

Special Conditions – REINSW Commercial / Industrial
Sales Inspection Report and Exclusive Agency Agreement

The Principal and the Agent are parties to an agreement titled 'Commercial / Industrial Sales Inspection Report and Exclusive Agency Agreement' dated on or around the date of these Special Conditions (**Agreement**).

The parties have agreed to vary the terms of the Agreement with effect from the date these Special Conditions are signed by both parties (the **Amendment Effective Date**).

Capitalised terms that are used but not defined in these Special Conditions, but are defined in the Agreement, have the meanings assigned to them in the Agreement, unless the context requires otherwise.

The parties agree, in consideration of, among other things, the mutual promises contained herein (the sufficiency of which is hereby acknowledged and agreed by each party), that with effect from the Amendment Effective Date, the Agreement is amended as follows:

Agency Period

Clause 2. is deleted and replaced with:

'2. At any time during the Exclusive Agency Period the Principal may (for any reason and in the Principal's absolute discretion):

- (a) by giving 30 days' written notice to the Agent, terminate the exclusive agency agreement; or*
- (b) on prior written notice to the Agent, convert the exclusive agency agreement into a non-exclusive agency agreement with immediate effect.'*

Agents Remuneration

Clause 3.i is amended by deleting the words '(b) by any other agent, or (c) by the Principal.'

Clause 3.ii is deleted and replaced with:

'The Agent shall be entitled to the fee at the amount stated in Clause 3(i) if within 30 days of the expiration of the Exclusive Agency Period the Principal enters into a Contract for the Sale of the Property with a Purchaser introduced to the Principal or the Property during the Exclusive Agency Period by the Agent (and the sale is completed).'

Clause 3. iii is deleted

Clause 3. iv is deleted and replaced with:

'The Agent's fee is calculated on the selling price. If the sale is subject to GST then the Agent's fee is calculated on the GST exclusive selling price.'

Promotional Activities

Clause 5. is deleted and replaced with:

'The Agent must not prepare or distribute any marketing or promotional material relating to the Property (in any form including erecting any "For Sale" signage) unless such marketing or promotional material has first been approved by the Principal in writing. The Agent must prepare a marketing and promotional material plan which includes the Agent's plan for any "For Sale" signage and provide such plan to the Principal for its approval. Once approved by the Principal, the Agent must only prepare and distribute marketing or promotional material relating to the Property in accordance with such approved plan.'

Principals Fee Obligation

Clause 8. is deleted and replaced with:

'The fee to which the Agent is entitled shall be due and payable on completion of the sale of the Property.'

Limit of Agent's Services

Clause 15. is deleted.

Agent's Indemnity and Liability

Clause 17. is deleted and replaced with:

'The Agent indemnifies the Principal from and against all actions, suits, claims, demands, losses, damages, compensation, costs, charges, expenses and obligations whatsoever to which the Principal shall or may become liable in respect of a breach of any provision of or warranty in this agreement, except to the extent that such a breach is caused or contributed to by any act or omission of the Principal.'

Material Fact

Clause 19.i is deleted and replaced with:

'The Principal will supply the Agent in writing with all relevant details and information pertaining to the material facts in respect of the Property and the common areas which are in the Principal's possession.'

Privacy

Clause 20. is deleted and replaced with:

'The Agent must, when it collects, uses, discloses or holds Personal Information in the course of performing its obligations under this agreement:

- (a) collect, use, access, disclose or hold such Personal Information obtained in connection with this agreement only for the purposes of performing its obligations under this agreement;*
- (b) comply with all applicable Privacy Laws as if it were a person subject to the Privacy Laws;*
- (c) not do any act or engage in any practice that would breach the Privacy Laws, or which if done or engaged in by the Principal, would breach the Privacy Laws;*
- (d) not disclose the Personal Information to any other person without the prior written consent of the Principal or as expressly required by applicable laws;*
- (e) without limitation of the Agent's obligations under clause 20(b), notify the Principal immediately upon becoming aware of a breach or possible breach of any of the obligations in this clause 20, whether by the Agent, its agents or personnel, and comply with any reasonable direction from the Principal with respect to remedying that breach;*
- (f) notify any individual that makes a complaint to the Agent regarding the Agent's acts or practices in relation to such individual's Personal Information, that the complaint may be investigated by the Privacy Commissioner;*
- (g) comply with all reasonable directions of the Principal in relation to the care and protection of Personal Information held in connection with this agreement or the rights of individuals to access and correct such Personal Information, and take all technical, organizational*

and other security measures reasonably within the Agent's power to protect the Personal Information from misuse, interference and loss from unauthorised access or use, modification or disclosure; and

- (h) not allow, or permit access to, or transfer any Personal Information that belongs to the Principal, has been provided by the Principal, or has been collected, accessed or used by the Agent in relation to this agreement, outside Australia.*

Privacy Laws means:

- (a) the Privacy Act 1988 (Cth);*
- (b) the NSW Privacy and Personal Information Act 1998 (Cth);*
- (c) the Health Records and Information Privacy Act 2002 (NSW); and*
- (d) any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued under any of the legislation referred to in paragraphs (a) – (c), each as amended from time to time.*

Personal Information has the meaning given under the Privacy Act 1988 (Cth).

In addition the Agent acknowledges that the Principal must comply with the contract disclosure requirements of the Government Information (Public Access) Act. The Agent also agrees to give to the Principal an immediate right of access to the information contained in records held by the Agent in relation to the performance of the services by the Agent under the agreement and information collected by the Agent from members of the public.'

Work Place Health and Safety

Clause 25. is deleted and replaced with:

'The Principal acknowledges that the Agent acts under the direction of the Principal to facilitate the transfer of the Property between Principal and purchaser.'

Defects

Clause 26. is deleted and replaced with:

'The Principal acknowledges the Property is subject to the defects and risks outlined in the Contract for Sale.'

Additional Clauses

The following additional clauses are inserted:

Include the following clause 27:

Agent to Perform Services

27. (a) The Agent must perform its obligations under this agreement:

- (i) in a proper, businesslike and timely manner;*
- (ii) using all necessary judgement, skill, labour and expert professional knowledge;*

(iii) adopting all methods, practices and standards of diligence and care normally exercised by other duly qualified persons providing comparable services in a proper, businesslike and timely manner; and

(iv) in accordance with all applicable laws.

(b) The Agent must comply with the Property NSW Scheme Terms and Conditions (Scheme No. SCM4271) in relation to this agreement, as updated from time to time, the terms of which are incorporated by reference in this agreement as if set out in full herein. If the Agent does not agree to be bound by such terms or any updates to such terms, the Agent must immediately terminate this agreement by notice in writing to the Principal.

Include the following clause 28:

Warranties By Agent

28. The Agent warrants that it:

- (a) has authority to enter into the agreement;
- (b) holds a real estate agent's licence under the Property, Stock and Business Agents Act 2002 (NSW) and will continue to hold it during the Exclusive Agency Period;
- (c) will be just and faithful to the Principal in its activities and dealings under this agreement and in all transactions relating to this agreement, and give a true account of the transactions to the Principal as often as may reasonably be required;
- (d) will inform the Principal of all relevant matters, accounts, documents and other information which may come into possession or power concerning this agreement or any part of the Property;
- (e) will promptly account for the receipt of any moneys belonging to the Principal;
- (f) will not make any representations about, or use any material related to, any part of the Property or the proposed sale of any residential unit proposed to be developed on the Property, unless it has the Principal's prior written approval. The Agent acknowledges that the Principal may suffer considerable loss if such approval is not obtained;
- (g) will not engage in any conduct that is misleading or deceptive, or is likely to mislead or deceive purchasers, potential purchasers or other persons, in regard to any part of the Property or the Principal (including, without limitation, anything the Principal has done, or intends to do);
- (h) will not engage in any conduct that is unconscionable;
- (i) will not make false or misleading representations concerning any part of the Property;
- (j) will comply with all applicable laws in carrying out its obligations, and exercising its rights, under this agreement; and
- (k) will comply with the written directions given by the Principal from time to time related to this agreement and the exercise of any obligations and rights under this agreement.

Include the following clause 29:

AML/CTF Compliance

29. Without limitation of the generality of clause 27.(a)(iv), the Agent must comply with the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) and any policies or procedures of the Principal which are notified to the Agent from time to time (**AML/CTF Laws**), and must not do any act or engage in any practice that would breach the AML/CTF Laws, or which if done or engaged in by the Principal, would breach the AML/CTF Laws.

Include the following clause 30:

Insurance

30. The Agent must maintain at its own cost:

- (a) *a comprehensive specific insurance policy to cover the liability of the Agent in respect of any act or default for which it may become liable under or in connection with this agreement;*
- (b) *professional indemnity insurance as required under the Property Stock and Business Agents Act 2002;*
- (c) *public liability insurance for at least \$20,000,000; and*
- (d) *workers' compensation insurance in accordance with the applicable legislation.'*

EXECUTION PAGE

EXECUTED as a deed.

Signed by [insert name of the Principal] (ABN [insert]))
[insert] in the presence of:)

.....
Date

.....
Witness

Signed by [insert name of Agent] (ABN [insert]))
the presence of:)

.....
Date

.....
Witness