

Business Sales Agency Agreement: Schedule



1. VENDOR (BUSINESS):

Full Name(s):

Primary Contact: Given Name(s): Surname:

Street 1:

Street 2:

Suburb: State: Postcode:

ABN (if applicable):

Telephone: W: H:
M: F:

Email:

Guarantor(s):

2. VENDOR (REAL PROPERTY): Not Applicable

Full Name(s):

Primary Contact: Given Name(s): Surname:

Street 1:

Street 2:

Suburb: State: Postcode:

ABN (if applicable):

Telephone: W: H:
M: F:

Email:

Guarantor(s):

Property Address:

Certificate of Title Reference: Volume: Folio:

3. AGENT: Company Name/Legal Entity:

Company Representative:

Street 1:

Street 2:

Suburb: State: Postcode:

ABN (if applicable): RLA No:

Telephone: W: F:
M:

Email:

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4. BUSINESS:

Name(s):

Street 1:

Street 2:

Suburb: State: Postcode:

ABN (if applicable):

Telephone: W: H:
M: F:

Email:

4A. OTHER BUSINESS ASSETS:

(e.g. Vendor's telephone and facsimile numbers, website or email addresses used in the conduct of the Business)

5. BUSINESS PREMISES:

Address:

6. GROSS ASKING PRICE:

Freehold:	<input type="text"/>
Business:	<input type="text"/>
Vendor's Estimate of Stock at Valuation:	<input type="text"/>
GST (if applicable):	<input type="text"/>
Total:	<input type="text"/>

7. SOLE / GENERAL AGENCY:

Sole Agency General Agency

8. PREVIOUS AGENCY:

Not applicable

*Currently/Previously listed for sale with

The Vendor has terminated the previous Sales Agency Agreement

Note: Failure to terminate the previous Sales Agency Agreement could result in the Vendor being liable to pay Professional Fees to both the Agent and the previous agent.

9. TERM (SOLE AGENCY):

Commencement Date: ___ / ___ / ___

End Date: ___ / ___ / ___

Note: At the conclusion of the Sole Agency period, the Agency will continue as a General Agency until terminated by either party in writing.

* Delete as applicable

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10. SALE METHOD:

- PRIVATE TREATY at the Gross Asking Price as instructed by the Vendor, or such other price as the Vendor may specify in writing.
- PUBLIC AUCTION to be held at _____ on ___ / ___ / _____ at _____
*am/pm

Note: The reserve price is to be specified in writing by the Vendor prior to the auction.

- TENDER closing ___ / ___ / _____ at _____ *am/pm
- REGISTRATION OF INTEREST closing ___ / ___ / _____ at _____ *am/pm
- Other (specify) _____

11. PREFERRED SETTLEMENT PERIOD:

- Within _____ days of executing the Business Sale Contract
- Other (specify) _____

12. ESTABLISHMENT FEE:

Non-refundable: \$ _____ including GST

13. STATUTORY CHARGES:

Non-refundable: \$ _____ including GST

14. PROFESSIONAL FEE:

- Fixed at: \$ _____ including GST
- Calculated at: _____ % (including GST) of Total Purchase Price of Business
- Other (specify): _____

15. OPTION TO PURCHASE PREMISES:

Upon settlement of any Contract of Sale of the Premises contained in any option to purchase or right of first refusal, negotiated by the Agent, the Vendor agrees to pay to the Agent a Professional fee of:

- Fixed at: \$ _____ including GST
- Calculated at: _____ % (including GST) of Gross Sale Price
- Other (specify): _____

16. MARKETING PLAN: As attached As described below

The Vendor will pay the marketing expenses and prescribed inquiry costs shown below:

State and Local Government Prescribed Inquiry charges \$ _____

Advertising / Marketing:

Print Media	_____	\$ _____
Electronic Media	_____	\$ _____
Photographs	_____	\$ _____
Signs	_____	\$ _____
Sketch / Floor plan	_____	\$ _____
Brochures / Leaflets	_____	\$ _____
Auctioneer's Fees	_____	\$ _____
Other	_____	\$ _____
Total		\$ _____

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17. EXPENSES:

Advance payment for Expenses

\$ _____ including GST

Payable by the Vendor into the Trust Account of the Agent no later than: ___ / ___ / _____

Expenses limit

\$ _____ including GST

Applicable to:

Term of the Sole Agency; or

For initial marketing period expiring on ___ / ___ / _____

18. PAYMENT OF EXPENSES:

The Vendor's Marketing Expenses and Statutory Costs will be paid:

In advance, upon signing of this Agreement; or

Within 7 days of an account from the Agent; and

With any balance owing payable at settlement.

19. ADDITIONAL CONDITIONS:

20. DISCLOSURE OF AGENT'S BENEFITS: None known Refer Form R2 attached

Note: A benefit includes a rebate, discount, refund or some other benefit the Agent or another person will receive, or expects to receive from any third party, in connection with the sale or purchase of the Property.

21. BUSINESS DETAILS:

21.1 Estimated Turnover: \$ _____ Agency Income: \$ _____

21.2 Estimated Gross Profit: \$ _____ Average Gross Profit: _____ %

21.3 Form 2: NOW BY: ___ / ___ / _____

21.4 Other Financial Statement: _____

21.5 Trading Hours:

Monday:	_____	Friday:	_____
Tuesday:	_____	Saturday:	_____
Wednesday:	_____	Sunday:	_____
Thursday:	_____	Other:	_____

21.6 How long owned: _____

21.7 How old is the Business: _____

21.8 Asbestos Register: Yes No

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21.9 WorkCover: Yes No

21.10 Staff: Full Time: Yes No Part Time: Yes No Casual: Yes No
Total Hours: Staff Schedule: Yes No

21.11 Number of Proprietors: Hours Worked: Total Wages: \$

21.12 Residence Details: (if any)

21.13 Certificate of Title Reference: Volume: Folio:

21.14 Accountant: Name:
Telephone: Mobile: Facsimile:

21.15 Franchise: Yes No Franchise Agreement: Yes No To be provided
Franchisor:

21.16 Reason for Sale:

21.17 Registered for GST? Yes No

21.18 To be sold as a Going Concern: Yes No

21.19 Provisional Trade Waste Permit Required? Yes No
If yes, is the Permit current? Yes No Permit number:

21.20 Environmental Protection Act 1993 / WHS Items:

22. LEASE TENANCY DETAILS: Not applicable

22.1 Size of Premises:

22.2 Term of Lease: Commencement date: ___ / ___ / ___ Years:

22.3 Right(s) of Renewal: Number: Years:

22.4 Current Rent: \$ per annum

22.5 Next Adjustment:

22.6 Adjustment Method:

22.7 Outgoings Payable: Landlord:
Tenant:

22.8 Any Other Charges:

22.9 Registered Number on Title: Volume: Folio:

22.10 Landlord:
Street 1:
Street 2:
Suburb: State: Postcode:
Telephone: W: H:
M: F:
Managing Agent:
Comments:

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22.11 Copy of Current Lease and Disclosure Statement obtained: Yes No

22.12 Copy of recent Rental Statement: Yes No

23. PLANT AND EQUIPMENT DETAILS:

23.1 Plant, Equipment, Fixtures and Fittings

Unencumbered as at the date of this Agreement and to be sold to the Purchaser free of any encumbrances as at the Settlement Date

Not applicable Schedule to be provided

As attached As described below:

23.2 Encumbered Plant, Equipment, Fixtures and Fittings for Unencumbered Transfer

Included in the sale and to be transferred to the Purchaser free of any encumbrance as at the Settlement Date

Not applicable Schedule to be provided

As attached As described below:

23.3 Encumbered Plant, Equipment, Fixtures and Fittings for Encumbered Assignment

Items to be assigned to the Purchaser at Settlement, subject to the existing encumbrances

Not applicable Schedule to be provided

As attached As described below:

23.4 Excluded Plant, Equipment, Fixtures and Fittings

Excluded from the sale

Not applicable Schedule to be provided

As attached As described below:

23.5 Third Party Plant, Equipment, Fixtures and Fittings

Not owned by the Vendor and not included in the sale

Not applicable Schedule to be provided

As attached As described below:

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24. GENERAL:

24.1 Gas and / or Electricity Contracts:

24.2 Special Licences (Fuel, Poison, Liquor, Tobacco, Milk, Other):

Copies taken:

Yes No

24.3 Agencies (X-lotto, Bank, Post Office, Other):

Copies Agreements:

Yes No

24.4 Trade Memberships:

24.5 Computer Hardware / Software:

24.6 Outstanding Notices: Yes No

Details:

24.7 Major Clients:

24.8 Comments:(History, Experience, Qualifications Required, Location, Parking, Seasonal, Deliveries, etc)

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Business Sales Agency Agreement: Terms and Conditions



TERMS AND CONDITIONS

1. APPOINTMENT:

The Vendor of the Business appoints the Agent for the purposes of marketing and selling the Business for the Term in accordance with the terms and conditions of this Agreement.

2. DEFINITIONS AND INTERPRETATION:

In this Agreement, unless the contrary intention appears:

Definitions

- 2.1 "Act" means the *Land and Business (Sale and Conveyancing) Act 1994* (as amended) and any relevant regulations;
- 2.2 "Agent" means the person or organisation specified in Item 3 of the Schedule;
- 2.3 "Agent's Authority" means the matters the Agent is authorised to perform in accordance with clause 5 of this Agreement;
- 2.4 "Agent's Obligations" means those obligations imposed on the Agent in accordance with clause 6 of this Agreement;
- 2.5 "Annexure" means an Annexure to this Agreement;
- 2.6 "Business" means the Vendor's Business specified in Item 4 of the Schedule and conducted from the address specified in Item 5 of the Schedule including:
 - 2.6.1 the Business Name (if any);
 - 2.6.2 the Goodwill;
 - 2.6.3 the Plant, Equipment, Fixtures and Fittings and the Encumbered Plant, Equipment, Fixtures and Fittings for Unencumbered Transfer;
 - 2.6.4 all intellectual property (including patents, copyrights and trademarks) used by the Vendor in connection with the conduct of the Business and all rights exercised by the Vendor under licence which are capable of assignment;
 - 2.6.5 the business assets free from any encumbrance, charge or lien together with the Vendor's interest in the Encumbered Plant, Equipment, Fixtures and Fittings for Encumbered Assignment;
- 2.7 "Business Premises" means the premises from which the Business is or may be conducted and specified in Item 5 of the Schedule;
- 2.8 "Establishment Fee" means the fee payable to the Agent in accordance with clause 8 of this Agreement and specified in Item 12 of the Schedule;
- 2.9 "Expenses" means the out of pocket expenses and disbursements (of any nature) incurred by the Agent in connection with the marketing and sale of the Business in accordance with this Agreement including but not limited to:
 - 2.9.1 the items outlined in Item 16 of the Schedule;
 - 2.9.2 Establishment Fee, auctioneer's fees and agreed travelling expenses;
 - 2.9.3 government fees, charges and duties (including any tax for the provision of goods and services under this Agreement);
 - 2.9.4 fees for the inquiries prescribed by the Act;
 - 2.9.5 any other costs incurred by the Agent on behalf of the Vendor and associated with any searches and any other activity considered necessary in the circumstances by the Agent;
- 2.10 "General Agency" means the non-exclusive appointment of the Agent for the purpose of marketing and selling the Business;
- 2.11 "Goodwill" means all of the goodwill of the Business including but not limited to:
 - 2.11.1 the trade of the customers of the Business together with all further business or orders flowing from those customers; and
 - 2.11.2 the right to carry on the Business;
- 2.12 "Gross Asking Price" means the amount agreed between the Agent and the Vendor as a reasonable sale price for the Business as specified in Item 6 of the Schedule;
- 2.13 "GST" means any goods and services or similar tax or comparable tax imposed by and defined by the GST Law.
- 2.14 "GST Law" means a *New Tax System (Goods and Services Tax) Act 1999* or any other Act or Regulation pursuant to, associated with, amending or replacing that Act. Any expression used in this Agreement that is also defined in the GST Law shall have the meaning used in or attributed to that expression by the GST Law.
- 2.15 "Guarantor" means the person(s) identified in Item 1 and Item 2 (if applicable) of the Schedule agreeing to guarantee and indemnify the Agent in accordance with clause 14 of this Agreement;
- 2.16 "Marketing Plan" means the plans for the marketing of the Business as agreed between the Vendor and Agent as outlined in Item 16 of the Schedule;
- 2.17 "Other Business Assets" means the assets specified in Item 4A of the Schedule;
- 2.18 "Professional Fee" means the fee payable for the Services provided by the Agent to the Vendor in accordance with this Agreement and set out in Items 14 and 15 of the Schedule;
- 2.19 "Real Property" means any freehold, leasehold or other interest in (or right to use) land (including a licence to occupy) included in the sale of the Business and set out in the Schedule;
- 2.20 "Real Property Vendor" means the person or entity specified in Item 2 of the Schedule and includes any executor, administrator, attorney, director or any other person authorised to act on behalf of the Real Property Vendor;
- 2.21 "REISA" means The Real Estate Institute of South Australia Incorporated;
- 2.22 "Sole Agency" means the exclusive appointment of the Agent for the purpose of marketing and selling the Business for the Term;
- 2.23 "Term" means the term of this agency appointment as specified in Item 9 of the Schedule;
- 2.24 "Vendor" means the person or entity specified in Item 1 of the Schedule and includes any executor, administrator, attorney, director or any other person authorised to act on behalf of the Vendor.
- 2.25 Words which denote the singular include the plural and vice versa;
- 2.26 Words which denote natural persons include corporations and vice versa; and:
 - 2.26.1 reference to a natural person includes that person and that person's personal representatives, assigns and permitted nominees; and
 - 2.26.2 reference to a corporation includes such corporation and its successors, assigns and permitted nominees;
- 2.27 Where a party to this Agreement consists of more than one person then:
 - 2.27.1 any covenant or obligation to be performed by that party shall bind each of those persons jointly and severally; and
 - 2.27.2 any reference to that party shall include any one or more of those persons;
- 2.28 Headings are included in this Agreement for convenience and do not form any part of this Agreement or affect its interpretation.

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3. AGENCY (SOLE AND GENERAL) AND TERMINATION:

Sole and General Agency

- 3.1 Unless otherwise specified in Item 7 of the Schedule, the appointment of the Agent by the Vendor will be treated as a Sole Agency for the Term.
- 3.2 During the period of Sole Agency, the Vendor must not attempt to sell, or sell, the Business to any person other than one introduced by the Agent to the Vendor but will refer any interested person to the Agent and advise the Agent accordingly.
- 3.3 During any period of General Agency the Vendor will refer to the Agent any person influenced by the Agent's marketing of the Business to the Agent.

Termination

- 3.4 During the Term of the Sole Agency this Agreement cannot be terminated unless termination is by written agreement between the parties.
- 3.6 Where the Vendor wishes to terminate this Agreement at the expiration of the Term of Sole Agency, the Vendor must provide to the Agent written notice of that termination.
- 3.7 Unless terminated by the Vendor in accordance with clause 3.6, upon expiration of the Term of Sole Agency a General Agency will apply until such time as this Agreement is terminated in accordance with clause 3.8.
- 3.8 A General Agency, whether created expressly by appointment or upon expiry of the Term of a Sole Agency shall continue until terminated by either party giving written notice to the other party.

4. VENDOR'S WARRANTIES AND INDEMNITIES:

Warranties

- 4.1 The Vendor warrants that:
 - 4.1.1 it owns the Business (except as otherwise stated in this Agreement);
 - 4.1.2 there are no outstanding notices, demands, charges and no encumbrances in relation to the Business (except as otherwise stated in this Agreement);
 - 4.1.3 it has the authority and legal capacity to enter into this Agreement;
 - 4.1.4 it has, and will continue to, disclose to the Agent all relevant information relating to the Business and that all such information is true and correct;
 - 4.1.5 it does not have an existing sole sales agency agreement with another person or entity to sell the Business and will not, during any period of Sole Agency under this Agreement, enter into a business sales agency agreement with another person;
 - 4.1.6 it will not during any period of Sole Agency under this Agreement, enter into an agreement for the sale and purchase of the Business during the Term unless that purchaser has been introduced by the Agent;
 - 4.1.7 it will refer a person interested in the purchase of the Business during the Sole Agency to the Agent;
 - 4.1.8 it has or will provide to the Agent all documents and other information (including all relevant trading figures and accounting information) as required under the Act, or any other relevant laws, and/or deemed by the Agent to be reasonably necessary to enable the Agent to perform the Agent's Obligations and to make truthful representations concerning the Business;
 - 4.1.9 it has complied with all relevant laws relating to the ownership of the Business, before the date of this Agreement;
 - 4.1.10 upon the making of an agreement with a purchaser for the sale of the Business, it will comply with the terms of that agreement and use its best endeavours to complete settlement;
 - 4.1.11 there is no other relevant information which the Vendor has knowledge of and has not brought to the attention of the Agent.

Indemnities

- 4.2 The Vendor indemnifies the Agent against all loss, damages, costs and fees (including, but not limited to the Professional Fee and Expenses), and holds harmless the Agent against all liability, claims (including third party claims), demands or actions whatsoever arising whether directly or indirectly from the appointment of the Agent by the Vendor pursuant to this Agreement, save and except to the extent that any such loss, damage and costs is directly attributable to the negligence of the Agent.
- 4.3 The Vendor expressly acknowledges that the indemnity contained in clause 4.2 is a continuing indemnity and survives expiration or termination of this Agreement.

5. AGENTS AUTHORITY:

The Vendor authorises the Agent to:

- 5.1 advertise and market the Business in accordance with the Marketing Plan;
- 5.2 appoint an auctioneer to assist in conducting an auction of the Business;
- 5.3 sign, on behalf of the Vendor, any contract for the sale of the Business effected by public auction and to authorise the auctioneer to sign such a contract on behalf of the Vendor;
- 5.4 accept any monies due to the Vendor prior to settlement in respect of the sale or proposed sale of the Business;
- 5.5 incur the Expenses up to the Expenses Limit;
- 5.6 transfer to itself from trust any monies payable to the Agent under this Agreement.

6. AGENTS OBLIGATIONS:

Unless otherwise specified in the Schedule, the Agent will:

- 6.1 use its best endeavours to sell the Business at the Gross Asking Price;
- 6.2 market and promote the Business for sale in accordance with the Marketing Plan;
- 6.3 negotiate the terms and conditions of sale of the Business with prospective purchasers in accordance with the Vendor's instructions and take reasonable steps to have any offer recorded in writing and signed by the offeror;
- 6.4 provide to the Vendor a copy of any signed offer within forty eight (48) hours of receipt of such offer or as otherwise agreed with the Vendor;
- 6.5 undertake all statutory and other relevant searches;
- 6.6 complete and serve all forms and notices required which may be served by the Agent on behalf of the Vendor under the relevant laws;
- 6.7 Unless directed otherwise by the Vendor, utilise the standard form of contract for sale and purchase of property authorised and approved by REISA from time to time.

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7. PROFESSIONAL FEE:

Vendor Must Pay the Professional Fee Upon Sale

7.1 Immediately upon the Agent effecting a "sale" of the Business the Professional Fee becomes payable by the Vendor to the Agent. The Vendor will pay the Professional Fee to the Agent immediately upon settlement of the sale or within seven (7) days of the issue of an account by the Agent, whichever is the earlier.

Sale Deemed

7.2 For the purposes of this Agreement, the Agent is deemed to have effected a "sale" of the Business in any of the following circumstances:

7.2.1 in preparing the Business for sale in accordance with this Agreement:

7.2.1.1 the Agent introduces or otherwise procures a purchaser for the Business during the Term; and

7.2.1.2 the Vendor enters into a contract (conditional or unconditional and including an option to purchase) for the sale of the Business (or any part of it) to that purchaser within twelve (12) calendar months of the introduction or procurement of that purchaser by the Agent; and

7.2.1.3 the Vendor completes the sale of the Business to that purchaser (or the purchaser's assignee or nominee) as substantially the transaction contemplated by the contract referred to in clause 7.2.1.2; or

7.2.2 the Business is sold before the expiration of a period of Sole Agency (whether or not the purchaser was introduced by the Agent); or

7.2.3 where the Vendor is a body corporate, the Purchaser acquires a legal or beneficial interest in the body corporate (and otherwise a transaction takes place in accordance with clauses 7.2.1 or 7.2.2); or

7.2.4 the purchaser enters into a partnership or joint enterprise with the Vendor (and otherwise a transaction takes place in accordance with clauses 7.2.1 or 7.2.2); or

7.2.5 the Vendor (or any related corporation) leases, licences, sublets or sub-licences any part of the Business to the purchaser (and otherwise a transaction takes place in accordance with clauses 7.2.1 or 7.2.2).

No Sale Deemed (Notwithstanding clause 7.2)

7.3 No sale of the Business is deemed to be effected where the contract for the sale of the Business is properly rescinded through no default on the part of either the Vendor or the Purchaser. Where more than one general agency exists no sale of the property shall have been effected or be deemed to have been effected where the contract referred to is obtained by another registered agent engaged by the Vendor to sell the property.

Breach

7.4 If a sale made in accordance with clause 7.2 is not completed because:

7.4.1 the Vendor breaches or defaults under a contract; or

7.4.2 the Vendor is unwilling to complete the sale or enforce its rights under a contract; or

7.4.3 the Vendor and the Purchaser, after entering into an Agreement, subsequently agree to cancel it, then the Vendor must, in addition to any other monies due under this Agreement, pay to the Agent damages equal to the Professional Fee which would otherwise have been payable had the sale been completed.

Damages for Breach

7.5 If the Vendor breaches this Agreement, in addition to any other rights and remedies the Agent may have, the Vendor will pay all the Agent's reasonable costs in enforcing its rights and recovering any money payable.

Part Professional Fee Payable

7.6 Where the Vendor is entitled to receive the deposit under a contract for the sale of the Business to a purchaser because of a default by the Purchaser under the contract, then the Vendor will pay the Agent an amount equal to the lesser of:

7.6.1 50% of the deposit (or its equivalent); or

7.6.2 the Professional Fee.

Option to Purchase Freehold

7.7 Should a purchaser enter into a binding contract of sale for the Business Premises pursuant to any option to purchase or first right of refusal to purchase contained in any contract of sale of the Business or lease of the Business Premises negotiated by the Agent on behalf of the Vendor in accordance with the Agent's appointment under this Agreement, then the Vendor upon the settlement of the Contract for the Business Premises, but not otherwise, will pay to the Agent the Professional Fee set out in Item 15 of the Schedule.

8. ESTABLISHMENT FEE

8.1 In consideration for the Agent preparing the Business for sale, the Vendor agrees to pay the Agent the Establishment Fee in addition to the Professional Fee and the Expenses.

8.2 The Establishment Fee is payable to the Agent on the date of this Agreement and its payment is absolute and not dependent on whether or not the Agent effects a sale of the Business.

9. EXPENSES:

Vendor shall pay the Expenses

9.1 The Vendor shall pay to the Agent the amount of the Expenses within 7 days from receiving the Agent's account for payment of same.

GST and Expenses

9.2 The Vendor specifically agrees to reimburse the Agent with respect to any amount of GST incurred by the Agent on behalf of the Vendor with respect to the Expenses or otherwise in the performance of the Agent's duties under this Agreement.

Payment of the Expenses

9.3 The payment of the Expenses is absolute and not dependent on whether or not the Agent effects a sale of the Business.

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Application of Expenses

- 9.4 If the Expenses charged by the Agent are less than the amount deposited in the Agent's trust account on account of the Expenses, upon:
- 9.4.1 completion of the sale of the Business; or
 - 9.4.2 termination of the agency (whichever first occurs) the Agent is authorised by the Vendor either:
 - 9.4.2.1 to refund the balance to the Vendor; or
 - 9.4.2.2 to credit the balance towards the Professional Fee or any other monies due to the Agent under this Agreement.

Advertising and Advertising Rebates

- 9.5 The Vendor agrees and acknowledges:
- 9.5.1 that the calculation of Expenses relating to advertising costs will include a proportional share of the total advertisement including header, borders, address, telephone, facsimile (and similar features) but does not include other advertisements published by the Agent;
 - 9.5.2 that the Agent may receive a rebate of Expenses as they relate to advertising expenses because of large volume advertising by the Agent.

10. INTEREST

The Vendor must pay interest on any amounts outstanding at the rate of five (5) percentage points per annum above the cash rate, as notified by the Reserve Bank of Australia.

11. CHARGE OVER THE REAL PROPERTY:

Fees and Expenses Are a Charge

- 11.1 The Vendor agrees that:
- 11.1.1 the Expenses; and
 - 11.1.2 the Professional Fee; and
 - 11.1.3 any other monies payable under this Agreement upon becoming payable, become a charge against any Real Property of the Vendor or its associated entities.

Charge May be Registered

- 11.2 If the Expenses or Professional Fee become payable in accordance with clause 11.1, then the Agent may request the Vendor to execute a mortgage in registrable form pursuant to the provisions of the *Real Property Act 1886* in favour of the Agent equal to the amount of the outstanding Expenses or the Professional Fee (or both) to secure the charge.

Vendor Must Comply

- 11.3 Where the Agent makes a request of the Vendor in accordance with clause 11.2, the Vendor must comply with that request.

12. WITHDRAWAL FROM SALE:

Subject to clause 9.1, the Vendor may withdraw the Business from sale at any time by written notice to the Agent, but such withdrawal does not constitute termination of this Agreement.

13. SALE BY PUBLIC AUCTION:

Where the Business is to be sold by public auction, the Agent or the auctioneer appointed by the Agent will auction the Business, unless sold beforehand, on the date specified in Item 10 of the Schedule in accordance with the Public Auction of Real Property Terms and Conditions jointly published by REISA and the Society of Auctioneers and Appraisers (SA) Inc.. The auction will be subject to the reserve price specified in writing by the Vendor.

14. GUARANTEE AND INDEMNITY

Guarantor to Perform Vendor's Obligations

- 14.1 The Guarantor guarantees that the Vendor will duly perform and observe all of the terms and conditions of this Agreement and indemnifies (and agrees to keep indemnified) the Agent from and against any cost, expense, damage or loss (including any loss of Professional Fees, Expenses and any other monies which would otherwise have been payable), which may be sustained or incurred by the Agent by reason of or on account of any breach, neglect or non-performance by the Vendor of this Agreement.

Personal Liability

- 14.2 The Guarantor acknowledges that its liability under this clause is personal and in addition to the liability of the Vendor under this Agreement.

Indulgence does not discharge liability

- 14.3 The Agent is authorised to grant or allow any time, relaxation or indulgence to the Vendor and to make composition with the Vendor as the Agent may think fit and it is declared that the giving of such time, relaxation or indulgence or compounding shall not discharge or reduce the liability of the Guarantor to the Agent.

15. NO MERGER

The terms of this Agreement do not merge upon the expiration or termination of this Agreement or the transactions contemplated by this Agreement.

16. GOODS AND SERVICES TAX (GST)

The Agent and the Vendor acknowledge and agree that:

- 16.1 If GST applies to any supply made under or in connection with this Agreement by either the Agent or the Vendor:
- 16.1.1 the Agent may, in addition to any amount or consideration expressed as payable in respect of the supply, recover from the Vendor an additional amount on account of GST; and
 - 16.1.2 the Vendor shall pay to or reimburse to the Agent or to a third party (as the case may be), any additional amount on account of any GST that is or was incurred, paid or payable by the Agent and/or the Vendor in respect of that supply; and
 - 16.1.3 the amount payable by the Vendor to the Agent or to a third party in respect of that supply shall be increased by the product of:
 - 16.1.3.1 the rate at which GST is imposed at that time; and
 - 16.1.3.2 the amount or consideration payable for the relevant supply; and
 - 16.1.4 the Vendor shall pay any additional amount on account of GST at the same time as the payment for the relevant supply is payable or at such other time as the Agent directs.

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16. GOODS AND SERVICES TAX (GST): (CONTINUED)

- 16.2 The Vendor agrees to pay and indemnify the Agent against any taxation penalties and/or interest that may be charged or levied against the Agent in respect of any GST liability under or in connection with this Agreement.
- 16.3 If for any reason any supply made under or in connection with this Agreement is not GST free or input taxed (as the case may be) as contemplated by the parties, then the Vendor shall on demand pay to the Agent by way of further consideration for the supply, an amount calculated in the manner specified in clause 16.1 including any penalties and/or interest incurred by the Agent under the GST Law.
- 16.4 Clause 16 shall survive the expiration or termination of this Agreement.

17. PRIVACY ACT 1988:

- 17.1 The Agent collects and uses the Vendor's Personal Information and any other information about the Vendor and/or the Business to be acquired by the Agent in the course of acting for the Vendor (collectively "**the Information**") to act on the Vendor's behalf and to perform the services and functions required by the Vendor in connection with this Agreement ("**Primary Purpose**"). Without limiting the generality of this clause, the Agent may disclose the Information to third parties as may be required to facilitate marketing and promotion activities, to arrange any works, repairs and maintenance in respect of the Property (where applicable), to comply with legislative requirements and for administration purposes.
- 17.2 Without provision of certain information the Agent may not be able to act effectively or at all on the Vendor's behalf.
- 17.3 In addition to the Primary Purpose, the Vendor acknowledges and agrees the Agent may subject to the *Privacy Act 1988 (Cth)* (where applicable):
 - 17.3.1 collect, use and disclose the Information to promote the services of the Agent to the public and/or to seek potential clients; and
 - 17.3.2 disclose the Information to third parties such as, but not limited to, other real estate businesses, real estate related bodies, valuers, data collection agencies, financial institutions, and media organisations.
- 17.4 Subject to any applicable statutory limitations and requirements, the Vendor has the right to access any Personal Information which may require correction or amendment of any inaccurate, incomplete, out of date or irrelevant information.
- 17.5 By signing this Agreement the Vendor expressly consents to the collection and use of the Information as provided for in this clause 17, and for the purposes of this agreement, "**Personal Information**" has the same meaning as in the *Privacy Act 1988 (Cth)*.

18. OTHER CONDITIONS:

This Agreement includes such other terms and conditions as specified in Item 19 of the Schedule.

19. GENERAL:

- 19.1 This Agreement, or a right created under it, may not be waived or varied except in writing, signed and dated by the parties.
- 19.2 This Agreement constitutes the entire agreement and understanding between the parties.
- 19.3 This Agreement is governed by and construed in accordance with the laws from time to time in force in South Australia and the parties submit to the non-exclusive jurisdiction of the Courts of South Australia.
- 19.4 If any provision of this Agreement shall be found by a court of competent jurisdiction to be invalid or unenforceable in law, then in such case, the parties hereby request and direct such court to sever such provisions from this Agreement.

INITIALS

Business Sales Agency Agreement: Execution Page



EXECUTED AS AN AGREEMENT

The vendor agrees that the agent is able to provide a copy of this agreement to the vendor within 48 hours of its execution.

Dated this day of

EXECUTION BY VENDOR

SIGNED by the Vendor

on the day of

Signature of Vendor

Full name of Vendor

Signature of Witness

Full name of Witness

OR

EXECUTED by

ABN in accordance
with section 127 of the *Corporations Act 2001*

on the day of

Director / Sole Director / Secretary
(strike out as applicable)

Full name

Director / Secretary
(strike out as applicable)

Full name

OR

SIGNED by

on the day of

by its duly authorised officer in the presence of:

Signature of Witness

Full name of Witness

SIGNED by the Vendor

on the day of

Signature of Vendor

Full name of Vendor

Signature of Witness

Full name of Witness

EXECUTED by

ABN in accordance
with section 127 of the *Corporations Act 2001*

on the day of

Director / Sole Director / Secretary
(strike out as applicable)

Full name

Director / Secretary
(strike out as applicable)

Full name

Authorised Officer's signature

Full name of Authorised Officer

Position held

INITIALS

Business Sales Agency Agreement: Execution Page



EXECUTION BY AGENT

Dated this Day of

SIGNED by / for and on behalf of the Agent (strike out as applicable)

Signature

Full name

EXECUTION BY GUARANTOR(S)

SIGNED by the Guarantor(s)

on the day of

in the presence of:

Signature of Witness

Full name of Witness

Signature of Guarantor

Full name of Guarantor

Signature of Guarantor

Full name of Guarantor

RECEIPT

Receipt of a copy of this Agreement is acknowledged by:

Vendor(s) initials: _____ Dated: ___ / ___ / ___

Guarantor(s) initials: _____ Dated: ___ / ___ / ___

OFFICE USE ONLY

Copy of Agreement provided to Vendor

Agent's initials: _____ Dated: ___ / ___ / ___

VENDOR PLEASE NOTE:-

1. REISA recommends that you should not sign any document unless you are satisfied that you understand its terms.
2. Use of this Agreement by a non-member of REISA is a breach of Copyright.

NOTE: ALL PARTIES SHOULD INITIAL ALL PAGES

INITIALS

Business Sales Agency Agreement: Execution Page



Agency representative:

Telephone: W: F:
M:

Email Address:

CREDIT CARD AUTHORITY FOR EXPENSES

Credit Card Type: Visa Amex Mastercard Bankcard Diners Club

Card Number:

Expiry Date:

Cardholder Name:

Signature _____

Amount: \$

Payment by EFT into Trust Account

BSB:

Trust Account Number:

Trust Account Name:

Reference:

NOTE: ALL PARTIES SHOULD INITIAL ALL PAGES

INITIALS