

AN AGREEMENT BETWEEN

.....
.....("the Vendor")

AND THE LICENCED REAL ESTATE AND BUSINESS AGENT

.....
.....("the Agent")

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

1. AGREEMENT TO SELL BY AUCTION

The Vendor 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 theday of20 ("the Auction")

The Property known as:

Portion of.....Location

Certificate of Title:

See attached Schedule for full Title Details..... [.....] initials

2. RESERVE PRICE

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

3. CONDITIONS OF SALE

The Particulars and Conditions of Sale of Freehold Property shall be those most recently approved by the Real Estate Institute of Western Australia (Inc) or such other Conditions of Sale as the Vendor or the Vendor's solicitors may approve.

4. CHATTELS/PLANT AND LIVESTOCK

4.1 In the event that the Property is sold together with chattels, plant and livestock then the chattels, plant and live-stock included in the sale shall be set out in the attached Schedule together with the description of the land and the Vendor warrants that at settlement the chattels, plant and livestock will not be subject to any encumbrance and shall be included in the purchase price of the Property.

4.2 Where the sale of the Property does not include chattels, plant and livestock and those chattels, plant and live-stock are sold to the Purchaser under a different contract, then the Vendor shall pay to the Agent a fee inclusive of GST on the value of chattels, plant and livestock on the following basis: % of [.....] initials
the selling price of the chattels, plant and livestock (eg if the chattels, plant and livestock sell for \$100,000 the selling fee is \$..... including GST) [.....] initials

4.3 See attached Schedule for List of Chattels, Plant and Livestock

5 AUCTION MARKETING CHARGES AND EXPENSES

The vendor **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 Vendor agrees to pay to the Agent all costs incurred in respect thereto but not to exceed \$..... including GST for which the Vendor'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 Vendor at settlement.

5.2 The Vendor 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 Vendor 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 Vendor 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 Vendor 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 Vendor 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 Vendor 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 vendor **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 Vendor 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 Vendor's behalf the Contract for such sale and shall be authorised to receive the deposit from the Purchaser and hold that deposit as stakeholder; and
- 7.4 The Property is sold with vacant possession or will be sold subject to those leases an encumbrances as detailed below.

.....

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 vendor and agent.

8.1 The following Agent's Auction Fee has been agreed.

- *(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
 (delete or complete as appropriate whenever asterisk (*) appears
- (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 will be payable by the Vendor on

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

8.2 The Agent's Auction Fee shall be paid by the Vendor 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 purchaser introduced to the Vendor, 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 purchaser in any of the abovementioned circumstances and the sale is not completed owing to the fault of the Vendor.

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 the following agreed maximum disbursements incurred by the Agent. [.....] initials

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

9. EXCLUSIVE AGENCY FOLLOWING AUCTION

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

The vendor **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 Vendor 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 purchaser to the Property and selling the Property to such a purchaser within the Exclusive Rights Period at a price not less than the Reserve Price or such other price as the Vendor shall accept the Agent shall be entitled to the following agreed Agent's Selling Fee:

- *(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 \$.....
then the Agent's Selling Fee inclusive of GST is \$..... **OR** [.....] initials
- *(d) As per the attached schedule [.....] initials
(*) delete or complete as appropriate wherever (*) appears.

In addition to the advertising and promotion costs referred to in clause 5, should the Vendor 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 Vendor on

Item of expense inclusive of GST

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

If the Vendor has granted the Agent an exclusive agency under this clause then the Agent's Selling Fee shall also be paid by the Vendor 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 purchaser introduced to the Vendor, 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 purchaser in any of the abovementioned circumstances and the sale is not completed owing to the fault of the Vendor.

9.1 Sale Takes Places After the Exclusive Rights Period

The vendor **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 purchaser 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 vendor elect in this clause not to be liable to pay a selling fee to the Agent if the sale of the Property to a purchaser 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

9.2 If after the end of the Exclusive Rights Period the Vendor 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 then Clause 9.1 shall not apply.

10 VENDOR INTRODUCES PURCHASER

The Vendor(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 Vendor(s) and Agent agree that if, prior to the Auction or where applicable, during the Exclusive Rights Period, the Vendor(s) introduce the ultimate purchaser of the Property to the Property themselves the Vendor(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** [.....] initials

Select Option

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 vendor 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 purchaser is obliged to make two or more payments to the vendor (over and above any deposit paid within 28 days of the execution of the contract) before the purchaser is entitled to a conveyance or transfer of the subject of the contract, means the time at which the purchaser is entitled to possession, occupation or control of the subject matter or the time at which the purchaser has paid at least 10% of the purchase price, whichever is the latter.

12. If the Vendor disputes the fee payable to the Agent on the grounds that the behaviour associated with charging the fee is unjust, then the Vendor may refer the dispute to the Real Estate and Business Agent's Supervisory Board or REIWA for adjudication.

13. **DISPUTES**

Further, the vendor 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.

14. **MORTGAGEE AUCTIONS**

Auctions on behalf of Mortgagees: Withdrawal Instructions

If the Agent is instructed to withdraw the Property from auction by the Vendor or Mortgagee and the Property is withdrawn before actually being offered at auction then the Agent may charge the following fee:-

- (i) if withdrawal is effected subsequent to the Agent receiving written instructions, but before the date within seven (7) days of the implementation of the advertising programme the fee payable including GST to the Agent shall be \$..... ; [.....] initials
- (ii) if withdrawal is effected within seven (7) days of the implementation of the advertising programme but before the date seven (7) days after the advertising programme has been in effect, the fee payable including GST to the Agent shall be \$..... ; [.....] initials
- (iii) if withdrawal is effected after the advertising programme has been in effect for seven (7) days but prior to the day of the Auction the fee shall be \$..... including GST ; [.....] initials
- (iv) if withdrawal is effected on the day of the Auction, the fee shall be \$..... including GST [.....] initials

15. **SPECIAL CONDITIONS**

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

16. **STRATA DISCLOSURE**

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

17. **VENDOR WARRANTY AND INDEMNITY**

The Vendor warrants to the Agent that:

- (a) All of the details supplied by the Vendor to the Agent for the listing of the Property for sale are true and correct and that the Vendor has not omitted any material detail of the Property including any encumbrance, defect or impediment to the Property and agrees to indemnify the Agent against any action that may be taken against the Agent for the wrongful description or omission in regard to representations of the Property in the marketing of the Property. [.....] initials
- (b) Where the land is pastoral leasehold the Vendor has obtained consent to sell and will make available to the Agent a copy of the current Range Condition Report to be included in the Contract. [.....] initials

18. **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.

19. **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 vendor, that the entity who claims to have introduced the purchaser 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

Vendor..... Date / /
Vendor..... 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.

Vendor.....
Vendor.....