

AN AGREEMENT BETWEEN

.....  
.....  
..... (“the Seller”)

AND THE LICENCED REAL ESTATE AND BUSINESS AGENT

.....  
..... (“the Agent”)

WHEREBY it is agreed between the Seller and the Agent as follows:

**1. AGREEMENT TO SELL BY AUCTION**

The Seller hereby appoints the Agent to offer for sale by public auction in accordance with the Real Estate and Business Agents Act 1978 and the Auction Sales Act 1973 at the Property / or at

.....  
on the..... day of ..... 20..... (“the Auction”)

The Seller’s Property situated and known as ..... (“the Property”).

The land is portion of..... Location and Lot..... Strata/Survey/Plan/Diagram.....  
and being the whole/part of the land comprised in Certificate of Title Volume ..... Folio.....

**2. RESERVE PRICE**

The auction shall be subject to a Reserve Price of \$..... or such Reserve Price as shall be advised by the Seller to the Auctioneer in writing prior to the commencement of the auction.

**3. CONDITIONS OF SALE**

The Particulars and Conditions of Sale of the Property shall be the Joint Form of General Conditions for the Sale of Land most recently produced by the Real Estate Institute of Western Australia (Inc) or such other Conditions of Sale as the Seller or the Seller’s solicitors may approve.

**4. CHATTELS/PLANT**

The following chattels/plant shall be included in the sale and the Seller warrants they are not the subject of any lien, charge, encumbrance or any interest of any third party:

.....  
.....  
.....

**5. AUCTION MARKETING CHARGES AND EXPENSES**

The seller **AGREES/DOES NOT AGREE (cross out whichever does not apply)** to pay to the Agent separate marketing costs and/or expenses. *Select Option*

For the purpose of the Auction and any exclusive agency following the Auction, the Agent shall be authorised to cause the sale to be advertised and promoted as the Agent may think fit and the Seller agrees to pay to the Agent all costs incurred in respect thereto but not to exceed \$..... including GST for which the Seller’s cheque is attached, or to be paid within seven (7) days of the date of invoice. [.....] initials

- 5.1 If the Property is sold, any balance retained in the Agent’s Trust Account (after deducting all outstanding agreed Marketing, Administration Charges and Expenses) shall be refunded in full to the Seller at settlement.
- 5.2 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.
- 5.3 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.
- 5.4 If the Seller withdraws the Property from sale and / or terminates this authority prior to the Auction or where applicable, the expiration of the Exclusive Rights Period, the Seller shall immediately reimburse the Agent for the agreed Marketing Charges and Expenses incurred by the Agent up until the date of withdrawal or termination.
- 5.5 If the Property is not sold at or before the Auction or, where applicable, the expiration of the Exclusive Rights Period (whichever is the latter) the Seller will reimburse the Agent on demand all agreed outstanding agreed Marketing Charges and Expenses.
- 5.6 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. The rate of interest shall be the Prescribed Rate as defined in the most recently approved Joint Form of General Conditions for the Sale of Land produced by the Real Estate Institute of Western Australia (Inc.)



**6. 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*

**7. TERMS OF SALE**

The Property shall be sold at or above the Reserve Price or at any other price as the Seller may agree to accept at the time of the auction on the following terms:

- 7.1 A deposit of .....% (per centum) of the purchase price shall be paid upon the signing of the contract;
- 7.2 The settlement date shall be the ..... day of ..... 20.....;
- 7.3 The Agent is hereby authorised to sign on the Seller's behalf the Contract for such sale and shall be authorised to receive the deposit from the Buyer and hold that deposit as stakeholder; and
- 7.4 The Property is sold with vacant possession or will be sold subject to those leases and encumbrances as detailed below.

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**8. AGENT'S AUCTION FEE (FOR THE PROPERTY BEING SOLD AT OR PRIOR TO THE AUCTION)**

**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.**

8.1 The following Agent's Auction Fee has been agreed **(delete or complete as appropriate whenever asterisk (\*) appears)**.

- \*[a] The Agent's Auction Fee inclusive of GST \$ ..... ; **OR** [.....] initials
- \*[b] The Agent's Auction Fee, inclusive of GST being ..... % of the actual selling price  
For example, if the actual selling price is \$ ..... then  
the Agent's Auction Fee inclusive of GST is \$ ..... ; **OR** [.....] initials
- \*[c] As per attached schedule [.....] initials

(d) In addition to the advertising and promotion costs referred to in Clause 5 the Agent will be entitled to be reimbursed for the following expenses incurred by the Agent and those expenses will be payable by the Seller on

Item of Expense including GST	Amount	
.....	.....	[.....] initials
.....	.....	[.....] initials
.....	.....	[.....] initials
.....	.....	[.....] initials

8.2 The Agent's Auction Fee shall be paid by the Seller to the Agent in the event of:

- (a) The Property is sold or transferred prior to the Auction or at the Auction; or
- (b) at any time, up to and including the date of the Auction, a buyer introduced to the Seller, or the Property contracts to purchase the Property, or gets another person or entity to purchase the Property or otherwise becomes a legal or beneficial owner of the Property;
- (c) the Property is sold to a buyer in any of the abovementioned circumstances and the sale is not completed owing to the fault of the Seller.

8.3 Agent's Offering Fee:

If no sale takes place, or if the Property is withdrawn from sale, then the Agent shall be paid an Agent's Offering Fee inclusive of GST of \$ ..... plus all disbursements incurred by the Agent in accordance with this Authority to Auction. [.....] initials

**9. EXCLUSIVE AGENCY FOLLOWING AUCTION**

**(only applicable if the Property does not sell at or before Auction)**

9.1 The seller **GRANTS/DOES NOT GRANT (cross out whichever does not apply)** the Agent an exclusive right for the sale of the Property by private treaty following the Auction.

*Select Option*



Should the Seller have agreed to grant the agent an exclusive right for the sale of the Property, that exclusive right commences immediately following the conclusion of the Auction and continues until midnight on ...../...../..... ("the Exclusive Rights Period"). In the event of the Agent introducing a buyer to the Property and selling the Property to such a buyer within the Exclusive Rights Period at a price not less than the Reserve Price or such other price as the Seller shall accept the Agent shall be entitled to the following agreed Agent's Selling Fee **(delete or complete as appropriate wherever (\*) appears):**

- \*[a] The Agent's Selling Fee inclusive of GST\$..... **OR** [.....] initials
- \*[b] Agent's Selling Fee inclusive of GST, being .....% of the actual selling price of the property.  
For example, if the actual selling price is \$..... [.....] initials  
then the Agent's Selling Fee inclusive of GST is \$..... **OR** [.....] initials
- \*[c] As per the attached schedule ..... [.....] initials

9.2 In addition to the advertising and promotion costs referred to in clause 5, should the Seller grant the Agent an exclusive right to sell the Property pursuant to this clause the Agent will be entitled to be reimbursed for the following expenses incurred by him and those expenses will be payable by the Seller on .....

**Item of expense inclusive of GST**

- ..... [.....] initials
- ..... [.....] initials
- ..... [.....] initials

9.3 If the Seller has granted the Agent an exclusive agency under this clause then the Agent's Selling Fee shall also be paid by the Seller to the Agent in the event of:

- (a) during the Exclusive Rights Period the Property is sold or transferred; or
- (b) at any time a buyer introduced to the Seller, or the Property, during the Exclusive Rights Period contracts to purchase the Property, or gets another person or entity to purchase the Property or otherwise becomes a legal or beneficial owner of the Property; or
- (c) the Property is sold to a buyer in any of the abovementioned circumstances and the sale is not completed owing to the fault of the Seller.

9.4 Sale Takes Places 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 provided that the sale takes place within a period of ..... days following the expiration of the Exclusive Rights Period. 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 shall 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.

*Select Option*

9.5 If after the end of the Exclusive Rights Period the Seller enters into a Selling Agency Agreement to sell the Property through another lawfully authorised Real Estate Agent, then the Agent shall not be entitled to a Selling Fee where the new listing agent is entitled to a Selling Fee in accordance with the new agency agreement and Clause 9.1 shall not apply.

**10. SELLER INTRODUCES BUYER**

The Seller(s) agree to pay the Agent's Auction Fee or Agent's Selling Fee on the terms set out in this Agreement PROVIDED THAT, regardless of anything contained in those terms, the Seller(s) and Agent agree that if, prior to the Auction or where applicable, during the Exclusive Rights Period, the Seller(s) introduce the ultimate buyer of the Property to the Property themselves the Seller(s) **\*WILL/WILL NOT be liable** to pay the Agent's Auction Fee or Agent's Selling Fee to the Agent. **(\*CROSS OUT WHICHEVER DOES NOT APPLY)**

*Select Option*

[.....] initials

**11. FEE PAYABLE ON SETTLEMENT**

Either the Agent's Auction Fee or 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.



**12. 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 Institute of Western Australia (Inc.), the Real Estate and Business Agents Supervisory Board, the civil and criminal legal systems, the Western Australian Department of Consumer & Employment Protection and the Australian Competition and Consumer Commission.

**13. MORTGAGEE AUCTIONS**

- 13.1 In the event that the Seller is a Mortgagee of the Property exercising a Power of Sale the Seller agrees that in the event of a sale of the Property taking place during the Exclusive Rights Period specified in Clause 9 to a buyer other than the one introduced by the Agent then the Seller shall be liable to pay to the Agent the same fees (in addition to payment of all expenses incurred as per Clauses 5, 8 and 9 in relation to such auction up to and including the date of the said sale) as those applicable to a sale to a Buyer introduced by the Agent.
- 13.2 If the Property is withdrawn from Auction or is withdrawn from Sale during the Exclusive Rights Period described in Clause 9 due to the Seller receiving payment for the amount of the Mortgage, or such other sum or consideration as is accepted by the Seller, then the Agent shall be reimbursed by the Seller all agreed expenses up to that date
- 13.3 If the Seller, being a Mortgagee exercising a Power of Sale, consents to any other party entering into a legally enforceable contract to sell the Property during the period specified in this Authority to Auction or within 90 days following the expiration of that period, whether the buyer was introduced to the Property or not during those periods, then the seller irrevocably agrees to pay to the Agent the Agent's Selling Fee in accordance with the remuneration as specified in Clause 7 together with the approved disbursements or expenses specified in Clauses 5, 8 and 9.

**14. SPECIAL CONDITIONS**

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**15. STRATA DISCLOSURE**

The Seller authorises the Agent to sign the certificate (strata property only) which gives compulsory disclosure material for and on behalf of the Seller.

**16. 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.

**17. AGENT S AUTHORITY**

The Seller authorises the Agent, or the Agent s Representative, or the auctioneer appointed by the Agent to sign the contract for the sale of the Property at the Auction.

**18. DEFINITIONS**

- "Agent s Representative" means a sales representative or real estate agent employed by the Agent.
- "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.

**SIGNATURE**

Seller ..... Date ..... / ..... / .....

Seller ..... Date ..... / ..... / .....

Agent or Agent's Representative..... Date ..... / ..... / .....

**A true copy of this Agreement together with the Joint Form of General Conditions for the Sale of Land has been received by each of the signatories hereto.**

Seller .....

Seller .....