced to the Property by the Agent during the Exclusive Rights Period does not take place until after the expiration of the Exclusive Rights Period

Select option

provided that the sale takes place prior to midnight on ...../...../20.....

Insert Date

Should the Seller elect in this clause not to be liable to pay a selling fee to the Agent if the sale of the Property to a buyer does not take place until after the expiration of the Exclusive Rights Period, then the Agent will not be entitled to a selling fee except to the extent that the Agent is otherwise entitled to Marketing Charges and Expenses or advertising and promotion costs in the manner referred to in this Agreement if the Property is not sold.

14. Agreement to Pay Marketing Charges and Expenses

The Seller AGREES/ DOES NOT AGREE to pay to the Agent separate marketing costs and/or expenses. If the Seller has agreed to incur Marketing Charges and Expenses, then complete either 16(a), 16(b) or 16(c)

Select option

15. Costs of Identification of Agents in Advertisements

(a) Pursuant to clause 8 of the REIWA Members' Codes of Practice, REIWA members who are agents are required in all advertisements to clearly show the agent's full trading name, together with the telephone number of the agent's principal licensed office or relevant branch office.

(b) The Seller AGREES/DOES NOT AGREE (CROSS OUT WHICHEVER DOES NOT APPLY) to pay for the advertising costs otherwise payable under this agreement associated with the agent complying with the requirements of clause 8 of the REIWA Members' Codes of Practice.

Select option

16. Marketing Charges and Expenses (inclusive of GST)

(a) The Seller agrees to pay up to a maximum of \$..... towards the Marketing Charges and Expenses. The sum of \$..... is paid now and is to be held in the Agent's Trust Account and will be used to pay the agreed charges and expenses as they arise from time to time. OR

[.....] initials

(b) The Seller agrees to pay up to a maximum of \$..... to reimburse the Agent for Marketing Charges and Expenses. If the Property is sold during the Agent's authority period and the Agent receives the Agent's Selling Fee, then the Agent will waive reimbursement of the Marketing Charges and Expenses. OR

(c) As per attached schedule.....

[.....] initials

[.....] initials

17. Seller Introducing Buyer

The Seller agrees to pay the Agent's Selling Fee on the terms and conditions set out in this Agreement PROVIDED THAT, regardless of anything contained in those terms and conditions, the Seller and Agent agree that if, during the Authority Period, the Seller introduces the ultimate buyer of the Property to the Property themselves the Seller

\*WILL/WILL NOT be liable to pay the Selling Fee to the Agent. \*CROSS OUT WHICHEVER DOES NOT APPLY

Select option

[.....] initials

18. Seller Appointing another Real Estate Agent

The Seller may not during the Exclusive Rights Period, except through the Agent, appoint another agent to find a buyer. If the Seller contravenes this clause by appointing another agent during the Exclusive Rights Period to find a buyer, that other agent finds such a buyer and the Property is sold to that buyer the Seller will be deemed to have terminated this authority and must pay to the Agent the Agent's Selling Fee and the agreed Marketing Charges and Expenses incurred by the Agent, as described in clause 16, up until the date of termination as liquidated damages. If the Agent's Selling Fee has been agreed to be a percentage of the actual selling price, for the purposes of calculating liquidated damages pursuant to this clause, the Agent's Selling Fee will be deemed to be the equivalent percentage of the Initial Listing Price or the lower amount of a range.

[.....] initials

Signature of Seller ..... Date: ...../...../.....

Signature of Seller ..... Date: ...../...../.....

Signature of Agent or Agent's Representative: ..... Date: ...../...../.....

A TRUE COPY OF THIS DOCUMENT HAS BEEN RECEIVED BY THE PARTIES HERETO.

Signature of Seller: ..... Date: ...../...../.....



## **PRIVACY ACT 1988 COLLECTION NOTICE**

The Agent uses personal information collected from the Seller to act as the Seller's agent and to perform their obligations under this Agreement. The Agent may also use such information collected to promote the services of the Agent and/or seek potential clients.

The Agent may disclose information to other parties including media organisations, on the internet, to potential buyers, or to clients of the Agent both existing and potential, as well as to parties engaged to evaluate the property, owners' corporations, government and statutory bodies and financial institutions.

Further, the Agent may disclose the information to other real estate and business agents who may in the future be purchasing or considering purchasing the Agent's real estate business, or other goodwill portion of that business.

The Agent will only disclose information in this way to other parties are required to perform their duties under this Agreement, to achieve the purposes specified above or as otherwise allowed under the Privacy Act 1988.

If the Seller would like to access this information they can do so by contacting the Agent at the address and contact numbers contained in this Agreement. The Seller can also correct this information if it is inaccurate, incomplete or out-of-date.

Real estate and tax law requires some of this information to be collected. If the information is not provided, the Agent may not be able to act effectively on the Seller's behalf or at all.

