

MASTER ADVOCATES



REAL ESTATE SERVICES

"Experience A Better Way"

VENDOR ADVOCACY AGREEMENT

**MASTER ADVOCATES – REAL ESTATE SERVICES PTY LTD ABN 59 169 821 407
("AGENT")**

And

**THE CLIENT
AS IDENTIFIED IN THE SCHEDULE
("CLIENT")**

DATE:

BETWEEN:

MASTER ADVOCATES – REAL ESTATE SERVICES PTY LTD ABN 59 169 821 407
Of P.O. Box 243, Essendon North, Victoria 3041
("Agent")

AND

THE CLIENT
AS IDENTIFIED IN THE SCHEDULE
("Client")

BACKGROUND:

- A. The Agent agrees to provide the Services to the Client in accordance with the terms of this Agreement.
- B. The Client agrees to engage the Agent to provide the Services in accordance with the terms of this Agreement.

GENERAL TERMS AND CONDITIONS

OPERATIVE PART:

1. INTERPRETATION

1.1 In this Agreement unless the context requires otherwise:

- (a) The singular includes the plural and vice versa.
- (b) A reference to one gender includes a reference to all other genders.
- (c) A reference to a party that is a corporation includes a reference to all related corporations as that term is defined under the *Corporations Act (Cth) 2001*.
- (d) Headings to clauses are included for the sake of convenience only and do not affect the interpretation of the clauses to which they relate.
- (e) References to any statute or statutory provision includes that statute or statutory provision as amended, extended, consolidated or replaced by subsequent legislation and any orders, regulations, instruments or other subordinate legislation made under the relevant statute.
- (f) This Agreement binds each party's legal personal representatives, successors and assigns.
- (g) Where a party comprises two or more persons the rights and obligations of such persons pursuant to this Agreement will endure for the benefit of and bind all of them jointly and each of them severally.
- (h) All amounts stated herein are in Australian Dollars.
- (i) The Schedules form part of this Agreement.

1.2 In this Agreement, unless the context requires otherwise, the following expressions have the following meanings:

"Agreement" means this Agreement between the Agent and the Client.

"Commencement Date" means the date of this Agreement.

“Confidential Information” means all confidential information and includes electronic systems and processes, written materials, custom written guides, financial or property information, new ideas, strategies, product and service plans, unpublished works, marketing plans and studies, forecasts, computer programs, databases, computer codes, concepts and designs, records, technical specifications, product design, and any document that is marked as being confidential.

“Engagement Fee” means the amount agreed to be paid by the Client to the Agent for the Agent to be engaged for the provision of the Services and includes (a) any amount set out in any invoice provided by the Agent to the Client; and (b) any amounts set out in the Schedules.

“Exclusive Sale Authority” means the exclusive sale authority attached at Schedule 3 to this Agreement.

“GST Act” means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* (as amended from time to time).

“Intellectual Property Rights” means all intellectual property rights at any time protected or capable of being protected by statute or common law including copyright, trade marks, patents, registered designs and rights in and to designs and any application or right to apply for registration of these rights including or in connection with this Agreement, inventions, ideas, discoveries, designs, models, source codes, software, reports and proposals in connection with the Services or any business conducted by the Agent.

“Party” means a party to this Agreement.

“Payment Amount” means the amount agreed to be paid by the Client to the Agent for the provision of the Services and includes (a) any amount set out in any invoice provided by the Agent to the Client; and (b) also includes any amounts if set out in the Schedules (including, for the avoidance of doubt, any Engagement Fee and any Sales Fee).

“Payment Date” means the earlier of (a) the date upon which the Client settles on a contract of sale for the sale of a Vendor Property, or (b) the date on which the Client should have settled on a sale of a Vendor Property but was unable to do so due to the fault of the Client.

“Penalty Interest” means an interest rate of 12% per annum and calculated on a daily basis, or otherwise the penalty interest rate as provided by applicable legislation.

“Sales Fee” means the amount specified in the Exclusive Sale Authority and agreed to be paid by the Client to the Agent in consideration for the Agent providing the Services to the Client (and for the avoidance of doubt, excludes the Engagement Fee).

“Schedules” means the schedules to this Agreement and forming part of this Agreement.

“Seller Criteria Sheet” means the criteria sheet completed by the Client and attached at Schedule 2 to this Agreement.

“Selling Agent” means the selling agent introduced to the Client by the Agent and selected by the Client to sell the Client’s property.

“Services” means the vendor’s advocacy services provided by the Agent for the benefit of the Client. For the purposes of this Agreement, any reference to ‘Services’ also includes those services set out in Schedule 1 to this Agreement.

“Vendor Property” means a property or properties to be sold by the Client, for which the Client has engaged the Services of the Agent.

2. AGENT’S AUTHORITY

The Client authorises the Agent to provide the Services the Client pursuant to the Seller Criteria Sheet attached at Schedule 2 and the Exclusive Sale Authority attached at Schedule 3.

3. PAYMENT

Consideration

- 3.1 The Client agrees to pay the non-refundable Engagement Fee to the Agent on the Commencement Date as consideration for engaging the Agent.
- 3.2 The Client agrees to pay the Sales Fee to the Agent on the Payment Date in respect of a Vendor Property where the Client enters into a contract for the sale of the Vendor Property (or the shares of the vendor if the vendor is a company) during the Exclusive Authority Period or the Continuing Authority Period (each as defined in the Exclusive Sale Authority).
- 3.3 The Client agrees to pay the Sales Fee if the Client enters into a binding contract of sale for the sale of a Vendor Property within 12 months of the Agent introducing the Client to the purchaser of the Vendor Property. For the avoidance of doubt, Clause 3.3 shall not apply where the Client has incurred a liability to pay another agent's commission under an Exclusive Sale Authority signed by the Client after the expiration of the Exclusive Authority Period with the Agent.
- 3.4 The Client agrees to pay the Sales Fee if the Client enters into a binding contract of sale for the sale of a Vendor Property but is unable to complete settlement of the Vendor Property due to the fault of the Client.

Expenses

- 3.5 The Client is liable for any costs incurred by the Agent on behalf of the Client, including but not limited to any advertising costs, marketing costs or sub-contracting costs relating to preparing for or attending to the sale of the Vendor Property.
- 3.6 The Client agrees to advance the funds for such, or reimburse the costs to the Agent upon receipt of an invoice from the Agent.

Penalty Interest

- 3.7 If on the Payment Date the Client fails to pay the Sales Fee to the Agent then the Client shall pay Penalty Interest to the Agent on all monies outstanding, calculated on and from the date on which the Payment Amount was due.
- 3.8 Such monies together with interest owing, under this Agreement, shall be a debt due from the Client to the Agent.

Method of Payment

- 3.9 All Payment Amounts must be paid by way of by direct deposit, cash, electronic bank transfer, or any other method of payment as accepted by the Agent from time to time for the purposes of this Agreement.

4. CONFIDENTIALITY

Client Information

The Parties acknowledge that Confidential Information, belonging to the Client, may come to the possession or control of the Agent during the course of the Agent's appointment.

- 4.2 The Agent will at all times use its best endeavors to ensure that all Confidential Information, belonging to the Client, remains and is kept totally confidential, unless the Agent is required to disclose that Confidential Information by operation of any applicable law or if the Agent is required by court order to disclose that Confidential Information.
- 4.3 The Confidential Information that the Agent receives will cease to be confidential if it becomes publicly known other than as a result of a breach of a confidentiality obligation imposed on the Agent by operation of this Agreement.
- 4.4 The Agent agrees that it will not disclose the Client's personal details to any third party unless expressly authorised in writing by the Client.

5. INTELLECTUAL PROPERTY RIGHTS

5.1 The Parties hereby agree that all Intellectual Property Rights connected with the Services are owned in full by the Agent to the full extent and operation of the law.

6. THE AGENT WARRANTIES

6.1 The Agent warrants to the Client that:

- (a) The Agent will comply, conduct itself, act and perform the Services, at all times in accordance with the local, State and Federal legislation, by-laws, orders and notices of all government, municipal and statutory authorities relating to the Services.
- (b) The Agent will exercise best endeavors and meet appropriate professional standards, including those standards set by the REIV, when providing the Services to the Client in accordance with this Agreement.

7. LIMITATION OF LIABILITY

Generally

7.1 The Parties agree that the following limitations apply to any liability imposed upon The Agent:

- (a) The Agent does not warrant that the Services will meet the Client's requirements if the Client has not provided the Agent with full instructions and information as required in order for the Agent to ensure that the Services meet the Client's requirements.
- (b) The Client agrees not to take any action whatsoever for any loss that the Client suffers as a result of the Agent ceasing or suspending the provision of any Services as a result of the Client not fulfilling any payment obligations under this Agreement.
- (c) The Agent may engage or employ others, to conduct the Services, as the Agent sees fit from time to time, and the Client agrees to release and indemnify the Agent and any employee, contractor, consultant, agent and any other third party whatsoever for any breach of this Agreement and the Client hereby releases and indemnifies the Agent against all actions, proceedings, liabilities, claims damages, costs and expenses in relation to any employment, appointment or engagement in so far as it is related to this Agreement.

7.2 To the full extent permissible (under all applicable laws, legislation, by laws and regulations) the Client hereby agrees to release and fully indemnify the Agent against all actions, claims and loss suffered (including in respect of any third parties) in regards to the following:

- (a) Doing something or any failure to do something that the Client reasonably expected to be done or conducted in respect of the Services; and/or
- (b) Any failure of the Services to satisfy any particular standard and/or outcomes, goals, or timeliness.

8. CLIENT WARRANTIES AND ACKNOWLEDGEMENTS

8.1 The Client provides the following warranties and acknowledgements in accordance with this Agreement:

- (a) The Agent is excluded from any liability to the Client, of any kind, in regards to the Services howsoever arising, whether or not connected with this Agreement.
- (b) The Client expressly warrants to the Agent, to the full extent permitted by law, that all information provided by the Client is accurate and not misleading.

8.2 The Client holds the Agent harmless and indemnifies the Agent against any loss, cost or expense resulting from the use and implementation of the Services provided by the Agent.

9. INDEMNITIES

The Client holds the Agent harmless and indemnifies the Agent (and its subsidiaries, affiliates, officers, related parties, employees, contractors, agents, co branders or other partners) from and against any claims (including third party claims), actions, liabilities, damages, costs, charges or expenses (including but not limited to legal fees) the Agent incurs or becomes liable to pay in respect of the subject matter of this Agreement, the Services, Confidential Information, Intellectual Property Rights, including any action taken by third parties against the Agent and in respect of the subject matter of this Agreement or the Services.

11. TERMINATION

11.1 This Agreement may be terminated by either party in accordance with the Exclusive Sale Authority termination provisions but without prejudice to either parties rights accrued or obligations incurred prior to the date of termination.

11.3 Upon termination of this Agreement the Agent shall immediately cease to be liable to the Client in respect of any outstanding obligations regarding the Services.

12. GST

12.1 Expressions used in this clause have the same meaning as when used in the GST Act.

12.2 If a Party makes a taxable supply under this Agreement, except where this Agreement states otherwise, the payment made by a Party for the taxable supply is expressed as a GST inclusive amount.

12.3 The Party liable to pay for a taxable supply to which this Agreement applies, must also pay the amount of any GST payable in respect of the taxable supply on the date on which payment for the taxable supply is due.

12.4 A Party is not obliged under this Agreement to pay the GST on a taxable supply to it, until given a valid tax invoice for the supply.

12.5 This clause does not merge on termination of this Agreement.

14. SEVERABILITY

In the event of any clause or part of a clause of this Agreement being invalid, illegal, unlawful or otherwise being incapable of enforcement, that clause or part of that clause shall be deemed to be severed from this Agreement and of no force and effect but all other clauses and parts of clauses of this Agreement shall nevertheless prevail and remain in full force and effect and be valid and fully enforceable and no clause or part of a clause of this Agreement shall be construed to be dependent upon any other clause or part of a clause unless so expressed herein.

15. WAIVER

The failure by either party at any time to enforce any of the provisions of this Agreement or any rights or to exercise any election in respect of this Agreement shall not be a waiver of such provisions rights or elections or affect the validity of this Agreement.

16. ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between The Agent and the Client as to the subject matter and renders all previous communications and representations with respect to this Agreement invalid.

17. FURTHER ASSURANCE

Each party to this Agreement shall do, sign and execute all acts, deeds, documents and things as may be reasonably required by the other party to effectively carry out and give effect to the terms of this Agreement.

18. PROPER LAW

This Agreement shall be governed by and construed pursuant to the laws of Victoria and the parties agree to submit to the non-exclusive jurisdiction of the Courts of Victoria in connection with any dispute or other matter relating to this Agreement.

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SCHEDULE 1
Schedule of Services

SCHEDULE 2
Seller Criteria Sheet

SCHEDULE 3
Exclusive Sale and/or Exclusive Auction Authority