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10 January 2017

**BY EMAIL:** [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au)

General Manager  
Adjudication Branch  
Australian Competition & Consumer Commission  
3<sup>rd</sup> Floor, East Point Plaza  
233 Adelaide Terrace  
PERTH WA 6000

Dear Sirs

**Application for Revocation of Existing Authorisation and Substitution with New Authorisation by the Real Estate Institute of Western Australia (Inc)**

I advise that we act for the Real Estate Institute of Western Australia (Inc) (**REIWA**).

As foreshadowed in Paul Donovan's email to Ms Marie Dalins of 15 December 2016, please find accompanying this letter an Application for Revocation of Non-Merger Authorisation and Substitution of New Authorisation pursuant to section 91C(1) of the *Competition and Consumer Act, 2010*, together with supporting written submissions (**Application**).

We have paid the \$2,500.00 payment of the lodging fee by electronic funds transfer. Please find **attached** a copy of the receipt for that payment.

The Application relates to REIWA's Articles, Members' Codes of Practice, Auction Code of Conduct, website (reiwa.com) Terms and Conditions and the agreement between REIWA and its members that give rise to the Standard Exclusive Agency Forms.

REIWA's Articles, Members' Codes of Practice, Auction Code of Conduct and the agreements Forms REIWA and its members that give rise to the Standard Exclusive Agency Agreements have been the subject of a previous grant of authorisation provided by the Commission (Application No. A91280: Public Register No. C2011/952), which was the subject of a final Determination dated 19 April 2012 and which came into effect on 11 May 2012. The period of the authorisation was for 5 years. Consequently,

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the period of the grant of the Commission's current authorisation expires on 11 May 2017.

Should you have any queries or require any further information, please do not hesitate to contact me or Paul Donovan.

Yours faithfully



**Helen Burnside**  
**Lawyer**  
**MDS LEGAL**

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# Form FC

Commonwealth of Australia

*Competition and Consumer Act 2010 — subsection 91C (1)*

## APPLICATION FOR REVOCATION OF A NON-MERGER AUTHORISATION AND SUBSTITUTION OF A NEW AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 91C (1) of the *Competition and Consumer Act 2010* for the revocation of an authorisation and the substitution of a new authorisation for the one revoked.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

### 1. Applicant

- (a) Name of applicant:  
(Refer to direction 2)

A91569 The Real Estate Institute of Western Australia (Inc) (REIWA).

- (b) Description of business carried on by applicant:  
(Refer to direction 3)

An association of real estate and business agents who provide real estate and business agency services in Western Australia.

- (c) Address in Australia for service of documents on the applicant:

c/- MDS Legal of Level 2, Irwin Chambers, 16 Irwin Street, Perth WA 6000

### 2. Revocation of authorisation

- (a) Description of the authorisation, for which revocation is sought, including but not limited to the registration number assigned to that authorisation:

Authorisation granted by the Commission in Determination dated 19 April 2012 (A91280).

- (b) Provide details of the basis upon which revocation is sought:

Authorisation A91280 was granted for the period of 5 years from 11 May 2012 and, therefore, expires on 10 May 2017. REIWA wishes to continue the period of its authorisation for a further period of 5 years.

### **3. Substitution of authorisation**

- (a) Provide a description of the contract, arrangement, understanding or conduct whether proposed or actual, for which substitution of authorisation is sought:  
(Refer to direction 4)

REIWA's existing substitution of the authorisation originally provided pursuant to section 88(1) of the *Competition and Consumer Act, 2010* (as it is now known), is sought of its Articles, reiwa.com Terms and Conditions, Members' Codes of Practice, Auction Code of Conduct and agreements between REIWA and its members that give rise to the Standard Exclusive Agency Forms.

- (b) Description of the goods or services to which the contract, arrangement, understanding or conduct (whether proposed or actual) relate:

Existing delivery of real estate and business agency services to real estate agents, business agents and the general public.

- (c) The term for which substitute authorisation of the contract, arrangement or understanding (whether proposed or actual), or conduct, is being sought and grounds supporting this period of authorisation:

5 years, on the grounds that the previous grants of authorisation to REIWA (A91280, A91026 and A70011) were for that period and there has been no change in circumstances that warrants an alteration to that period of the grant of authorisation.

### **4. Parties to the contract, arrangement or understanding (whether proposed or actual), or relevant conduct, for which substitution of authorisation is sought**

- (a) Names, addresses and description of business carried on by those other parties to the contract, arrangement or understanding (whether proposed or actual), or the relevant conduct:

REIWA and its Members, present and future, of REIWA, PO Box 8099, Subiaco East, WA 6008, that/who provide real estate and business agency services in Western Australia.

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:  
(Refer to direction 5)

REIWA and its Members, present and future, of REIWA, PO Box 8099, Subiaco East, WA 6008, that/who provide real estate and business agency services in Western Australia. MDS Legal is making this application on behalf of REIWA, as its retained lawyers.



- (c) Where those parties on whose behalf the application is made are not known - description of the class of business carried on by those possible parties to the contract or proposed contract, arrangement or understanding:

N/A.

**5. Public benefit claims**

- (a) Arguments in support of application for substitution of authorisation:

See attached written submissions.

*(See Direction 6 of this Form)*

- (b) Facts and evidence relied upon in support of these claims:

See attached written submissions.

**6. Market definition**

Provide a description of the market(s) in which the goods or services described at 3 (b) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

See attached written submissions.

*(See Direction 7 of this Form)*

**7. Public detriments**

- (a) Detriments to the public resulting or likely to result from the substitute authorisation, in particular the likely effect of the conduct on the prices of the goods or services described at 3 (b) above and the prices of goods or services in other affected markets:

See attached written submissions.

*(See Direction 8 of this Form)*

- (b) Facts and evidence relevant to these detriments:

See attached written submissions.

**8. Contracts, arrangements or understandings in similar terms**

This application for substitute authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings (whether proposed or actual) that are, or will be, in similar terms to the abovementioned contract, arrangement or understanding

- (a) Is this application to be so expressed?

No.

- (b) If so, the following information is to be furnished:

- (i) description of any variations between the contract, arrangement or understanding for which substitute authorisation has been sought and those

contracts, arrangements or understandings that are stated to be in similar terms:

.....  
.....  
(See Direction 9 of this Form)

- (ii) Where the parties to the similar term contract, arrangement or understanding(s) are known - names, addresses and description of business carried on by those other parties:

.....  
.....  
(See Direction 5 of this Form)

- (iii) Where the parties to the similar term contract, arrangement or understanding(s) are not known — description of the class of business carried on by those possible parties:

.....  
.....

**9. Joint Ventures**

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Competition and Consumer Act 2010*)?

No.

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

.....  
.....

- (c) If so, by whom or on whose behalf are those other applications being made?

.....  
.....

**10. Further information**

- (a) Name, postal address and telephone contact details of the person authorised by the parties seeking revocation of authorisation and substitution of a replacement authorisation to provide additional information in relation to this application:

Paul Donovan/Helen Burnside, MDS Legal of Level 2, Irwin Chambers, 16 Irwin Street, Perth WA 6000. Telephone: (08) 9325 9353.

Dated... 10 January 2017

Signed on behalf of the applicant



pp.

(Signature)

Paul Donovan

Director of MDS Legal

MDS Legal – REIWA’s retained lawyers

## DIRECTIONS

1. Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.
2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. In item 1 (b), describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding, or the relevant conduct, in respect of which substitute authorisation is sought.
4. In completing this form, provide details of the contract, arrangement or understanding (whether proposed or actual), or the relevant conduct, in respect of which substitute authorisation is sought.
  - (a) to the extent that the contract, arrangement or understanding, or the relevant conduct, has been reduced to writing — provide a true copy of the writing; and
  - (b) to the extent that the contract, arrangement or understanding, or the relevant conduct, has not been reduced to writing — provide a full and correct description of the particulars that have not been reduced to writing; and
  - (c) If substitute authorisation is sought for a contract, arrangement or understanding (whether proposed or actual) which may contain an exclusionary provision — provide details of that provision.
5. Where substitute authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
6. Provide details of those public benefits claimed to result or to be likely to result from the contract, arrangement or understanding (whether proposed or actual), or the relevant conduct, including quantification of those benefits where possible.
7. Provide details of the market(s) likely to be affected by the contract, arrangement or understanding (whether proposed or actual), in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the application for substitute authorisation.
8. Provide details of the detriments to the public, including those resulting from the lessening of competition, which may result from the contract, arrangement or understanding (whether proposed or actual). Provide quantification of those detriments where possible.
9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.



## **REIWA's Articles**

AS AT 24 SEPTEMBER 2015

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## REIWA ARTICLES

### NAME

1. The name of the association is "The Real Estate Institute of Western Australia (Inc)".

### DEFINITIONS

2. In these Articles, and any Codes or Rules made pursuant to these Articles, the following terms shall have the following meanings:

**"Arbitration Panels"** means the panels created and maintained by REIWA to determine arbitration disputes pursuant to Article 34;

**"Ballot Paper"** means either the physical piece of paper by which votes can be cast in an election for candidates listed on that paper or an electronic voting form contained on an Electronic Voting Site;

**"Branch Manager"** means a Person who is nominated as a branch manager pursuant to the terms of section 37(2) of the *Real Estate and Business Agents Act, 1978*;

**"Business Day"** means any day except a Saturday, Sunday or public holiday in Western Australia;

**"Business Transaction"**:

- (a) means a sale, exchange or other disposal and a purchase, exchange or other acquisition of a business and any share or interest in the business or the goodwill thereof; and
- (b) includes any sale, exchange or other disposal or any purchase, exchange, and other acquisition of goods, chattels or other property relating to a business transaction of the kind specified in paragraph (a); and
- (c) also includes an option to enter into a business transaction; but
- (d) does not include the sale, exchange, or other disposal or a purchase, exchange, or other acquisition of a share in the capital of a body corporate carrying on a business or an option in respect thereof;

**"Chief Executive Officer"** means the Chief Executive Officer of REIWA referred to in these Articles and appointed by the Council pursuant to Article 54;

**"Codes"** means the members Codes of Practice and any other code prescribed from time to time by the REIWA Council pursuant to Article 54;

**"Complaint"** means an allegation by a Person that a member of REIWA has breached one of REIWA's Articles, Codes or Rules, together with a request by that Person that the matter be referred to a Professional Standards Tribunal hearing;

**"Continuing Professional Education"** means the program for structured continuing professional education required to be undertaken by Ordinary and Associate members who are licensed real estate and business agents in the manner from time to time prescribed by Council;

**"Council"** means the committee referred to in these Articles and established under Article 52 which is made up of the Persons who have the power to manage the affairs of REIWA as provided for in section 20 of the *Associations Incorporation Act, 1987*;

**"Electronic Vote"**, in relation to an election, means a vote cast in the election by means of an electronic ballot form;

**"Electronic Voting Site"**, in relation to an election, means a secure internet site approved or managed by the Returning Officer for the purposes of enabling eligible voters to cast an Electronic Vote in the election;

**"Finance and Risk Management Committee"** means the sub-committee known as the Finance and Risk Management Committee or such other name given by the Council to the sub-committee appointed by the Council pursuant to Article 93 to consider REIWA's financial and risk management matters;

**"Franchisor"** means a Person who grants to another Person (the franchisee) the right to carry on the business of supplying the services of acting as an agent in respect of real estate and/or business transactions pursuant to a Franchise Agreement;

**"Franchise Agreement"** means a Franchise Agreement as defined in section 4 of the *Franchising Code of Conduct, 1998* contained in the Trade Practices (Industry Codes Franchising) Regulations 1999 as prescribed under section 51AE of the *Trade Practices Act, 1974*;

**"General Meeting"** means the Annual General Meetings or Special General Meetings of members of REIWA held by REIWA as referred to in Articles 94 and 96;

**"Licensed Agent"** means a real estate agent or business agent licensed pursuant to the provisions of the *Real Estate and Business Agents' Act, 1978*;

**"Person"** means a natural person of either sex, a public body, company, partnership, or association or body of persons, corporate or unincorporate;

**"Person in Bona Fide Control of the Business"** means the person who is in bona fide control of a business operated under a licence pursuant to the terms of the *Real Estate and Business Agents Act, 1978*;

**"Professional Standards Tribunal"** means the disciplinary tribunal referred to in these Articles and established pursuant to Article 23;

**"Real estate transaction"**:

- (a) means a sale, exchange, or other disposal and a purchase, exchange or other acquisition of real estate and any exclusive right whether deriving from the ownership of a share or interest in a body corporate or partnership, or otherwise, to the use or occupation of real estate including the leasing, and letting, and the acquisition under lease or letting or tenancy or occupation of real estate; and
- (b) includes a sale, exchange, or other disposal and any purchase, exchange, or other acquisition of goods, chattels or other property relating to a real estate transaction of a kind specified in paragraph (a); and



(c) includes the collection of rents or other payments for use or occupation; and

(d) also includes an option to enter into a real estate transaction;

**"REIWA"** means the Real Estate Institute of Western Australia (Inc);

**"Regional members"** means those members of REIWA, no matter their category of membership, who:

(a) in the case of members who are natural persons, whose principal place where that person conducts or is engaged in business is outside of the Perth Greater Capital City Statistical Area, as that area is defined and published from time to time by the Australian Bureau of Statistics pursuant to section 6(d) of the *Australian Bureau of Statistics Act, 1975*; or,

(b) in the case of members who are not natural persons, whose registered office pursuant to section 36 of the *Real Estate and Business Agents Act, 1978* is located outside of the Perth Greater Capital City Statistical Area, as that area is defined and published from time to time by the Australian Bureau of Statistics pursuant to section 6(d) of the *Australian Bureau of Statistics Act, 1975*;

**"Register of Members"** means the register of current members kept and maintained by REIWA pursuant to Article 10 and the provisions of section 27 of the *Associations Incorporation Act, 1987*;

**"Returning Officer"** means the Chief Executive Officer in his or her capacity as the Returning Officer designated under Article 55 to conduct and control the election of members of the REIWA Council as provided for in these Articles;

**"Rules"** means any Rules prescribed from time to time by the REIWA Council pursuant to Article 54;

**"Scrutineers"** means the two persons appointed by the Council pursuant to Article 56;

**"Special Resolution"** means a resolution that is passed by a majority of not less than three-fourths of the members of the association who are entitled under these Articles to vote and who vote in person or by proxy at a General Meeting of which notice specifying the intention to propose the resolution as a special resolution was given in accordance with these Articles;

**"Surplus Property of the Association"** means that property of REIWA remaining after satisfaction of the debts and liabilities of the association and the costs, charges and expenses of the winding-up of the association;

## **OBJECTS**

3. The object and purpose of REIWA shall be to ensure that REIWA members enjoy a reputation as highly professional real estate and/or business agency practitioners operating in a sustainable business environment. In particular, REIWA shall strive to ensure:

### **3.1 As to reputation:**

3.1.1 The public knows the REIWA brand and understands the benefits of using a REIWA agent.

3.1.2 REIWA members understand the importance of professional conduct and customer service on the reputation of the industry.

**3.2 As to professional standards:**

3.2.1 REIWA sets the standard for professional conduct in real estate practice in Western Australia and REIWA members are leaders in real estate practice.

3.2.2 To enhance the experience of their customers REIWA members continually strive for excellence in all facets of real estate practice.

3.2.3 REIWA members understand the regulatory environment in which they operate and are committed to generating consumer confidence in the real estate transaction.

**3.3 As to a sustainable business environment:**

3.3.1 REIWA members operate in a regulatory and fiscal framework that is conducive to profitable and efficient real estate businesses.

3.3.2 REIWA members enjoy a range of cost competitive, innovative REIWA services that assist them to run efficient and profitable businesses.

4. The property and the income of REIWA shall be applied solely towards the promotion of the objects or purposes of REIWA and no part of that property or income may be paid or otherwise distributed directly or indirectly, to members of the Association, except in good faith in the promotion of those objects or purposes.

**POWERS**

5. Subject to the *Associations Incorporation Act, 1987* and to these Articles, REIWA may do all things necessary or convenient for carrying out its objects and purposes, and in particular, may:

5.1 acquire, hold, deal with and dispose of any real or personal property;

5.2 open and operate bank accounts;

5.3 invest its money:

5.3.1 as trust funds may be invested under Part III of the *Trustees Act, 1962*; or

5.3.2 in any other manner as determined from time to time by the Council;

5.4 borrow money upon such terms and conditions as the association thinks fit;

5.5 give such security for the discharge of liabilities incurred by REIWA as REIWA thinks fit;

5.6 appoint agents to transact any business of the association on its behalf;

5.7 enter into any other contract it considers necessary or desirable;

5.8 act as Trustee and accept and hold real and personal property upon trust, as permitted under section 13 of the *Associations Incorporation Act, 1987*.

## MEMBERSHIP

### Categories of membership

6. The categories of membership of REIWA shall be Ordinary members, Corporate members, Associate members, Life members, Affiliate members and a category of membership for alumni of REIWA (such category to be named by resolution of the Council from time to time).
7. Subject to Article 8 a Person's eligibility for membership of the various categories stipulated in Article 6 shall be as follows:
  - 7.1 Ordinary member. A natural person (not being a corporation, partnership or other body corporate) who is either:
    - 7.1.1 a Licensed Agent; or
    - 7.1.2 not the holder of a real estate or business agent's licence under the *Real Estate and Business Agents Act, 1978* but who:
      - (a) is the sole proprietor of a business, a partner in a firm or a director of a company whose business, either alone or as part of or in connection with any other business, is to act as agent in respect of real estate and/or business transactions; or
      - (b) is a sole proprietor of a business, a partner in a firm or a director of a company that carries on business as a Franchisor;
    - 7.1.3 provided that no person shall be entitled to be an Ordinary member unless that person is a director or partner of an entity that is a Corporate member or that person is a Corporate member by virtue of being a sole proprietor whose business, either alone or as part of or in connection with any other business, is to act as agent in respect of real estate and/or business transactions.
  - 7.2 Corporate member
    - 7.2.1 Any natural person who is a sole proprietor of a business, any corporation or any partnership whose business, either alone or as part of or in connection with any other business, is to act as agent in respect of real estate and/or business transactions, provided that:
      - (a) the entity concerned actively carries on the business of:
        - (i) acting as agent in real estate and/or business transactions and is the holder of a current triennial certificate issued pursuant to Section 31 of the *Real Estate and Business Agents Act, 1978*, or
        - (ii) a Franchisor;
      - (b) and all:
        - (i) directors;
        - (ii) partners;

- (iii) Branch Managers;
- (iv) persons in Bona Fide Control of the Business; and,
- (v) in the case of a sole trading business that conducts real estate and/or business transactions, the owner,

of the proposed Corporate member are either Ordinary members or Associate members unless in the case of directors or partners, the director or partner concerned is ordinarily resident outside the State of Western Australia.

7.2.2 Any corporation which is a Licensed Agent and is incorporated outside the State of Western Australia, the directors of which are resident outside the State, provided that the Person in bona fide control of the business operated under the license and any branch managers are Ordinary members or Associate members.

7.3 Associate member. A Person who is a Licensed Agent or the holder of some special qualification allied to real estate, such special qualification being a qualification approved by the Council.

7.4 Life member. An Ordinary member who, in the light of long, continuous and outstanding meritorious service, is:

7.4.1 nominated for life membership by another ordinary member of REIWA in writing, who shall provide that nomination to the Chief Executive Officer of REIWA, together with supporting documentation and information stipulated by the Chief Executive Officer;

7.4.2 by resolution of the REIWA Council considered deserving of life membership; and resolved by ordinary resolution at a general meeting of REIWA to be a life member.

7.4.3 A Life member shall be entitled to the same membership rights as an Ordinary member, save that a Life member shall not be liable to pay any membership subscription for his or her continuing membership.

7.5 Affiliate member. A Person who is engaged, in whole or in part, in an occupation designated by the REIWA Council to be sufficiently related to the provision of real estate or business agency services so as to warrant inclusion in this category of membership.

7.6 REIWA alumni member. Any Person who has in the past been an Ordinary Member or Associate Member of REIWA, but who:

7.6.1 is no longer a member of the categories of REIWA membership set out in Articles 7.1 – 7.5 above; and

7.6.2 does not conduct business as a licensed Agent, is not engaged by any real estate or business agency business to act as a Sales Representative (as that term is defined in section 4 of the *Real Estate and Business Agents Act, 1978*) and does not act as an agent for any other person in any Real Estate Transactions or Business Transactions.

PROVIDED THAT the name of this category of membership shall be determined from time to time by the Council.

**Eligibility for membership**

8. No Person shall be eligible to apply for membership or to remain a member of REIWA (no matter when that Person was admitted to membership of REIWA) in relation to any of the classes of membership stipulated in Article 7:
- 8.1 unless that Person agrees in writing to abide by the Articles, Codes and Rules of REIWA;
  - 8.2 if that Person:
    - 8.2.1 is a person whose licence and/or triennial certificate under the *Real Estate and Business Agents Act, 1978* is currently under suspension or is currently cancelled by order of the State Administrative Tribunal under that Act;
    - 8.2.2 is an undischarged bankrupt or otherwise is an insolvent under administration within the meaning of the Corporations Law;
    - 8.2.3 is of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
    - 8.2.4 has been convicted of an indictable offence in respect of which a sentence has been imposed of:
      - (a) imprisonment for more than one year or for an indeterminate period; or
      - (b) a fine of \$15,000.00 or more or such amount of fine as is stipulated from time to time in relation to the definition of "serious conviction" appearing in section 9 of the Spent Convictions Act, 1988.
    - 8.2.5 is a director of a corporation, is a partner in a partnership or is the sole proprietor of a business which is indebted to REIWA or, alternatively, is indebted to another member of REIWA pursuant to any arbitration award made under REIWA's Articles, Codes or Rules; or
    - 8.2.6 is an ex-director of a corporation, is an ex-partner in a partnership or is the ex-sole proprietor of a business which is indebted to REIWA or alternatively, is indebted to another member of REIWA pursuant to any arbitration award made under REIWA's Articles, Codes or Rules unless the corporation, partnership or business did not owe that debt at the date of the Person applying for membership ceased to be a director of that corporation, partner in that partnership or sole proprietor of that business;
  - 8.3 unless, in the case of:
    - 8.3.1 Ordinary, Corporate and Associate members; and
    - 8.3.2 Life members whose business, either alone or as part of or in connection with any other business, is to act as agent in respect of real estate and/or business transactions;

the member concerned (in this Article referred to as "the member") supplies to REIWA a written declaration in a form required by the REIWA Council that the member is and will be insured for the period of his or her membership of REIWA pursuant to the terms of a professional indemnity insurance contract that includes the following features:

- (a) the policy holder under the insurance contract is a Corporate member referred to in clause 7.2 above;
- (b) the insured pursuant to the insurance contract includes a Corporate member referred to in clause 7.2 above and the member;
- (c) the insurance contract provides a limit of indemnity of at least \$1 million or such other sum as prescribed by the Council from time to time;
- (d) the insurance contract includes as insured events as to which the insured is entitled to indemnity under the contract all activities by the member and the Corporate member referred to in sub-paragraph (a) above in respect to the operations of carrying on the business, either alone or as part of or in connection with any other business, of acting as agent in respect of real estate and/or business transactions in which the member and the Corporate member are involved including, but not limited to, the general provision of real estate services, business agency services and auctions;
- (e) the insurance contract includes as insured events as to which the insured is entitled to indemnity under the contract any claims that arise out of, or are in any way related to, the provisions of the *Trade Practices Act, 1974*.

SAVE AND EXCEPT THAT a Person who is entitled to be an Ordinary member, Corporate member or Associate member solely as a consequence of carrying on business as a Franchisor or being a partner of a firm or the director of a company that carries on business as a Franchisor shall be eligible to apply for membership of REIWA and/or to remain as a member of REIWA notwithstanding that the Person does not comply with this clause 8.3.

8.4 unless, in the case of:

8.4.1 existing Ordinary and Associate members who are licensed real estate and/or business agents-

the member completes Continuing Professional Education; and

8.4.2 new applicants for Ordinary and Associate membership who are licensed real estate and/or business agents -

the applicant agrees to complete Continuing Professional Education

#### **Applications for membership**

- 9. 9.1 Applications for membership of REIWA shall be made in a form stipulated by the Council, to be accompanied by the payment by the applicant of a non-refundable application fee as stipulated by the Council.
- 9.2 Applications for membership of REIWA shall be determined by the Chief Executive Officer of REIWA.

- 9.3 Applicants for membership shall have no right to be heard prior to the making of the determination regarding that application for membership by the Chief Executive Officer. However, the applicant for membership shall be provided with written notice of the Chief Executive Officer's determination within a period of 14 days following the determination, together with written reasons for any rejection of that application.
- 9.4 Any Person whose application for membership is rejected may appeal pursuant to Article 43.
- 9.5 Notice of any successful application for membership of REIWA shall be provided within a month of the application being approved to all existing members by way of written notice, notice by e-mail, notice by posting on the internet or such other method determined by the Council.

#### **Register of members**

10. REIWA shall keep and maintain in an up to date condition a register of the members of REIWA, the categories of membership applicable to those members and their postal or residential addresses. Upon the request of a member, REIWA shall make the register available for the inspection of that member and the member may make a copy or take an extract from the register but shall have no right to remove the register for that purpose.

#### **Annual membership return**

11. Should the REIWA Council at any time, at its sole discretion, think it desirable that a member and/or any class or classes of membership provide information pertaining to those members' eligibility for membership, their compliance with the terms of these Articles and/or any other information relating to their membership, the Council may require members to complete and return to the Chief Executive Officer an annual declaration before 30 June each year in a form to be determined by the Council certifying:
- 11.1 whether the member continues to comply with the various criteria for membership of the individual categories of membership referred to in these Articles;
- 11.2 any other information relevant to determine whether a member complies with the provisions of these Articles; and/or
- 11.3 any other information relating to the member's membership of REIWA.

#### **Requirements for ongoing membership**

12. Members of REIWA will at all times adhere to the Articles, Codes and Rules of REIWA.
13. Members of REIWA shall not in any way assist or in any other way be a party to the breach by any Person of REIWA's intellectual property rights or any unauthorised use by a Person of REIWA's membership services.

Members of REIWA shall not:

- 13.1 In any way infringe any intellectual property rights held by REIWA including, but not limited to, REIWA's copyright and REIWA's rights in designs, patents, confidential information and trademarks.
- 13.2 In any way assist or in any other way be a party to the breach by any Person of REIWA's intellectual property rights (including, but not limited to, REIWA's copyright and REIWA's rights in designs, patents, confidential information and trademarks) or any unauthorised use by a person of REIWA's membership services.

- 13A. Members of REIWA shall not engage in conduct that is misleading or deceptive of REIWA or its servants or agents or is likely to mislead or deceive REIWA or its servants or agents. Further, members of REIWA shall not, with respect to their dealings or association with REIWA or any of its services, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

#### **Membership subscriptions**

14. Members shall pay membership subscriptions in such sums and for such periods as shall be fixed from time to time by the Council as being payable by individual members or groups of members.
15. All membership subscriptions must be paid by members by the date marked on the relevant invoices as being the time that the payment is due. If any member fails to pay the subscription due by that member within 60 days of the due date marked on the relevant invoice the Council may, in its discretion, terminate the Person's membership.
16. Persons who become members of REIWA after the commencement of the period for which annual subscriptions have been set in any particular year shall pay a reduced initial subscription as determined by the Council, such amount to be paid at the time the Person submits his or her application to become a member of REIWA.
17. Any member aggrieved by a decision or action under this Article may appeal such decision pursuant to Article 43.

#### **SUSPENSION OF REIWA TRADING SERVICES TO MEMBERS**

18. If any member of REIWA owes to REIWA a debt in excess of REIWA's stipulated trading terms in relation to the provision to that member by REIWA of membership services, REIWA shall have the ability to cease supplying membership services to that member until the debt has been paid in full. The terms of this clause shall not, when applied, amount to a termination or suspension of a Person's membership and a member aggrieved by a decision under this Article may appeal such decision pursuant to Article 43.

#### **RESIGNATION**

19. Any member may at any time submit a resignation from membership of REIWA by providing written notice of that intention to the Chief Executive Officer and such a Person shall cease to be a member of REIWA should that Person's resignation be accepted by the Council pursuant to the provisions of Article 20 below.
20. The REIWA Council may refuse to accept the resignation of a member of REIWA for any reason that it shall in its absolute discretion determine warrants such a refusal including, but not limited to, the fact that a Person is indebted to REIWA or due to the fact that the member is the subject of an arbitration hearing or a Professional Standards Tribunal hearing pursuant to these Articles.

#### **CESSATION OF MEMBERSHIP**

21. Should the Chief Executive Officer of REIWA determine that a member of REIWA does not comply with the criteria for membership stipulated in Articles 7 and 8 above, that Person shall cease to be a member of REIWA immediately upon notice of that fact being provided to that member by the Chief Executive Officer.



22. Should a member be provided with a notice by the Chief Executive Officer that that Person ceases to be a member of REIWA pursuant to the provisions of Article 21 above that Person shall have a period of 14 days from the date that the Person is provided with that notice to make written request to the Chief Executive Officer that the issue of that member's compliance with the criteria of membership stipulated in Articles 7 and 8 above be referred to a Professional Standards Tribunal for determination. Upon receipt of any such request, the Chief Executive Officer shall convene a Professional Standards Tribunal hearing and shall reinstate the membership of that Person until further order of the Professional Standards Tribunal.

#### **PROFESSIONAL STANDARDS TRIBUNALS AND THE DISCIPLINING OF MEMBERS**

23. REIWA shall establish from time to time Professional Standards Tribunals that shall be made up of three individuals selected by the Chief Executive Officer from a panel of individuals previously approved by the Council. The members of each Professional Standards Tribunal shall not be required to be members of REIWA but, in the case of the Chairperson, shall be a legal practitioner as defined under Section 3 of the *Legal Practice Act, 2003*.
24. Should the Chief Executive Officer:
- 24.1 receive a complaint from any Person that a member of REIWA has breached REIWA's Auction Code of Conduct;
  - 24.2 receive a complaint from a member of REIWA that another member has breached one or more of REIWA's Articles, Codes or Rules; or
  - 24.3 make a complaint referred to in sub-paragraphs 24.1 or 24.2 himself or herself,
- the Chief Executive Officer must refer that complaint for determination at a hearing by a Professional Standards Tribunal.
25. Upon the hearing of a matter referred to a Professional Standards Tribunal the Tribunal shall have the power to:
- 25.1 terminate or suspend the membership of REIWA of the Person who is the subject of the hearing.
  - 25.2 impose the penalties prescribed in any of REIWA's Articles, Codes or Rules in respect of any breaches of those Articles, Codes or Rules.
  - 25.3 impose monetary penalties of not more than \$10,000.00, or such alternate maximum sum as prescribed from time to time by the Council, for any breach of any of REIWA's Articles, Codes or Rules.
  - 25.4 require the Person the subject of the hearing to undertake a course of further training provided by REIWA or another service provider as stipulated by the Professional Standards Tribunal.
  - 25.5 impose a reprimand.
  - 25.6 dismiss the matter without penalty.
  - 25.7 order the restitution of any monies held or received by the member the subject of the hearing to any Persons determined by the Professional Standards Tribunal to be entitled to those monies, provided that any sum ordered by way of restitution shall be no more than \$25,000.00 in total.

26. Notwithstanding the provisions of Article 24 above, a Professional Standards Tribunal that is hearing a particular matter that has been referred to it may decline to hear or determine that matter on the ground that:
- 26.1 the subject of the matter is not within the capacity of the Professional Standards Tribunal to determine;
  - 26.2 the matter is frivolous or vexatious; or
  - 26.3 it is otherwise inappropriate for the Professional Standards Tribunal to hear or determine the matter concerned.

Should a Professional Standards Tribunal decline to hear or determine a matter pursuant to this Article, the Chief Executive Officer must then refer the matter to the Department of Commerce and its successors if, in the opinion of the Professional Standards Tribunal or the Chief Executive Officer, the matter might amount to a breach of the provisions of the *Real Estate and Business Agents Act, 1978* or the Code of Conduct issued pursuant to section 101 of that Act.

27. Prior to the commencement of any hearing before a Professional Standards Tribunal, the Person who originally made the complaint pursuant to Article 24 above that is the subject of the particular hearing may give written notice that he or she wishes to withdraw that complaint. In that event, the hearing before the Professional Standards Tribunal shall not take place unless the Chief Executive Officer decides that a matter should nevertheless proceed to be heard by a Professional Standards Tribunal.
28. The following procedure shall apply with respect to any hearing conducted by a Professional Standards Tribunal:
- 28.1 Not less than 14 days before the Professional Standards Tribunal meets to hear the relevant matter, the Tribunal shall give to the defendant member:
    - 28.1.1 written notice of the nature of the matter to be heard and particulars of the events that are alleged to have occurred;
    - 28.1.2 copies of any documentary evidence proposed to be considered by the Professional Standards Tribunal at the hearing including, but not limited to, any relevant written complaints that have been made; and
    - 28.1.3 written notice stating the date, time and place of the hearing and informing the member that the member may attend and speak at the hearing and/or submit to the Professional Standards Tribunal written representations at or prior to the date of the hearing.
  - 28.2 At the hearing by the Professional Standards Tribunal, prior to the Tribunal making its determination, the Tribunal shall call before it any evidence that it deems fit and the defendant member shall be given an opportunity to call evidence and make oral representations. The Tribunal shall give due consideration to all the evidence and representations before it.
  - 28.3 Following the hearing by the Professional Standards Tribunal, the Tribunal shall deliver its decision and the reasons for that decision in writing. A copy of the decision and the reasons for that decision shall be provided to the defendant member within 14 days of the decision being made.

- 28.4 Should a Member be convicted as a consequence of a disciplinary hearing conducted by a Professional Standards Tribunal and that conviction not be overturned upon appeal pursuant to Article 43, the outcome of the Tribunal hearing and any appeal must be communicated to REIWA Members through the REIWA publication REIWA News or an equivalent publication. That communication shall take place upon the latter of either the determination of any appeal under Article 43 or, if there is no appeal, upon the expiration of the time permitted under Article 43 for an appeal to be lodged. Further, the relevant Professional Standards Tribunal shall have the power to exercise its discretion to rule that the identity of the member the subject of the hearing concerned shall not be published if the Tribunal considers that this would be substantially unfair in the circumstances. Any member aggrieved by the exercising of such discretion by a Tribunal may appeal against such a determination pursuant to Article 43.
29. The Professional Standards Tribunal shall not have the power to make any costs orders with respect to the hearing of any matters before it.
30. Notwithstanding any suspension of a member pursuant to Article 25 above, the member shall remain liable for all monies that otherwise would have been payable if the member had not been under suspension during the period of suspension.
31. Notwithstanding any termination of a member's membership pursuant to Article 25 above the member shall remain liable for all monies due at the date of that termination to:
- 31.1 REIWA; or
- 31.2 another member.
32. Any member who is expelled or suspended from membership of REIWA or who is penalised by a Professional Standards Tribunal pursuant to these articles shall have a right of appeal against that expulsion, suspension or penalty in accordance with the provisions of Article 43 below; provided that if a member has been expelled or suspended the member shall remain under suspension until the determination of the appeal.
33. Expulsion of a member pursuant to Article 25 above shall be deemed to not take effect until:
- 33.1 the date upon which any time given to appeal against the decision to expel expires pursuant to Article 43 below; or
- 33.2 the date that notice of the determination of any such appeal is given to the member, whichever is the later.

#### **ARBITRATIONS**

34. REIWA shall create and maintain Arbitration Panels for the purpose of hearing and resolving:
- 34.1 disputes between member agents to which any of REIWA's Articles, Codes or Rules relate or which otherwise arise out of the provision of real estate or business agency services by one or more members of REIWA; and
- 34.2 any disputes between members of REIWA and members of the public to which any of REIWA's Articles, Codes or Rules relate or which otherwise arise out of the provision of real estate or business agency services by one or more members of REIWA; provided

that the member(s) of the public concerned agrees in writing to submit the dispute to the REIWA Arbitration Panel to be determined pursuant to these Articles and to abide by such a determination.

So as to avoid any doubt, Arbitration Panels and the processes referred to in Articles 34 to 41 have no application to the matters set out in these Articles as being matters to be determined by the Professional Standards Tribunal, the Appeals Board or the Chief Executive Officer.

35. Arbitration Panels shall be empowered to determine arbitration disputes under these Articles in accordance with the terms of the *Commercial Arbitration Act, 1985 (WA)* and all parties to such arbitration hearings shall be bound by the provisions (including appeal provisions) of that Act, except insofar as the terms of the *Commercial Arbitration Act 1985 (WA)* are lawfully modified by REIWA's Articles, Codes or Rules and/or the terms of the Dispute Resolution Manual approved by the Council.
36. All disputes between members to which any of REIWA's Articles, Codes or Rules relate or which otherwise arise out of the provision of real estate or business agency services by one or more members of REIWA must be submitted to REIWA for resolution by arbitration pursuant to the provisions of these Articles.
37. Any member who is a party to a dispute with a member of the public or another member shall, if and when required by REIWA through the Chief Executive Officer, submit such dispute for arbitration to an Arbitration Panel provided that no dispute with a member of the public can be referred for resolution by arbitration under these Articles unless the member of the public concerned agrees in writing to submit to and abide such a resolution. The opinion of the Chief Executive Officer as to whether any member is or is not a party to a dispute shall be final.
38. Notwithstanding the provisions of these Articles, an Arbitration Panel that is hearing or resolving a particular dispute may decline to hear or determine that dispute on the ground that the subject matter of the dispute is not within the capacity of the Arbitration Panel to determine or that it is otherwise inappropriate for the Arbitration Panel to hear or determine the dispute concerned. No arbitration shall determine any dispute in which the subject matter of that dispute exceeds a monetary amount of \$50,000.00, or such other sum as shall be stipulated from time to time by the Council.
39. Arbitration Panels shall be made up of individuals selected by the Chief Executive Officer and shall be administered in accordance with the terms of a Dispute Resolution Manual approved by the Council.
40. Before any Arbitration Panel may commence to hear any arbitration pursuant to these Articles, the parties to the dispute may be required by direction of the Chief Executive Officer, upon the giving of not less than 14 days' notice, to attend a conciliation conference before a conciliator appointed by the Chief Executive Officer who shall be an individual determined by the Chief Executive Officer to be skilled in conciliation techniques. The procedures for such conciliation conferences may be stipulated in the Dispute Resolution Manual approved by Council.
41. With respect to any arbitration:
  - 41.1 any Person seeking arbitration of a dispute pursuant to these Articles shall at the time of lodging the request for arbitration forward such sum as the Chief Executive Officer shall determine to be appropriate, together with such sums as the Chief Executive Officer may consider as being in dispute, which sums shall be held in trust in an interest bearing account for the benefit of that party;

- 41.2 the Chief Executive Officer may require any other party to an arbitration held pursuant to these Articles holding monies in dispute to lodge such sum as the Chief Executive Officer may determine with REIWA, such sum to be held in trust in an interest bearing account for the benefit of such party;
- 41.3 after an arbitration has been finalised, any sum held pursuant to this Article may be retained or refunded in whole or in part as determined by the Arbitration Panel after the hearing of the dispute.

## **LEGAL REPRESENTATION**

42. A Person shall be entitled to legal representation at any hearing or appeal conducted pursuant to these Articles or any of REIWA's Codes or Rules if the decision-maker conducting that hearing or appeal considers that such legal representation is necessary to enable the party concerned to effectively present the party's case and it is otherwise appropriate in the circumstances for the party to be legally represented.

## **APPEALS**

43. Any Person who is given a right to appeal against a decision pursuant to the provisions of these Articles may so appeal by notice in writing addressed to the Chief Executive Officer, such notice of appeal to be lodged with the Chief Executive Officer, together with a written statement of the grounds of that appeal, within 28 days from the date REIWA providing the notice of the decision appealed against.
44. All appeals pursuant to Article 43 above shall be heard by an Appeals Board made up of the following individuals who shall not have been members of the original decision-making body:
- 44.1 a Chairperson, being a legal practitioner as defined under section 3 of the *Legal Practice Act, 2003*, appointed by the President of the Australian Institute of Arbitrators and Mediators, who is a member of that Institute but is not a member of REIWA and is not a licensed real estate/business agent or sales representative under the *Real Estate and Business Agents Act, 1978*;
- 44.2 a consumer representative who shall be appointed by the Council but who is not a licensed real estate/business agent or sales representative under the *Real Estate and Business Agents Act, 1978* and who is not a member of REIWA; and
- 44.3 an individual appointed by the REIWA Council who is a real estate or business agent licensed under the *Real Estate and Business Agents Act, 1978*.
45. The Chairperson of the Appeals Board shall be responsible for making all determinations on issues of law. Issues of fact shall be determined by a majority decision of three members of the Appeals Board.
46. Any Person appealing pursuant to Article 43 above shall pay to REIWA at the time that the appeal is lodged such sum as the Council shall determine from time to time. A notice of appeal shall not have been duly lodged pursuant to Article 43 above unless and until the required sum is paid to REIWA.
47. Any sum of money lodged with REIWA pursuant to Article 46 above with respect to the hearing of an Appeal shall be retained or refunded in whole or in part as determined by the Appeals Board.

48. Appeals to the Appeals Board under these Articles from decisions of the Professional Standards Tribunal will be by way of re-hearing and not by way of hearing *de novo*. Appeals to the Appeals Board under these Articles from the decision or action of any other Person will be by way of hearing *de novo*.
49. Upon the hearing of an appeal the Appeals Board shall only have the power to make a decision that the decision-maker who made the original decision appealed from was empowered to make; provided that the Appeals Board may make such orders as to the costs of the hearing of the appeal as the Appeals Board considers to be just including, but not limited to, payment of the administrative costs of REIWA relating to the appeal and the costs of the parties to the appeal.
50. At any appeal to the Appeals Board, REIWA shall be a respondent to that appeal and shall be entitled to appear at the hearing of the Appeal.
51. The following procedure shall apply with respect to the hearing of any appeal by the Appeals Board pursuant to these Articles:
- 51.1 Not less than 14 days before the Appeals Board sits to hear the relevant appeal the Chief Executive Officer shall give to the parties to the appeal:
- 51.1.1 written advice of the appeal and copies of the notice of appeal and grounds of appeal lodged in accordance with Article 43 above;
- 51.1.2 copies of any documentary evidence considered by the decision-maker who made the decision the subject of the appeal;
- 51.1.3 written notice stating the date, time and place of the hearing or, if ordered by the Appeals Board, any preliminary conference to be held with respect to the Appeal, and informing the parties to the appeal that they may attend and speak at the hearing and/or submit to the Appeals Board written representations at or prior to the date of the hearing;
- 51.2 At the hearing of the appeal by the Appeals Board, prior to the Appeals Board making its determination, the parties to the appeal shall be given an opportunity to be heard and the Appeals Board shall give due consideration to any oral or written representations submitted by the parties to the appeal;
- 51.3 Following the hearing of the appeal the Appeals Board shall deliver its decision in writing. A copy of the decision and the reasons for that decision shall be provided to the parties to the appeal within 14 days of the decision being made.

## **THE REIWA COUNCIL**

### **Name of Management Committee**

52. The persons who have the power to manage the affairs of REIWA and thereby constitute the committee of the association for the purposes of the *Associations Incorporation Act, 1987* shall be known as "the Council".

### **Membership of Council**

53. The Council shall comprise nine individuals and:

- 53.1 all nine of those members shall be either Ordinary members or Life members of REIWA and in order to be eligible to stand for election or appointment as a member of the Council, the member concerned:
- (a) must have been an Ordinary and/or Life member for no less than three consecutive years immediately prior to the General Meeting at which time the person becomes a member of the Council; and
  - (b) must not be a member whose membership is under suspension.
- 53.2 two of those members shall be elected by Ordinary and/or Life members of REIWA who are Regional Members and whose membership is not under suspension. For this purpose Western Australia shall be divided into two regional electoral areas and the regional members of the Council shall be elected from each of those two regions, with only Ordinary and/or Life members whose principal place of residence is inside the regional area concerned and whose membership is not under suspension, being eligible to vote for that regional member of Council. The two regional electoral areas shall be as follows, with reference to the non-metropolitan regions defined in section 4 and detailed in schedule 4 of the *Planning and Development Act, 2005*:
- 53.2.1 the Northern and Eastern Regional Electoral Area, made up of the regions of Kimberley, Pilbara, Gascoyne, Mid-west, Goldfields-Esperance and the Wheatbelt;
  - 53.2.2 the South-Western Regional Electoral Area, made up of the regions of Peel, the South-West and the Great Southern.
- PROVIDED THAT, to the extent that the two regional electoral areas referred to in Articles 53.2.1 and 53.2.2 above include any portion of the Perth Greater Capital City Statistical Area (as that area is defined and published by the Australian Bureau of Statistics pursuant to section 6(d) of the *Australian Bureau of Statistics Act, 1975*), that portion shall be excluded from those regional electoral areas.
- 53.3 seven of those members of the Council shall be elected by the Ordinary and/or Life members of REIWA. All Ordinary and/or Life members of REIWA whose membership is not under suspension shall be eligible to vote for those seven positions, including Ordinary and/or Life members who are Regional Members.

#### **Powers of the Council**

54. The Council shall have the power to do all things necessary so as to effectively manage the affairs of REIWA, including the power to appoint or dismiss a Chief Executive Officer and to prescribe from time to time Codes and Rules, so long as those Codes and Rules are not inconsistent with these Articles.

#### **Council Elections**

55. The Chief Executive Officer will act as the Returning Officer to conduct elections for the members of the Council PROVIDED THAT the Chief Executive Officer may appoint a delegate to perform all or some of the duties of the Returning Officer set out in these Articles.
56. At the meeting of the Council held in June or July each year, prior to the Annual General Meeting, the Council will appoint two Scrutineers to observe the conduct of the Council election process and who will be required to:

- 56.1 advise the Returning Officer of any issues or problems that arise in their view with respect to that election process; and
- 56.2 report to the Annual General Meeting as to any observations by them of any issues or problems with the Council election process.

PROVIDED THAT, to the extent that the election is conducted by the casting of an Electronic Vote on an Electronic Voting Site, the Scrutineers shall not participate in that aspect of the election process.

- 57. A candidate for election as a member of the Council must lodge with the Returning Officer no earlier than the last Monday in July and no later than the second Friday in August prior to the election concerned a nomination in writing signed by two Ordinary or Life members and counter-signed by the candidate.
- 58. The Returning Officer shall reject the nomination of any candidate who:
  - 58.1 is not an Ordinary or Life member of REIWA;
  - 58.2 is a person whose membership of REIWA is under suspension; or
  - 58.3 is a candidate who lodges his or her nomination before the last Monday in July or after the second Friday in August.
- 59. Prior to the preparation of the Ballot Paper for the election of Councillors there shall be a draw conducted or caused to be conducted by the Returning Officer in the presence of the Scrutineers to determine the order of the names of the candidates appearing on the Ballot Paper. The candidates shall be entitled to attend the draw but it is not mandatory for them to do so.
- 59A. The election of Councillors is able to be conducted, in the discretion of the Returning Officer (such discretion to be exercised prior to the draw referred to in Article 59 above), by the casting of votes on a Ballot Paper that is a physical piece of paper and/or by the casting of an Electronic Vote on an Electronic Voting Site.
- 60. Following the draw referred to in Article 59 above, Ballot Papers shall be prepared or caused to be prepared by the Returning Officer, upon which shall be printed or otherwise identified the names of all candidates. The Returning Officer shall:
  - 60.1 post or cause to be posted a Ballot Paper to each member who is entitled to vote as soon as practicable; and/or
  - 60.2 if the Returning Officer determines, as provided for in Article 59A above, that voting shall be permitted to occur by the casting of an Electronic Vote on an Electronic Voting Site, give notice to members entitled to vote of that fact.
- 60A. In the case of a ballot that is conducted that enables the casting of Electronic Votes, the Returning Officer is to ensure that each member who is entitled to vote is provided with notice of all the necessary information required in order to vote in the election, including (but not limited to):
  - 60A.1 the internet address of the Voting Site; and
  - 60A.2 the passwords (if any) required to access the voting site.
- 60B. In the case of a ballot that is conducted that enables the casting of Electronic Votes, the Returning Officer is to ensure that the Voting Site contains:
  - 60B.1 instructions for voting;



- 60B.2 a method of declaration of identity and entitlement to vote; and
- 60B.3 any other information that the Returning Officer considers appropriate.
61. To ensure secrecy in the election process the Returning Officer will prepare or cause to be prepared Ballot Papers in such a way so as to keep confidential the manner in which a member has voted but in a way by which the Returning Officer can readily ascertain which members have actually voted and to prevent multiple voting.
62. 62.1 Members entitled to vote in Council elections shall mark on their Ballot Papers in a manner directed by the Returning Officer those candidates for whom the member wishes to vote. The number of candidates selected by the member on the Ballot Paper shall be equal to or less than the number of vacant Council positions the subject of the election.
- 62.2 No vote shall be counted unless the Ballot Paper is received by the Returning Officer not later than two business days prior to the time set for the commencement of the General Meeting at which the Ballot Papers are to be used.
63. As Ballot Papers are received by the Returning Officer they shall be stored in a secure closed ballot box or, in the case of Electronic Votes, in a secure electronic format, in the custody of the Returning Officer. Neither the Returning Officer nor any other person shall count or access the contents or substance of Ballot Papers until the formal voting procedure occurs as set out immediately below. The Returning Officer shall open the ballot box and access any Electronic Votes prior to the commencement of the Annual General Meeting and count the votes received according to the following procedure:
- 63.1 the Returning Officer shall first ascertain the identity of the Person who has purported to vote and shall reject the vote of any member not qualified to vote;
- 63.2 the Returning Officer shall then proceed to access and count the valid Ballot Papers;
- 63.3 the Returning Officer shall then total the number of votes cast for each candidate;
- 63.4 this procedure, in so far as it applies to Ballot Papers that are physical pieces of paper, shall be conducted in the presence of the Scrutineers. However, in so far as the procedure applies to Electronic Votes, the procedure shall not be conducted in the presence of the Scrutineers.
64. The candidates elected to the Council positions the subject of the election shall be those candidates receiving the highest number of votes cast for them.
65. In the event that candidates to a Council position receive the same number of votes then the candidate elected shall be determined by way of a lot organised by the Returning Officer.
66. The Returning Officer shall sign a certificate of the results of the Council election and hand the same, together with details of the number of votes each candidate at the election received, to the Chairperson of the Annual General Meeting, who shall then:
- 66.1 declare the result of the Council election to the meeting;
- 66.2 announce the number of votes received by each candidate at the election; and

- 66.3 direct the Chief Executive Officer to enter the result of the election and the number of votes received by each candidate in the Minutes.
67. Contemporaneously with the announcement by the Chairperson of the result of the Council election as provided for in Article 66 above the scrutineers shall provide a report to the meeting on their observations of the conduct of the election process and any issues or problems they have observed with that process.
68. All ballot papers shall be destroyed or caused to be destroyed by the Returning Officer as soon as practicable after the result of the ballot is declared by the Chairperson at the General Meeting.
69. If for any reason an election scheduled to occur at an Annual General Meeting cannot or does not take place then the Returning Officer shall call a Special General Meeting for as soon as possible following the date of the original General Meeting for the purpose of conducting the necessary Council election and the procedures set out above in these Articles in relation to the conducting of the Council election pertaining to the Annual General Meeting shall apply to the following Special General Meeting *seriatim*.
70. If there are no nominations in excess of the Council vacancies the members nominated shall be declared elected by the Chairperson at the Annual General Meeting and those facts shall be entered in the Minutes.
71. If the candidates nominated and elected at a General Meeting are fewer than the Council positions then vacant, the positions that remain unfilled shall be deemed to be casual vacancies and shall be treated in accordance with the provisions of Article 85 below.

#### **Councillors' terms of office**

72. Each member of Council shall hold office for a period of three years and at the expiry of each such period the position on Council held by a Councillor shall become vacant. However, the Councillor concerned shall be eligible for re-election subject to the provisions of Article 73 below.
73. No member of Council shall remain on the Council at the expiration of a cumulative, although not necessarily consecutive, total of 12 years total service on the Council. However, at the expiration of a further three years any person who has been rendered ineligible to serve on the Council as a consequence of this provision shall become re-eligible to do so and may again stand for election to the Council.
74. Each successful candidate for election to the Council shall take office from the close of the General Meeting at which he or she was elected and shall remain in office until the commencement of business at the Annual General Meeting at which time that Council position has become vacant.
75. Subject to Article 73 above, if the three year electoral term of a Councillor expires at a time when that Councillor is President of REIWA, that person shall be entitled to continue to fill that position on the Council until the next election occurs for any other Council position following the ending of that person's term as President.

#### **Council office bearers**

76. The office bearers of REIWA shall be the President, Deputy President and the Chairperson of the Finance and Risk Management Committee (who must be a member of the Council).

77. 77.1 The position of President, shall be appointed from the members of the Council at an election conducted by that Council in the manner it sees fit at the Council's first meeting after the Annual General Meeting at which the previous President's term expired.
- 77.2 The positions of Deputy President and Chairperson of the Finance and Risk Management Committee shall be appointed from the members of the Council at an election conducted by that Council in the manner it sees fit at the Council's first meeting after the Annual General Meeting at which the previous Deputy President and Chairperson of the Finance and Risk Management Committee's positions term expired.
78. At the election of the office bearers the position of President (if vacant) shall be voted for firstly, the position of Deputy President shall be voted for secondly and the position of the Chairperson of the Finance and Risk Management Committee shall be voted for thirdly.
79. 79.1 The President, elected as provided for in Article 77 above, shall remain in office in that position for a period of two years until the commencement of business at the Annual General Meeting that occurs at about that time.
- 79.2 The Deputy President and Chairperson of the Finance and Risk Management Committee, elected as provided for in Article 77 above, shall remain in office in those positions for a period of one year until the commencement of business at the Annual General Meeting that occurs at about that time.
80. A person shall be eligible to be elected as President, Deputy President or Chairperson of the Finance and Risk Management Committee without having served any minimum term as a Councillor.

#### **Removal of Office Bearers**

81. The Council may remove any office bearer from his or her position as President, Deputy President or Chairperson of the Finance and Risk Management Committee upon two thirds of the Councillors of REIWA resolving at a meeting to so remove the office bearer from that position.

#### **Removal of Councillors**

82. A member of the Council may be removed from that position as a Councillor before the expiration of his or her period of office should members determine by way of Special Resolution at a Special General Meeting convened pursuant to Article 96 below that the person concerned shall be so removed as a Councillor. In such circumstances, the members voting at that Special General Meeting may resolve by ordinary resolution to appoint a person to fill the position on the Council made vacant by the earlier removal of the member of Council for the balance of the relevant term. Otherwise the vacancy concerned shall be treated as being a casual vacancy in accordance with the provisions of Article 85 below.
83. Any member of the Council who shall:
- 83.1 cease to be an Ordinary or Life member of REIWA, or be suspended from that membership; or
- 83.2 be absent without leave of the Council for three consecutive meetings of the Council,
- shall vacate his or her position as a Councillor unless, in the latter case, the disqualification shall be dispensed with by resolution of the Council.

### **Casual vacancies**

84. A Councillor may resign his or her position by giving written notice of that action to the Chief Executive Officer.
85. 85.1 If a casual vacancy arises with a Council position, then the Council may appoint by its own resolution a person to fill that vacant Council position who must be a member of REIWA who would otherwise be eligible to stand for election to the Council in accordance with the terms of Article 58 above. That person shall continue to fill that Council position until the commencement of business at the next Annual General Meeting. Further, an election for that Council position shall take place in accordance with the procedures set out in Articles 55 to 71 above on the basis that the results of that election will be declared at that next Annual General Meeting following the occurrence of the casual vacancy.
- 85.2 If the Council determines not to fill a casual vacancy as provided for in Article 85.1 above then:
- 85.2.1 that position shall remain vacant for the balance of the term of that vacant position unless the position is filled pursuant to the provisions of Articles 85.2.2 or 85.2.3 below;
- 85.2.2 should a Special General Meeting of members be called in accordance with Article 96 below for the purpose of moving a resolution to fill a casual vacancy for the balance of the term of the vacant Council position, at such a Special General Meeting it may be moved by ordinary resolution that the casual vacancy be filled by a specified person for the balance of the term concerned;
- 85.2.3 should the number of casual vacancies on the Council be such that it is not possible to have a quorum pursuant to Article 87 below the Chief Executive Officer shall call a Special General Meeting for the purpose of appointing by ordinary resolution persons to fill the vacant Council positions for the balance of the terms of those positions.
86. In the case of a casual vacancy in the office of President, Deputy President or Chairperson the Council shall appoint from its own number by way of election by members of the Council a replacement President, Deputy President or Chairperson, as the case may be, until the expiration of that office bearer's term.

### **Quorum and procedures at Council meetings**

87. At any meeting of Council the necessary number of Councillors participating in that meeting, whether in person, by telephone or electronically, to form a quorum, shall be six.
88. Meetings of the Council shall be held from time to time as determined by resolution of the Council, as directed by the Chief Executive Officer by notice to each of the members of the Council in the manner stipulated in Article 89 below or as requested in writing by no fewer than five members of the Council to the Chief Executive Officer.
89. Notice shall be given of every meeting of the Council to every Council member and shall be sent by post or by e-mail to the addresses for the Councillors concerned appearing in REIWA's membership records. However, notice need not be given of any meeting which has been fixed by a previous resolution of the Council, either as a specific date for the holding of a meeting or as a day upon which meetings are to be regularly held.

90. 90.1 All questions and resolutions at a meeting of the Council shall be determined by a majority of the votes of the members of the Council participating in the meeting determining that question or resolution, whether participating in person, by telephone or electronically.
- 90.2 The Chairperson of a Council meeting shall be entitled to vote with respect to any question or resolution and, in the case of any equality of votes, shall have a second and casting vote.
- 90.3 Meetings of the Council and the determination of questions and resolutions may be conducted by the Council with members of the Council meeting physically, speaking by telephone or by video conference, participating by electronic means such as e-mail or in such other manner as the Council deems fit to transact its business.
91. Council members shall ensure that they disclose any interest in a contract or proposed contract made by or in the contemplation of the Council as is required under section 21 of the *Associations Incorporation Act, 1987*. Further, Council members shall ensure that they comply with the prohibition upon taking part in any deliberations or decisions of the Council with respect to contracts as stipulated in section 22 of that Act.
92. Information disclosed and matters discussed during the course of a meeting of a Council meeting are to be regarded as strictly confidential. All persons present at a Council meeting have a duty of confidentiality in respect of such information and matters unless agreed to the contrary by a decision of the meeting.

**SUB-COMMITTEES, INCLUDING COMMITTEES FOR COUNTRY AREAS AND SPECIALIST PRACTICE AREAS**

93. The Council shall have the power to create at its discretion sub-committees of REIWA. Those sub-committees shall include a Finance and Risk Management Committee and such other sub-committees as the Council may, in its discretion, determine. Each such sub-committee shall:
- 93.1 be established for such purposes as thought appropriate by the Council including, but not limited to:
- 93.1.1 for the purpose of providing specialised membership services to particular groups of REIWA members, including groups defined with reference to particular regional areas or areas of practice speciality;
- 93.1.2 for the purpose of enabling groups of members to have a voice in REIWA affairs, including to lobby outside institutions or to provide advice and representations to the REIWA Council.
- 93.2 be made up of persons either stipulated individually by the Council, whether or not those persons are members of REIWA, or who shall be elected. In the case of elected positions, the manner in which those elections are to take place, including which groups of members shall be entitled to vote at a particular election and whether non-members of REIWA shall be entitled to stand for that election, shall be determined by the Council;
- 93.3 not charge any fees of REIWA members or others with respect to the delivery of REIWA services associated with that sub-committee unless those fees have been approved by the Council.

## **GENERAL MEETINGS**

### **Annual General Meetings**

94. The Annual General Meeting shall be held each calendar year on a date and at a time the Council determines but no later than within 4 months of the end of REIWA's financial year (and provided for in Article 112 below) and shall be convened by not less than 14 days' notice being provided to members.
95. The following resolutions shall be included by the Chief Executive Officer in the notice convening the Annual General Meeting and may be moved at that meeting:
- 95.1 any resolution determined by the Council prior to 15 July to be put at the Annual General Meeting; and
- 95.2 any resolution, notice of which is provided to the Chief Executive Officer on or by 15 July in writing signed by no fewer than 20 Ordinary and/or Life members of REIWA.

### **The calling of Special Meetings**

96. The Chief Executive Officer shall convene a Special General Meeting to be held no less than 14 days nor more than 28 days from the date of the following:
- 96.1 the Council determining that a specified resolution or resolutions should be put to a Special General Meeting; or
- 96.2 the Chief Executive Officer receiving a request to hold a Special General Meeting, together with a proposed resolution or resolutions, in writing signed by no fewer than 100 Ordinary and/or Life members.
97. The Chief Executive Officer shall provide to Ordinary members and Life members notice of each Special General Meeting specifying the date, time and place of that meeting and the resolutions proposed to be put at that meeting.

### **Special and ordinary resolutions**

98. All resolutions put to General Meetings, whether those meetings are Annual General Meetings or Special General Meetings, shall be ordinary resolutions determined by a simple majority vote excepting resolutions required by these Articles or by the *Associations Incorporation Act, 1987* to be Special Resolutions.
99. Where a resolution is required by these Articles or under the *Associations Incorporation Act, 1987* to be a Special Resolution, notice of the meeting at which that resolution will be put must specify the intention to propose the resolution as a Special Resolution.

### **Agenda for Annual General Meeting**

100. The following shall be the agenda of each Annual General Meeting:
- 100.1 the confirmation of the Minutes of the last Annual General Meeting and of any Special General Meeting held since the preceding Annual General Meeting;
- 100.2 receipt of the formal reports of the Council;
- 100.3 the receipt of the submitted financial accounts of REIWA showing the financial position of the Association at the end of the immediately preceding financial year;

- 100.4 the determination of all resolutions;
- 100.5 the election of Councillors;
- 100.6 the appointment of an auditor for the ensuing year;
- 100.7 general business.

#### **Procedure at General Meetings**

- 101. At any General Meeting 20 ordinary and/or life members present personally or by proxy and whose membership shall not be under suspension shall form a quorum. If within half an hour from the time appointed for a General Meeting to commence a quorum is not present the meeting shall be dissolved.
- 102. The person who is President immediately prior to the commencement of business at the General Meeting, or in the absence of the President the Deputy Presidents at that time, or in the absence of those persons, an ordinary member of the Council at that time, shall chair every General Meeting of REIWA. If within 10 minutes after the time appointed for the commencement of the General Meeting concerned none of the persons referred to above are present, the meeting may elect its own Chairperson.
- 103. A General Meeting may be adjourned from time to time and from place to place upon an ordinary resolution to that effect by the persons physically present at that meeting, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

#### **Voting at General Meetings**

- 104. At any General Meeting voting with respect to a resolution shall be by way of a show of hands and whether a resolution has been carried, carried by a particular majority, or lost, shall be determined by the Chairperson; provided that if a poll is demanded by at least 20 Ordinary and/or Life members present personally or by proxy at the General Meeting, the voting with respect to the resolution shall be conducted by such a poll.
- 105. If a poll is demanded in accordance with the provisions of Article 104 above it shall be taken immediately in such a manner as determined by the Chairperson and the result of the poll should be deemed to be the resolution of the meeting at which the poll was demanded. The demand for a poll may be withdrawn.
- 106. Every Ordinary and/or Life member shall be entitled to vote on resolutions put at General Meetings and shall have one vote on a show of hands and at a poll; provided that no member who has been suspended from membership shall be entitled to attend at the meeting, vote at the meeting, vote in relation to the election of Councillors or to act as a proxy.
- 107. In the case of an equality of votes the Chairperson of the General Meeting shall have a casting vote in addition to the vote that the Chairperson was entitled to as a member.
- 108. Votes may be cast either personally or by proxy, but no person may be appointed a proxy who is not an Ordinary or Life member of REIWA and entitled on his or her own behalf to be present and to vote at the meeting for which the proxy is given.

109. The instrument appointing a proxy shall be deposited at the office of REIWA no later than 12 noon on the Business Day immediately prior to the day of the General Meeting, and if it is expressed as applying to an entire meeting it shall stand for every adjournment of that meeting.
110. Every instrument of proxy shall, as nearly as circumstances will admit, be in the following form or effect:



**APPOINTMENT OF PROXY**

I, ..... being an Ordinary member/Life member [delete as appropriate] of the Real Estate Institute of Western Australia (Inc) ("REIWA") and entitled to attend and vote at the General Meeting referred to below, hereby appoint:

Write here the name of the person you are appointing if this person is **someone other than** the Chairperson of the Meeting

or if no person is named, the Chairperson of the Meeting, as my proxy to act at the General Meeting of members on my behalf and to vote in accordance with the following directions (or, if no directions have been given with respect to any motion put to the meeting, as the proxy sees fit including, but not limited to, any procedural motions or motions to amend) at the General Meeting of members of REIWA to be held

on            day, the            day of            200    ,  
and at any adjournment of that meeting.

**Voting directions to your proxy - please mark  to indicate your directions to vote.**

Motion Item 1.                      The motion that ...  
[describe motion]                      For  Against

Motion Item 2.                      The motion that ...  
[described motion]                      For  Against

**Lodgement of Proxy**

This Proxy Form must be received at REIWA's Office no later than 12 noon on the business day immediately prior to the day of the above meeting. Any Proxy Form received after that time will not be valid for the scheduled meeting.

**MEMBER'S SIGNATURE**

## **ACCOUNTS**

111. REIWA shall:
- 111.1 keep such accounting records as correctly record and explain the financial transactions and financial position of the association;
  - 111.2 keep its accounting records in such a manner as will enable true and fair accounts of the association to be prepared from time to time; and
  - 111.3 keep its accounting records in such a manner as will enable true and fair accounts of the association to be conveniently and properly audited.
112. The financial year for REIWA shall end on 30 June in each year, unless otherwise determined by the Council.
113. REIWA shall submit to its members at the Annual General Meeting its accounts showing the financial position of the association at the end of the immediately preceding financial year.
114. A copy of REIWA's financial statements for the immediately preceding financial year shall be provided by mail or e-mail to each member entitled to attend or vote at the Annual General Meeting seven days prior to that meeting occurring.

## **AUDITOR**

115. At every Annual General Meeting REIWA shall appoint an auditor or auditors for the ensuing year.
116. If a casual vacancy should occur in the office of auditor the Council may fill such casual vacancy.
117. A member of the Council shall not be eligible for election as auditor.
118. At least once every year the accounts of REIWA shall be audited by the appointed auditors.

## **COMMON SEAL OF REIWA**

119. The common seal of REIWA engraved with the name of the Association shall be kept in the care of the Chief Executive Officer. The seal shall not be used or affixed to any deed or other document except pursuant to a resolution of the Council or a General Meeting. Further, the seal shall not be used or affixed to any deed or other document except in the presence of two members of the Council, both of whom shall subscribe their names as witnesses to the use or affixing of the seal.

## **AMENDMENT TO THE ARTICLES**

120. REIWA may amend these Articles by Special Resolution at a General Meeting but not otherwise.
121. Within one month of the passing of a Special Resolution altering its Articles, or such further time as may be allowed pursuant to section 17 of the *Associations Incorporation Act, 1987* the Chief Executive Officer shall lodge as required by section 17 of that Act notice of the Special Resolution setting out particulars of the alteration together with a certificate given by a member of the Council. That certificate shall certify that the resolution was duly passed as a Special Resolution and that the Articles of REIWA as so altered conform with the requirements of the *Associations Incorporation Act, 1987*.

122. In accordance with section 17 of the *Associations Incorporation Act, 1987*, an amendment to the Articles of REIWA shall not take effect until the provisions of Article 121 above have been complied with.

#### **THE CUSTODY AND INSPECTION OF RECORDS AND DOCUMENTS**

123. The custody of all records, books, documents and securities of REIWA shall be held by the Chief Executive Officer or as otherwise determined by the Council.
124. Members of REIWA shall not be entitled to inspect any of the records and documents of the Association unless the member is otherwise entitled to do so pursuant to the terms of these Articles or pursuant to the terms of the *Associations Incorporation Act, 1987* or unless a written request for such an inspection is made to the Chief Executive Officer and approved by the REIWA Council.

#### **ARTICLES TO BE AVAILABLE TO MEMBERS**

125. REIWA shall keep and maintain in an up-to-date condition these Articles and, upon the request of a member of REIWA, shall make available those Articles for the inspection of the member and the member may make a copy or take an extract from the Articles but shall have no right to remove the Articles for that purpose.

#### **RECORD OF OFFICE HOLDERS**

126. REIWA shall maintain a record of:
- 126.1 the names and residential or postal addresses of the persons who are the office bearers of REIWA, including all offices held by the persons who constitute the Council of the association and persons who are authorised to use the common seal of the association; and
  - 126.2 in accordance with the terms of section 29 of the *Associations Incorporations Act, 1987* the names and residential or postal addresses of any Persons who are appointed to act as trustees on behalf of the association,
  - 126.3 and REIWA shall, upon the request of a member of the association, make available the record for the inspection of the member and the member may make a copy of or take an extract from the record but shall have no right to remove the record for that purpose.

#### **DISSOLUTION**

127. REIWA may be wound-up voluntarily if REIWA is solvent and if it is resolved by special resolution at a General Meeting, whether Special or Annual, that REIWA be so wound-up voluntarily.
128. The President shall cause a copy of any special resolution passed by REIWA resolving that REIWA be wound-up voluntarily to be lodged in accordance with section 30(2) of the *Associations Incorporation Act, 1987* within 14 days after the passing of the resolution.
129. If, upon the winding up or any dissolution of REIWA, there remains any surplus property, that property shall not be paid to or distributed amongst the members of REIWA but shall be given or transferred:
- 129.1 to another association incorporated under the *Associations Incorporation Act, 1987*; or
  - 129.2 for charitable purposes,

provided that prior to the winding up or any dissolution of REIWA the Council shall be authorised and directed by the members at a general meeting to prepare a distribution plan of the Surplus Property of the Association pursuant to section 33 of the *Associations Incorporation Act, 1987*. The incorporated association or charitable purpose which is to receive the Surplus Property shall be determined by a resolution of the eligible members of REIWA at that time.

130. In the event of the winding up or any dissolution of REIWA the Commissioner of Taxation shall be advised of the date of that winding up or dissolution within 30 days of that winding up or dissolution occurring.

#### **NOTICES**

131. Any notice required to be provided under these Articles shall, unless stipulated otherwise under the terms of these Articles, must be in writing and must be served on the recipient by ordinary post, facsimile or e-mail.
132. Service of any notice pursuant to the Articles by REIWA shall be deemed to have occurred:
- 132.1 the next business day after the notice was posted by mail to the address of a member recorded in REIWA's Register of Members or the address of any other Person previously provided by that Person to REIWA;
  - 132.2 on the day upon which REIWA transmits the notice to a Person by facsimile to a facsimile number previously provided by that Person to REIWA and when the facsimile machine which transmits the notice prints an acknowledgement that every page comprising that notice has been transmitted to the specified number;
  - 132.3 on the day upon which REIWA transmits the notice to a Person by e-mail to an e-mail address previously provided by that Person to REIWA and when an electronic receipt recording that the e-mail containing the notice has been received or read at the specified e-mail address.

#### **TRANSITIONAL PROVISIONS**

133. The terms of these Articles shall come into effect in the manner described in the Schedule to these Articles.

## SCHEDULE 1 TO THE ARTICLES

### TRANSITIONAL PROVISIONS RELATING TO AMENDMENTS MADE AT THE 2006 ANNUAL GENERAL MEETING OF MEMBERS

- A. These articles shall not come into force and effect until the occurrence of all of the following events:
- (i) the amendment of these Rules by a Special Resolution at a General Meeting;
  - (ii) the compliance with the lodgement and other requirements of section 17 of the *Associations Incorporation Act, 1987*;
  - (iii) the granting by the Australian Competition and Consumer Commission of authorisation of the terms of these Articles pursuant to Part VII of the *Trade Practices Act, 1974*.
- B. Notwithstanding the date upon which these Articles come into force and effect, the provisions relating to the procedures for the election of Councillors as provided for in Articles 53 and 55 to 80 shall not come into force and effect until 1 June 2007 and, at that time, the implementation of those Articles shall occur with the following modifications:
- (i) all of the nine Council positions shall become vacant at the commencement of business at the Annual General Meeting held in 2007 and the elections that take place prior to that Annual General Meeting for membership of the Council shall take place with respect to all nine positions, save and except that the then President shall be entitled to the benefit of the provisions of Article 75 and, if that Article applies, the President shall be thereby entitled to fill one of the vacant Council positions;
  - (ii) the first election of members of the Council shall take place in 2008 and shall be held in relation to three Council positions, notwithstanding that the three persons who have held those three positions may not have served their full three year terms as provided for in Article 72. The three persons who shall be required to stand for election in 2008 shall be, firstly, any ex-President who avoided the need to stand for election in 2007 due to the provisions of clause B(i) above and Article 75 and then those members of the Council who have, in total, including when the period prior to 2007 is taken into account, served the longest as members of the REIWA Council. Should one or more members of the Council have served the same period of time as Councillors and therefore it not be possible to identify all three of the Council positions that are vacant in 2008, lots shall be drawn by those Councillors who have served for the same amount of time to determine which of those Council positions will become vacant.
  - (iii) the next three Council positions shall become vacant in 2009 and elections for those positions will be held at that time. The method of identification of these three Council positions shall be the same as set out in sub-paragraph (ii) above.
  - (iv) The final three Council positions shall become vacant in 2010 and elections for those positions will be held at that time. The method of identification of those three Council positions shall be the same as set out in sub-paragraph (ii) above.
  - (v) Following 2010, elections will be held as required as a consequence of the expiry of terms of office as provided for in Article 72.

- C. Until 1 June 2007 the provisions of Articles 6 to 14 of REIWA's Articles, concerning the election and procedures of members of the Council, as they existed prior to the adopting of the Articles set out in this document shall continue to apply. To the extent that the provisions of the previous Articles conflict with any of the provisions of the Articles contained in this document, those previous Articles shall take priority until 1 June 2007.
- D. The provisions of Article 53.2 regarding the need for members of Council to have been Ordinary and/or Life members for no less than three consecutive years immediately prior to the General Meeting at which time the person becomes a member of the Council shall not apply to any individual who is a member of the Council at the time these Articles come into force and effect.
- E. Notwithstanding the provisions of clause 62.1 of these Articles, voters in the 2007 Council elections be entitled to select and cast votes on ballot papers for a total number of candidates that is less than the equivalent number of vacant Council positions the subject of that election and, to this end, the decision of the Returning Officer to count such votes in the 2007 Council election is ratified.

## **SCHEDULE 2 TO THE ARTICLES**

### **TRANSITIONAL PROVISIONS RELATING TO AMENDMENTS MADE AT THE 2008 ANNUAL GENERAL MEETING OF MEMBERS**

- A. The amendments to Articles 13A and 24 made at the 2008 Annual General Meeting of REIWA shall not come into force and effect until the occurrence of all of the following events:
- (i) compliance with the lodgement and other requirements of section 17 of the *Associations Incorporation Act, 1987*; and
  - (ii) the granting by the Australian Competition and Consumer Commission of authorisation of the terms of those amended Articles pursuant to Part VII of the Trade Practices Act, 1974.
- B. The amendments to Article 24 made at the 2008 Annual General Meeting of REIWA and the changes made therein to the jurisdiction of REIWA to receive complaints to be referred to its Professional Standards Tribunal shall not apply to matters the circumstances of which have been referred to REIWA prior to the 2008 Annual General Meeting.

### **SCHEDULE 3 TO THE ARTICLES**

#### **TRANSITIONAL PROVISIONS RELATING TO AMENDMENTS MADE AT THE 2011 ANNUAL GENERAL MEETING OF MEMBERS**

The amendments to Articles 2 and 8 made at the 2011 Annual General Meeting of REIWA shall not come into force and effect until the occurrence of all of the following events:

- (i) compliance with the lodgement and other requirements of section 17 of the *Associations Incorporation Act, 1987*; and
- (ii) the granting by the Australian Competition and Consumer Commission of authorisation of the terms of those amended Articles pursuant to Part VII of the *Competition and Consumer Act 2010*.



## REIWA Terms and Conditions for reiwa.com

### 1. Definitions

In this Agreement the following terms have the following meanings:

- (a) "Act" means the Real Estate and Business Agents Act, 1978.
- (b) "Agreement" means the agreement between the REIWA Member named on the Subscription Form and once accepted by REIWA, these Terms and Conditions, the REIWA price list on the Website and if applicable, any additional conditions contained on the Subscription Form, and any further conditions that REIWA may publish from time-to-time on the Website for providing to the REIWA Member the Services.
- (c) "Banner Advertisement" is an advertising display placed by a REIWA Member on pages associated with property searches of a particular suburb on the Website. The advertisement will be viewable on standard web browsers on what are commonly known as desktop or laptop computers but may not be viewable on some mobile devices, such as smartphones.
- (d) "Code" means the Code of Conduct for Agents and Sales Representatives 2011.
- (e) "Content" means Intellectual property rights (including copyright) of REIWA in all information, text, material, graphics, software, source code and advertisements REIWA provides on the Website.
- (f) "Corporate Member" means a member of the corporate member category of membership provided for in REIWA's articles.
- (g) "Database Mining" means the computational process of finding patterns and knowledge and then extracting and transforming that information for further use.
- (h) "Deep Linking" means using a hyperlink that links to a specific, generally searchable or indexed piece of web content on a web site.
- (i) "eFlyer" is a service of sending emails to property seekers who have subscribed to reiwa.com alerts.
- (j) "End User" means each person in the Office authorised by the REIWA Member to use the Services. Where appropriate, this term includes the contractors, employees, servants and agents of the REIWA Member who have access to the Services. End Users may only use the Services for the business purpose of the REIWA Member.
- (k) "Essential Property Advertisement" means a Property Advertisement for a property with reference to a particular suburb that is not a Headline Property Advertisement, Feature Property Advertisement or Priority Feature Property Advertisement.
- (l) "Feature Property Advertisement" means a Property Advertisement for a property with reference to a particular suburb that, on a search results page:
  - (i) features a coloured header;
  - (ii) when viewed through a standard web browser on what are commonly known as desktop or laptop computers, features a larger photograph than Essential Property Advertisements or Headline Property Advertisements, although the photograph may not be viewable as larger on some mobile devices, such as smartphones;
  - (iii) features additional information in respect of the REIWA Member; and
  - (iv) has the priority on the Website that is set out in clause 5 of these Terms and Conditions.
- (m) "GST" means the goods and services tax payable under A New Tax System (Goods and Services Tax) Act 1999.
- (n) "Headline Property Advertisement" means a Property Advertisement for a property with reference to a particular suburb that, on a search results page:
  - (i) features a coloured header;
  - (ii) when viewed through a standard web browser on what are commonly known as desktop or laptop computers, features one (1) large photograph and three (3) smaller photographs of the property, rather than the one (1) photograph featured for Priority Feature Property Advertisements, Feature Property Advertisements and Essential Property Advertisements, although the additional photographs may not be viewable on some mobile devices, such as smartphones; and
  - (iii) has the priority on the Website that is set out in clause 5 of these Terms and Conditions.
- (o) "Office" means any single office location where the business of the REIWA Member is conducted and at which the Subscription will apply. Separate subscriptions are required for each Office.
- (p) "Price" or "Prices" means the prices shown on the Subscription Form or the Website for the use of one or more of the Services including but not limited to any general usage fee charged of the REIWA Member or an Office for accessing the Website or any one or more of the Services, as amended from time-to-time by REIWA on the Website. Price or Prices exclude GST.
- (q) "Pricefinder" is a service to obtain title information through Landgate.
- (r) "Private Sale" means a sale of property that occurs or is attempted, in circumstances where the seller of the property is not represented by a real estate agent appointed pursuant to section 60 of the Act in the transaction and "Private Seller" means a seller of a property in those circumstances.
- (s) "Priority Feature Property Advertisement" means a Property Advertisement for a property with reference to a particular suburb that:
  - (i) was obtained by a REIWA Member for a particular suburb prior to 1 March 2016;
  - (ii) is limited to a maximum of 4 (four) per suburb, of which any REIWA Member may only have a maximum of 2 (two);
  - (iii) on a search results page:
    - A. features a coloured header;
    - B. when viewed through a standard web browser on what are commonly known as desktop or laptop computers, features a larger photograph than Essential Property Advertisements or Headline Property Advertisements, although the photograph may not be viewable as larger on some mobile devices, such as smartphones;
    - C. features additional information in respect of the REIWA Member;
  - (iv) is either:
    - A. associated with a stipulated Office;
    - B. associated with a stipulated End User; or
    - C. associated with an identified property; and
- (v) has the priority on the Website that is set out in clause 5 of these Terms and Conditions;
- (t) "Privacy Legislation" means the Privacy Act 1988 (Cth) and any State privacy legislation which may be enacted during the term of the Agreement.
- (u) "Property Advertisement" means an advertisement by a REIWA Member on the Website and includes:
  - (i) Priority Feature Property Advertisements;
  - (ii) Feature Property Advertisements;
  - (iii) Headline Property Advertisements; and
  - (iv) Essential Property Advertisements.
- (v) "Realform" is a document precedent system accessed through the Website whereby REIWA supplies forms and documents. The service is delivered by REIWA under the name of "Realform", "REI Forms Live" or such other name as chosen by REIWA from time-to-time.
- (w) "Real Inspection" is a property condition report service obtained through the Website.
- (x) "REIWA" means the Real Estate Institute of Western Australia (Inc) ABN 12 908 623 811;
- (y) "REIWA Member" means the company, person, persons, or entity whose name and address appears on the Subscription Form and is a Corporate Member of REIWA;
- (z) "Scraping" means the process of collecting and extracting information from websites and using that copied information on another website.
- (aa) "Services" means the various functionalities available to subscribers to the Website, including but not limited to the functionalities known as Feature Property, Banner Advertising, Headline Property, eFlyer, Realform and Real Inspection, Pricefinder and any functionalities made available by REIWA from time-to-time.
- (bb) "Subscription" means those Services requested by the REIWA Member to be supplied by REIWA to an Office nominated by the member at the Prices for those Services stipulated by REIWA.
- (cc) "Subscription Form" means the document (either in hard copy or electronic format) that is used for the ordering of the Services by the REIWA Member, including but not limited to any document described as being an "order form", "purchase order", "contract", "booking form" or "agreement".
- (dd) "Website" means reiwa.com.au.

### 2. Request for Services

- (a) This Agreement is conditional upon the REIWA Member being a Corporate Member of REIWA. All Services cease immediately upon a REIWA Member ceasing to be a REIWA Member, upon the REIWA Member's REIWA membership being suspended, or as otherwise provided for under this Agreement.
- (b) The REIWA Member hereby requests REIWA make the Services available to the REIWA Member at the Office. Acceptance of the Agreement by REIWA entitles the REIWA Member to access the Services subject to this Agreement at the Office. Upon acceptance by REIWA, the REIWA Member will be given a log-in code. If a REIWA Member has more than one Office, then each Office needs to subscribe to a separate Agreement.
- (c) The Website is owned and operated by REIWA. The Services are accessed on that Website. The REIWA Member's access to the Website is conditional upon acceptance and compliance with these Terms and Conditions and this Agreement. The REIWA Member's use of, and access to, the Services on the Website constitutes the REIWA Member's agreement to this Agreement.

### 3. End User

The use of the Services, including the posting of Property Advertisements and Banner Advertisements, is limited to the REIWA Member and End Users associated with the relevant Office.

### 4. Subscription Forms and Provision of Information

The REIWA Member must complete the appropriate Subscription Form or forms and provide all information nominated by REIWA from time-to-time relating to the Services provided as part of the member's Subscription.

### 5. Property Advertisements

- (a) Each Property Advertisement on the Website must be associated with a particular suburb.
- (b) When a search is conducted on the Website, Property Advertisements falling within the parameters of that search (but not when the search is sorted using the "sort" option on the website) and associated with the suburb searched will appear in the following order:
  - (i) Priority Feature Property Advertisements, if any, will always be at the top of the page, although the order of those Priority Feature Property Advertisements will rotate amongst themselves;
  - (ii) all other Feature Property Advertisements will be listed directly below the Priority Feature Property Advertisements in reverse-chronological order to the order that that the Property Advertisement was lodged with REIWA (with the newest Feature Property Advertisement at the top);
  - (iii) Headline Property Advertisements will be listed directly below Feature Property Advertisements in reverse chronological order to the order that that the Property Advertisement was lodged with REIWA (with the newest Headline Property Advertisement at the top); and
  - (iv) Essential Property Advertisements will be listed directly below Headline Property Advertisements in reverse chronological order to the order that that the Property Advertisement was lodged with REIWA (with the newest Essential Property Advertisement at the top).

## 6. Upgrading Listings

The REIWA Member may upgrade any Essential Property Advertisement or Headline Property Advertisement at any time by completing the Subscription Form nominated by REIWA from time-to-time and agreeing to pay the relevant Price.

## 7. Banner Advertisements

When a REIWA Member, as part of its Subscription, is entitled to Banner Advertisements:

- (a) the REIWA Member cannot obtain any more than four (4) Banner Advertisements per suburb at any one time;
- (b) Banner Advertising may only relate to the promotion of the REIWA Member and its employees; and
- (c) Banner Advertisements cannot be used to advertise properties for sale or lease.

## 8. Term of this Agreement

This Agreement comes into effect immediately upon REIWA notifying the REIWA Member that it will provide the Services to the REIWA Member and remains in effect until terminated. Subject to clause 2(a), the REIWA Member or REIWA may terminate this Agreement without reason by one party giving a minimum thirty (30) days prior written notice to the other party, unless the relevant Subscription Form provides a fixed term for the Agreement, which fixed term shall not be longer than six (6) months. The REIWA Member is obliged to pay the portion of the Services used by the REIWA Member under this Agreement.

## 9. Payments & Charges

- (a) The REIWA Member will pay REIWA the Price for the Services the subject of the Subscription by the REIWA Member for the Office referred to in the Agreement.
- (b) The Price will commence on REIWA's acceptance of this Agreement and are payable monthly in arrears on the last day of each month, the first Price payment to be made represents the proportionate charge for the past month from and including the notification of acceptance together with any additional payments then due. If credit terms apply to the REIWA Member then those credit terms will apply to the REIWA Member's payments.
- (c) Claims for any credit on any payment made by a REIWA Member must be made in writing to REIWA within 14 days from the date upon which the cause of the claim first arises.

## 10. Alteration to Services, Prices and Terms and Conditions

REIWA reserves the right to add or withdraw any of its Services, and modify or otherwise alter the Services without notice. REIWA reserves the right to change or alter any and all Prices these Terms and Conditions or other conditions of supply of this Agreement or the Services at any time and from time-to-time by publishing them on the Website and advising Corporate Members of REIWA of the fact that modifications have been made to the Prices, these Terms and Conditions or other conditions of supply of this Agreement or the Services by email notice or by postal notice. However, REIWA will use its best efforts to provide six (6) months notice in advance of the effective date of such changes. Continued use by the REIWA Member of the Services is taken as acceptance of any of the above changes.

## 11. Copyright

- (a) It is recognised that all data and information provided by REIWA through the Website, REIWA and its formats, will be subject to the copyright owned by REIWA and other property rights of REIWA or any database provider REIWA may use. The REIWA Member must not commit or permit any act or omission by it or its consultants, agents, employees or any third party which will impair the copyright or other proprietary rights to the data, information and formats of the Website, REIWA or any database provider REIWA may use.
- (b) The REIWA Member must not disclose, transfer, duplicate, reproduce, or retain for a purpose other than that for which it was first acquired, sell or reuse any information supplied by REIWA regardless of the form in which that information was supplied and, in particular, without limiting the generality must not do any of those acts with respect to information contained in hardcopy or any storage media, of whatever type, nature and description.
- (c) Without limiting the generality of the subclause 11(a), no information supplied by REIWA will be copied or transferred to another file, where access to the Services permits the REIWA Member to print data in machine readable form (using commands designated for this purpose) and the REIWA Member agrees:
  - (i) not to transfer, retransmit, duplicate or resell any items from the database to any third party without the prior written approval of REIWA;
  - (ii) not to use these items from the Services to combine with any other information with the object of offering it online or in any other way to third parties without the prior written approval of REIWA.
- (d) The Content is owned and/or controlled by REIWA, its suppliers and/or licensors unless expressly indicated otherwise on the Website. The Content is protected by Australian and international copyright and trademark laws. The REIWA Member must not modify, copy, reproduce, republish, frame, upload to a third party, post, transmit or distribute this Content in any way except as expressly provided for on the Website in any manner or for any purpose which is unlawful or in any manner which violates any rights of REIWA or any other party or which is prohibited by this Agreement. Nothing contained on the Website should be construed as granting any licence or right of use of any trademark displayed on the Website without the express written permission of REIWA, the relevant third party owner or rights holder.
- (e) Copyright in all REIWA information and products (including precedents, data, pages, documents, maps, online graphics, images, web pages, audio and video) is vested in REIWA and is protected by the Copyright Act 1968. Apart from any use as permitted under the fair dealing provisions of the Copyright Act 1968, all other rights are reserved, and no information and products or part of them may be reproduced by any process, distributed, commercialised or reused for any other purpose without the prior written permission of REIWA.

## 12. Disclaimer

- (a) The Services and their Content are made available on the understanding that REIWA is not rendering professional advice. While REIWA has made every effort to ensure the accuracy, reliability, completeness and suitability for purpose of the information presented, REIWA does not give any guarantee or take any responsibility or accept any liability (including without limitation, liability in negligence) arising from or connected to any errors or omissions. REIWA accepts no responsibility and disclaims all liability for any losses, damages or costs as a result of the use or reliance on the Service.
- (b) End Users and REIWA Members must exercise their own skill and care with respect to the use of any information provided by REIWA, and before relying on the information, that End Users and REIWA Members must carefully consider its relevance to their purpose and obtain any professional advice appropriate to their particular circumstances. The Services may be subject to Privacy Legislation and contractual restrictions and must not be used for direct marketing of goods and services or be released to any person or third party for the purpose of direct marketing of goods and services. REIWA takes no responsibility for any breaches of Privacy Legislation by any person in relation to the Services.

## 13. Limitation upon REIWA obligations and Representations

- (a) All terms, conditions, representations, warranties, guarantees and indemnities by REIWA ("Representations"), not expressly contained in this Agreement, whether arising by operation of law or otherwise, are hereby expressly excluded to the maximum extent permitted by law and, in particular, but in no way limiting the generality of it, REIWA makes no Representations as to the completeness or accuracy of the data comprised in the Services or as to its fitness for use for any purpose.

## 14. Warranties by REIWA Member

- (a) The REIWA Member warrants, as a continuing warranty through the duration of this Agreement that:
  - (i) the REIWA Member has a signed authority to sell, lease or manage any property put onto the Website by the REIWA Member;
  - (ii) all details entered on the Website by the REIWA Member are accurate and kept up-to-date including but not limited to, in relation to "price" and "display price" information, that the correct and actual price of the property is displayed e.g. a price of "zero" or similar will breach this clause;
  - (iii) all properties are listed in the correct suburb; i.e. the listing suburb must be as per the information on the "Statements" section of the Certificate of Title, labelled "PROPERTY STREET ADDRESS" or if none is stated then the local authority address for the property, unless it can be proven to REIWA's satisfaction to be incorrect;
  - (iv) all photos or images used within Property Advertisements and/or Banner Advertisements are used with the permission of the owner of the photographs;
  - (v) all external links to virtual tours and movies will be a virtual tour or movie of that property only and not simply links to other external sites or not in relation to that property;
  - (vi) there is no personal or agency advertising appearing within the Property Advertisements (e.g. words in the property description or images loaded to the photo slideshow) beyond the promotion of the property itself;
  - (vii) the REIWA Member will not re-load onto the Website or tag Property Advertisements as "new" when they are already on the market for sale with the REIWA Member. A "new" Property Advertisement in reiwa.com means new to the market with the REIWA Member. A new listing authority for the property, when the REIWA Member has recently held a prior listing authority for the property, does not make the property „new for reiwa.com purposes;
  - (viii) the REIWA Member will not enter the same property on the Website in relation to more than one suburb;
  - (ix) the REIWA Member will not knowingly engage in misleading or deceptive conduct; any conduct that is misleading or deceptive or is likely to be misleading or deceptive including, but not limited to, the following conduct:<sup>1</sup>
    - (A) listing a property on the Website under the name of a REIWA Member as a seller's agent when, in fact, the property is being sold by a seller without using the services of that member as a real estate agent approved pursuant to section 60 of the Act;
    - (B) listing a property on the Website under the name of a REIWA Member as the relevant seller's agent when the REIWA Member does not intend to or, alternatively, does not in fact, comply with the obligations to provide the services and duties specified as being required of such an agent under the Act and the Code;
    - (C) listing a property on the Website when under the name of a REIWA Member as the relevant seller's agent when the REIWA Member has not been validly approached to act as the real estate agent pursuant to section 60 of the Act;
    - (D) listing a property under the name of a REIWA Member as the relevant seller's agent when the sale is in fact a Private Sale;
    - (E) asserting in any advertisement, content, posting or listing on the Website that a property is a Private Sale; and
    - (F) identifying in any advertisement, content, posting or listing on the Website contact details that infer that those details are those of the relevant REIWA Member when in fact the contact details are not those of the Member.
  - (x) the REIWA Member will not enter or cause to be entered any html tags or coding onto or into any descriptions of any properties on the Website;
  - (xi) the REIWA Member will not engage in scraping, reproduction of content, database mining or deep linking or in any way using reiwa.com format, information or material on any other site;
  - (xii) the REIWA Member will not engage in spamming, personal abuse or illegal behaviour;

<sup>1</sup> REIWA considers that consumers who access the Website will, or would be likely to, infer that REIWA Members who list properties on the Website are not facilitating Private Sales and will comply with the legislative requirements set out in the Act and the Code and referred to in clauses 10(a)(ix)(A)-(C). A failure to comply with those requirements and/or to behave in the manner envisaged in clauses 10(a)(ix)(A)-(F) is likely to amount to misleading or deceptive conduct.

- (xiii) the REIWA Member will not knowingly transmit viruses, malware or similar malicious code or scripts;
- (xiv) the REIWA Member will not assist or allow non-member REIWA real estate agents or private sellers to advertise properties on reiwa.com; persons or entities who are not subscribers to the Services or otherwise entitled to use the Services (including, but not limited to, non-member REIWA real estate agents or Private Sellers) to advertise properties on the Website and/or to otherwise access the Services;
- (xv) the REIWA Member will not cause or allow duplicate listings to appear on the Website; and
- (xvi) the REIWA Member will not permit any Property Advertisement, Banner Advertisement or other posting on the Website to contain any material deemed by REIWA in its absolute discretion to be offensive or likely to offend.

#### 15. Liability

- (a) REIWA will not be liable to the REIWA Member for any loss of profit, or earnings, or any damages suffered (including to goodwill) by any person arising directly or indirectly out of the provision of the Services whether in accordance with the terms of the Agreement or otherwise and whether caused by negligence or wilful act or omission of REIWA, its consultants, contractors, agents or employees or from any other cause.
- (b) Under no circumstances will REIWA or any related corporation or their respective board members, officers, consultants, contractors, agents or employees be liable for any indirect, incidental, special and/or consequential damages or loss of profits whatsoever which result from any use or access of, or any inability to use or access, the Website, the Services or any Content.
- (c) REIWA liability of any nature or kind including, without limitation, negligence with respect to the subject matter of this Agreement, or for non-compliance with or breach of any Representations which cannot be excluded by Agreement, is limited to again providing the Services in respect to which the breach or non-compliance arose, or, at REIWA's option, to the cost of having that Service provided.

#### 16. Indemnity

The REIWA Member indemnifies and holds REIWA and its board members, officers, consultants, contractors, agents and employees harmless from and against any loss, claim, demand, expense (including legal fees) arising out of the REIWA Member's use of or access to the Services and Website and the REIWA Members input of material into the Website. The obligations imposed by this clause benefit REIWA and its board members, officers, consultants, contractors, agents and employees jointly and severally.

#### 17. Default

If there is a breach of any of the Terms and Conditions of this Agreement and REIWA has given 7 days notice of breach then:

- (a) all monies payable by the REIWA Member to REIWA will at REIWA's election become immediately due and payable despite the specified period for payment not yet having expired;
- (b) any credit facilities provided by REIWA may be withdrawn by REIWA;
- (c) REIWA may withhold the delivery of Services already ordered by the REIWA Member and is at liberty to suspend the Services to be provided to the REIWA Member pursuant to this Agreement;
- (d) in the event of a suspension of a REIWA Member's account, the REIWA Member must immediately pay REIWA the Price for the Services that have been subscribed by the REIWA Member up to that time;

- (e) in the event of a suspension of a REIWA Member's account, REIWA is not liable to refund any monies or credit the REIWA Member's account with respect to the time the REIWA Member remains in breach of the Agreement for the Services that ought to have been provided had the REIWA Member not been in breach of this Agreement;
- (f) REIWA may list the REIWA Member with any credit rating authority it so chooses and will only remove such a listing when the REIWA Member remedies its breach of this Agreement;
- (g) REIWA may charge interest on any overdue amount at the Wespac business overdraft rate on amounts owing 30 days or over plus 3% calculated daily on the amount overdue until payment is received in full; and
- (h) REIWA may charge to the REIWA Member all monies, costs, charges and expenses (including legal costs on an indemnity basis) of any attempt made by or on behalf of REIWA to recover any monies owing by the REIWA Member to REIWA or to secure any indebtedness or liability by the REIWA Member to REIWA despite no demand having been made by REIWA for payment to the REIWA Member.

18. Notwithstanding the terms of clause 17, if there is any breach of clauses 11 and/or 14 of these Terms and Conditions, REIWA (in addition to the rights given to REIWA under clause 17) may immediately remove any advertisement, content, posting or listing from the Website that relates to that breach.

#### 19. Entire Agreement

This Agreement, including notices of other Conditions provided to the REIWA Member in any printed form or otherwise published by REIWA, including revisions of them constitute the entire agreement between the parties on this subject matter.

#### 20. REIWA Member Privacy Statement

The REIWA Member warrants with respect to the information supplied that all requirements of the Privacy Legislation as to content security, access, disclosure and use, have or will be complied with in full. The REIWA Member will comply with any reasonable direction relating to privacy given by REIWA.

#### 21. REIWA Privacy Statement

REIWA is bound by the Privacy Legislation. Refer to the Privacy Statement on reiwa.com.au.

#### 22. Security

The REIWA Member agrees to do whatever is reasonably requested by REIWA to maintain security for the Services and to ensure that the Services are not used by people who are not permitted to use it under this Agreement.

#### 23. Law

This Agreement and all matters arising from the relationship of REIWA and the REIWA Member will be interpreted and governed in accordance with the laws of the State of Western Australia. The REIWA Member submits to the exclusive jurisdiction of the Courts of Western Australia.

#### 24. Special Conditions

Any special conditions set out on the subscription form apply to this Agreement. In the case of a conflict of provisions, the special conditions prevail.



# The Real Estate Institute of Western Australia (Inc.)

## MEMBERS' CODES OF PRACTICE

As approved

By Council December 2008

### DEFINITIONS

**Agency Agreement:** Means an agreement between a Listing Agent and a Principal whereby the Principal grants to the Listing Agent the right to sell or lease a property or business.

**Agent:** An agent means a person who is a real estate agent or business agent, or both a real estate agent or business agents, and for the purpose of this Code, includes, where the context permits, a sales representative. Further, to the extent that an agent is provided with rights or incurs obligations pursuant to the terms of this Code, the use of the word "agent", in the context of the provision of these rights or incurring of those obligations, carries with it an additional meaning that the person is also a member of the Institute.

**Agents Acting In Conjunction:** When an agent is approached by, or has contact with, a prospective purchaser/lessee and introduces such purchaser/lessee to a property listed by another agent pursuant either to a particular agreement to do so or through a Multi-listing arrangement and thereby facilitates a sale the introducing agent and the listing agent can be said to be acting in conjunction.

**Agents Acting In Association:** Where two or more agents are appointed pursuant to authorities to sell or lease a property they may also agree with or without the owner/lessor to have a common marketing programme and are said to be acting in association. The selling or leasing fee may be payable to the agent successfully negotiating the transaction or may be shared pursuant to an arrangement between the agents.

**Agents Acting Jointly:** Where an owner/lessor appoints two or more agents to act exclusively together to market or lease a property, such agents are termed joint agents. The manner in which fees will be payable is normally by prior agreement between the agents and the owner.

**Authority:** Means the written instructions given by a Principal to an agent that authorises the agent to conduct the actions specified in the document.

**Business Days:** Means any day other than a Saturday, Sunday or State Public Service holiday in Western Australia.

**Conjunctural Agreement:** Means any agreement between a listing agent and another agent to share a fee arising from the introduction of a customer to the listing agent by the other agent.

**Day:** Means a period of twenty-four (24) hours commencing at midnight.

**Exclusive Agency Agreement:** Means an agreement which includes a provision whereby a Principal grants to a Listing Agent the exclusive right to sell lease or manage a property or business and, in particular, is an agreement in which the Principal agrees that the Principal will pay a fee to the Listing Agent if:

- (a) during the term of the agency listing the property or business is:
  - (i) in the case of a sale listing, sold or transferred; or
  - (ii) in the case of a lease listing, leased;
- (b) at any time an entity introduced during the term of the agency listing to the Principal or to the property or business:
  - (i) in the case of a sale listing, contracts, or procures another to contract, to buy or to be the recipient of a transfer of the property or business, or otherwise becomes a legal or beneficial owner of the property or business;
  - or
  - (ii) in the case of a lease listing, contracts, or procures another to contract, to lease the property or business, or otherwise becomes a legal or beneficial lessee of the property or business; or
- (c) the property or business is sold, transferred or leased in any of the circumstances referred to in sub-paragraphs (a) or (b) above and the sale, transfer or lease is not completed owing to the fault of the Principal.

**Fee:** Means the agreed monetary sum paid or to be paid by a Principal to an agent, other than any agreed marketing charges and expenses.

**Institute:** Means the Real Estate Institute of Western Australia Incorporated.

**Listing Agent:** Means an agent who has been duly authorised by a Principal to sell or lease a property and or business.

**Managing Agent:** Means an agent who has been authorised by a Principal to manage the Principal's property.

Person: Means a natural person of either gender, a corporation, a partnership or the sole proprietor of a business and the singular shall include the plural and vice versa.

Principal: Is one who authorises an agent to act on his behalf and, where the term is used in the context of dealing with a property, is a person who is the owner or is otherwise lawfully entitled to deal with the property.

Valid inspection of the property or business: Means:

(a) an inspection whereby the agent concerned accompanies the purchaser or lessee onto the land inside the boundary lines of the lot making up the property or business (including in the case of a strata title property, any land which is common property) but shall not require any entry into the dwellings or improvements on the property or that make up the business; or

(b) in the case of a business, the agent concerned provides the purchaser with financial, technical or descriptive data which clearly identifies the business to the purchaser.



## MEMBERS' CODES OF PRACTICE

The Members' Codes of Practice is supplementary to the Codes of Conduct determined by the Real Estate and Business Agents' Act 1978 to which all members and sales representatives must conform.

### 1.0 OBTAINING AN AGENCY TO SELL

- 1.1 An agent shall not offer a property or business for sale or lease on behalf of a principal without first obtaining the written authority of such principal.
- 1.2 An agent who receives written instructions to offer real estate for sale must promptly search the title of the real estate and any relevant strata plans.

### 2.0 INTERFERENCE WITH CONTRACTS OR AGREEMENTS

- 2.1 Where an agent has entered into an agency agreement, members must not induce or attempt to induce a breach of or interference with that agency agreement.
- 2.2 Prior to entering into any agency agreement for the sale or lease of a property or business an agent must enquire of the prospective Principal whether that Principal has entered into any prior agency agreements in connection with the sale or lease of the property or business the subject of the proposed listing that impose any current or potential liabilities to pay a fee or impose any other current or potential obligations upon a principal and, if so, what the terms of that prior agency agreement are.
- 2.3 An agent must not solicit or accept any agency if the agent is aware that any other agency is in force which may obligate the vendor/lessor to pay two fees or expose the vendor/lessor to a claim for damages for breach of contract in the event of a sale or lease taking place, unless the agent gives a prior written statement to the vendor/lessor that the vendor/lessor may be liable for two fees or for a claim for damages for breach of contract if the vendor/lessor signs a further agency agreement
- 2.4 This provision does not limit obligations with respect to fee sharing in any other rule.  
Penalty: A maximum fine of \$10,000.00, such fine being subject to change by Council from time to time.

### 3.0 AGENCY AGREEMENTS

- 3.1 An agent must clearly explain to the vendor or lessor his/her rights and responsibilities, in respect of any agency agreement and provide a copy of the agreement to the vendor or lessor at the time of signing the agreement.
- 3.2 An agent who holds an exclusive appointment must not take action against a vendor or lessor for recovery of a fee when a property and/or business has been sold or leased by a second agent who was not aware of the exclusive appointment and who has been paid a fee, unless the vendor or lessor was made fully aware of his/ her responsibilities under the exclusive agency agreement, at the time the agreement was signed.
- 3.3
  - (a) If a jointly instructed agency has been established for private treaty, such arrangement shall continue until terminated and confirmed forthwith in writing by the agents themselves either on instructions of the Principal or by mutual agreement.
  - (b) Unless otherwise agreed in writing by the agents they will be deemed to be joint agents in respect of customers introduced to

the property and/or business during the period of the original joint agency for a period of 60 days from the date of expiry or termination of the original joint agency.

#### 4.0 CONJUNCTIONAL ARRANGEMENTS

##### Preamble

The listing agent has complete freedom to negotiate the fee for a sale or a lease with the vendor or lessor both as to the method of its calculation and amount.

The listing agent also has complete freedom to negotiate the sharing of the fee with other agents participating in the sale or lease.

##### Division of Fee in Conjunctional Sales and Leases

4.1 Agents entering into conjunctional agreements should ensure that all the conditions of that agreement including, but not limited to, all conditions relating to fees, be clearly agreed. In the absence of any express agreement to the contrary between the Listing Agent and the conjunctional agent, the onus is upon the Listing Agent to propose to the conjunctional agent all the relevant terms of the conjunctional agreement. The conjunctional agent shall then respond to that proposal expeditiously. Should the Listing Agent and the conjunctional agent then agree to the terms of a conjunctional agreement, the onus is upon the conjunctional agent to prepare a written conjunctional agreement, unless agreed otherwise between the parties.

4.2 (a) Subject to agents who are parties to a conjunctional agreement agreeing to the contrary, if an agent has a prospective purchaser/lessee for a property and/or business and requests the Listing Agent to conjoin, the prospective purchaser/lessee must be first identified to the Listing Agent.

The Listing Agent should agree to act in conjunction with a fellow agent unless satisfied that it is not in the best interests of the vendor or lessor.

Subject to agents who are parties to a conjunctional agreement agreeing to the contrary, any conjunctional agreement made between agents will remain in force with respect to the prospective purchaser or lessee the subject of the conjunctional agreement until the listing agent's authority to sell or lease the property or business comes to an end.

After a prospective purchaser/lessee has been identified to a listing agent by a conjunctional agent pursuant to this clause, the listing agent is prohibited from approaching that purchaser/lessee if a conjunctional agreement is not subsequently entered into, unless the listing agent has previously introduced the purchaser/lessee to the relevant property or business.

(b) A listing agent is prohibited from approaching a prospective purchaser/lessee the subject of a conjunctional agreement unless:

- i) the conjunctional agent is informed of the matters to be raised with the purchaser/lessee beforehand;
- (ii) it is otherwise agreed by the listing and conjunctional agent; or
- (iii) the purchaser/lessee approaches the listing agent.

##### 4.3 Listings by Former Conjoining Agents

If, at the expiration of a conjunctional agreement, a former conjoining agent enters into an exclusive listing agreement with a vendor with respect to the property or business the subject of that former conjunctional agreement, the former conjoining agent shall, as a matter of courtesy,



advise the Listing Agent within two business days of entering into that selling agency agreement that such an agency agreement has in fact been entered into. This requirement that a former conjunctional agent give notice to a former Listing Agent shall not apply if the exclusive selling agency agreement entered into by the former conjunctional agent is entered into 60 days or more after the end of the exclusive listing period contained in the initial agreement between the vendor and the former Listing Agent.

#### 4.4 Procedure for Negotiations

Conjunctional agents are entitled to make direct contact with vendors, both during and after the period of a conjunctional agreement, excepting that:

(a) all offers to purchase the relevant property and/business must be either put to the vendor through the listing agent or, alternatively, the listing agent must be informed by the conjunctional agent of the fact of such an offer being put to the vendor prior to the vendor's acceptance of that offer; and

(b) a conjunctional agent, as sub-agent of the listing agent, is prohibited from breaching his/her common law duty of fidelity owed to a listing agent and this includes, unless agreed to the contrary by the listing agent and the conjunctional agent, a prohibition upon a conjunctional agent using for his or her own personal benefit, and to the detriment of the listing agent, information acquired in the course of the conjunctional agent's engagement as a conjunctional agent.

#### 4.5 Procedure for Presentation of Offers

The Listing Agent must, within twenty-four (24) hours of receiving an offer from the conjoining agent, present it to the vendor or lessor for consideration and notify the conjoining agent that the offer has been so presented. If it is not possible to present the offer within twenty-four (24) hours, the Listing Agent must explain to the conjoining agent the reasons for the delay. Should the offer be rejected, the Listing Agent must promptly return it to the conjoining agent with written notification of rejection signed and dated by the vendor or lessor.

#### 4.6 Processing of Contracts for Sale

The conjoining agent must forward to the Listing Agent without delay the original offer and acceptance together with, if the offer and acceptance provides that the deposit monies are to be paid to the vendor or lessor's agent, all deposit monies received. If the conjoining agent has not received the deposit monies nominated in the offer and the offer provides that the deposit monies are to be paid to the vendor's agent, the Listing Agent must be notified immediately of the position regarding such deposit monies.

#### 4.7 Payment of Conjunctional Agreement Fees

The conjoining agent shall provide to the listing agent any tax invoice that the conjoining agent is required to issue within one business day of settlement. The listing agent shall forward to the conjoining agent the fee agreed to in the conjunctional agreement within two business days of settlement or, if the conjoining agent fails to issue to the listing agent any tax invoice that the conjoining agent is required to so issue, the listing agent shall not be required to forward the fee agreed to in the conjunctional agreement until two business days after the listing agent receives such a tax invoice.

### 5.0 AGENTS DEALING WITH THE SAME PROSPECTIVE PURCHASER/LESSEE

5.1 (a) If:

- i) an agent has entered into an agency agreement or a conjunctional agreement with respect to the sale or lease of a property or business,
- and
- (ii) that agent proposes claiming a fee pursuant to that agency agreement or conjunctional agreement on the grounds that the agent has introduced a prospective purchaser or lessee to the vendor, lessor, listing agent, property and/or business concerned,

THEN that agent shall ensure that reasonable contact is maintained with that prospective purchaser or lessee.

(b) For the purpose of sub-clause 5.1(a) the expression "reasonable contact" includes, but is not limited to, when reasonably practical:

- (i) in the case of the sale or lease of a property other than a business, speaking to the prospective purchaser or lessee or a representative of that purchaser or lessee in person or by telephone or making contact in writing no less than once in the 14 day period prior to the purchase or lessee entering into a relevant contract to purchase or lease the property;
- (ii) in the case of the sale or lease of a business, speaking to the prospective purchaser or lessee or a representative of that purchaser or lessee in person or by telephone or making contact in writing no less than once in the 28 day period prior to the purchase or lessee entering into a relevant contract to purchase or lease the business;
- (iii) when reasonably practical, carrying out at least one inspection of the property or business concerned in the presence of the prospective purchaser or lessee, or, in the case of a purchaser or lessee which is a corporation, a representative of that purchaser or lessee.

(c) The purpose of this sub-clause is to stipulate a level of service to be provided by agents when dealing with prospective purchasers or lessees. However, nothing in this sub-clause is intended to provide the parties to an agency agreement or a conjunctional agreement with contractual rights outside the provisions of the relevant agreement itself.

5.2 Unless agents who are parties to a conjunctional agreement agree to the contrary, it shall be a pre-requisite to the entitlement of the non-listing agent to claim a fee pursuant to that conjunctional agreement that the non-listing agent has performed the following tasks with respect to the purchaser or lessee who the non-listing agent claims gives rise to an entitlement to a fee:

- (a) the non-listing agent shall introduce the purchaser to the property or the business the subject of the conjunctional agreement;
- (b) the non-listing agent shall provide the listing agent with the name of the purchaser or lessee concerned;
- (c) in the case of the sale or lease of a property other than a business the non-listing agent shall speak to the purchaser or lessee, or a representative of that purchaser or lessee, in person or by telephone or shall make contact in writing no less than once in the 14 day period prior to the purchase or lessee entering into a relevant contract to purchase or lease the property;
- (d) in the case of the sale or lease of a business, the non-listing agent shall speak to the purchaser or lessee, or a representative of that purchaser or lessee, in person

or by telephone or shall make contact in writing no less than once in the 28 day period prior to the purchaser or lessee entering into a relevant contract to purchase or lease the property or business;

- (e) the non-listing agent shall carry out at least one valid inspection of the property or business concerned in the presence of the prospective purchaser or lessee, or a representative of that prospective purchaser or lessee, prior to the purchaser or lessee entering into a relevant contract to purchase or lease the property or business.

## 6.0 ENGAGEMENT TO ACT FOR BUYER OR LESSEE

An agent who is engaged to act for a buyer or lessee must look to that buyer or lessee for remuneration.

## 7.0 CONFLICT OF INTEREST

Agents are to follow the requirements of the Real Estate and Business Agents Act 1978 and the Code of Conduct for Agents and Sales Representatives made pursuant to section 101 of the Real Estate and Business Agents Act 1978.

## 8.0 ADVERTISING

Advertisements by agents must at all times show clearly the agent's full trading name together with the telephone number of the agent's principal licensed office or relevant branch office.

## 9.0 "FOR SALE" and "MANAGEMENT" SIGNS

- 9.1 A "For Sale" or "For Lease" sign or "Auction" sign may only be erected if valid written authority has been granted by the principal and must be taken down on or before the day of settlement.
- 9.2 All signs should be kept in good order and condition so as not to detract from the value of the property and/or business concerned or the properties and/or businesses in the immediate vicinity.
- 9.3 Where an agent is engaged by a strata company and manages the strata company only, that agent may, with the authority of the strata company, erect a sign which must clearly convey that the authority is limited to the management of the strata company

## 10.0 CONDUCT OF AGENTS

- 10.1 A member must act fairly and honestly in his or her dealings with other members.
- 10.2 A member must not knowingly engage in any misleading or deceptive conduct.
- 10.3 A member must not engage in any harsh or unconscionable conduct in his or her dealings with other members.

## 11.0 DISPLAYS

Members are prohibited from erecting or maintaining stalls or displays at venues other than premises that are registered offices or branch offices under Sections 36 and 37 of the Real Estate and Business Agents' Act, 1978, if those stalls or displays are erected or maintained in circumstances where persons will be misled or deceived or be likely to be misled or deceived into believing that those premises are in fact

registered offices or branch offices under the provisions of Sections 36 and 37 of the Real Estate and Business Agents' Act, 1978.

## AUCTION CODE OF CONDUCT

### 1 OBJECT OF CODE

#### 1.1 THE OBJECTS OF THIS CODE ARE TO:

- (a) Regulate and standardise the procedures of members of REIWA when conducting auctions.
- (b) Provide consumer protection for both sellers and buyers in the auction process.

#### 1.2 THE OBJECTS OF THIS CODE SET OUT IN CLAUSE 1.1 ABOVE SHALL BE ACHIEVED BY:

- (a) Real Estate Agents, Real Estate Sales Representatives and Auctioneers adhering to the terms of this Code of Conduct.
- (b) REIWA enforcing this Code of Conduct with respect to the actions of its members.
- (c) REIWA providing education to its members about this Code of Conduct and, in particular, compliance with its terms.
- (d) REIWA promoting to the public the existence of this Code of Conduct, its terms and the method by which consumers may lodge complaints with REIWA about any breaches of the Code by members of REIWA.
- (e) REIWA reviewing on a regular basis the efficacy of this Code of Conduct in providing consumer protection in the auction process and, where necessary, amending the terms of the Code to enhance the effectiveness by which the Code meets its stipulated objects.

### 2 INTERPRETATION

#### IN THIS CODE:

“agent” means a person representing another and/or acting on that other person’s behalf.

“auction” means the selling of any property of any kind or description whatsoever by any mode whereby the highest, lowest, or any bidder is the purchaser, or whereby the first who claims the property submitted for sale at a certain price named by the person acting as Auctioneer is the purchaser, or whereby there is a competition for the purchase of any property in any way commonly known and understood to be by way of auction.

“Auctioneer” means any person who:

- (a) sells or attempts to sell or offers for sale or resale any property, whether the property of the Auctioneer or of any other person, by way of auction; and
- (b) is licensed as an Auctioneer pursuant to section 6 of the Auction Sales Act, 1973.

“Person” includes a public body, company or association or body of persons, corporate or unincorporate.

“the public” means the general community considered as a whole including, but not limited to, buyers and sellers of property at auctions.

“Real Estate Agent” means a person licensed as a Real Estate Agent pursuant to the terms of the Real Estate and Business Agents Act, 1978 and who has been appointed by a seller to sell a particular property at auction.

“Real Estate Sales Representative” means a person registered as a Real Estate Sales Representative pursuant to the terms of the Real Estate and Business Agents Act, 1978.

“Seller” is the person who is selling a property the subject of an auction.

### 3 GENERAL CONDUCT OF REAL ESTATE AGENTS, REAL ESTATE SALES REPRESENTATIVES & AUCTIONEERS

In addition to the obligations placed upon Real Estate Agents, Real Estate Sales Representatives and Auctioneers pursuant to the provisions of the REIWA Members' Codes of Practice, as set out in clause 7 below:

- 3.1 Real Estate Agents, Real Estate Sales Representatives and Auctioneers acting in relation to auctions must at all times act with honesty and fairness when dealing with members of the public.
- 3.2 Real Estate Agents, Real Estate Sales Representatives and Auctioneers acting in relation to auctions must at no time:
  - (a) act in an unconscionable manner;
  - (b) unduly harass or coerce any member of the Public; or
  - (c) apply sales pressure to any member of the Public that, in all the circumstances, is unfair.<sup>1</sup>

### 4 BEFORE THE AUCTION

- 4.1 Real Estate Agents shall not advertise a property as being for sale by auction unless there is intended to be a genuine auction and unless a legally valid written authority to auction form has been duly executed by or on behalf of the Seller.
- 4.2 Prior to any auction the Real Estate Agent appointed by a Seller to sell the particular property by auction shall make available for inspection to any person who so requests the terms and conditions under which the sale of the property by auction will be undertaken.
- 4.3 If applicable, the Real Estate Agent shall specify in the terms and conditions of sale referred to in clause 4.2 above that the Seller reserves the right to bid for the property either personally or through an agent and shall identify the number of those reserved bids.
- 4.4 The Real Estate Agent shall make this Code of Conduct available for inspection prior to the auction by providing copies of this Code to any person to whom the Real Estate Agent gives a copy of the terms and conditions of the auction.
- 4.5 If the seller so instructs, the Real Estate Agent must inform the Public in all advertising devised by the Real Estate Agent with respect to the property that offers for the property may be considered prior to the Auction.

### 5 AT THE AUCTION

- 5.1 The terms and conditions of any auction sale shall be on display and available for inspection together with this Code at the auction. Any portion of the terms and conditions relating to the description of the property shall be read aloud by the Auctioneer appointed to conduct the auction of the property at the commencement of that auction.
- 5.2 Before commencement of the bidding for a property, the Auctioneer shall announce whether the Seller is selling with a reserve price. It shall not be necessary for that reserve price to be disclosed to bidders.
- 5.3 If the Seller has reserved the right to bid for the property either personally or through an agent:
  - (a) the Auctioneer shall announce prior to the commencement of the bidding that the Seller has so reserved the right to bid and shall at that time specify whether the Auctioneer, the seller or some other person on behalf of the seller will be making those bids;
  - (b) where the Auctioneer has been appointed to bid on behalf of the Seller all bids made on behalf of the Seller shall be so made by the Auctioneer and notice of that fact shall be given prior to the commencement of the bidding for the property;

<sup>1</sup> Examples of where the provisions of clause 3.2 may be breached would include:

- (a) where bids are accepted from persons who are known to be suffering from dementia, intoxicated or confused as to the nature of the auction process.
- (b) where unreasonable pressure is placed on a seller to set a reserve price that is well below the known market price, particularly where the seller is known to be suffering from a disability.
- (c) the canvassing of potential buyers to attend an auction or to make a bid at an auction, by telephoning the buyers at an unreasonable hour or with unreasonable frequency.
- (d) belittling, berating or embarrassing a bidder during the conducting of an auction.
- (e) disguising onerous terms in contracts by the use of fine print or complex language.
- (f) providing advice as to the terms of a contract of sale to a potential bidder/buyer or advice as to the terms of an authority to auction to a seller without mentioning or adequately describing the obligations placed upon the consumer by the contracts concerned.

**5 AT THE AUCTION continued**

- (c) where the Seller or some person other than the Auctioneer shall be bidding on behalf of the Seller the Auctioneer shall identify that person prior to the commencement of the bidding for the property;
  - (d) the Auctioneer shall announce prior to the commencement of bidding for the property the maximum number of bids which will or may be made during the auction by the Seller or by any person on behalf of the Seller;
  - (e) the Auctioneer shall announce, contemporaneously with any bid being made by or on behalf of a seller the fact that the bid has been so made by or on behalf of the seller;
  - (f) neither the Real Estate Agent nor any salesperson engaged by the Real Estate Agent shall make or assist any other person to make any bid on behalf of the Seller in contravention of any announcement by the Auctioneer under clause 5.3.
- 5.4 If a property is to be sold at an auction without reserve no bid shall be made by or on behalf of the Seller and no Real Estate Agent or Auctioneer may in any way encourage or be a party to such a bid at the auction provided that this clause shall not apply to any auction where a court has ordered to the effect that the particular auction shall take place without reserve.
- 5.5 The Auctioneer shall ensure that the amount of any bid is clearly stated.
- 5.6 The Auctioneer shall resolve any disputed bid in accordance with the terms and conditions of sale governing the auction.
- 5.7 When any person asks the Auctioneer whether the current bid was a bid made by or on behalf of the Seller, the Auctioneer MUST respond by advising whether or not the bid was made by or on behalf of the Seller.
- 5.8 Under no circumstances may a bid made on behalf of the Seller by an Auctioneer or a Real Estate Agent be at or in excess of any Seller's reserve price.
- 5.9 The Auctioneer shall always clearly announce when the property is about to be sold under the hammer.

**6 DUMMY BIDDING**

- 6.1 Dummy bidding is fictitious or false bidding at an auction by non-genuine bidders in the audience with no real intention to buy the property and any Auctioneer or Real Estate Agent who encourages or is a party to such bidding is in breach of this Code PROVIDED that nothing in this clause prevents an Auctioneer or agent from encouraging or being a party to bidding by or on behalf of a Seller as provided for in this code.

**7 CONSUMER/INDUSTRY AWARENESS AND REVIEW OF THE TERMS OF THIS CODE**

- 7.1 REIWA shall promote the terms of this Code of Conduct to consumers and its members, and REIWA shall collect data with respect to the Code in accordance with procedures set out in its Part IV of the Trade Practices Act and Auction Code of Conduct Compliance Programme Manual.
- 7.2 REIWA shall review the terms of this Code of Conduct and the efficacy of its terms in providing consumer protection in accordance with the procedures set out in its Part IV of the Trade Practices Act and Auction Code of Conduct Compliance Programme.
- 7.3 Consumers and members of REIWA may access the Part IV of the Trade Practices Act and Auction Code of Conduct Compliance Programme by making written contact with the Personal Assistant to the Chief Executive Officer of REIWA or by visiting the REIWA internet site at [www.reiwa.com.au](http://www.reiwa.com.au).

**8 THE REIWA MEMBERS' CODES OF PRACTICE**

The following provisions are reproduced from clause 10 of the REIWA Members' Codes of Practice:

- 8.1 In any agency relationship, a member must act in the best interests of his or her principal except where it would be unreasonable or improper to do so.
- 8.2 In any agency relationship, a member must act in accordance with the instructions of his or her principal, except where it would be unreasonable to do so.
- 8.3 A member must act fairly and honestly.
- 8.4 A member must not knowingly engage in any misleading or deceptive conduct.
- 8.5 A member must not engage in any harsh or unconscionable conduct.
- 8.6 A member must act so as to exercise due skill, care and diligence.

## 9 BREACHES OF THIS CODE

9.1 Consumers and members of the real estate industry may lodge complaints with REIWA if they believe that a member of REIWA has breached any term of this Code of Conduct or the REIWA Member's Codes of Practice. Upon receipt of such a complaint REIWA will deal with that complaint in accordance with the terms of Article 41 of REIWA's Articles.

9.2 Extracts from Article 41 of REIWA's Articles are set out below:

### "EXPULSION AND SUSPENSION OF MEMBERSHIP AND DISCIPLINING OF MEMBERS

41. 41.1 A member may be expelled or suspended from the Institute should the Council or Executive Committee determine that:

- (a) ...
- (b) ...
- (c) ...
- (d) the member has breached one or more of the rules, articles, codes, regulations or by-laws of the Institute.

41.2 Should:

- (a) the Institute receive a complaint from a member of the Institute, the Chief Executive Officer of the Institute, an agent who is not a member of the Institute or a member of the public that any of the events referred to in Article 41.1 has or may have occurred; or
- (b) the Council or the Executive Committee of their own complaint consider that any of the events referred to in Article 41.1 has or may have occurred

the Council or the Executive Committee must refer the matter to a Professional Standards Tribunal for hearing.

41.3 41.3.1 Professional Standards Tribunals shall be established from time to time by the Council or the Executive Committee and shall be made up of persons stipulated and selected by the Council:

41.3.2 Upon the hearing of a matter referred to a Professional Standards Tribunal pursuant to Article 41.2 the Tribunal shall have the power to:

- (a) impose the penalties prescribed in any articles, rules, codes, regulations or by-laws of the Institute in respect to any breaches thereof;
- (b) impose monetary penalties of not more than \$10,000 for any breach of any articles, rules, codes, regulations or by-laws of the Institute;
- (c) impose a reprimand;
- (d) dismiss the matter without penalty and without recommendation of further action;
- (e) recommend that the member be expelled or suspended from membership of the Institute; and/or
- (f) order the restitution of any monies held or received by the member the subject of the hearing to the persons determined to be entitled to those monies.

41.3.3...

41.4 41.4.1 Should a Professional Standards Tribunal recommend in accordance with Articles 41.3.2 that a member be expelled or suspended from membership of the Institute the matter shall be referred back to the Council or the Executive Committee for determination.

41.4.2...

41.4.3...

41.5 ...

41.6 Any member who is expelled or suspended from membership of the Institute by the Council or the Executive Committee pursuant to Article 41 or who is penalised by a Professional Standards Tribunal pursuant to Articles 41.3.2(1), (b), (c) or (f) shall have a right of appeal against that expulsion, suspension or penalty in accordance with the provisions of Article 45 PROVIDED THAT if a member has been expelled or suspended the member shall remain under suspension until the determination of the appeal.

41.7 Expulsion of a member pursuant to Article 41 shall be deemed to not take effect until:

- (a) the date upon which any time given to appeal against the decision to expel expires pursuant to Article 45; or
- (b) the date that notice of the determination of any such appeal is given to the member whichever is the later."



## **SCHEDULE “E” – STANDARD EXCLUSIVE AGENCY FORMS**

The following documents are included in this schedule, marked up to show the amendments that have been made since the versions of the documents that were provided to the ACCC with the 2012 Application.

Words and phrases that are included in the current documents, but not the earlier versions, are highlighted in pink. Deleted words and phrases have been marked up in red and blue.

This index also sets out the amendments to those documents where such amendments could not be practicably marked up on the documents themselves. Parts of those documents which have been amended, where the amendments are shown in this index, have been highlighted in green.

Changes to numbering and formatting have not been identified where they do not alter the content of the forms.

### **1 Authority to Auction**

1.1 No changes have been made to this document since the 2012 Application.

### **2 Authority to Auction – Rural**

2.1 No changes have been made to this document since the 2012 Application.

### **3 Residential Exclusive Agency Selling Agreement (long version)**

3.1 The term “Marketing Charges and Expenses” has been amended to “Expenses” throughout the form. This amendment has not been marked up on the document.

3.2 Clause 4(a), which deals with the agent’s entitlement to the agent’s selling fee, has been amended as follows:

#### **4. Agent’s Entitlement to the Agent’s Selling Fee**

(a) The Selling Fee will be payable ~~if upon settlement of a transaction if during the Exclusive Rights Period:~~

(i) During the Exclusive Rights Period the Property is sold or exchanged; or

(ii) the Agent is entitled to the Selling Fee as a consequence of the terms of clause 13. a Buyer introduced by the Agent to the Seller or the

~~Property, contacts to buy the Property, or gets another person or entity to buy the Property or otherwise becomes a legal or beneficial owner of the Property; or~~

~~(iii) the Property is sold to a Buyer in any of the above circumstances but Settlement does not occur due to the fault of the Seller.~~

3.3 Changes have also been made to clause 16, which deals with Expenses. The previous version of the clause read as follows:

16. Marketing Charges and Expenses (inclusive of GST)

(a) The Seller agrees to pay up to a maximum of \$\_\_\_ towards the Marketing Charges and Expenses.

The sum of \$\_\_\_ is paid now and is to be held in the Agent's Trust Account and will be used to pay the agreed charges and expenses as they arise from time to time. **OR**

(b) The Seller agrees to pay up to a maximum of \$\_\_\_ to reimburse the Agent for Marketing Charges and Expenses. If the Property is sold during the Agent's authority period and the agent receives the Agent's Selling Fee, then the Agent will waive reimbursement of the Marketing Charges and Expenses. **OR**

(c) As per the attached schedule \_\_\_\_\_

3.4 The Information Collection Notice set out on page 4 of the document has also been amended. The previous version read as follows:

PRIVACY ACT 1988

COLLECTION NOTICE

The Agent uses personal information collected from the Seller to act as the Seller's agent and to perform their obligations under this Agreement. The Agent may also use such information collected to promote the services of the Agent and/or seek potential clients.

The Agent may disclose information to other parties including media organisations, on the internet, to potential buyers, or to clients of the Agent both existing and potential, as well as to parties engaged to evaluate the property, owners' corporations, government and statutory bodies and financial institutions.

Further, the Agent may disclose the information to other real estate and business agents who may in the future be purchasing or considering purchasing the Agent's real estate business, or other goodwill portion of that business.

The Agent will only disclose information in this way to other parties who are required to perform their duties under this Agreement, to achieve the purposes specified above or as otherwise allowed under the Privacy Act 1988.

If the Seller would like to access this information they can do so by contacting the Agent at the address and contact numbers contained in this Agreement. The Seller can also correct this information if it is inaccurate, incomplete or out-of-date.

Real estate and tax law requires some of this information to be collected. If the information is not provided, the Agent may not be able to act effectively on the Seller's behalf or at all.

#### **4 Residential Exclusive Agency Selling Agreement (short version)**

4.1 Clauses 4 and 11 have been amended to change the term "Marketing Expenses" to "Expenses". This amendment has not been marked up on the document.

4.2 Further amendments have been made to clause 4, which deals with the payment of expenses. The previous version of the clause read as follows:

##### **4. AGREEMENT TO PAY MARKETING EXPENSES**

The Seller **\*AGREES/DOES NOT AGREE** to pay the Agent separate Marketing Expenses. If the Seller agrees to pay then:

- (i) The Seller agrees to pay up to a maximum of \$\_\_\_\_ towards the Marketing Charges and Expenses.

If so, the sum of \$\_\_\_ is paid now and is to be held in the Agent's Trust Account and will be used to pay the Marketing Expenses as they arise from time to time.

**OR**

(ii) The Seller agrees to pay up to a maximum of \$\_\_\_ to reimburse the Agent for Marketing Expenses. If the Property is sold during the Agent's Authority Period and the Agent receives the Agent's Selling Fee, then the Agent will waive reimbursement of the Marketing Expenses. **OR**

(iii) As per the attached schedule \_\_\_\_\_

4.3 Amendments have also been made to clause 8(a), as follows:

8 AGENT'S ENTITLEMENT TO THE AGENT'S SELLING FEE

(a) The Selling Fee will be payable ~~if upon settlement of a transaction if during the Authority Period:~~

(i) ~~During the Exclusive Rights Period, the Property is sold or exchanged a buyer introduced by the Agent to the Seller or the Property, contracts to buy the Property, or gets another person or entity to buy the Property or otherwise becomes a legal or beneficial owner of the Property; or~~

(ii) ~~the Agent is entitled to the Selling Fee as a consequence of the terms of clause 7. the Property is sold to a buyer in any of the abovementioned but Settlement does not occur due to a fault of the Seller.~~

4.4 Clause 14, which contains the information collection notice, has also been amended. The previous version of the clause read as follows:

14. PRIVACY COLLECTION NOTICE

The Agent uses personal information collected from the Seller to act as the Seller's Agent and to perform their obligations under this Agreement. The Agent may also use

such information collected to promote the services of the Agent and/or seek potential clients. The Agent may disclose information to other parties including media organisations, on the internet, to potential buyers, or to clients of the agent both existing and potential, as well as to parties engaged to evaluate the property, owners' corporations, government and statutory bodies and financial institutions. Further, the Agent may disclose the information to other real estate and business agents who may in the future be purchasing or considering purchasing the Agent's real estate business, or other goodwill portion of that business. The Agent will only disclose information in this way to other parties who are required to perform their duties under this Agreement, to achieve the purposes specified above or as otherwise allowed under the Privacy Act 1988. If the Seller would like to access this information they can do so by contacting the Agent at the address and contact numbers contained in this Agreement. The Seller can also correct this information if it is inaccurate, incomplete or out-of-date. Real estate and tax law requires some of this information to be collected. If the information is not provided, the Agent may not be able to act effectively on the Seller's behalf or at all.

**5 Residential Exclusive Agency Selling Agreement – Unsolicited Consumer Contracts**

5.1 The Information Collection Notice in clause 14 has been amended. The earlier version of this document provided to the ACCC with the 2012 Application had the version of this clause reproduced above in paragraph 4.4 in respect of the Residential Exclusive Agency Selling Agreement (short version).

**6 Exclusive Selling Agency Agreement for Rural Property**

6.1 No changes have been made to this document since the 2012 Application.

**7 Exclusive Selling Agency Agreement for Commercial and Industrial Property**

7.1 Clause 3, which relates to the agent's selling fee, has been amended. The previous version of the clause listed a selling fee "inclusive of GST". The

new version lists the fee excluding GST, the sum of GST and the total.

- 7.2 Clause 4, which relates to the agent's entitlement fee, has been amended. The previous version of the clause read as follows:

4. Agent's Entitlement to the Agent's Selling Fee

The Agent's Selling Fee will be payable if during the Exclusive Rights Period:

- (a) the Property is sold or exchanged
- (b) a buyer introduced by the Agent to the Seller or the Property, contracts to buy the Property, or gets another person or entity to buy 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 a fault of the Seller;

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 then Clauses 4(b) and 13 shall not apply.

- 7.3 The Information Collection Notice on page 4 of the document has been amended. The earlier version of this document provided to the ACCC with the 2012 Application had the version of this clause reproduced above in paragraph 3.4 in respect of the Residential Exclusive Agency Selling Agreement (long version), save that it was headed:

PRIVACY ACT 1988

COLLECTION NOTICE

Selling Agency Agreements

**8 Exclusive Appointment Agent to Sell a Business (including Land) (formerly called the Exclusive Appointment of Agent to Sell/Offer to Sell a Business)**

8.1 The only change that has been made to this document since the version provided with the 2012 Application is to the privacy collection notice in clause 15. The previous notice was in the form set out at paragraph 4.4 in respect of the Residential Exclusive Agency Selling Agreement (short version), save that it was headed:

15. Privacy Act COLLECTION NOTICE

**9 Exclusive Authority to Lease, Sub-lease or Assign Commercial/Industrial Premises**

9.1 The only change to this document has been the addition of the Information Collection Notice at page 3.

**10 Exclusive Authority to Act as Managing Agent for Residential Premises for a Short Term/Holiday Accommodation**

10.1 The term "Owner" has been replaced with "Lessor" throughout the document.

**11 Exclusive Authority to Act as Managing Agent of Residential Premises**

11.1 The term "Owner" has been changed to "Lessor" throughout the document. This amendment has not been marked up on the document.

11.2 The term "Agent" has been changed to "Property Manager" throughout the document. This amendment has not been marked up on the document.

11.3 The previous version of clause 4.2 also included a clause 4.2.7 which has been deleted. That clause, in context, read "The Owner warrants that the information referred to in Item 13 is true and correct".

11.4 Clause 4.6.11, which is the equivalent of clause 4.6.1 in the previous version, has been amended as follows:

The ~~Agent~~Property Manager may transfer, sell or assign the ~~Agent's~~Property Manager's rights under this Agreement to a third party ~~without the prior~~with the written consent of the ~~Owner~~Lessor ~~(if it is an assignment) (if allowed by law) and upon such transfer the~~(if it is an assignment) (if allowed by law) and upon such transfer the ~~Owner and~~Owner and the third party ~~will be bound by~~agrees to comply with the terms and conditions of this Agreement;

11.5 Clause 5.3 has been amended to add clause 5.3.7 in relation to emergency maintenance. This clause replaces clauses 5.3.6 and 5.3.7 in the previous version of the document, which read:

5.3.6 at the expense of the Owner, effect any maintenance or repairs to the Premises as deemed necessary by the Agent, without notice to the Owner, provided that the cost in any case does not exceed the amount specified in Item 9;

5.3.7 despite clause 5.3.6, at the expense of the Owner, effect any maintenance or repairs to the Premises whatsoever (without regard to the limit specified in Item 9 of Schedule) where, in the reasonable opinion of the Agent, such maintenance or repair relates to an emergency, provided that the Agent will use reasonable endeavours to contact and gain the approval of the Owner to engage such maintenance and repairs prior to authorising such expenditure.

11.6 Clause 5.3.16, has been amended as follows:

at the ~~Owner's~~ Lessor's expense, ~~appear~~ present the Lessor's cases before the Magistrates Court or any other relevant authority on behalf of the ~~Owner~~ Lessor;

11.7 The Information Collection Notice in clause 8 has been amended. The equivalent provision in the previous version of the document read as follows:

## **8. Privacy Act 1988**

8.1 The parties agree and acknowledge that the Agent uses personal information collected from the tenants and the Owner to act as the Owner's agent and to perform its obligations under this Agreement. The Agent may also use such information collected to promote the services of the Agent and/or seek potential clients. The use of such information by the Agent may include, but is not limited to, use on the Internet.

8.2 The Agent may disclose information to other parties



including tradespersons, other agents, media organisations, potential buyers, clients of the Agent (both existing and potential), parties engaged to evaluate the Premises, owners, corporations, government and statutory bodies (including, but not limited to, the Magistrate's Court), financial institutions and third parties as required by law.

- 8.3 Further, the Agent may disclose the information to other real estate and business agents who may in the future be purchasing or considering purchasing the Agent's real estate business, rent roll or other goodwill portion of the Agent's business.
- 8.4 The Agent will only disclose information in this way to other parties as required to perform its duties under this Agreement, to achieve the purposes specified above or as otherwise allowed under the Privacy Act 1988.
- 8.5 If the Owner would like to access this information, the Owner can do so by contacting the Agent at the address and contact numbers contained in this Agreement. The Owner can also correct this information if it is inaccurate, incomplete or out-of-date, by advising the Agent in writing.
- 8.6 Real estate and tax law requires some of this information to be collected. If the information is not provided, the Agent may not be able to act effectively on the Owner's behalf or at all.

## **12 Exclusive Appointment to Act as Agent Manager of a Strata Company**

- 12.1 Since the 2012 Application a significant number of amendments have been made to the schedules to this form such that it is not practicable to set out all amendments to those schedules that have been made. As such, the version of the document provided to the ACCC with the 2012 Application has also been included for comparison, clearly marked. Further, the following amendments can be specifically identified.

12.2 The term "Services Fees" has been changed to "Management Fees" throughout the document. This amendment has not been marked up.

12.3 The earlier version of the form included the following definitions in clause 1, which have since been deleted:

**"Additional Services"** means the Additional Services set out in Schedule 2;

**"Agreed Services"** means the Agreed Services set out in Schedule 1;

**"Commission"** means any commission, fee, discount or other benefit or incentive offered or given by or sought from an insurance company or agent, finance broker, property maintenance contractor, builder, pest controller, removalist, or other persons with whom the Agent conducts business;

**"Section"** means section of the Act;

**"Services Fees"** mean fees calculated and payable pursuant to Items 5, 7 and 8 of the Particulars and Schedule 3 and as reviewed in the manner and at the times specified in Item 6 of the Particulars;

**"Strata Company"** means the strata company created by law on registration of the Strata Plan /Survey Strata Plan;

**"Strata Plan/Survey-Strata Plan"** means the strata/survey-strata plan registered by the Registrar of Titles in the Strata Company's name and given the number described on the front page of this agreement;

12.4 Clause 2 has been amended as follows:

~~The Strata Company warrants that a~~All necessary corporate action has been taken to authorise the Strata Company to enter into and observe and perform this agreement.

~~The Strata Company represents and warrants to the Agent that the Strata Company's property does not contain any significant defects that would adversely affect the health or safety of any person.~~

12.5 Clause 3 has been amended. Clause 3 in the earlier version of the document read as follows:

The Strata Company appoints the Agent as exclusive agent manager of the Strata Company for the Term and the Agent accepts the appointment commencing on the date referred to in Item 1 of the Particulars. At the end of the Term the appointment may be extended depending on the choice made in Item 3 of the Particulars.

12.6 Clause 7 has been amended as follows:

7. ~~SERVICES FEES MANAGEMENT FEES~~

7.1 The Strata Company ~~will~~ shall during the Term:

- (a) pay the ~~Services Fees Management Fees~~ to the Agent; and
- (b) reimburse the Agent for all reasonable ~~disbursements costs and expenses~~ properly incurred by the Agent in providing the Agent's ~~Services, including but not limited to postage.~~

7.2 The Strata Company ~~will~~ shall:

- (a) pay to the Agent a fair and reasonable fee for any Agent's Services provided by necessity after the Term has ended;
- (b) reimburse the Agent for all reasonable ~~fees costs and expenses~~ properly incurred by the Agent in providing any Agent's Services after the Term has ended;
- (c) ~~the Strata Company shall~~ pay the ~~Services Fees~~ fees received by the Strata Company in accordance with section 43 relative to inspections and services. ~~in accordance with Item 8 of the particulars;~~
- (d) ~~Reimburse bank and other disbursement fees including, but not limited to, postage bank fees, statutory charges, electronic fund transfer fees, BPay and credit card charges;~~

~~(e) — pay the fees for Additional Services in accordance with Item 7 of the Particulars.~~

~~7.3 — The Agent is authorised to apply the Strata Company's funds towards the payment of the Agent's accounts for fees and disbursements~~

~~7.4 — Review of Service Fees~~

~~— The Services Fees will be reviewed on the dates set out in Item 4 of the Particulars. Unless agreed otherwise, on the review dates the Services Fees will be increased by the percentage referred to in Item 6 of the Particulars or if no figure is stated then it will be increased by multiplying the Services Fee payable immediately prior to the review date by a fraction obtained by dividing the Consumer Price Index All Groups (Perth) for the quarter last published prior to the review date by the Consumer Price Index All Groups (Perth) for the quarter last published prior to the commencement of the Term (in the case of the first review) or the previous review date (in the case of each other Services Fee review).~~

~~7.3 — The Strata Company shall pay to the Agent the fees received by necessity after the Term has ended; and~~

~~7.4 — The Agent may apply the Strata Company's funds towards payment of the Agent's accounts for fees, costs and expenses.~~

12.7 Clause 8 has also been amended. The previous version of the clause read as follows:

## 8. AGENT'S INDEMNITY

8.1 The Strata Company acknowledges that:

- (a) the Act confers responsibility on the Strata Company for the maintenance and repair of the Strata Company's Property; and

- (b) if as part of the Agreed Services or the Additional Services the Agent is required to carry out a function of the Strata Company relating generally to the maintenance and repair of the Strata Company's property:
  - (i) the responsibility of the Agent for the maintenance and repair of specific property is limited to only those services the Strata Company requests the Agent to carry out from time to time in respect of that specific property; and
  - (ii) the Agent is not liable for any loss arising from any:
    - (a) disrepair, defect or danger in the Strata Company's property that is not the subject of a request under clause 8.1(b)(i) from the Strata Company; or
    - (b) inherent defect or danger in the Strata Company's property, whether as designed or constructed.

8.2 The Strata Company indemnifies the Agent against all loss relating to or arising from the performance by the Agent of its obligations under this Agreement, except to the extent that the loss is caused by the Agent's negligence.

8.3 The Agent is not liable to the strata company if the Agent fails to do any act, if such failure arises from the strata company's failure to make the appropriate decision in relation to such act or to make sufficient money available to the Agent to enable the Agent to carry out its obligations under this Agreement.

12.8 Clause 9 has been amended to delete clause 9.4, which read as follows:

This agreement may be terminated (without penalty) at any time with the mutual consent of the parties.

12.9 Clause 10 has been amended. The previous version of the clause read as follows:

10. AGENT'S DISCLOSURE

It is agreed that the Agent may not retain rebates, discounts and commissions paid to it by the providers of goods and services to the Strata Company described below unless the Strata Company has been otherwise notified in writing by the Agent

| Name of company / person | Amount / percentage of rebate, discount | Other information relating to the disclosure |
|--------------------------|-----------------------------------------|----------------------------------------------|
|                          |                                         |                                              |
|                          |                                         |                                              |
|                          |                                         |                                              |

12.10 Clause 11 has been amended to remove clause 11.4, which read as follows:

Any notice to be served on the Strata Company or the Agent, under this agreement, may only be served either personally or by post, by facsimile or by email, at the address of that party appearing in this agreement, or at any other address subsequently notified by that party in writing to the other party.

12.11 Clause 18, which deals with disputes, is the equivalent of clause 12 in the previous version of the document. That clause has been amended as follows:

~~12.18~~ DISPUTES

~~(a) If the Strata Company disputes the fee payable to the Agent on the ground that it is unjust the strata~~

~~company may refer the dispute to the Commission for Consumer Protection or the Real Estate Institute of Western Australia for adjudication.~~

- (b) Further, the strata company has the right to refer any other dispute that arises with the Agent to a number of different institutions. Depending upon the nature of the dispute these institutions may include the ~~Commissioner for Consumer Protection, the~~ civil and criminal legal systems, the Western Australian ~~D~~department of ~~Consumer and employment protection–Commerce~~, the Australian Competition and Consumer Commission, ~~and~~ the Real Estate Institute of Western Australia (Inc), ~~the Real Estate and Business and the Commissioner for Consumer Protection.~~

12.12 The Information Collection Notice set out on page 3 of the document has also been amended. The previous version read as follows:

#### PRIVACY ACT 1988 – COLLECTION NOTICE

The Agent uses personal information collected from the Strata Company and Lot Owners to act as the Strata Manager and to perform their obligations under this Agreement. The Agent may also use such information collected to promote the services of the Agent and/or seek potential clients.

The Agent may disclose information to other parties including media organisations, courts, on the internet, to lot owners, or to clients of the Agent both existing and potential, as well as to tradespeople, owners' corporations, government and statutory bodies and to third parties as required by law.

Further, the Agent may disclose the information to other real estate and business agents who may in the future be purchasing or considering purchasing the Agent's real estate business, strata managements or other goodwill portion of the Agent's business.



The Agent will only disclose information in this way to other parties as: required to perform their duties under this Agreement, to achieve the purposes specified above or as otherwise allowed under the Privacy Act 1988.

If the Strata Company or Lot Owners would like to access this information, they can do so by contacting the Agent at the address and contact numbers contained in this Agreement. The Seller can also correct this information if it is inaccurate, incomplete or out-of-date.

Real estate and tax law requires some of this information to be collected. If the information is not provided, the Agent may not be able to act effectively on the Owner's behalf or at all.

### **13 Exclusive Authority to Act as Managing Agent for Commercial/Industrial Property**

13.1 The term "Owner" has been changed to "Client" throughout this document. This change has not been marked up on the document.

13.2 Clause 2 has been amended as follows:

#### **2. ~~TERM OF APPOINTMENT~~ DURATION OF AGREEMENT**

2.1 The appointment of the Agent ~~commences~~ shall commence on the date ~~set out shown~~ and will be for the term ~~plus any extension~~ as ~~set out shown~~ in Item 5 of the Schedule ~~and thereafter until 28 days notice of termination is given in writing by the Client to the Agent.~~

13.3 The following subclauses have been deleted from clause 4 since the previous version of the document:

4.1.1 to negotiate leases for the Premises in accordance with the instructions of the Owner, and sign agreements to lease on behalf of the Owner;

4.1.2 to collect all rents including minimum, variable, special and percentage rentals and all amounts due in respect of electricity or other fuels supplied promptly as and when they fall due and are payable and give valid receipts for them;

4.1.3 to negotiate rent reviews, extensions of leases, options of



renewal, options to purchase, rights of first refusal, assignments of leases, surrender of leases and the like, as and when appropriate pursuant to instructions given from time to time by the Owner;

4.1.10 to do anything necessary to undertake and complete the duties set out in clause 3.

13.4 Clause 5.2.1 replaces clause 5.3 in the previous version of the document, which read as follows:

5.3 If:

- (a) the sale or disposal in clause 5.2 takes place within twelve (12) calendar months from the date of commencement of this appointment causing termination of this appointment and the Agent is not receiving a commission from the sale or disposal and is not appointed as managing agent by the purchaser or new Owner or the Premises on terms similar to those set out in this appointment; or
- (b) Prior to the end of the date set out in Item 5 of the Schedule this agreement is wrongfully terminated by the Owner,

then the Owner hereby undertakes to pay to the Agent compensation by way of liquidated damages an amount equivalent to 50% of the Agent's Management Fees that would have been payable from the date of termination of this appointment for a period of three (3) calendar months after the sale, disposal or termination as if such termination had not taken place which fees shall be calculated on the basis of the average gross rentals and other charges as defined in Items 8 and 10 of the Schedule payable for the three (3) months prior to the termination.

Note: The Real Estate Institute of Western Australia (Inc.) considers that the liquidated damages rate of 50% referred to in sub-clause 5.3 above provides an accurate calculation of the actual damages that would usually be suffered if an agreement is

termination in a manner that attracts liquidated damages. However, if the Owner consider that circumstances exist which could justify a different rate, the Owner may seek the Agent's agreement to that rate.

13.5 Clauses 6.1 and 6.2 have been amended as follows:

6. REMUNERATION OF AGENT

6.1 The Agent will be entitled to be paid management fees for those duties described in 3.1, and for those authorities described in 4.1 at the rate shown in Item 7 of the Schedule.:-

~~(a) — management fees and additional fees at the rates shown in Item 8 and 10 of the Schedule; and~~

~~(b) — such marketing costs and expenses as the parties have agreed as recorded in Item 6 of the Schedule.~~

6.2 The Agent is authorised to deduct from sums due to the Owner-Client, all fees, charges and out of pocket expenses and liquidated damages as referred to or as hereby contained/agreed in this appointment.

13.6 Clauses 8.1(2) has been amended as follows:

At the expiration of the said tTerm stated in ~~Item 5 of~~ the Schedule, provided at least 28 days written notice is given by either party, or or, if so elected by the owner in Item 5 of the Schedule, at the end of the extension referred to in Item 5.

13.7 Clause 9.1 has been amended as follows:

9.1 The Owner-Client indemnifies the Agent against any and all actions, suits, demands, claims, costs or other expenses brought against or made upon the Agent or incurred ~~or~~ arising out of this appointment ~~in any way whatsoever excepting insofar as those actions, suits, demands, claims, costs or other expenses arise out of the negligence of the Agent or the Agent's breach of the terms of this appointment.~~

# authority to auction

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  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 Sellers 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 Sellers 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.)

# authority to auction



APPROVED BY  
THE REAL ESTATE INSTITUTE  
OF WESTERN AUSTRALIA (INC.)  
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## 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 Sellers 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.

## 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 Commissioner for Consumer Protection 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                                   |                                                   |
|------------------------------------------|------------------------------------------|---------------------------------------------------|
| <input style="width: 95%;" type="text"/> | <input style="width: 95%;" type="text"/> | <input style="width: 95%;" type="text"/> initials |
| <input style="width: 95%;" type="text"/> | <input style="width: 95%;" type="text"/> | <input style="width: 95%;" type="text"/> initials |
| <input style="width: 95%;" type="text"/> | <input style="width: 95%;" type="text"/> | <input style="width: 95%;" type="text"/> initials |
| <input style="width: 95%;" type="text"/> | <input style="width: 95%;" type="text"/> | <input style="width: 95%;" type="text"/> 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*

# authority to auction

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 \$   
then the Agent's Selling Fee inclusive of GST is \$  OR  initials

\*(c) As per the attached schedule

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**

|                      |                               |
|----------------------|-------------------------------|
| <input type="text"/> | <input type="text"/> initials |
| <input type="text"/> | <input type="text"/> initials |
| <input type="text"/> | <input type="text"/> 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 Agents 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**)  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 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.

# authority to auction

## 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 Commissioner for Consumer Protection, the civil and criminal legal systems, the Western Australian Department of Commerce 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

## 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                          | <input type="text"/> | Date | <input type="text"/> |
| Seller                          | <input type="text"/> | Date | <input type="text"/> |
| Agent or Agent's Representative | <input type="text"/> | Date | <input type="text"/> |

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 | <input type="text"/> |
| Seller | <input type="text"/> |

# authority to auction - rural property

## 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 the  day of  20  ("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. CHATELS/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 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.)

# authority to auction - rural property



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THE REAL ESTATE INSTITUTE  
OF WESTERN AUSTRALIA (INC.)  
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## 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               |                               |
|-------------------------------|----------------------|-------------------------------|
| <input type="text"/>          | <input type="text"/> | <input type="text"/> initials |
| <input type="text"/>          | <input type="text"/> | <input type="text"/> initials |
| <input type="text"/>          | <input type="text"/> | <input type="text"/> initials |
| <input type="text"/>          | <input type="text"/> | <input type="text"/> 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               |                               |
|-------------------------------|----------------------|-------------------------------|
| <input type="text"/>          | <input type="text"/> | <input type="text"/> initials |
| <input type="text"/>          | <input type="text"/> | <input type="text"/> initials |
| <input type="text"/>          | <input type="text"/> | <input type="text"/> initials |
| <input type="text"/>          | <input type="text"/> | <input type="text"/> 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  OR  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

|                      |                      |                               |
|----------------------|----------------------|-------------------------------|
| <input type="text"/> | <input type="text"/> | <input type="text"/> initials |
| <input type="text"/> | <input type="text"/> | <input type="text"/> initials |
| <input type="text"/> | <input type="text"/> | <input type="text"/> initials |
| <input type="text"/> | <input type="text"/> | <input type="text"/> 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

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)  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 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 Commissioner for Consumer Protection 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.), Commissioner for Consumer Protection, 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 \$  ;
- (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 \$  ;
- (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 ;
- (iv) if withdrawal is effected on the day of the Auction, the fee shall be \$  including GST

initials

initials

initials

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

initials

## 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.
- (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.

# authority to auction - rural property



APPROVED BY  
THE REAL ESTATE INSTITUTE  
OF WESTERN AUSTRALIA (INC)  
COPYRIGHT © REIWA 2012  
FOR USE BY REIWA MEMBERS

## 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

An agreement between the Agent and the Seller ("the Agreement") authorising the Agent to offer the Property for sale on the following terms and conditions:

**1A. SELLER'S NAME:** .....

..... ("the Seller")

Address: ..... Post Code: .....

Tel: ..... Fax: .....

Mobile: ..... Email: .....

**SELLER:**

- is the Owner  
 has given Power of Attorney to .....
- is a Mortgagee in Possession  
 is an Executor/Administrator

**1B. ADDRESS OF PROPERTY TO BE SOLD** .....

.....

Whole/Part Lot ..... on Deposited/Diagram/Survey/Strata/Plan No. ....

Whole/Part Volume: ..... Folio: ..... ("the Property")

**LISTING PRICE**

\$ ..... Auction

\$ ..... to \$ .....

**1C. AGENT**

Name of Licenced Real Estate and Business Agent: .....

Trading as ..... ("the Agent")

Address .....

**2. AGENT'S SELLING FEE**

**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 Commissioner for Consumer Protection or REIWA for adjudication.

The following Agent's Selling Fee has been agreed:

\* (i) The Agent's Selling Fee inclusive of GST is \$ ..... OR [.....] initials

\* (ii) The 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

\* (iii) As set out in the attached schedule: ..... [.....] initials

(\*delete or complete as appropriate whenever asterisk (\*) appears)

**3. EXCLUSIVE RIGHTS PERIOD**

IT IS AGREED:

The Seller authorises the Agent to find a buyer for the Property

for an Exclusive Rights Period from and including ..... / ..... / ..... until midnight on ..... / ..... / ..... Inclusive.  
**("the Exclusive Rights Period")**

Signature of Seller ..... Date: ...../...../.....

Signature of Seller ..... Date: ...../...../.....

Signature of Agent or Agent's Representative: ..... Date: ...../...../.....

**COMPETITION IN EXPENSES 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 advertising, promotional, and other expenses and it should be noted that agents may agree not to require payment of those Expenses in agreements such as the one contained in this form.

**4. Agent's Entitlement to the Agent's Selling Fee**

- (a) The Selling Fee will be payable if:
- (i) During the Exclusive Rights Period, the Property is sold or exchanged; or
  - (ii) The Agent is entitled to the Selling Fee as a consequence of the terms of clause 13.
- (b) 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, and where the new listing agent is entitled to a selling fee, then the Agent will not be entitled to a Selling Fee and clauses 4(a)(ii) and 13 will not apply.
- (c) The Selling Fee will be payable if the Property is sold to a Buyer in any of the abovementioned circumstances and:
- (i) The sale is not completed due to the fault of the Seller; or
  - (ii) The person introduced to the Seller or to the Property by the Agent procures another person or entity to buy the Property or otherwise become the legal or beneficial owner of the Property.

**5. Agent's Selling Fee Payable on Settlement**

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.

**6. 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 Commissioner for Consumer Protection, the civil and criminal legal systems, the Western Australian Department of Commerce, the Australian Competition and Consumer Commission, and The Real Estate Institute of Western Australia (Inc.).

**7. Expenses**

- (a) If the Property is sold, any balance retained in the Agent's Trust Account (after deducting all outstanding agreed Expenses) will be refunded in full to the Seller at settlement.
- (b) The Seller agrees to pay the Agent at or prior to settlement all agreed Expenses incurred by the Agent in offering the Property.
- (c) The Agent will submit to the Seller an itemised account of all agreed Expenses claimed at the conclusion of this Agreement, or as reasonably required.
- (d) If the Seller withdraws the Property from sale, sells the Property to a buyer introduced to the Property by the Seller and/or terminates this authority prior to the expiration of the Exclusive Rights Period, the Seller must immediately reimburse the Agent for the agreed Expenses incurred by the Agent up until the date of withdrawal or termination.
- (e) If the Property is not sold within the Exclusive Rights Period the Seller will reimburse the Agent on demand all outstanding agreed Expenses.
- (f) The Agent may charge interest on the agreed Expenses if an account has been rendered to the Seller and is unpaid for longer than 30 days after the date of the account. The rate of interest will be the Prescribed Rate as defined in the most recently approved Joint Form of General Conditions for the Sale of Land by the Real Estate Institute of Western Australia (Inc.).

**8. Agent's Authority**

- (a) The Agent may engage other licensed Real Estate Agents to find a buyer. If so, the Agent may pay a fee to the other Agent.
- (b) The Agent is authorised to accept any deposit paid by a buyer and to hold it as a stakeholder, or in the case of Strata Titled Property being sold before registration of the Strata Plan, as Trustee for the buyer in accordance with Section 70 of the Strata Titles Act, 1985.
- (c) If the Property is sold, the Agent is authorised to give appropriate instructions to aid settlement to the nominated conveyancer of both the Seller and buyer.
- (d) The Agent is authorised at or prior to settlement to remit the balance of the deposit to the Seller or to the Seller's nominated conveyancer for the purpose of completing the sale after deducting the Agent's Selling Fee and any outstanding agreed Expenses. The Agent's Selling Fee will be held on trust pending settlement.
- (e) If the Property is sold and there is no deposit, or the deposit held by the stakeholder is insufficient to cover the Agent's Selling Fee and outstanding agreed Expenses, the Seller must pay on demand any shortfall and the Seller authorises the Agent to obtain payment of the shortfall out of purchase monies held or to be received by the Seller's conveyancer.
- (f) The Seller authorises the Agent to sign the certificate for the giving of compulsory disclosure material for and on behalf of the Seller (Strata property only).

**9. Access**

The Seller agrees to allow appropriate access by the Agent to the Property and to provide all necessary keys and security details.

**10. Seller's Warranty**

The Seller warrants that the Seller has the authority to enter into this Agreement and that no other person holds an agency agreement for the Property.

**11. Seller's Acknowledgement**

The Seller acknowledges:

- (a) having been informed by the Agent, before signing this authority, that the Agent's Selling Fee is subject to agreement;
- (b) having read and understood and agreed to the terms and conditions of this Agreement;

**12. 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 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.

If this agreement is to be facsimiled then this page should be signed

13. Sale Takes Place 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

Select option

provided that the sale takes place prior to midnight on [ ] / [ ] / 20 [ ]

Insert Date

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 will not be entitled to a selling fee except to the extent that the Agent is otherwise entitled to Expenses or advertising and promotion costs in the manner referred to in this Agreement if the Property is not sold. Refer to 4(b).

14. Agreement to Pay Advertising and Promotional Expenses and/or Other Expenses

The Seller AGREES/ DOES NOT AGREE to pay to the Agent separate advertising and promotional expenses and/or expenses. If the Seller has agreed to incur these expenses, then complete clause 16.

Select option

15. 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 and promotional expenses 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

16. EXPENSES: Marketing and Property Searches and Other

The Seller \* AGREES/DOES NOT AGREE to pay the Agent separate expenses. If the Seller agrees then:

Select option

(a) Advertising and Promotional Expenses

(i) The Seller agrees to pay up to a maximum of \$ [ ] (inclusive of GST) towards the advertising, sign boards, printed material and promotions OR

[ ] initials

(ii) The Seller agrees to pay up to a maximum of \$ [ ] (inclusive of GST) towards the advertising, sign boards, printed material and promotions. If the Property is sold during the Agents Authority Period and the Agent receives the Selling Fee, the Agent will waive reimbursement of the marketing expense.

[ ] initials

(b) The Seller agrees to pay up to a maximum of \$ [ ] (inclusive of GST) towards other expenses to those referred to in clause 16(a) above that are incurred by the Agent including searches at Landgate. These searches include certificate of title and any associated documents, survey/strata plans (if applicable), and any other expenses.

[ ] initials

(c) As per attached schedule [ ]

[ ] initials

The sum of \$ [ ] is paid now and is to be held in the Agent's Trust Account and will be used to pay the agreed expenses referred to in clause 16 (a), (b) & (c) above as they arise from time to time and the sum of \$ [ ] will be paid [ ]

[ ] initials

17. Seller Introducing Buyer

The Seller agrees to pay the Agent's Selling Fee on the terms and conditions set out in this Agreement PROVIDED THAT, regardless of anything contained in those terms and conditions, the Seller and Agent agree that if, during the Authority Period, the Seller introduces the ultimate buyer of the Property to the Property themselves the Seller

\*WILL/WILL NOT be liable to pay the Selling Fee to the Agent. \*CROSS OUT WHICHEVER DOES NOT APPLY

Select option

[ ] initials

18. Seller Appointing another Real Estate Agent

The Seller may not during the Exclusive Rights Period, except through the Agent, appoint another agent to find a buyer. If the Seller contravenes this clause by appointing another agent during the Exclusive Rights Period to find a buyer, that other agent finds such a buyer and the Property is sold to that buyer the Seller will be deemed to have terminated this authority and must pay to the Agent the Agent's Selling Fee and the agreed Expenses incurred by the Agent, as described in clause 16, up until the date of termination as liquidated damages. If the Agent's Selling Fee has been agreed to be a percentage of the actual selling price, for the purposes of calculating liquidated damages pursuant to this clause, the Agent's Selling Fee will be deemed to be the equivalent percentage of the Initial Listing Price or the lower amount of a range.

[ ] initials

Signature of Seller: [ ]

Date: [ ] / [ ] / [ ]

Signature of Seller: [ ]

Date: [ ] / [ ] / [ ]

Signature of Agent or Agent's Representative: [ ]

Date: [ ] / [ ] / [ ]

A TRUE COPY OF THIS DOCUMENT HAS BEEN RECEIVED BY THE SELLER

Signature of the Sellers: [ ]



**INFORMATION  
COLLECTION NOTICE**

**PRIVACY ACT, 1988**

**AUSTRALIAN PRIVACY PRINCIPLE 5**

The Agent (whose contact details appear on this form) collects the personal information provided in this form in compliance with the provisions of the *Privacy Act, 1988* and the Australian Privacy Principles.

The Agent collects this information to enable it to provide the services and benefits the subject of this form and to enable it to conduct its business.

Further details regarding the purposes for which the information is collected, the disclosures that are usually made of personal information collected by the Agent, the situations where the Agent is required to collect information by law, and any disclosure of information that may be made by the Agent overseas, can be obtained from the more detailed collection notice on the Agent's website. The Agent's privacy policy may also be accessed on that website.

If the information collected in this form is not provided, the Agent may not be able to provide its services as effectively. Individuals who wish to access or correct information held about them or who wish to make any complaint regarding privacy should contact the Agent's privacy officer.

# selling agency agreement residential: exclusive agency



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An agreement between the Agent and the Seller ("the Agreement") authorising the Agent to offer the Property for sale on the following terms and conditions:

Seller's Name:  ("The Seller")  
 Address:  Post Code:   
 Tel:  Fax:  Mobile:  Email:

Name and Address of Licenced Real Estate and Business Agent:  
 ("The Agent")  
 Address:

**NB Delete or complete as appropriate wherever asterisk (\*) appears in this Agreement  
IT IS AGREED**

**1. AUTHORITY PERIOD**

The Seller authorises the Agent to find a Buyer for the Property at:

**2. LISTING PRICE: \$**  **OR**  
 \$  to \$

Number  Street   
 Suburb   
 Whole/Part Lot  Survey / Strata / Deposited / Plan / Diagram No   
 Whole/Part Cert. of Title Vol  Folio  ("the Property")  
 during the Exclusive Period from and including the date of this Agreement until midnight on  /  /  inclusive. ("the Exclusive Period")

**3. SELLING FEE**

**NOTICE: Fees charged by real estate agents are not fixed by law and are to be agreed between a 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 Commissioner for Consumer Protection or REIWA for adjudication.

The following Selling Fee has been agreed:

\* (i) The Selling Fee inclusive of GST is \$  **OR**  Initials  
 \* (ii) The Selling Fee inclusive of GST, being  % of the actual selling price of the Property.  
 (e.g., if the actual selling price is \$  then the Selling Fee is \$  **OR**  Initials  
 \* (iii) As set out in the attached schedule:  Initials

**4. EXPENSES: Marketing and Property Searches and Other**

The Seller **\*AGREES/DOES NOT AGREE** to pay to the Agent separate Expenses. If the Seller agrees to pay then:

(a) (i) The Seller agrees to pay up to a maximum of \$  (inclusive of GST) towards the advertising, sign boards, printed materials and promotions. **OR**  Initials  
 (ii) The Seller agrees to pay up to a maximum of \$  (inclusive of GST) towards the advertising, sign boards, printed material and promotions. If the Property is sold during the Agents Authority Period and the Agent receives the Selling Fee, the Agent will waive reimbursement of the marketing expense.  Initials  
 (b) **Other Expenses**  
 The Seller agrees to pay up to a maximum of \$  (inclusive of GST) towards other expenses to those referred to in clause 4(a) above that are incurred by the Agent including searches at Landgate. These searches include certificate of title and any associated documents, survey/strata plans (if applicable) and any other expenses.  Initials  
 (c) As per the attached schedule  Initials

**5. COSTS OF IDENTIFICATION OF AGENTS IN ADVERTISEMENTS**

- (i) 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.
- (ii) The Seller **\*AGREES/DOES NOT AGREE** 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  Initials

**6. SELLER INTRODUCES BUYER**

Despite anything else to the contrary the Seller and Agent agree that if, during the Exclusive Period, the Seller introduces the ultimate Buyer of the Property themselves, the Seller **\* WILL/WILL NOT** be liable to pay the Selling Fee to the Agent.

Select option  Initials

**7. SALES TAKES PLACE AFTER THE EXCLUSIVE PERIOD**

The Seller **\* AGREES/DOES NOT AGREE** to pay to the Agent the Selling Fee in circumstances where the sale of the Property to a Buyer introduced to the Property by the Agent during the Exclusive Period does not take place until after the expiration of the Exclusive Period provided that the sale takes place prior to midnight on  /  / 20

Select option  Initials

Insert Date

Should the Seller elect in this clause not to be liable to pay the 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 Period, then the Agent will not be entitled to the Selling Fee but the Agent is entitled to Expenses in the manner referred to in this Agreement if the Property is not sold. Refer to section 8(b).

Signature of Seller:  Date:   
 Signature of Seller:  Date:   
 Signature of Agent or Agent's Representative:  Date:

A TRUE COPY OF THIS DOCUMENT HAS BEEN RECEIVED BY THE SELLER

Signature of the Sellers:



# selling agency agreement residential: exclusive agency



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## 8. AGENT'S ENTITLEMENT TO THE AGENT'S SELLING FEE

- (a) The Selling Fee will be payable if:
- (i) During the Exclusive Rights Period, the Property is sold or exchanged; or
  - (ii) The Agent is entitled to the Selling Fee as a consequence of the terms of clause 7.
- (b) 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, and where the new listing agent is entitled to a selling fee, then the Agent will not be entitled to a Selling Fee and clauses 8(a)(i) and 7 will not apply.
- (c) The Selling Fee will be payable if the Property is sold to a Buyer in any of the abovementioned circumstances and:
- (i) The sale is not completed due to the fault of the Seller; or
  - (ii) The person introduced to the Seller or to the Property by the Agent procures another person or entity to buy the Property or otherwise become the legal or beneficial owner of the Property.

## 9. 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 Commissioner for Consumer Protection, the civil and criminal legal systems, the Western Australian Department of Commerce, the Australian Competition and Consumer Commission, and the Real Estate Institute of Western Australia (Inc.).

## 10. AGENT'S AUTHORITY

- (a) The Agent may engage other licensed Real Estate Agents to find a buyer. If so, the Agent may pay a fee to the other agent.
- (b) The Agent is authorised to accept any deposit paid by a Buyer and to hold it as a stakeholder, or in the case of Strata Titled Property being sold before registration of the Strata Plan, as trustee for the Buyer in accordance with Section 70 of the Strata Titles Act, 1985.
- (c) If the Property is sold, the Agent is authorised to give appropriate instructions to aid settlement to the nominated conveyancer of both the Seller and Buyer.
- (d) The Agent is authorised at or prior to settlement to remit the balance of the deposit to the Seller or their conveyancer to complete the sale after deducting the Selling Fee and Expenses, which will be held in trust pending settlement but is then irrevocably authorised to be paid to the Agent from trust.
- (e) If the Property is sold and there is no deposit, or the deposit held by the stakeholder is insufficient to pay the Selling Fee and Expenses, the Seller will pay on demand any shortfall and the Seller irrevocably authorises their conveyancer to pay the Agent the shortfall out of any monies held by the Seller's conveyancer or due to the Seller.
- (f) The Seller authorises the Agent to sign any compulsory disclosure material required to be given to a Buyer on behalf of the Seller.

## 11. EXPENSES

- (a) If the Property is sold, any balance retained in the Agent's Trust Account (after deducting all outstanding Expenses) will be refunded to the Seller after settlement.
- (b) If the Seller has agreed to pay Expenses to the Agent then:
  - (i) the Seller agrees to pay the Agent at or prior to settlement all Expenses incurred by the Agent in offering the Property; and
  - (ii) if the Property is not sold within the Exclusive Period, the Seller will reimburse the Agent on demand all outstanding Expenses.
- (c) The Agent will submit to the Seller an itemised account of all Expenses payable at the conclusion of this Agreement, or as reasonably required.
- (d) Despite anything else to the contrary, if the Seller withdraws the Property from sale, sells the Property to a Buyer introduced to the Property by the Seller or terminates this authority prior to the expiration of the Authority Period, the Seller will, amongst other remedies, immediately reimburse the Agent for the Expenses incurred by the Agent up until the date of withdrawal or termination.
- (e) The Agent may charge interest, at the rate of 9% per annum calculated on a daily basis, on the Expenses if an account has been rendered to the Seller and is unpaid for longer than 30 days after the date of the account.

## 12. SELLER APPOINTING ANOTHER REAL ESTATE AGENT

The Seller may not during the Exclusive Period, except through the Agent, appoint another agent to find a buyer. If the Seller contravenes this clause by appointing another agent during the Exclusive Period to find the buyer, that other agent finds such a buyer and the Property is sold to that buyer the Seller will be deemed to have terminated this authority and must pay to the Agent the Agent's Selling Fee and the agreed Expenses incurred by the Agent, as described in clause 4, up until the date of termination as liquidated damages. If the Agent's Selling Fee has been agreed to be a percentage of the actual selling price, for the purposes of calculating liquidated damages pursuant to this clause, the Agent's Selling Fee will be deemed to be the equivalent percentage of the Initial Listing Price or the lower amount of a range.

initials

## 13. DEFINITIONS

"GST" means the Goods and Services Tax pursuant to A New Tax System (Goods and Services Tax) Act 1999.

"introduces" or "introduced" means an effective cause of the relevant sale.

"Expenses" means all costs, charges and expenses in marketing, advertising and promoting the Property for sale in any way. Includes Landgate searches.

"sold" and "sale" includes exchange or the disposition of the Property in any manner whatsoever or any part of the legal or beneficial ownership of the Property or a transaction.

"settlement" and "transaction" each have the same meaning as each is defined in the Real Estate and Business Agents Acts.

## 14. INFORMATION COLLECTION NOTICE - PRIVACY ACT, 1988 - AUSTRALIAN PRIVACY PRINCIPLE 5

The Agent (whose contact details appear on this form) collects the personal information provided in this form in compliance with the provisions of the Privacy Act, 1988 and the Australian Privacy Principles. The Agent collects this information to enable it to provide the services and benefits the subject of this form and to enable it to conduct its business. Further details regarding the purposes for which the information is collected, the disclosures that are usually made of personal information collected by the Agent, the situations where the Agent is required to collect information by law, and any disclosure of information that may be made by the Agent overseas, can be obtained from the more detailed collection notice on the Agent's website. The Agent's privacy policy may also be accessed on that website. If the information collected in this form is not provided, the Agent may not be able to provide its services as effectively. Individuals who wish to access or correct information held about them or who wish to make any complaint regarding privacy should contact the Agent's privacy officer.

## COMPETITION IN MARKETING EXPENSES 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 advertising, promotional, and other expenses it should be noted that agents may agree not to require payment of those expenses in agreements such as the one contained in this form.

## IF THIS AGREEMENT IS ON SEPARATE PAGES, THEN THE SELLER SHOULD SIGN THIS PAGE

Signature of Seller:

Date:

Signature of Seller:

Date:

**Australian Consumer Law  
Unsolicited Consumer Contract  
Selling Agency Agreement**

**IMPORTANT NOTICE TO THE CONSUMER  
YOU HAVE THE RIGHT TO CANCEL THIS AGREEMENT WITHIN 10 BUSINESS DAYS FROM AND  
INCLUDING THE DAY AFTER YOU SIGNED OR RECEIVED THIS AGREEMENT**

**DETAILS ABOUT YOUR ADDITIONAL RIGHTS TO TERMINATE THIS AGREEMENT ARE SET OUT IN THE  
INFORMATION ATTACHED TO THIS AGREEMENT**

**An agreement between the Agent and the Seller ("the Agreement") authorising the Agent to offer the Property for sale on the following  
terms and conditions**

|                  |
|------------------|
| AGENTS NAME      |
| ACN/ABN          |
| BUSINESS ADDRESS |
| TELEPHONE NUMBER |
| FACSIMILE NUMBER |
| EMAIL ADDRESS    |

|               |        |
|---------------|--------|
| SELLER'S NAME |        |
| ADDRESS       |        |
| TELEPHONE     | FAX:   |
| MOBILE:       | EMAIL: |

IT IS AGREED

|                                                                                                                                                                                         |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>1. EXCLUSIVE PERIOD</b><br>THE Seller authorises the Agent to find a Buyer for the Property at:<br><br>from and including the date of this Agreement until midnight on      /      / |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|                                                |
|------------------------------------------------|
| <b>2. THE LISTING PRICE OF THE PROPERTY IS</b> |
|------------------------------------------------|

|                                                                                             |
|---------------------------------------------------------------------------------------------|
| Signed by the Seller(s) <input type="text"/>                                                |
| on this                                      day of                                      20 |

# selling agency agreement residential: exclusive agency



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**3. SELLING FEE**  
**NOTICE: Fees charged by real estate agents are not fixed by law and are to be agreed between a 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 Commissioner for Consumer Protection or REIWA for adjudication.  
 The following Selling Fee has been agreed:

\* (i) The Selling Fee inclusive of GST is \$  **OR**  Initials

\* (ii) The Selling Fee inclusive of GST, being  % of the actual selling price of the property.  
 (e.g., if the actual Selling Price is \$  then the Selling Fee is \$  **OR**  Initials

\* (iii) As set out in the attached schedule:   Initials

**4. AGREEMENT TO PAY MARKETING EXPENSES**  
 The Seller **\* AGREES/DOES NOT AGREE** to pay to the Agent separate Marketing Expenses. If so then: Select option

\* (i) The Seller agrees to pay up to a maximum of \$  towards the Marketing Expenses. If so, the sum of \$  is paid and is to be held in the Agent's Trust Account and will be used to pay the charges and expenses as they arise from time to time **OR**  Initials

\* (ii) The Seller agrees to pay up to a maximum of \$  to reimburse the Agent for Marketing Expenses. If the Property is sold during the Agent's Exclusive Period and the Agent receives the Selling Fee, then the Agent will waive reimbursement of the Marketing Expenses **OR**  Initials

\* (iii) As per attached schedule:   Initials

**5. COSTS OF IDENTIFICATION OF AGENTS IN ADVERTISEMENTS**

(i) 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.

(ii) The Seller **\* AGREES/DOES NOT AGREE** 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

**6. SELLER INTRODUCES BUYER** Select option  
 Despite anything else to the contrary the Seller and Agent agree that if, during the Exclusive Period, the Seller introduces the ultimate Buyer of the Property themselves, the Seller **\* WILL/WILL NOT** be liable to pay the Selling Fee to the Agent.  Initials

**7. SALES TAKES PLACE AFTER THE EXCLUSIVE PERIOD** Select option  
 The Seller **\* AGREES/DOES NOT AGREE** to pay to the Agent the Selling Fee in circumstances where the sale of the Property to a Buyer introduced to the Property by the Agent during the Exclusive Period does not take place until after the expiration of the Exclusive Period provided that the sale takes place prior to midnight on  /  / 20  Initials  
Insert Date

Should the Seller elect in this clause not to be liable to pay the 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 Period, then the Agent will not be entitled to the Selling Fee but the Agent is entitled to Marketing Expenses in the manner referred to in this Agreement if the Property is not sold.

**8. AGENT'S ENTITLEMENT TO THE AGENT'S SELLING FEE**

(a) The Selling Fee will be payable upon settlement of a transaction if during the Exclusive Period:

- (i) the Property is sold or exchanged;
- (ii) at any time a Buyer introduced by the Agent to the Seller or the Property, contracts to buy the Property, or gets another person or entity to buy the Property or otherwise becomes a legal or beneficial owner of the Property; or
- (iii) the Property is sold to a Buyer in any of the above circumstances but Settlement does not occur due to the fault of the Seller;

(b) If after the end of the Exclusive Period the Seller enters into a Selling Agency Agreement to sell the Property through another lawfully authorised Real Estate Agent, and where the new listing agent is entitled to a selling fee, then the Agent will not be entitled to a Selling Fee and clauses 7 and 8(a)(ii) will not apply.

**9. 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 Commissioner for Consumer Protection, the civil and criminal legal systems, the Western Australian Department of Commerce, the Australian Competition and Consumer Commission, and the Real Estate Institute of Western Australia (Inc.).

Signature of Seller:  Date:  /  /

Signature of Seller:  Date:  /  /

# selling agency agreement residential: exclusive agency



## 10. AGENT'S AUTHORITY

- (a) The Agent may engage other licensed Real Estate Agents to find a buyer. If so, the Agent may pay a fee to the other agent.
- (b) The Agent is authorised to accept any deposit paid by a Buyer and to hold it as a stakeholder, or in the case of Strata Titled Property being sold before registration of the Strata Plan, as trustee for the Buyer in accordance with Section 70 of the Strata Titles Act, 1985.
- (c) If the Property is sold, the Agent is authorised to give appropriate instructions to aid settlement to the nominated conveyancer of both the Seller and Buyer.
- (d) The Agent is authorised at or prior to settlement to remit the balance of the deposit to the Seller or to the Seller's nominated conveyancer for the purpose of completing the sale after deducting the Selling Fee and any Marketing Expenses. The Selling Fee will be held on trust pending settlement.
- (e) If the Property is sold and there is no deposit, or the deposit held by the stakeholder is insufficient to cover the Selling Fee and Marketing Expenses, the Seller will pay on demand any shortfall and the Seller irrevocably authorises their conveyancer to pay the Agent the shortfall out of any monies held by the Seller's conveyancer.
- (f) The Seller authorises the Agent to sign any compulsory disclosure material given to a Buyer on behalf of the Seller.

## 11. MARKETING EXPENSES

- (a) If the Property is sold, any balance retained in the Agent's Trust Account (after deducting all outstanding Marketing Expenses) will be refunded in full to the Seller at settlement.
- (b) If the Seller has agreed to pay Marketing Expenses to the Agent then:
  - (i) the Seller agrees to pay the Agent at or prior to settlement all Marketing Expenses incurred by the Agent in promoting the Property; and
  - (ii) if the Property is not sold within the Exclusive Period, the Seller will reimburse the Agent on demand all outstanding Marketing Expenses.
- (c) The Agent will submit to the Seller an itemised account of all Marketing Expenses payable at the conclusion of this Agreement, or as reasonably required.
- (d) Despite anything else to the contrary, if the Seller withdraws the Property from sale, sells the Property to a Buyer introduced to the Property by the Seller or terminates this authority prior to the expiration of the Exclusive Period, the Seller will, amongst other remedies, immediately reimburse the Agent for the Marketing Expenses incurred by the Agent up until the date of withdrawal or termination.
- (e) The Agent may charge interest, at the rate of 9% per annum calculated on a daily basis, on the Marketing Expenses if an account has been rendered to the Seller and is unpaid for longer than 30 days after the date of the account.

## 12. SELLER APPOINTING ANOTHER REAL ESTATE AGENT

The Seller may not during the Exclusive Period, except through the Agent, appoint another agent to find a buyer. If the Seller contravenes this clause by appointing another agent during the Exclusive Period to find the buyer, that other agent finds such a buyer and the Property is sold to that buyer the Seller will be deemed to have terminated this authority and must pay to the Agent the Agent's Selling Fee and the agreed Marketing Charges and Expenses incurred by the Agent, as described in clause 4, up until the date of termination as liquidated damages. If the Agent's Selling Fee has been agreed to be a percentage of the actual selling price, for the purposes of calculating liquidated damages pursuant to this clause, the Agent's Selling Fee will be deemed to be the equivalent percentage of the Initial Listing Price or the lower amount of a range.

initials

## 13. DEFINITIONS

"GST" means the Goods and Services Tax pursuant to A New Tax System (Goods and Services Tax) Act 1999.

"Introduces" or "introduced" used in this form means an effective cause of the relevant sale.

"Marketing Expenses" means all costs, charges and expenses in marketing, advertising and promoting the Property for sale in any way.

"sold" and "sale" includes exchange or the disposition of the Property in any manner whatsoever or any part of the legal or beneficial ownership of the Property or a transaction.

"settlement" and "transaction" each have the same meaning as each is defined in the Real Estate and Business Agents Act.

## 14. INFORMATION COLLECTION NOTICE (GENERAL VERSION)

### PRIVACY ACT, 1988

### AUSTRALIAN PRIVACY PRINCIPLE 5

The Agent (whose contact details appear on this form) collects the personal information provided in this form in compliance with the provisions of the Privacy Act, 1988 and the Australian Privacy Principles. The Agent collects this information to enable it to provide the services and benefits the subject of this form and to enable it to conduct its business. Further details regarding the purposes for which the information is collected, the disclosures that are usually made of personal information collected by the Agent, the situations where the Agent is required to collect information by law, and any disclosure of information that may be made by the Agent overseas, can be obtained from the more detailed collection notice on the Agent's website. The Agent's privacy policy may also be accessed on that website. If the information collected in this form is not provided, the Agent may not be able to provide its services as effectively. Individuals who wish to access or correct information held about them or who wish to make any complaint regarding privacy should contact the Agent's privacy officer.

## COMPETITION IN MARKETING EXPENSES 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 Expenses and it should be noted that agents may agree not to require payment of separate Marketing Expenses in agreements such as the one contained in this form.

### IF THIS AGREEMENT IS ON SEPARATE PAGES, THEN THE SELLER SHOULD SIGN THIS PAGE

Signature of Seller:  Date:

Signature of Seller:  Date:

Signature of Agent or Agent's Representative:  Date:

Name:

Business Address:

Email Address:

A TRUE COPY OF THIS DOCUMENT HAS BEEN RECEIVED BY THE SELLER

Signature of the Sellers:

## AUSTRALIAN CONSUMER LAW REAL ESTATE AGENT IDENTIFICATION

AGENT IDENTITY :

BUSINESS ADDRESS

TELEPHONE NUMBER

FACSIMILE NUMBER

EMAIL ADDRESS

|                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|---------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>PURPOSE</b>                              | <p>TO SEEK YOUR AGREEMENT TO APPOINT THE REAL ESTATE AGENCY TO ADVERTISE YOUR PROPERTY FOR SALE AND INTRODUCE BUYERS WHO MAY BUY YOUR PROPERTY.</p> <p>THE AGENT'S FEE WOULD ONLY BE PAYABLE IF YOUR PROPERTY IS SOLD.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>REQUESTS TO LEAVE THE PREMISES</b>       | <p>THE AGENT IS OBLIGED TO LEAVE YOUR PREMISES IMMEDIATELY UPON REQUEST</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>INFORMATION ABOUT TERMINATION PERIOD</b> | <p>Note Section 86 of the Australian Consumer Law prohibits the supplier of an unsolicited consumer agreement from supplying goods or services under the agreement, accepting or requiring payment or any other consideration for those goods or services during a period of 10 business days starting:</p> <ul style="list-style-type: none"><li>(a) if the agreement was not negotiated by telephone - at the start of the first business day after the day on which the agreement was made; or</li><li>(b) if the agreement was negotiated by telephone - at the start of the first business day after the day on which the consumer was given the agreement document relating to the agreement.</li></ul> |



## SELLING AGENCY AGREEMENT CANCELLATION NOTICE (INFORMATION REGARDING RIGHTS)

### Right to cancel this Selling Agency Agreement within 10 business day cooling-off period

You have a right to cancel this agreement without any reason within 10 business days from and including the day after you signed or received this agreement.

#### Extended right to cancel this agreement

If the supplier has not complied with the law in relation to unsolicited consumer agreements, you also have a right to cancel this agreement by contacting the supplier, either orally or in writing.

**Refer to the information attached to this agreement.** You may have up to 6 months to cancel this agreement in certain circumstances.

To cancel this agreement in writing, complete this notice and **send it to the supplier.**

Alternatively, write a letter or send an email to the supplier.

### Supplier details (to be completed by the supplier)

Name:

Address:

Email address (if any):

Fax number (if any):

Details of goods or services  
supplied under the agreement:

Cost of goods or services:

Date of agreement:

Transaction number (if any):

### Consumer details

Name of consumer:

Consumer's address:

I WISH TO CANCEL THIS AGREEMENT

Signed by the consumer:

Date:

**Note:** You must either return to the supplier any goods supplied under the agreement or arrange for the goods to be collected.

# selling agency agreement rural: exclusive agency



An agreement between the Agent and the Seller ("the Agreement") authorising the Agent to offer the Property for Sale on the following terms and conditions:

Seller's Name:  ("the Seller")

Address:  Post Code:

Tel:  Fax:  Mobile:  Email:

Name and Address of Licenced Real Estate and Business Agent:

("the Agent")

IT IS AGREED:

1. INITIAL LISTING PRICE: \$  OR

2. AUTHORITY PERIOD \$  to \$

The Seller authorises the Agent to find a buyer for the Property at:

Portion of

Locations

Certificate of Title

See attached Schedule for full Title Details  ("the Property")

for an Exclusive Rights Period from and including the date of this Agreement until midnight on  /  /  Inclusive.

("the Exclusive Rights Period")

### 3. AGENT'S SELLING FEE

**NOTICE: Fees charged by real estate agents are not fixed by law, and are to be agreed between seller and agent.**

The following Agent's Selling Fee has been agreed:

\* (i) The Agent's Selling Fee inclusive of GST is \$  OR  initials

\* (ii) The 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

\* (iii) As set out in the attached schedule:   initials

\* (iv) If no sale takes place, and/or if the Seller withdraws the Property from the market, then the Agent shall be paid an Agent's Offering Fee inclusive of GST \$  plus the following agreed maximum disbursements incurred by the Agent

**Item of expense**

**Amount**

Administration fee: Property investigation search, and aerial photographs -

\$   initials

\$   initials

\$   initials

(\*delete or complete as appropriate whenever asterisk (\*) appears)

### 4 Chattels/Plant and Livestock

(a) In the event that the Property is sold together with chattels, plant and livestock then the chattels, plant and stock included in the sale shall be set out in the attached Schedule together with the description of the Land and the Seller 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.

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

(b) Where the sale of the Property does not include chattels, plant and livestock and those chattels, plant and livestock are sold to the Buyer under a different contract, then the Seller shall pay to the Agent a fee (inclusive of GST) on the value of chattels, plant and livestock on the following basis:

% of the selling price of the chattels, plant and livestock

For example if the chattels, plant and livestock sell for \$100,000 the Chattels, plant and Livestock Fee is \$   initials

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 Commissioner for Consumer Protection or REIWA for adjudication.

Signature of Seller(s):  Date:

Signature of Seller(s):  Date:

Signature of Agent or Agent's Representative:  Date:

### 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.

# selling agency agreement rural: exclusive agency

## 5. Agent's Entitlement To The Agent's Selling Fee

The Agent's Selling Fee will be payable if during the Exclusive Rights Period:

- (a) the Property is sold or exchanged;
- (b) at any time a buyer introduced by the Agent to the Seller or the Property, contracts to buy the Property, or gets another person or entity to buy 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; 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 then Clauses 5(b) and 19 shall not apply.

## 6. Agent's Selling Fee Payable on Settlement.

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 the latter.

## 7. 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 Commissioner for Consumer Protection, the civil and criminal legal systems, the Western Australian Department of Consumer & Employment Protection and the Australian Competition and Consumer Commission.

## 8. Marketing Charges and Expenses

- (a) If the Property is sold, any balance retained in the Agent's Trust Account (after deducting all outstanding agreed Marketing Charges and Expenses) shall be refunded in full to the Seller at settlement.
- (b) 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.
- (c) 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.
- (d) If the Seller withdraws the Property from sale, sells the Property to a buyer introduced to the Property by the Seller and/or terminates this authority prior to 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.
- (e) If the Property is not sold within the Exclusive Rights Period the Seller will reimburse the Agent on demand all outstanding agreed Marketing Charges and Expenses.
- (f) 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 after the date of the account. 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 by the Real Estate Institute of Western Australia.

## 9. Agent's Authority

- (a) The Agent may engage other licensed Real Estate Agents to find a buyer. If so, the Agent may pay a fee to the other Agent.
- (b) The Agent is authorised to accept any deposit paid by a buyer and to hold it as a stakeholder, or in the case of Strata Titled Property being sold before registration of the Strata Plan, as Trustee for the buyer in accordance with Section 70 of the Strata Titles Act, 1985.
- (c) If the Property is sold, the Agent is authorised to give appropriate instructions to aid settlement to the nominated conveyancer of both the Seller and buyer.
- (d) The Agent is authorised at or prior to settlement to remit the balance of the deposit to the Seller or to the Seller's nominated conveyancer for the purpose of completing the sale after deducting the Agent's Selling Fee and any outstanding agreed Marketing Charges and Expenses. The Agent's Selling Fee shall be held on trust pending settlement.
- (e) If the Property is sold and there is no deposit, or the deposit held by the stakeholder is insufficient to cover the Agent's Selling Fee and outstanding agreed Marketing Charges and Expenses, the Seller shall pay on demand any shortfall and the Seller authorises the agent to obtain payment of the shortfall out of purchase monies held or to be received by the Seller's conveyancer.
- (f) The Seller authorises the Agent to sign the certificate of giving of compulsory disclosure material for and on behalf of the Seller (Strata property only).

## 10. Access

The Seller agrees to allow appropriate access by the Agent to the Property and to provide all necessary keys and security details.

## 11. Seller's Warranty and Indemnity

- (a) Seller warrants to the Agent that all of the details supplied by the Seller to the Agent for the listing of the Property for sale are true and correct and that the Seller 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.
- (b) Where the land is pastoral leasehold the Seller 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.

## 12. Seller's Acknowledgement

The Seller acknowledges:

- (a) having been informed by the Agent, before signing this authority, that the Agent's Selling Fee is subject to agreement;
- (b) having read and understood and agreed to the terms and conditions of this Agreement;
- (f) that information contained in the Property Description form shall be incorporated in and form part of this Agreement.

## 13. 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 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.



# selling agency agreement rural: exclusive agency



**14. Agreement to Pay Marketing Charges and/or Expenses**

The seller **AGREES/ DOES NOT AGREE** to pay to the Agent separate marketing costs and/or expenses.

*Select option*

If the seller has agreed to incur marketing charges and/or expenses, then complete either 15(a) or 15(b)

**15. Marketing, Administration Charges and Expenses (inclusive of GST)**

(a) The maximum Marketing and Administration Charges and Expenses the Seller authorises the Agent to incur on the Seller's behalf are:

- (i) Marketing Charges & Expenses: \$   initials
- (ii) Administration Charge: Property investigation search, and aerial photographs - \$   initials
- (iii) Other agreed expenses :  \$  **OR**  initials

(b) The Seller agrees to pay up to a maximum of \$  to reimburse the Agent for Marketing Charges and Expenses. If the Property is sold during the Agent's authority period and the Agent receives the Agent's **Selling Fee**, then the Agent will waive reimbursement of the Marketing Charges and Expenses. The sum of \$  is paid herewith and is to be held in the Agent's Trust Account and will be used to pay the agreed charges and expenses as they arise from time to time.

initials

**16. 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*

**17. Seller Introducing Buyer**

The Seller(s) agree to pay the Agent's Selling Fee on the terms and conditions set out in this Agreement PROVIDED THAT, regardless of anything contained in those terms and conditions, the Seller(s) and Agent agree that if, during the Authority 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 Selling Fee to the Agent. \*CROSS OUT WHICHEVER DOES NOT APPLY

*Select option*

**18. Seller Appoints Another Real Estate Agent**

The Seller may not during the Exclusive Rights Period, except through the Agent, appoint another agent to find a buyer, If the Seller contravenes this clause by appointing another agent during the Exclusive Rights Period to find the buyer, that other agent finds such a buyer and the Property is sold to that buyer the Seller will be deemed to have terminated this authority and must pay to the Agent the Agent's Selling Fee and the agreed Marketing Charges and Expenses incurred by the Agent, as described in clause 15(a) or 15(b) below, up until the date of termination as liquidated damages. If the Agent's Selling Fee has been agreed to be a percentage of the actual selling price, for the purposes of calculating liquidated damages pursuant to this clause, the Agent's Selling Fee will be deemed to be the equivalent percentage of the Initial Listing Price.

initials

**19. 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 prior to midnight on  /  / 20  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*

Signature of Seller(s):  Date:   
 Signature of Seller(s):  Date:   
 Signature of Agent or Agent's Representative:  Date:

**TRUE COPY OF THIS DOCUMENT HAS BEEN RECEIVED BY THE PARTIES HERETO,**

Signature of Seller(s):  Date:   
 Signature of Seller(s):  Date:

# selling agency agreement commercial and industrial: exclusive agency



An agreement between the Agent and the Seller ("the Agreement") authorising the Agent to offer the Property for Sale on the following terms and conditions:

Seller's Name:  ("the Seller")

Address:  Post Code:

Tel:  Fax:  Mobile:  Email:

Name and Address of Licenced Real Estate and Business Agent:

THE SELLER WARRANTS THAT -

- a) Is the Seller registered for GST?  Yes  No  initials
- b) Will GST apply to the transaction?  Yes  No  initials
- c) If GST applies, then specify:  Initials

**Note: The seller should get independent advice on the taxation consequences of this sale before entering into a contract for sale.**

IT IS AGREED:

1. **INITIAL LISTING PRICE:** \$  OR

2. **AUTHORITY PERIOD** The Seller authorises the Agent to find a buyer for the Property at:

Number  Street  Suburb

Lot  Plan/ Diagram/ Strata/Survey Strata Plan No

Cert. of Title Vol  Folio No  Diagram  ("the Property")

for an Exclusive Rights Period from and including the date of this Agreement until midnight on  /  /  Inclusive.  
("the Exclusive Rights Period")

3. **AGENT'S SELLING FEE**

**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 Commissioner for Consumer Protection or REIWA for adjudication.

The following Agent's Selling Fee has been agreed:

\*(i) The Agent's Selling Fee is \$  plus GST \$  totalling \$  OR  initials

\*(ii) The Agent's Selling Fee, being  % of the actual selling price of the property.  initials

(For example, if the actual selling price is \$ )

then the Agent's Selling Fee is \$  plus GST \$  totalling \$  ) OR

\*(iii) As set out in the attached schedule:  initials

(\*delete or complete as appropriate whenever asterisk (\*) appears)

Signature of Seller(s):  Date:

Signature of Seller(s):  Date:

Signature of Agent or Agent's Representative:  Date:

## 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.

# selling agency agreement commercial and industrial: exclusive agency



## 4. Agent's Entitlement To The Agent's Selling Fee

- (a) The Selling Fee will be payable if:
  - (i) During the Exclusive Rights Period, the Property is sold or exchanged; or
  - (ii) The Agent is entitled to the Selling Fee as a consequence of the terms of clause 13.
- (b) 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, and where the new listing agent is entitled to a selling fee, then the Agent will not be entitled to a Selling Fee and clauses 4(a)(ii) and 13 will not apply.
- (c) The Selling Fee will be payable if the Property is sold to a Buyer in any of the abovementioned circumstances and:
  - (i) The sale is not completed due to the fault of the Seller; or
  - (ii) The person introduced to the Seller or to the Property by the Agent procures another person or entity to buy the Property or otherwise become the legal or beneficial owner of the Property.

## 5. Agent's Selling Fee Payable on Settlement.

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.

## 6. 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 Commissioner for Consumer Protection, the civil and criminal legal systems, the Western Australian Department of Commerce, the Australian Competition and Consumer Commission, and The Real Estate Institute of Western Australia (Inc.).

## 7. Marketing Charges and Expenses

- (a) If the Property is sold, any balance retained in the Agent's Trust Account (after deducting all outstanding agreed Marketing Charges and Expenses) shall be refunded in full to the Seller at settlement.
- (b) 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.
- (c) 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.
- (d) If the Seller withdraws the Property from sale, sells the Property to a buyer introduced to the Property by the Seller and/or terminates this authority prior to 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.
- (e) If the Property is not sold within the Exclusive Rights Period the Seller will reimburse the Agent on demand all outstanding agreed Marketing Charges and Expenses.
- (f) 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 after the date of the account. 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 by the Real Estate Institute of Western Australia.

## 8. Agent's Authority

- (a) The Agent may engage other licensed Real Estate Agents to find a buyer. If so, the Agent may pay a fee to the other Agent.
- (b) The Agent is authorised to accept any deposit paid by a buyer and to hold it as a stakeholder, or in the case of Strata Titled Property being sold before registration of the Strata Plan, as Trustee for the buyer in accordance with Section 70 of the Strata Titles Act, 1985.
- (c) If the Property is sold, the Agent is authorised to give appropriate instructions to aid settlement to the nominated conveyancer of both the Seller and buyer.
- (d) The Agent is authorised at or prior to settlement to remit the balance of the deposit to the Seller or to the Seller's nominated conveyancer for the purpose of completing the sale after deducting the Agent's Selling Fee and any outstanding agreed Marketing Charges and Expenses. The Agent's Selling Fee shall be held on trust pending settlement.
- (e) If the Property is sold and there is no deposit, or the deposit held by the stakeholder is insufficient to cover the Agent's Selling Fee and outstanding agreed Marketing Charges and Expenses, the Seller shall pay on demand any shortfall and the Seller authorises the Agent to obtain payment of the shortfall out of purchase monies held or to be received by the Seller's conveyancer.
- (f) The Seller authorises the Agent to sign the certificate of giving of compulsory disclosure material for and on behalf of the Seller (Strata property only).

## 9. Access

The Seller agrees to allow appropriate access by the Agent to the Property and to provide all necessary keys and security details.

## 10. Seller's Warranty

The Seller warrants that the Seller has the authority to enter into this Agreement and that no other person holds an agency agreement for the Property.

## 11. Seller's Acknowledgement

The Seller acknowledges:

- (a) having been informed by the Agent, before signing this authority, that the Agent's Selling Fee is subject to agreement;
- (b) having read and understood and agreed to the terms and conditions of this Agreement;
- (f) that information contained in the Property Description form shall be incorporated in and form part of this Agreement.

## 12. 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 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.

If this agreement is to be facsimiled then this page should be signed

# selling agency agreement commercial and industrial: exclusive agency



**13. 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 prior to midnight on  /  / 20

Select option

Insert Date

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.

**14. Agreement to Pay Marketing Charges and/or Expenses**

The seller **AGREES/ DOES NOT AGREE** to pay to the Agent separate marketing costs and/or expenses.

Select option

If the seller has agreed to incur marketing charges and/or expenses, then complete either 16(a), 16(b) or 16(c)

**15. 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

**16. Marketing Charges and/or Expenses (inclusive of GST)**

(a) The Seller agrees to pay up to a maximum of \$  towards the Marketing Charges and Expenses.

initials

The sum of \$  is paid herewith and is to be held in the Agent's Trust Account and will be used to pay the agreed charges and expenses as they arise from time to time **OR**

(b) The Seller agrees to pay up to a maximum of \$  to reimburse the Agent for Marketing Charges and Expenses. If the Property is sold during the Agent's authority period and the Agent receives the Agent's Selling Fee, then the Agent will waive reimbursement of the Marketing Charges and Expenses.

initials

**OR**

(c) As per attached schedule

initials

**17. Seller Introducing Buyer**

The Seller(s) agree to pay the Agent's Selling Fee on the terms and conditions set out in this Agreement PROVIDED THAT, regardless of anything contained in those terms and conditions, the Seller(s) and Agent agree that if, during the Authority 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 Selling Fee to the Agent. **\*CROSS OUT WHICHEVER DOES NOT APPLY**

Select option

initials

**18. Seller Appointing Another Real Estate Agent**

The Seller may not during the Exclusive Rights Period, except through the Agent, appoint another agent to find a buyer, if the Seller contravenes this clause by appointing another agent during the Exclusive Rights Period to find the buyer, that other agent finds such a buyer and the Property is sold to that buyer the Seller will be deemed to have terminated this authority and must pay to the Agent the Agent's Selling Fee and the agreed Marketing Charges and Expenses incurred by the Agent, as described in clause 16(a), 16(b) or 16(c) below, up until the date of termination as liquidated damages. If the Agent's Selling Fee has been agreed to be a percentage of the actual selling price, for the purposes of calculating liquidated damages pursuant to this clause, the Agent's Selling Fee will be deemed to be the equivalent percentage of the Initial Listing Price.

initials

Signature of Seller(s):

Date:

Signature of Seller(s):

Date:

Signature of Agent or Agent's Representative:

Date:

**A TRUE COPY OF THIS DOCUMENT HAS BEEN RECEIVED BY THE PARTIES HERETO,**

Signature of Seller(s):

Date:

Signature of Seller(s):

Date:

**INFORMATION COLLECTION NOTICE (GENERAL VERSION)**

**PRIVACY ACT, 1988**

**AUSTRALIAN PRIVACY PRINCIPLE 5**

**Selling Agency Agreements**

The Agent (whose contact details appear on this form) collects the personal information provided in this form in compliance with the provisions of the *Privacy Act, 1988* and the Australian Privacy Principles. The Agent collects this information to enable it to provide the services and benefits the subject of this form and to enable it to conduct its business. Further details regarding the purposes for which the information is collected, the disclosures that are usually made of personal information collected by the Agent, the situations where the Agent is required to collect information by law, and any disclosure of information that may be made by the Agent overseas, can be obtained from the more detailed collection notice on the Agent's website. The Agent's privacy policy may also be accessed on that website. If the information collected in this form is not provided, the Agent may not be able to provide its services as effectively. Individuals who wish to access or correct information held about them or who wish to make any complaint regarding privacy should contact the Agent's privacy officer.

appointment of an agent to sell a business (including land)  
to be used only if the land is owned by the same entity that owns the business



APPROVED BY  
THE REAL ESTATE INSTITUTE  
OF WESTERN AUSTRALIA (R.E.I.W.A.)  
COMPANION OF REIWA 2016  
FOR USE BY REIWA MEMBERS

An agreement between the Agent and the Seller authorising the Agent to offer the Business for Sale on the following terms and conditions ("the Agreement")

Seller's Name:  ("the Seller")

Address:  Post Code:

Tel:  Fax:  Mobile:  Email:

Name and Address of Licenced Real Estate and Business Agent:  
  
("the Agent")

**Land Description (if freehold is included in the sale):**

Lot:  on Diagram/Survey/Strata/Deposited/Plan  whole/part of Certificate of Title Volume  Folio

Registered Business Name

Type of Business:  A.B.N.  ("the Business")

**IT IS AGREED:**

**1. AUTHORITY (\* cross out whichever does not apply)**

\* (i) **Exclusive Authority:** The Agent is appointed for an Exclusive Period from the date of this Agreement until midnight on  /  /  inclusive ("Exclusive Period") **OR**

\* (ii) **Non-Exclusive Authority:** The Agent is appointed for a Non Exclusive Period from the date of this Agreement until terminated in writing by the Seller, or the expiration of one (1) year from the date of this appointment, whichever is the earlier ("Non-Exclusive Period").

**2. DETAILS OF INITIAL LISTING PRICE: Business**

|                                     |                         |
|-------------------------------------|-------------------------|
| Land                                | \$ <input type="text"/> |
| Goodwill                            | \$ <input type="text"/> |
| Fixed Plant, Fixtures & Fittings    | \$ <input type="text"/> |
| Moveable Plant, Fixtures & Fittings | \$ <input type="text"/> |
| Stock Estimate [to be adjusted]     | \$ <input type="text"/> |
| <b>TOTAL:</b>                       | \$ <input type="text"/> |

**3. AGENT'S SELLING FEE**

Notice: Fees charged by Real Estate & Business Agents are not fixed by law and are to be agreed between the Seller and Agent. The Selling Fee, inclusive of GST, has been agreed as follows (complete (a), (b), or (c)):

(a) The Selling Fee inclusive of GST is \$  **OR**

(b) The Selling Fee, inclusive of GST is  % of the actual selling price

For example, if the actual selling price is \$  then the Selling Fee is \$  **OR**

(c) As per the attached schedule

Initials  
 Initials  
 Initials

**If the Seller disputes the fee payable to the Agent on the grounds that it is unjust, the Seller may refer the matter to The Commissioner for Consumer Protection or REIWA for adjudication**

**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.



appointment of an agent to sell a business (including land) to be used only if the land is owned by the same entity that owns the business



AFFILIATED BY  
THE REAL ESTATE INSTITUTE  
OF WESTERN AUSTRALIA (INC.)  
CORPORATED IN WESTERN AUSTRALIA  
AND USED BY REIWA MEMBERS

#### 4. Agent's Entitlement To The Selling Fee

- (1) The Selling Fee will be payable if during the Exclusive Period:
  - (a) the Business or part of the Business is sold or exchanged;
  - (b) a buyer introduced by the Agent to the Seller or the Business contracts to buy the Business or any part of it, or gets another person or entity to buy the Business or otherwise becomes the legal or beneficial owner of the Business;
  - (c) the Business is sold to a buyer in any of the abovementioned circumstances and the sale is not completed owing to the fault of the Seller.
- (2) If after the end of the Exclusive Period the Seller enters into a Selling Agency Agreement to sell the Business through another lawfully authorised Real Estate and Business Agent, then the Agent will 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 Clauses 4(1)(b) and 10 will not apply.
- (3) The Selling Fee will be payable if during the Non-Exclusive Period, the buyer is introduced to the Seller or to the Business by the Agent.

#### 5. Agent's Selling Fee Payable on Settlement.

The Selling Fee will only be payable to the Agent on the Settlement of the transaction that gives rise to the Agents 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 Selling Fee will be payable immediately.

#### 6. 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 Commissioner for Consumer Protection, the civil and criminal legal systems, the Western Australian Department of Commerce, the Australian Competition and Consumer Commission, and The Real Estate Institute of Western Australia (Inc.).

#### 7. Marketing Expenses

- (a) If the Business is sold, any balance retained in the Agent's Trust Account (after deducting all Marketing Expenses) will be refunded to the Seller after Settlement.
- (b) The Seller agrees to pay the Agent at or prior to Settlement all Marketing Expenses incurred by the Agent in promoting the Business.
- (c) The Agent will submit to the Seller an itemised account of all Marketing Expenses claimed at the conclusion of this Agreement, or as reasonably required.
- (d) Despite anything else in this Agreement to the contrary if the Seller withdraws the Business from sale, sells the Business to a buyer introduced to the Business by the Seller and/or terminates this authority prior to the expiration of the Exclusive Period or Non-Exclusive Period, the Seller must immediately reimburse the Agent for the Marketing Expenses incurred by the Agent up until the date of withdrawal or termination.
- (e) If the Business is not sold within the Exclusive Period or Non-Exclusive Period the Seller will reimburse the Agent on demand all Marketing Expenses.
- (f) The Agent may charge interest on the Marketing Expenses if an account has been rendered to the Seller and is unpaid for longer than 30 days after the date of the account. The rate of interest will be 9% per annum calculated on a daily basis.

#### 8. Agent's Authority

- (a) The Agent may engage other licensed Real Estate and Business Agents to find a buyer. If so, the Agent may pay a fee to the other Agent.
- (b) The Agent is authorised to accept any deposit paid by a buyer and to hold it as a stakeholder.
- (c) If the Business is sold, the Agent is authorised to give appropriate instructions to aid settlement to the nominated conveyancer of both the Seller and Buyer.
- (d) The Agent is authorised at or prior to settlement to remit the balance of the deposit to the Seller or to the Sellers nominated conveyancer for the purpose of completing the sale after deducting the Agent's Selling Fee and Marketing Expenses. The Selling Fee must be held on trust pending Settlement. The Agent is irrevocably authorised to pay the Selling Fee and Marketing Expenses from Trust immediately after Settlement.
- (e) If the Business is sold and there is no deposit, or the deposit held by the stakeholder is insufficient to cover the Selling Fee and Marketing Expenses then, the Seller will pay on demand any shortfall and the Seller irrevocably authorises the Sellers conveyancer to pay the shortfall out of sale proceeds held or to be received by the Seller or Sellers conveyancer.

#### 9. Definitions

"**Authority Period**" means either the Exclusive Period or Non-Exclusive Period whichever is applicable.

"**Business**" means the land and buildings (if owned by the Seller) used in the Business and the goodwill, fixed and moveable plant, equipment, fixtures, fittings, stock, benefit of leases, intellectual property and other assets of the Business or any part of the Business.

"**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, an effective cause of the relevant sale.

"**Marketing Expenses**" means all advertising, marketing and promotional costs, and charges and expenses.

"**sold**" includes the disposition of the Business in any manner whatsoever or any part of the legal or beneficial ownership of the Business.

"**Settlement**" has the same meaning as in s60 of the Real Estate and Business Agents Act 1978

appointment of an agent to sell a business (including land)  **REIWA**  
 to be used only if the land is owned by the same entity that owns the business

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|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                     |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>10. Sale Takes Places After the Exclusive Period</b></p> <p>The Seller <b>AGREES/DOES NOT AGREE</b> (cross out whichever does not apply) to pay to the Agent the Selling Fee in circumstances where the sale of the Business to a buyer introduced to the Business by the Agent during the Exclusive Period does not take place until after the expiration of the Exclusive Period provided that the sale takes place prior to midnight on <input type="text"/>/ <input type="text"/>/20<input type="text"/></p> <p>Should the Seller elect in this clause not to be liable to pay a Selling Fee to the Agent if the sale of the Business to a buyer does not take place until after the expiration of the Exclusive Period, then the Agent will not be entitled to a Selling Fee but the Agent is entitled to Marketing Expenses in the manner referred to in this Agreement .</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | <p>Select Option</p> <p>Insert Date</p>                                                                                             |
| <p><b>11. Agreement to Pay Marketing Expenses</b></p> <p>The Seller <b>AGREES/ DOES NOT AGREE</b> to pay to the Agent separate Marketing Expenses. If the Seller has agreed to incur Marketing Expenses, then:</p> <p>(a) the Seller agrees to pay up to a maximum of \$ <input type="text"/> towards the Marketing Expenses. The sum of <input type="text"/> is paid now and is to be held in the Agents 'Trust Account and will be used to pay the Marketing Expenses as they arise form time to time <b>OR</b></p> <p>(b) the Seller agrees to pay up to a maximum of \$ <input type="text"/> to reimburse the Agent for Marketing Expenses. If the Business is sold during the Agents authority period and the Agent receives the Selling Fee, then the Agent will waive reimbursement of the Marketing Expenses <b>OR</b></p> <p>(c) As per attached schedule <input type="text"/></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | <p>Select Option</p> <p><input type="text"/> Initials</p> <p><input type="text"/> Initials</p> <p><input type="text"/> Initials</p> |
| <p><b>12. Costs of Identification of Agents in Advertisements</b></p> <p>(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.</p> <p>(b) The Seller <b>AGREES/DOES NOT AGREE</b> (CROSS OUT WHICHEVER DOES NOT APPLY) to pay for the Marketing Expenses otherwise payable under this Agreement associated with the Agent complying with the requirements of clause 8 of the REIWA Members' Codes of Practice.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <p>Select Option</p>                                                                                                                |
| <p><b>13. Seller Introducing Buyer</b></p> <p>The Seller <b>*AGREES/ DOES NOT AGREE</b> to pay the Selling Fee on the terms and conditions set out in this Agreement PROVIDED THAT, regardless of anything contained in those terms and conditions, the Seller(s) and Agent agree that if, during the Authority Period, the Seller introduces the ultimate buyer of the Business to the Business themselves the Seller <b>*WILL/WILL NOT</b> be liable to pay the Selling Fee Initials to the Agent. <b>*CROSS OUT WHICHEVER DOES NOT APPLY</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <p>Select Option</p> <p>Select Option</p>                                                                                           |
| <p><b>14. Sale of Shares in Seller or Units in Trust</b></p> <p>The Seller represents and warrants that there will be no removal of the Seller as trustee of a trust, no sale of shares in the Seller and no sale of units in the unit trust (if applicable) during the Authority Period. The Seller agrees that if, during the Authority Period:</p> <p>(i) any of the shareholders of the Seller effects a sale, exchange or other disposal of any of the shares in the Seller;</p> <p>(ii) any of the unitholders of any unit trust of which the Seller is the trustee carrying on the Business effects a sale, exchange or other disposal of any of the units in the unit trust; or</p> <p>(iii) the Seller ceases to be the trustee of a unit trust on whose behalf the Seller is carrying on the Business;</p> <p>then the Seller will be deemed to have wrongly withdrawn the Business from sale, the Seller will be in breach of this Agreement and the Seller will pay by way of liquidated damages to the Agent an amount equal to 75% of the Agent's Selling Fee pursuant to this Agreement calculated as though the Seller had sold the Business at the Initial Listing Selling Price set out in this Agreement.</p> <p><b>NOTE:</b> The Real Estate Institute of Western Australia (Inc) considers that the liquidated damages rate of 75% referred to in clause 19 above provides an accurate calculation of the actual damages that would usually be suffered if an agreement is terminated in a manner that attracts liquidated damages. However, if the Seller considers that circumstances exist which could justify a different rate, the Seller may seek the Agent's agreement to that rate.</p> | <p><input type="text"/> Initials</p>                                                                                                |



**15. INFORMATION COLLECTION NOTICE (GENERAL VERSION)**

**PRIVACY ACT, 1988**

**AUSTRALIAN PRIVACY PRINCIPLE 5**

The Agent (whose contact details appear on this form) collects the personal information provided in this form in compliance with the provisions of the *Privacy Act, 1988* and the Australian Privacy Principles. The Agent collects this information to enable it to provide the services and benefits the subject of this form and to enable it to conduct its business. Further details regarding the purposes for which the information is collected, the disclosures that are usually made of personal information collected by the Agent, the situations where the Agent is required to collect information by law, and any disclosure of information that may be made by the Agent overseas, can be obtained from the more detailed collection notice on the Agent's website. The Agent's privacy policy may also be accessed on that website. If the information collected in this form is not provided, the Agent may not be able to provide its services as effectively. Individuals who wish to access or correct information held about them or who wish to make any complaint regarding privacy should contact the Agent's privacy officer.

**16. Guarantee**

In consideration of the Agent entering into this Agreement the below named Guarantor guarantees the due payment for the Selling fee and Marketing Expenses or liquidated damages payable by the Seller to the Agent under this Agreement. No time indulgence or variation of this Agreement will adversely affect this guarantee. The Guarantor indemnifies the Agent in relation to the Selling fee, Marketing Expenses or liquidated damages due and payable by the Seller to the Agent pursuant to this Agreement.

Signature of Seller:  Date:

Signature of Seller:  Date:

Signature of Agent or Agents Representative:  Date:

Executed by the Seller pursuant to its Constitution and the Corporations Act

Sole/director

Full name of director

Signature of Guarantor  Name of Guarantor

Address of Guarantor

Signature of Seller(s):  Date:

Signature of Agent or Agent's Representative  Date:

A TRUE COPY OF THIS DOCUMENT HAS BEEN RECEIVED BY THE SELLER,

Signature of Seller(s):  Date:

authority to lease, sub lease or assign  
commercial / industrial premises exclusive agency



An agreement between the Agent and the Principal ("the Agreement")  
authorising the Agent to offer the Property for lease on the following terms and conditions and to be paid the agreed fee for causing the transaction:

Lessor/Lessee Name & Address  ("The Principal")  
 ABN:   
 Tel:  Fax:  Mobile:  Email:   
 Name and Address of Licenced Real Estate and Business Agent:  
  
 ("The Agent")

**IT IS AGREED**

**1. EXCLUSIVE PERIOD**  
 The Principal authorises the Agent to  Lease  Sub Lease  Assign the  Office  Showroom  Warehouse  Factory  
 Number  Street   
 Suburb   
 Survey / Strata / Deposited / Plan / Diagram No   
 of Title Vol  Folio  ("the Property")  
 during the Exclusive Period from and including the date of this Agreement until midnight on  /  /  inclusive. ("the Authority Period")

**2. FEE FOR THE LEASE, SUB-LEASE OR ASSIGNMENT**  
**NOTICE: Fees charged by real estate agents are not fixed by law and are to be agreed between a Principal and Agent.**  
 If the Principal disputes the fee payable to the Agent on the grounds that it is unjust the Principal may refer the dispute to the Commissioner for Consumer Protection or REIWA for adjudication.  
 The following Fee has been agreed:  
 \*(i) The Fee inclusive of GST is \$  OR [ ] initials  
 \*(ii) The Fee inclusive of GST, being  % of the dollar value of all rent and outgoings payable during the term of the tenancy (Gross Rental Value).  
 (e.g., if the actual Gross Rental Value is \$  then the Fee is \$  OR [ ] initials  
 \*(iii) As set out in the attached schedule:  [ ] initials

**3. AGREEMENT TO PAY MARKETING EXPENSES**  
 The Principal \*AGREES/DOES NOT AGREE to pay to the Agent separate Marketing Expenses. If so then: *Select option*  
 \*(i) The Principal agrees to pay up to a maximum of \$  including GST towards the Marketing Expenses. If so, the sum of \$  is paid and is to be held in the Agents Trust Account and will be used to pay the charges and expenses as they arise from time to time OR [ ] initials  
 \*(ii) As per attached schedule  [ ] initials

**4. COSTS OF IDENTIFICATION OF AGENTS IN ADVERTISEMENTS**  
 (i) 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 agents principal licenced office or relevant branch office.  
 (ii) The Principal \*AGREES/DOES NOT AGREE 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*

**5. PRINCIPAL INTRODUCES TENANT** *Select option*  
 Despite anything else to the contrary the Principal and Agent agree that if, during the Authority Period, the Principal introduces the ultimate Tenant to the Property themselves, the Principal \*WILL/WILL NOT be liable to pay the Fee to the Agent. [ ] initials

**6. DISPUTES**  
 The Principal 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 Commissioner for Consumer Protection, the civil and criminal legal systems, the Western Australian Department of Commerce, the Australian Competition and Consumer Commission, and the Real Estate Institute of Western Australia (Inc.).

Signature of Principal:  Date:   
 Signature of Principal:  Date:   
 Signature of Agent or Agent's Representative:  Date:

A TRUE COPY OF THIS DOCUMENT HAS BEEN RECEIVED BY THE PRINCIPAL

Signature of the Principal:

authority to lease, sub lease or assign  
commercial / industrial premises exclusive agency



**7. LEASE DETAILS: NEW LEASE / SUB LEASE / ASSIGNMENT**

Area m<sup>2</sup>:  Availability:

Term:  Option:

Net Rental: (Including GST) \$  /m<sup>2</sup> \$  PER ANNUM NET

Rent Reviews Method (To Market / CPI / other such agreed method as stated):

Frequency of rent reviews:

Car Parking: undercover bays  open bays

Car Park Rental: undercover bays: \$  (incl. GST)  open bays: \$  (incl. GST)   
undercover bays: \$  (incl. GST)  open bays: \$  (incl. GST)

Rent Review Car Parking: method:  frequency:

Zoning:  Approved Use

Principal's Chattels / Fixtures / Fittings:

**8. OUTGOINGS:**

Variable outgoings are estimated to be \$  /m<sup>2</sup> per annum including GST where applicable.

The responsibility for payment of outgoings shall be as follows:-

|                                               | TO BE PAID FOR BY<br>(DENOTE WITH X) |                          |                                                 | TO BE PAID FOR BY<br>(DENOTE WITH X) |                          |
|-----------------------------------------------|--------------------------------------|--------------------------|-------------------------------------------------|--------------------------------------|--------------------------|
|                                               | Lessor                               | Lessee                   |                                                 | Lessor                               | Lessee                   |
| Water Drainage & Sewerage Rates               | <input type="checkbox"/>             | <input type="checkbox"/> | Lift Running and Maintenance                    | <input type="checkbox"/>             | <input type="checkbox"/> |
| Local Authority Rates                         | <input type="checkbox"/>             | <input type="checkbox"/> | Building Maintenance of a Non Structural Nature | <input type="checkbox"/>             | <input type="checkbox"/> |
| Land Tax & M.R.I.T.                           | <input type="checkbox"/>             | <input type="checkbox"/> | Grounds Maintenance                             | <input type="checkbox"/>             | <input type="checkbox"/> |
| Water Consumed                                | <input type="checkbox"/>             | <input type="checkbox"/> | Cleaning (incl. window) & Rubbish Removal       | <input type="checkbox"/>             | <input type="checkbox"/> |
| Interest Charges on Outstanding Rates & Taxes | <input type="checkbox"/>             | <input type="checkbox"/> | Toilet Requisites                               | <input type="checkbox"/>             | <input type="checkbox"/> |
| Building Insurance                            | <input type="checkbox"/>             | <input type="checkbox"/> | Strata Company Levies                           | <input type="checkbox"/>             | <input type="checkbox"/> |
| Plate Glass & Public Liability Insurance      | <input type="checkbox"/>             | <input type="checkbox"/> | Property Management Fees                        | <input type="checkbox"/>             | <input type="checkbox"/> |
| Security                                      | <input type="checkbox"/>             | <input type="checkbox"/> | Fire Services                                   | <input type="checkbox"/>             | <input type="checkbox"/> |
| Utilities (ie power, gas, telephone)          | <input type="checkbox"/>             | <input type="checkbox"/> | Other (Specify) <input type="text"/>            | <input type="checkbox"/>             | <input type="checkbox"/> |
| Common Area Lighting and Power                | <input type="checkbox"/>             | <input type="checkbox"/> | Other (Specify) <input type="text"/>            | <input type="checkbox"/>             | <input type="checkbox"/> |
| Air Conditioning Running and Maintenance      | <input type="checkbox"/>             | <input type="checkbox"/> | All Other Building Outgoings                    | <input type="checkbox"/>             | <input type="checkbox"/> |

Where the demised property represents a proportion of the building or land described in this authority, such outgoings will be apportioned in accordance with the net lettable area occupied to the total net lettable area of the building.

**9. SPECIAL CONDITIONS:** If insufficient space, see attached annexure

**10. The Agent needs to be aware of the following issues:**

**COMPETITION IN MARKETING EXPENSES 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 Expenses and it should be noted that agents may agree not to require payment of separate Marketing Expenses in agreements such as the one contained in this form.

**IF THIS AGREEMENT IS ON SEPARATE PAGES, THEN THE PRINCIPAL SHOULD SIGN THIS PAGE**

Signature of Principal:  Date:

Signature of Principal:  Date:

Signature of Agent or Agent's Representative:  Date:

**INFORMATION COLLECTION NOTICE (GENERAL VERSION)**

**PRIVACY ACT, 1988**

**AUSTRALIAN PRIVACY PRINCIPLE 5**

**Selling Agency Agreements**

The Agent (whose contact details appear on this form) collects the personal information provided in this form in compliance with the provisions of the *Privacy Act, 1988* and the Australian Privacy Principles. The Agent collects this information to enable it to provide the services and benefits the subject of this form and to enable it to conduct its business. Further details regarding the purposes for which the information is collected, the disclosures that are usually made of personal information collected by the Agent, the situations where the Agent is required to collect information by law, and any disclosure of information that may be made by the Agent overseas, can be obtained from the more detailed collection notice on the Agent's website. The Agent's privacy policy may also be accessed on that website. If the information collected in this form is not provided, the Agent may not be able to provide its services as effectively. Individuals who wish to access or correct information held about them or who wish to make any complaint regarding privacy should contact the Agent's privacy officer.

exclusive authority to act as managing agent for residential premises for short term /holiday accommodation



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## EXCLUSIVE AUTHORITY TO ACT AS MANAGING AGENT FOR RESIDENTIAL PREMISES FOR SHORT TERM /HOLIDAY ACCOMMODATION

ADDRESS OF PREMISES TO BE MANAGED:  ("the Premises")

LICENCED REAL ESTATE AND BUSINESS AGENT:  ("the Agent")

Telephone:  Facsimile:  Email:  ABN:

LESSOR:  ("the Lessor")

ADDRESS:

TELEPHONE: (W)  (H):  (Fax):  (M):

EMAIL:

POWER OF ATTORNEY OR EMERGENCY CONTACT:

The Lessor hereby instructs the Agent to act as its Managing Agent on an exclusive basis in respect of the Premises on the following conditions:

**1. PERIOD OF AGENCY:**

The period of agency shall be for the period from  /  /  until  /  /

At the conclusion of this period the Lessor AGREES/DOES NOT AGREE (cross out whichever does not apply) to extend the period of the agency until twenty-eight (28) days written notice of termination is given by either the Lessor or the Agent to the other.

**2. BOOKINGS:**

The Agent is to make all bookings and select tenants for the Premises. Rental prices are to be set by either:

- (i) the Lessor in writing, or if none then
- (ii) at the Agent's discretion, depending on the condition and size of the Premises, number of tenants and time of year.

Unless otherwise agreed the Lessor does not authorise the Premises to be rented for less than:

\$  per night during peak periods, \$  per night during mid peak periods,  
 \$  per night during off peak periods.

**3. DEPOSITS AND RENTALS:**

All deposits and rental monies are to be collected by the Agent.

**4. REPAIRS AND MAINTENANCE:**

The Agent may arrange and supervise all reasonable repairs and maintenance up to an amount of \$  per item as necessary without further reference to the Lessor. Any single amount of repairs and maintenance in excess of that amount shall be as instructed by the Lessor in writing to the Agent.

**5. DISBURSEMENTS:**

The Agent is to pay on the Lessor's behalf:

|                                                                                                                                                   |                                                                                                                                                     |
|---------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|
| Cleaning Charges after every tenant <input style="width: 40px;" type="text"/> <input style="width: 40px;" type="text"/>                           | Gas Charges <input style="width: 40px;" type="text"/> <input style="width: 40px;" type="text"/> <input style="width: 40px;" type="text"/>           |
| Cleaning Charges on a quarterly/bi-annual/ annual basis <input style="width: 40px;" type="text"/>                                                 | Gardening/Lawn mowing <input style="width: 40px;" type="text"/> <input style="width: 40px;" type="text"/> <input style="width: 40px;" type="text"/> |
| Linen Cleaning <input style="width: 40px;" type="text"/> <input style="width: 40px;" type="text"/> <input style="width: 40px;" type="text"/>      | Insurance Charges <input style="width: 40px;" type="text"/> <input style="width: 40px;" type="text"/> <input style="width: 40px;" type="text"/>     |
| Electricity Charges <input style="width: 40px;" type="text"/> <input style="width: 40px;" type="text"/> <input style="width: 40px;" type="text"/> | Rubbish Collections <input style="width: 40px;" type="text"/> <input style="width: 40px;" type="text"/> <input style="width: 40px;" type="text"/>   |
| Water Charges <input style="width: 40px;" type="text"/> <input style="width: 40px;" type="text"/> <input style="width: 40px;" type="text"/>       | Other: <input style="width: 40px;" type="text"/> <input style="width: 40px;" type="text"/> <input style="width: 40px;" type="text"/>                |



exclusive authority to act as managing agent for residential premises for short term /holiday accommodation



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**6. RESERVE FUND:**

The lessor agrees to maintain a reserve fund of \$  in the Agent's trust account to cover incidental expenses. For example, the replacement of gas bottles.

**7. REMITTANCE:**

The net balance (after deduction of the Agent's fees and expenses, Reserve Fund and disbursements) shall be remitted on a monthly basis to the Lessor

at:  or paid to the Lessor's bank at

Bank:  Branch:

BSB No:  Account No:

The Agent shall submit monthly statements to the Lessor at the following postal address:

**8. AGENT'S OBLIGATIONS**

In performing its obligations under this agreement, the Agent agrees to act with due care and diligence.

**Notice:** Fees charged by real estate agents are not fixed by law, and are to be agreed between the Lessor and the Agent.

**9. AGENT'S FEES AND EXPENSES (CHOOSE \*9.1 OR \*9.2)**

\* 9.1 The following Agent's Fees INCLUSIVE of GST have been agreed:

(a) Management Fee: (i) %  gross rental collected. **OR**  Initials

For example, if the gross rental is \$  per month then the Management Fee is \$

**OR**

(ii) \$  per month  Initials

(b) Property Condition Report: \$  OR \$  per hour up to a maximum of \$   Initials

(c) Interim Property Condition Reports: \$  per report every  months  Initials

(d) Annual Summary \$   Initials

(e) Property Inspections prior to the disbursement of deposits \$   Initials

(f) Court Attendances \$  per hour  Initials

(g) Inspections prior to the disbursement of deposits where the Agent has not been responsible for taking the booking \$  per inspection  Initials

(h) Other   Initials

And the following Agent's Expenses INCLUSIVE of GST have been agreed on a cost recovery basis:

(i) Postage and Petties up to a maximum of: \$  per   Initials

(j) Advertising up to a maximum of: \$  per   Initials

(k) ~~BAD and~~ Bank charges   Initials

**OR**

**\* 9.2 Fixed Payment**

The Lessor agrees to pay the Agent a fixed amount INCLUSIVE of GST of \$  per month.  Initials

This Fixed Payment includes all of the Agent's fees and expenses referred to item 9.1 and is paid regardless of the amount of rental income received by the Lessor or expenses incurred by the Agent.

NOTE: Delete clause 9.1 or 9.2

**10. AGREEMENT TO PAY SEPARATE MARKETING EXPENSES**

The Lessor **AGREES/DOES NOT AGREE** (cross out whichever does not apply) to pay to the agent separate marketing costs and/or expenses (advertising).

Select Option

**11. 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 **LESSOR 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

12. If the Lessor disputes the fee payable to the Agent on the grounds that it is unjust the Lessor may refer the dispute to the Department of Commerce or the Real Estate Institute of Western Australia (Inc.) for adjudication.

**13. DISPUTES**

Further, the Lessor 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 Department of Commerce, the civil and criminal legal systems, the Commissioner for Consumer Protection and the Australian Competition, Consumer Commission, and the Real Estate Institute of Western Australia (Inc.).

**14. LESSOR'S USE OF THE PROPERTY:**

The Premises will be available to the Lessor:

- a. If the Agent has not already accepted a booking from suitable tenants for the Premises; and
- b. written notification of times required are given to the Agent.

Unless otherwise advised, the following periods are for the use by the Lessor:

**15. KEYS**

Two (2) sets of house keys are to be made available to the Agent.

**16. MISCELLANEOUS INFORMATION:**

**17. AGENT INDEMNITY:**

The Lessor hereby indemnifies the Agent against any actions, suits, demands, claims, costs or other expenses brought against or made upon the Agent or incurred by the Agent arising out of this authority or the renting of the Property by the Agent except to the extent that any relevant liability of the agent has been caused or contributed to by the agent's negligence or default under this agreement.

**18. TERMINATION:**

- (1) This management authority may be terminated prior to the expiry of the period of agency referred to in Clause 1 by:
  - (a) the Lessor if the Agent fails to substantially perform its obligations under this management authority and such failure continues for twenty-eight (28) days after written notice complaining of such failure is given by the Lessor to the Agent; or
  - (b) the Agent or the Lessor giving not less than twenty-eight (28) days notice in writing to the other.
  - (c) the lessor without giving prior notice should the agent have been guilty of a fundamental breach of the terms of the Agreement.
- (2) In the event that this management authority is wrongfully terminated by the Lessor pursuant to Clause 18(1)(b), the Lessor will pay to the Agent as and by way of liquidated damages a sum equivalent to whichever of either (A) 50% of the Fixed Payment agreed in Item 9.2 which would otherwise have been payable to the Agent for the unexpired period of the agency, if clause 9.2 applies to this Agreement, or (B) 50% of the Management Fee agreed to in item 9.1(a) for bookings of the Property that have been received prior to termination but not fulfilled if clause 9.1 applies to this Agreement.
- (3) The Lessor agrees that payment of the liquidated damages under Clause 18(2) is a fair and reasonable pre-estimate of the damages likely to be sustained by the Agent if the management authority is wrongfully terminated prior to the expiration of the period of agency and reflects the real loss or damage likely to be suffered by the Agent.

initials

- (4) The Real Estate Institute of Western Australia (Inc) considers that the liquidated damages rate of 50% referred to in sub-clause 18(2) above provides an accurate calculation of the actual damages that would usually be suffered if an agreement is terminated in a manner that attracts liquidated damages. However, if an lessor considers that circumstances exist which could justify a different rate, the lessor may seek the agent's agreement to that rate.

exclusive authority to act as managing agent for residential premises for short term /holiday accommodation



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~~BAD AND~~  
19. **BANK FEES**

The Lessor hereby authorises the Agent to deduct from any moneys payable pursuant to this Agreement all Bank Fees in respect of that money and agree that the deductions be borne by the Lessor.

20. **INTERPRETATION:**

"GST" means the Goods and Services Tax introduced pursuant to A New Tax System (Goods and Services Tax) Act 1999.

"Bank Fees" means any proper account keeping fee, transaction fee or any other charge of a like nature imposed by any financial institution in respect of an account in money referred to above is held.

**A Management Fee:** includes the charge for services provided by the agent including receiving bookings and the associated deposits, collecting and disbursing rents, co-ordinating cleaners and advising the Lessor on relevant issues.

**Gross Rental:** the total dollar value of all rental revenue collected by the Agent from the tenants before any deductions.

**Property Condition Reports:** these reports describe the condition of the property and permit the Lessor to compare the status of the property over a period of time.

**Annual summary:** An annual report of all revenue and expenses for the property.

~~"BAD" means any tax or charge imposed under the Debits Tax Act 1982;~~

21. **SPECIAL INSTRUCTIONS/CONDITIONS**

(By agreement between the Agent and the Lessor.)

[Large empty rectangular box for special instructions/conditions]

Signature Of Lessor  Date:

Signature of Lessor  Date:

Signature of Agent or Agent's Representative  Date:

**A TRUE COPY OF THIS AUTHORITY HAS BEEN RECEIVED BY THE PARTIES HERETO.**

Signature Of Owner  Date:



**EXCLUSIVE MANAGEMENT AUTHORITY  
FOR RESIDENTIAL PREMISES**



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**Schedule**

|                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|----------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>ITEM 1<br/>Lessors</b>              | <p><b>Lessor 1 (Primary Contact)</b> <input style="width: 500px; height: 20px;" type="text"/></p> <p>Address: <input style="width: 500px; height: 20px;" type="text"/><br/><input style="width: 500px; height: 20px;" type="text"/></p> <p>Telephone:      Work: <input style="width: 150px; height: 20px;" type="text"/>      Home: <input style="width: 150px; height: 20px;" type="text"/><br/>                             Mobile: <input style="width: 150px; height: 20px;" type="text"/>      Facsimile: <input style="width: 150px; height: 20px;" type="text"/><br/>         E-mail: <input style="width: 500px; height: 20px;" type="text"/></p> <p><b>Lessor 1 prefers to be contacted by</b><br/> <input type="checkbox"/> email   <input type="checkbox"/> telephone   <input type="checkbox"/> post   <input type="checkbox"/> sms</p> <p><b>Lessor 2</b></p> <p>Address: <input style="width: 500px; height: 20px;" type="text"/><br/><input style="width: 500px; height: 20px;" type="text"/></p> <p>Telephone:      Work: <input style="width: 150px; height: 20px;" type="text"/>      Home: <input style="width: 150px; height: 20px;" type="text"/><br/>                             Mobile: <input style="width: 150px; height: 20px;" type="text"/>      Facsimile: <input style="width: 150px; height: 20px;" type="text"/><br/>         E-mail: <input style="width: 500px; height: 20px;" type="text"/></p> <p><b>Lessor 3</b></p> <p>Address: <input style="width: 500px; height: 20px;" type="text"/><br/><input style="width: 500px; height: 20px;" type="text"/></p> <p>Telephone:      Work: <input style="width: 150px; height: 20px;" type="text"/>      Home: <input style="width: 150px; height: 20px;" type="text"/><br/>                             Mobile: <input style="width: 150px; height: 20px;" type="text"/>      Facsimile: <input style="width: 150px; height: 20px;" type="text"/><br/>         E-mail: <input style="width: 500px; height: 20px;" type="text"/></p> <p><b>OTHER CONTACTS:</b></p> <input style="width: 500px; height: 20px;" type="text"/><br><input style="width: 500px; height: 20px;" type="text"/><br><input style="width: 500px; height: 20px;" type="text"/><br><input style="width: 500px; height: 20px;" type="text"/><br><input style="width: 500px; height: 20px;" type="text"/> |
| <b>ITEM 2<br/>Property<br/>Manager</b> | <p>Trading Name: <input style="width: 500px; height: 20px;" type="text"/></p> <p>Licensee: <input style="width: 500px; height: 20px;" type="text"/></p> <p>ABN: <input style="width: 150px; height: 20px;" type="text"/>      Triennial No: <input style="width: 150px; height: 20px;" type="text"/></p> <p>Address: <input style="width: 500px; height: 20px;" type="text"/><br/><input style="width: 500px; height: 20px;" type="text"/></p> <p>Telephone:      Business: <input style="width: 500px; height: 20px;" type="text"/><br/>                             Facsimile: <input style="width: 500px; height: 20px;" type="text"/></p> <p>E-mail: <input style="width: 500px; height: 20px;" type="text"/></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>ITEM 3<br/>Premises</b>             | <p>Premises Address: <input style="width: 500px; height: 20px;" type="text"/><br/><input style="width: 500px; height: 20px;" type="text"/></p> <p>Local Council: <input style="width: 500px; height: 20px;" type="text"/></p> <p>Lot No: <input style="width: 50px; height: 20px;" type="text"/> on Survey/Strata/Deposited/Plan/Diagram <input style="width: 300px; height: 20px;" type="text"/></p> <p>Volume/Folio <input style="width: 500px; height: 20px;" type="text"/></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |

For extra lessors see annexure schedule page 9 & 10

INITIALS:    **Property Manager**     **Lessor 1**     **Lessor 2**     **Lessor 3**

|                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
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| <b>ITEM 4<br/>Strata</b>                                                                              | Strata Title: <input type="checkbox"/> Yes <input type="checkbox"/> No<br>Strata Manager <input type="text"/> Telephone <input type="text"/><br>Address <input type="text"/><br>Registered By-Laws (Notification) Yes /No <input type="checkbox"/> If Yes then see attachment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>ITEM 5<br/>Rental</b>                                                                              | Rent range: \$ <input type="text"/> to \$ <input type="text"/><br>per *week / fortnight / calendar month (for each tenancy) *Delete whichever does not apply<br>Term of lease preferred Minimum Term <input type="text"/><br>Maximum Term <input type="text"/> Refer to clause 5.1 Terms and Conditions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>ITEM 6<br/>Term of Management Agreement</b>                                                        | The Term of this Agreement is from <input type="text"/> / <input type="text"/> / <input type="text"/> until <input type="text"/> / <input type="text"/> / <input type="text"/><br>At the conclusion of the Term the Lessor <b>AGREES / DOES NOT AGREE</b> (cross out whichever does not apply) to extend the Term until twenty-eight (28) days written notice of termination is given by either the Lessor or the Property Manager to the other.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Select Option<br><b>Lessors Initials</b><br>1 <input type="text"/> 2 <input type="text"/> 3 <input type="text"/>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>ITEM 7<br/>Property Manager's Fees for Services</b><br><br>(GST inclusive unless otherwise stated) | Notice: Fees charged by the Property Manager are not fixed by law, and are to be agreed between the Lessor and the Property Manager.<br><b>7.1 Costs of identification of Property Managers in advertisements</b><br>(a) Pursuant to clause 8 of the REIWA Members' Code of Practice, REIWA members who are Property Managers are required in all advertisements to clearly show the Property Manager's full trading name, together with the telephone number of the Property Manager's principal licensed office or relevant branch office.<br>(b) The Lessor <b>AGREES / DOES NOT AGREE</b> (cross out whichever does not apply) to pay for the advertising costs otherwise payable under this agreement associated with the Property Manager complying with the requirements of clause 8 of the REIWA Members' Code of Practice.<br><b>7.2 Marketing and Advertising Expenses</b><br>(a) The Lessor <b>AGREES / DOES NOT AGREE</b> (cross out whichever does not apply) to pay to the Property Manager separate marketing costs and/or expenses.<br>(b) The Property Manager is authorised on each occasion, when letting is required to advertise the Premises for letting, at the Lessors expense:<br>(i) on the internet up to a maximum of \$ <input type="text"/><br>(ii) in print media up to a maximum of \$ <input type="text"/><br>(iii) in other marketing up to a maximum of \$ <input type="text"/><br><b>7.3 The following Property Manager's Fees have been agreed:</b><br>(a) <b>Leasing Fee</b><br>For each new tenancy<br>*(i) The Leasing Fee is <input type="text"/> % of the annual Gross Rental of the tenancy.<br>For example if the Gross Rental is \$ <input type="text"/><br>then the Leasing Fee will be \$ <input type="text"/><br>OR *(ii) The fixed Leasing Fee for each new tenancy will be \$ <input type="text"/><br>OR <b>*(iii) The Leasing Fee is the equivalent of <input type="text"/> weeks rent plus GST.</b><br>For example <input type="text"/> weeks rent at \$ <input type="text"/> per week is \$ <input type="text"/><br>plus GST \$ <input type="text"/> is a Leasing Fee of \$ <input type="text"/><br>*Cross out whichever does not apply<br>(b) <b>Management Fee</b><br>(i) The Management Fee is <input type="text"/> % of Gross Collections<br>For example if the Gross Collections are \$ <input type="text"/><br>then the Management Fee is \$ <input type="text"/><br>OR<br>(ii) A fixed Management Fee of \$ <input type="text"/> per month/annum<br>(cross out whichever does not apply)<br>(c) <b>Property Condition Report Fee at the commencement of each new tenancy</b><br>\$ <input type="text"/> or<br>\$ <input type="text"/> per hour up to a maximum of \$ <input type="text"/><br>(cross out whichever does not apply) | Select Option<br><input type="text"/> <input type="text"/> <input type="text"/><br>Select Option<br><input type="text"/> <input type="text"/> <input type="text"/><br><input type="text"/> <input type="text"/> <input type="text"/><br><input type="text"/> <input type="text"/> <input type="text"/><br><input type="text"/> <input type="text"/> <input type="text"/><br><input type="text"/> <input type="text"/> <input type="text"/><br><input type="text"/> <input type="text"/> <input type="text"/><br><input type="text"/> <input type="text"/> <input type="text"/><br><input type="text"/> <input type="text"/> <input type="text"/><br><input type="text"/> <input type="text"/> <input type="text"/><br><input type="text"/> <input type="text"/> <input type="text"/><br><input type="text"/> <input type="text"/> <input type="text"/><br><input type="text"/> <input type="text"/> <input type="text"/> |

INITIALS: Property Manager  Lessor 1  Lessor 2  Lessor 3





|                                                                                                                                                                                                                                                  | <b>7.4</b> If Item 7 is not applicable and an Annexure is attached to this Authority, then the fees set out in that Annexure will apply.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Lessors Initials<br>1      2      3<br><input type="text"/> <input type="text"/> <input type="text"/> |                                        |                                                        |                                                           |                                                       |                                                |                                       |                                            |                                   |                          |                                                                   |                                              |                          |                                                                             |                                       |                          |  |                                          |                          |                     |  |  |  |  |  |                    |  |  |  |  |  |                    |  |  |  |  |  |
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| <b>Annual Review of Property Managers Fees</b>                                                                                                                                                                                                   | <b>7.5</b> All of the above agreed fees, excluding items at cost, in items 7.3 and 7.4 will be reviewed on the <input type="text"/> day of <input type="text"/> each year of the Term or any extension or renewal by an increase of <input type="text"/> % or if left blank, see clause 6.6.<br><br>For example if a Property Manager Fee was \$10 and a 10% increase applied then the new fee would be \$11.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | <input type="text"/> <input type="text"/> <input type="text"/>                                        |                                        |                                                        |                                                           |                                                       |                                                |                                       |                                            |                                   |                          |                                                                   |                                              |                          |                                                                             |                                       |                          |  |                                          |                          |                     |  |  |  |  |  |                    |  |  |  |  |  |                    |  |  |  |  |  |
| <b>Notice:</b> If the Lessor disputes the Property Manager's Fees payable to the Property Manager on the grounds that they are unjust the Lessor may refer the dispute to the Commissioner for Consumer Protection or to REIWA for adjudication. |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                       |                                        |                                                        |                                                           |                                                       |                                                |                                       |                                            |                                   |                          |                                                                   |                                              |                          |                                                                             |                                       |                          |  |                                          |                          |                     |  |  |  |  |  |                    |  |  |  |  |  |                    |  |  |  |  |  |
| <b>ITEM 8 Outgoings</b>                                                                                                                                                                                                                          | The Lessor hereby authorises the Property Manager to make payments on its behalf with regard to the following Outgoings: <table border="0" style="width: 100%;"> <tr> <td><input type="checkbox"/> Council Rates</td> <td><input type="checkbox"/> Landlord Protection Insurance</td> <td><input type="checkbox"/> Smoke Alarm / RCD Annual Service</td> </tr> <tr> <td><input type="checkbox"/> Water Rates (see clause 4.1)</td> <td><input type="checkbox"/> Gardening/Lawn Mowing</td> <td><input type="checkbox"/> Pool Service</td> </tr> <tr> <td><input type="checkbox"/> Water Consumption</td> <td><input type="checkbox"/> Land Tax</td> <td><input type="checkbox"/></td> </tr> <tr> <td><input type="checkbox"/> Strata Levies (includes gas/electricity)</td> <td><input type="checkbox"/> Repairs/Maintenance</td> <td><input type="checkbox"/></td> </tr> <tr> <td><input type="checkbox"/> Building and Contents Insurance (including Strata)</td> <td><input type="checkbox"/> Pest Control</td> <td><input type="checkbox"/></td> </tr> <tr> <td></td> <td><input type="checkbox"/> Gas/Electricity</td> <td><input type="checkbox"/></td> </tr> </table> |                                                                                                       | <input type="checkbox"/> Council Rates | <input type="checkbox"/> Landlord Protection Insurance | <input type="checkbox"/> Smoke Alarm / RCD Annual Service | <input type="checkbox"/> Water Rates (see clause 4.1) | <input type="checkbox"/> Gardening/Lawn Mowing | <input type="checkbox"/> Pool Service | <input type="checkbox"/> Water Consumption | <input type="checkbox"/> Land Tax | <input type="checkbox"/> | <input type="checkbox"/> Strata Levies (includes gas/electricity) | <input type="checkbox"/> Repairs/Maintenance | <input type="checkbox"/> | <input type="checkbox"/> Building and Contents Insurance (including Strata) | <input type="checkbox"/> Pest Control | <input type="checkbox"/> |  | <input type="checkbox"/> Gas/Electricity | <input type="checkbox"/> |                     |  |  |  |  |  |                    |  |  |  |  |  |                    |  |  |  |  |  |
| <input type="checkbox"/> Council Rates                                                                                                                                                                                                           | <input type="checkbox"/> Landlord Protection Insurance                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | <input type="checkbox"/> Smoke Alarm / RCD Annual Service                                             |                                        |                                                        |                                                           |                                                       |                                                |                                       |                                            |                                   |                          |                                                                   |                                              |                          |                                                                             |                                       |                          |  |                                          |                          |                     |  |  |  |  |  |                    |  |  |  |  |  |                    |  |  |  |  |  |
| <input type="checkbox"/> Water Rates (see clause 4.1)                                                                                                                                                                                            | <input type="checkbox"/> Gardening/Lawn Mowing                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <input type="checkbox"/> Pool Service                                                                 |                                        |                                                        |                                                           |                                                       |                                                |                                       |                                            |                                   |                          |                                                                   |                                              |                          |                                                                             |                                       |                          |  |                                          |                          |                     |  |  |  |  |  |                    |  |  |  |  |  |                    |  |  |  |  |  |
| <input type="checkbox"/> Water Consumption                                                                                                                                                                                                       | <input type="checkbox"/> Land Tax                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | <input type="checkbox"/>                                                                              |                                        |                                                        |                                                           |                                                       |                                                |                                       |                                            |                                   |                          |                                                                   |                                              |                          |                                                                             |                                       |                          |  |                                          |                          |                     |  |  |  |  |  |                    |  |  |  |  |  |                    |  |  |  |  |  |
| <input type="checkbox"/> Strata Levies (includes gas/electricity)                                                                                                                                                                                | <input type="checkbox"/> Repairs/Maintenance                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <input type="checkbox"/>                                                                              |                                        |                                                        |                                                           |                                                       |                                                |                                       |                                            |                                   |                          |                                                                   |                                              |                          |                                                                             |                                       |                          |  |                                          |                          |                     |  |  |  |  |  |                    |  |  |  |  |  |                    |  |  |  |  |  |
| <input type="checkbox"/> Building and Contents Insurance (including Strata)                                                                                                                                                                      | <input type="checkbox"/> Pest Control                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <input type="checkbox"/>                                                                              |                                        |                                                        |                                                           |                                                       |                                                |                                       |                                            |                                   |                          |                                                                   |                                              |                          |                                                                             |                                       |                          |  |                                          |                          |                     |  |  |  |  |  |                    |  |  |  |  |  |                    |  |  |  |  |  |
|                                                                                                                                                                                                                                                  | <input type="checkbox"/> Gas/Electricity                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <input type="checkbox"/>                                                                              |                                        |                                                        |                                                           |                                                       |                                                |                                       |                                            |                                   |                          |                                                                   |                                              |                          |                                                                             |                                       |                          |  |                                          |                          |                     |  |  |  |  |  |                    |  |  |  |  |  |                    |  |  |  |  |  |
| <b>ITEM 9 Maintenance Limit</b>                                                                                                                                                                                                                  | Maximum expenditure (inclusive of GST) allowed in any one instance for repairs and maintenance (or trade quotes) without the Lessor's specific approval (refer to clause 5.3.7 of the Terms and Conditions): \$ <input type="text"/><br>Preferred maintenance contactors:<br><input type="text"/> Tel: <input type="text"/><br><input type="text"/> Tel: <input type="text"/>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                       |                                        |                                                        |                                                           |                                                       |                                                |                                       |                                            |                                   |                          |                                                                   |                                              |                          |                                                                             |                                       |                          |  |                                          |                          |                     |  |  |  |  |  |                    |  |  |  |  |  |                    |  |  |  |  |  |
| <b>ITEM 10 Water Consumption</b>                                                                                                                                                                                                                 | The Lessor agrees to contribute <input type="text"/> %, up to a maximum of \$ <input type="text"/> towards the cost of water consumed annually at the Premises.<br>The Lessor acknowledges that the relevant authority may from time to time be required to perform a meter reading.<br>The Lessor agrees to pay for any cost associated with that water meter reading.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                       |                                        |                                                        |                                                           |                                                       |                                                |                                       |                                            |                                   |                          |                                                                   |                                              |                          |                                                                             |                                       |                          |  |                                          |                          |                     |  |  |  |  |  |                    |  |  |  |  |  |                    |  |  |  |  |  |
| <b>ITEM 11 Payment to Lessor</b>                                                                                                                                                                                                                 | Funds to be paid to Lessor: <input type="checkbox"/> Monthly <input type="checkbox"/> Other <input type="text"/><br>Payment method:<br><input type="checkbox"/> Bank account<br>A/C Name: <input type="text"/> Institution <input type="text"/><br>BSB: <input type="text"/> Account No: <input type="text"/><br><input type="checkbox"/> Other <input type="text"/><br><b>STATEMENTS</b> Statements are to be sent to: Email: <input type="checkbox"/> Yes <input type="checkbox"/> No<br><input type="text"/>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                       |                                        |                                                        |                                                           |                                                       |                                                |                                       |                                            |                                   |                          |                                                                   |                                              |                          |                                                                             |                                       |                          |  |                                          |                          |                     |  |  |  |  |  |                    |  |  |  |  |  |                    |  |  |  |  |  |
| <b>ITEM 12 Insurance Cover</b>                                                                                                                                                                                                                   | Pursuant to Condition 4.2.4 it is the Lessor's responsibility to adequately insure the Premises at the Lessor's expense throughout the period of this agency. <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>Perils Insured</th> <th>Company</th> <th>Policy No.</th> <th>Amount</th> <th>Excess</th> <th>Due Date</th> </tr> </thead> <tbody> <tr> <td>Public Liability</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Workers Compensation</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Landlord Protection</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Building Insurance</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Contents Insurance</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>                                                                                                                                                                                                                                                                                                          |                                                                                                       | Perils Insured                         | Company                                                | Policy No.                                                | Amount                                                | Excess                                         | Due Date                              | Public Liability                           |                                   |                          |                                                                   |                                              |                          | Workers Compensation                                                        |                                       |                          |  |                                          |                          | Landlord Protection |  |  |  |  |  | Building Insurance |  |  |  |  |  | Contents Insurance |  |  |  |  |  |
| Perils Insured                                                                                                                                                                                                                                   | Company                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Policy No.                                                                                            | Amount                                 | Excess                                                 | Due Date                                                  |                                                       |                                                |                                       |                                            |                                   |                          |                                                                   |                                              |                          |                                                                             |                                       |                          |  |                                          |                          |                     |  |  |  |  |  |                    |  |  |  |  |  |                    |  |  |  |  |  |
| Public Liability                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                       |                                        |                                                        |                                                           |                                                       |                                                |                                       |                                            |                                   |                          |                                                                   |                                              |                          |                                                                             |                                       |                          |  |                                          |                          |                     |  |  |  |  |  |                    |  |  |  |  |  |                    |  |  |  |  |  |
| Workers Compensation                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                       |                                        |                                                        |                                                           |                                                       |                                                |                                       |                                            |                                   |                          |                                                                   |                                              |                          |                                                                             |                                       |                          |  |                                          |                          |                     |  |  |  |  |  |                    |  |  |  |  |  |                    |  |  |  |  |  |
| Landlord Protection                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                       |                                        |                                                        |                                                           |                                                       |                                                |                                       |                                            |                                   |                          |                                                                   |                                              |                          |                                                                             |                                       |                          |  |                                          |                          |                     |  |  |  |  |  |                    |  |  |  |  |  |                    |  |  |  |  |  |
| Building Insurance                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                       |                                        |                                                        |                                                           |                                                       |                                                |                                       |                                            |                                   |                          |                                                                   |                                              |                          |                                                                             |                                       |                          |  |                                          |                          |                     |  |  |  |  |  |                    |  |  |  |  |  |                    |  |  |  |  |  |
| Contents Insurance                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                       |                                        |                                                        |                                                           |                                                       |                                                |                                       |                                            |                                   |                          |                                                                   |                                              |                          |                                                                             |                                       |                          |  |                                          |                          |                     |  |  |  |  |  |                    |  |  |  |  |  |                    |  |  |  |  |  |
| <b>ITEM 13 Additional Conditions</b>                                                                                                                                                                                                             | <input type="checkbox"/> Not Applicable <input type="checkbox"/> As detailed below <input type="checkbox"/> See annexure(s)<br><input type="text"/><br><input type="text"/><br><input type="text"/>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                       |                                        |                                                        |                                                           |                                                       |                                                |                                       |                                            |                                   |                          |                                                                   |                                              |                          |                                                                             |                                       |                          |  |                                          |                          |                     |  |  |  |  |  |                    |  |  |  |  |  |                    |  |  |  |  |  |

INITIALS: **Property Manager**  **Lessor 1**  **Lessor 2**  **Lessor 3**

# EXCLUSIVE MANAGEMENT AUTHORITY FOR RESIDENTIAL PREMISES



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## Terms and Conditions APPROVED BY THE REAL ESTATE INSTITUTE OF WESTERN AUSTRALIA INCORPORATED FOR THE EXCLUSIVE USE OF REIWA MEMBERS

|                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                             |   |   |   |                      |                      |                      |
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| <p><b>1 Appointment</b></p>                    | <p>The Lessor appoints and authorises the Property Manager as the Lessors Property Manager on a sole exclusive basis to provide the Services in respect of the Premises for the Term in accordance with the terms and conditions of this Agreement and the Property Manager accepts the appointment.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                             |   |   |   |                      |                      |                      |
| <p><b>2 Definitions and Interpretation</b></p> | <p>In this Agreement, unless a contrary intention appears:</p> <p>"Act" means the Residential Tenancies Act 1987 and the Residential Tenancies Regulations 1989;</p> <p>"Administration Fee" means a fee charged for administration services;</p> <p>"Annual Financial Summary" means an annual report of all revenue and expenses for the Premises that have been received or paid by the Property Manager;</p> <p>"Attendance Fee" means a fee for attendances at the Premises for purposes other than routine inspections;</p> <p>"Bank Fees" means any proper account keeping fee, transaction fee or any other charge of a like nature imposed by any bank or financial institution in respect of an account in which money is held including dishonoured cheque fees;</p> <p>"Essential Services" means electricity; gas; a functioning refrigerator but only if supplied with the premises; sewerage, septic tank, or other waste water management treatment; and water, including the supply of hot water.</p> <p>"Expenses" means the items of cost specified in Item 7;</p> <p>"Gross Collections" means the total dollar value of all monies collected by the Property Manager or Lessor from the tenants or other sources;</p> <p>"Gross Rental" means the total dollar value of all rental revenue collected or to be collected by the Property Manager from the tenants before any deductions;</p> <p>"GST" means any goods and services tax or similar or comparable tax imposed by and defined in the GST Law;</p> <p>"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;</p> <p>"Lease Renewal Fee" means a fee charged for negotiating the terms and conditions of a new lease with the same Tenant.</p> <p>"Leasing Fee" means a charge specified in Item 7.3(a) by the Property Manager to the Lessor for services in connection with finding a tenant, including but not limited to arranging advertising, interviewing and checking the credentials of prospective tenants;</p> <p>"Lessor" means the person or organisation specified in Item 1 and includes any executor, administrator, attorney, director or any other person authorised to act on behalf of the Lessor;</p> <p>"Maintenance Limit" means the amount specified in Item 9;</p> <p>"Management Fee" means the charge and fee referred to in Item 7.3(b);</p> <p>"Outgoings" means the payments specified in Item 8;</p> <p>"Premises" means the property specified in Item 3;</p> <p>"Primary Contact" means the person who the Property Manager will contact on all matters and receive instructions from. The Primary Contact will be responsible for relaying all matters to other persons named as Lessor or other persons with an interest in the Premises;</p> <p>"Property Manager" means the licensed Real Estate Agent specified in Item 2;</p> <p>"Property Manager's Fees" means all of the amounts specified in Item 7;</p> <p>"Property Condition Reports" describe the condition of the Premises;</p> <p>"RCD" means Residual Current Device;</p> <p>"Rent Negotiation Fee" means a fee charged for negotiating a new rent that is not associated with a new lease or a fixed increase rent that is incorporated into a lease.</p> <p>"Rental" means the amount charged to a tenant for rental of the Premises;</p> <p>"Rent Review Fee" a fee charged for a review of rent during the term of a periodical or fixed term tenancy that does not amount to a renegotiated Residential Tenancy Agreement or a fixed increase of rent. Examples of when this fee applies are CPI rent reviews and market rent reviews. It does not apply to rental increases where the dollar amount or percentage of the increase is specified within the Residential Tenancy Agreement.</p> <p>"Routine Inspection" is used in the same context as section 46(2)(6) of the Act;</p> <p>"Routine Inspection Fee" means a fee for a Routine Inspection;</p> <p>"Security Bond" has the same meaning as in the Act;</p> <p>"Services" means the services specified in Item 7;</p> <p>"Tenant Enquiry" means an enquiry to determine if a prospective tenant is listed on any relevant database;</p> <p>"Tenant Enquiry Fee" means the cost associated with the Property Manager making a Tenant Enquiry;</p> <p>"Term" means the period specified in Item 6 or any extension;</p> <p>The singular includes the plural and vice versa and references to natural persons include corporations and vice versa.<br/>Where more than one person is a party to this Agreement, the terms and conditions to be performed by them bind each party jointly and severally. A reference to an Item is a reference to that Item in the Schedule.</p> |                                                                                                                                                                                                             |   |   |   |                      |                      |                      |
| <p><b>3 Termination</b></p>                    | <p>3.1 This Agreement may be terminated by:</p> <p>3.1.1 the Lessor if the Property Manager fails to substantially perform its obligations under this Agreement and such failure continues for twenty eight (28) days after a written notice of default is given by the Lessor to the Property Manager; or</p> <p>3.1.2 the Lessor without giving prior written notice if the Property Manager is found guilty of an offence that is a fundamental breach of the terms of this Agreement; or</p> <p>3.1.3 the Property Manager giving not less than twenty eight (28) days' notice in writing to the Lessor if the Lessor has given instructions that are unlawful or a breach of any Act or Code or are unreasonable."</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | <p><b>Lessors Initials</b></p> <table border="1"> <tr> <td>1</td> <td>2</td> <td>3</td> </tr> <tr> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> </table> | 1 | 2 | 3 | <input type="text"/> | <input type="text"/> | <input type="text"/> |
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INITIALS: Property Manager  Lessor 1  Lessor 2  Lessor 3



*Would otherwise be payable to the Agent*

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| <p><b>3 Termination (continued)</b></p>                  | <p>3.2 In the event that this Agreement is wrongfully terminated by the Lessor during the Term (including a sale of the Premises before the end of the Term), the Lessor will pay to the Agent as and by way of liquidated damages a sum equivalent to fifty percent (50%) of the Management Fee which was last payable to the Property Manager or if none was payable then the Management Fee based on the lowest rent range set out in Item 5, for the unexpired period of the Term. The Lessor agrees that payment of the liquidated damages in this clause is a fair and reasonable pre-estimate of the damages likely to be sustained by the Property Manager if this Agreement is terminated prior to the expiry of the Term and reflects the real loss or damage likely to be suffered by the Property Manager.</p> <p>3.3 The Real Estate Institute of Western Australia (Inc) considers that the liquidated damages rate of 50% referred to in sub-clause 3.2 above provides an accurate calculation of the actual damages that would usually be suffered if an agreement is terminated in a manner that attracts liquidated damages.</p>                                                                                                                                                                                                                                                                                                                                                                              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| <p><b>4 Lessor's Obligations and Acknowledgments</b></p> | <p><b>Lessor Obligations</b></p> <p>4.1 The Lessor acknowledges that it is a requirement of the relevant authority that supply of water remains the responsibility of the Lessor and that accounts will be issued in the Lessor's name. Payment for consumption is made by the Lessor and invoiced and reimbursed by the tenant as appropriate.</p> <p>4.2 The Lessor warrants that:</p> <p>4.2.1 the Lessor is the registered proprietor of the Premises or has the written authority of the registered proprietor to enter into this Agreement and has the legal capacity to enter into this Agreement;</p> <p>4.2.2 all information and/or descriptions provided to the Property Manager in relation to the Premises are true and correct and the Lessor undertakes to promptly advise the Property Manager of any change to that information;</p> <p>4.2.3 the whole of the Premises comprise residential premises and is to be used for residential accommodation;</p> <p>4.2.4 the Lessor holds appropriate insurance in respect of the Premises as specified in Item 12 and will provide evidence of such cover to the Property Manager within seven (7) days from the date of execution of this Agreement and will maintain such insurance during the Term;</p> <p>4.2.5 there is no other residential management agreement relating to the Premises;</p> <p>4.2.6 the Property Manager will be informed in writing of any changes to the ownership of the Premises;</p> <p>4.2.7 the Premises comply with the Building Amendment Regulations 2009 for smoke alarms and have at least two RCDs fitted to protect the power points and lighting final sub circuits to comply with the Electricity Regulations 1947;</p> <p>4.2.8 if the Lessor is notified of the need for an urgent repair to the premises as to which section 43 of the Act applies, the Lessor will ensure that the necessary repairs are carried out by a suitable repairer as soon as practicable;</p> <p>4.2.9 the minimum standards of security will be provided and maintained at the Premises as prescribed in the Act</p> <p>4.3 The Lessor acknowledges its obligation under the Residential Tenancies Act 1987 to comply with all building, health and safety laws in so far as they apply to the Premises.</p> <p><b>Lessor Indemnities</b></p> <p>4.4 The Lessor indemnifies and will keep indemnified the Property Manager against all liability or loss arising directly or indirectly from, and any costs, charges, late fees and expenses (including, but not limited to any loss of Property Managers Fees and Expenses) incurred in connection with or attributable to:</p> <p>4.4.1 any breach of this Agreement by the Lessor;</p> <p>4.4.2 the failure by the Lessor to provide adequate instructions to the Property Manager in respect of any matter arising under this Agreement or to provide adequate monies to the Property Manager to enable the Property Manager to properly carry out the Property Manager's obligations under this Agreement;</p> <p>4.4.3 any loss or damage whatsoever to the Premises or to any goods and chattels on the Premises, or injury to any person accessing the Premises;</p> <p>except to the extent such liability is attributable to the negligence or default of the Property Manager.</p> <p>4.5 The indemnities contained in clause 4.4 survive the expiration or termination of this Agreement.</p> <p><b>Lessor Acknowledgments</b></p> <p>4.6 The Lessor acknowledges that:</p> <p>4.6.1 the Property Manager may receive an offer of or receive a commission, fee or reward from another party in regard to the performance of the duties or functions to be carried out by the Property Manager and the Lessor consents to the Property Manager receiving such commissions, fees or rewards as notified by the Property Manager in writing;</p> <p>4.6.2 the Property Manager's duties and obligations are limited to those contained in this Agreement or as otherwise agreed in writing by the parties;</p> <p>4.6.3 the Property Manager gives no warranty or other assurance as to the credit worthiness or financial status of any tenant;</p> <p>4.6.4 the Property Manager is expressly authorised by the Lessor to carry out the duties and obligations attributed to the Property Manager pursuant to this Agreement including, but not limited to, authority to carry out the activities outlined in clause 5 below;</p> <p>4.6.5 the Property Manager is expressly authorised to deduct from the Property Manager's Trust Account any monies due and payable by the Lessor to the Property Manager pursuant to this Agreement including but not limited to, the Property Manager's Fees, the Expenses, the Outgoings and any payments due under clause 3, from any monies received by the Property Manager for and on behalf of the Lessor;</p> <p>4.6.6 the Property Manager is not responsible for any damage caused by any tenant,</p> <p>4.6.7 the Lessor is responsible for the payment to service providers of repairs and maintenance that the Property Manager has issued instructions to on the Lessor's behalf.</p> <p>4.6.8 It is the Lessor's obligation to ensure smoke alarms and at least two RCDs are installed in the Premises and maintained in accordance with the statutory regulations.</p> <p>4.6.9 It is the Lessor's obligation to ensure that action is taken as soon as practicable to organise urgent repairs to which section 43 of the Act apply.</p> <p>4.6.10 It is the Lessor's obligation to ensure that the Premises have the minimum level of security as prescribed in the Act.</p> <p>4.6.11 The Property Manager may transfer, sell, assign the Property Manager's rights under this Agreement to a third party with the written consent of the Lessor provided that (if it is an assignment) the third party agrees to comply with terms and conditions of this Agreement.</p> |                                                                                                                                                                                                             |   |   |   |                      |                      |                      |
| <p><b>5 Property Manager's Obligations</b></p>           | <p><b>Property Letting</b></p> <p>5.1 Unless otherwise specified in the Schedule, the Property Manager will:</p> <p>5.1.1 use reasonable endeavors to let or re-let the Premises (as applicable) as and when they become vacant, at the Rental range and for the preferred term specified in Item 5, or at such other rental as the Lessor from time to time may nominate in consultation with the Property Manager but in accordance with market conditions;</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           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INITIALS: **Property Manager**  **Lessor 1**  **Lessor 2**  **Lessor 3**

**5 Property Manager's Obligations**  
(continued)

- 5.1.2 at the Lessor's expense, advertise the Premises to let in an appropriate manner;
  - 5.1.3 interview prospective tenants and conduct any necessary checks (as determined by the Property Manager);
  - 5.1.4 negotiate the terms and conditions of tenancy with any prospective tenants;
  - 5.1.5 at the Lessor's expense, prepare a residential tenancy agreement, and execute such an agreement and any other documents which may be required under the Act on behalf of the Lessor.
- 5.2 Where it is agreed that certain letting obligations will not apply to this Agreement, the corresponding sub-clause of clause 5.1 will not apply.

**Property Management**

- 5.3 Unless specified otherwise in the Schedule, the Property Manager will:
- 5.3.1 negotiate and sign leases on behalf of the Lessor;
  - 5.3.2 use reasonable endeavors to collect the Gross Rental and other monies (if any) from the tenants;
  - 5.3.3 pay Outgoings from monies collected by the Property Manager, upon receiving accounts from or for the Lessor. Subject to the Property Manager holding sufficient funds in trust the Property Manager is authorised to pay the Property Manager's Fees, Expenses and the Outgoings listed in Items 7, 8, 9 and 10 relating to the Premises on behalf of the Lessor;
  - 5.3.4 account and render statements in writing to the Lessor for all monies received, paid or appropriated and to pay all remaining monies due to the Lessor as specified in Item 11;
  - 5.3.5 inspect the Premises from time to time when deemed necessary by the Property Manager and, if requested by the Lessor, will report in writing to the Lessor on the general condition of the Premises;
  - 5.3.6 advise the Lessor of any major damage to or accident occurring in or on the Premises as soon as reasonably practicable upon the Property Manager becoming aware of the same;
  - 5.3.7 If the Property Manager is unable to contact the Lessor, or if the Property Manager and the Lessor agree then despite clause 5.3.6, at the expense of the Lessor, affect any maintenance or repairs to the Premises whatsoever (without regard to the limits specified in item 9 of the schedule) where, in the reasonable opinion of the Property Manager, such maintenance or repair relates to:
    - (a) repairs necessary for the supply or restoration of an essential service being electricity, gas, functioning refrigerator, sewerage, septic tank or other waste water management treatment, and water including the supply of hot water; and/ or
    - (b) urgent repairs to avoid exposing a person to the risk of injury, exposing property to damage or causing the tenant undue hardship or inconvenience,
 provided that the Property Manager will use reasonable endeavours to contact and gain the approval of the Lessor to engage such maintenance and repairs prior to authorising such expenditure;
  - 5.3.8 at the expense of the Lessor, arrange for any device or keys to the Premises to be provided to the Tenant for the purposes of entering the Premises;
  - 5.3.9 assist the Lessor in relation to insurance claims and other insurance matters in respect of the Premises as and when required to do so;
  - 5.3.10 advise the Lessor if the Premises are or are to become vacant as soon as practicable after the Property Manager becomes aware of it and will seek the Lessor's instructions as to re-letting;
  - 5.3.11 advise the Lessor as and when tenancies become due for renewal and/or expiry;
  - 5.3.12 negotiate the terms and conditions of extensions or renewals of residential tenancy agreements with tenants;
  - 5.3.13 assess and determine any application for assignment or subletting of a tenancy;
  - 5.3.14 use reasonable endeavors to advise the Lessor of any known breach of terms of any residential tenancy agreement as soon as reasonably practicable upon the Property Manager becoming aware of it;
  - 5.3.15 complete, sign on behalf of the Lessor and serve all application forms and notices required which may be served by the Property Manager on behalf of the Lessor under the Act;
  - 5.3.16 at the Lessor's expense, present the Lessor's cases before the Magistrates Court or any other relevant authority on behalf of the Lessor;
  - 5.3.17 insert the date on the form "Authorisation for an Agent to Present a Party's Case";
  - 5.3.18 attend at the Premises as reasonably required and complete and serve any documentation, as required under the Act;
  - 5.3.19 receive, lodge and disburse from the Security Bond and pet bond (if applicable) in accordance with the lease and the Act;
  - 5.3.20 make Tenant Enquiries before any letting.
- 5.4 In performing its obligations under this Agreement, the Property Manager agrees to act with due skill, care and diligence.
- 5.5 Where it is agreed that certain management obligations will not apply to this Agreement, the relevant sub-clause of clause 5.3 will not apply.

**6 Property Managers Fees and Expenses**

- 6.1 In consideration of the Property Manager performing its obligations under this Agreement, the Lessor must pay the Property Manager the Property Manager's Fees, and reimburse the Property Manager for the Expenses and the Outgoings (if any) pursuant to this Agreement including, but not limited to, those specified in Items 7, 8, 9 and 10. They are payable immediately upon the entitlement arising.
- In the event that the rental is paid by a third party including but not limited to an insurer, the Management Fee is payable on the portion of that rental that relates to the Term of this Management Agreement including any extension thereof, regardless of whether the payment is made to the Lessor, Property Manager or to a third party

**Payment of Property Manager's Fees**

- 6.2 Subject to clause 6.4, where the Property Manager introduces or otherwise procures for the Lessor a tenant and the Lessor then enters into an agreement to let the Premises to that tenant or to that tenant's nominee, or if the Premises are let by any other means during the Term the Lessor must at that time pay to the Property Manager the Property Manager's Fees for letting the Premises.

**Payment of Expenses**

- 6.3 The Lessor agrees that if any residential tenancy agreement between the Lessor and a tenant introduced by the Property Manager pursuant to this Agreement is terminated or lapses by reason of the Lessor's breach or default or the Lessor being unwilling to proceed with the residential tenancy agreement, then such conduct by the Lessor will be a breach of the Lessor's obligations under this Agreement. In such circumstances the Lessor will, in addition to any other monies payable under this Agreement, be liable to pay to the Property Manager as liquidated damages an amount equal to 50% of the Property Managers Fees for letting and management which would have been payable if the residential tenancy agreement had not lapsed or terminated. The parties acknowledge that this is a genuine pre-estimate of the loss the Property Manager would incur in relation to such a breach.

INITIALS: Property Manager  Lessor 1  Lessor 2  Lessor 3



|                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>6 Property Managers Fees and Expenses</b><br/>(continued)</p>                            | <p>6.4 The Lessor will not be required to pay the Property Manager's Fees to the Property Manager where, during the period in which the Premises are let, this Agreement has been properly terminated.</p> <p>6.5 The Lessor must pay to the Property Manager the amount of the Expenses specified in Item 7 and actually incurred by the Property Manager.</p> <p><b>Review of Property Managers Fee</b></p> <p>6.6 The Property Managers Fees will be reviewed on the dates set out in Item 7.5 of the Schedule. Unless agreed otherwise, on the review dates the Property Managers Fees will be increased by the percentage referred to in Item 7.5 or if no figure is stated then it will be increased by multiplying the Property Managers Fee payable immediately prior to the review date ("Current Fee") by a fraction obtained by dividing the Consumer Price Index All Groups (Perth) for the quarter last published prior to the review date ("Current CPI") by the Consumer Price Index All Groups (Perth) for the quarter last published prior to the commencement of the Term (in the case of the first review) or the previous review date (in the case of each other Property Manager's Fee review) ("Previous CPI") or if no figure is stated then it will be increased by the following calculation:<br/> <math display="block">\text{New Fee} = \text{Current Fee} \times \left( \frac{\text{Current CPI} - \text{Previous CPI}}{\text{Previous CPI}} \right)</math> Where in this clause<br/> <b>Current Fee</b> means the Property Manager's Fee payable immediately prior to the Review Date<br/> <b>Current CPI</b> means the Consumer Price Index All Groups (Perth) for the quarter last published prior to the Review Date<br/> <b>Previous CPI</b> means the Consumer Price Index All Groups (Perth) for the quarter last published prior to the commencement of the Term or the previous Review Date</p> <p><b>Fee Disputes</b></p> <p>6.7 If the Lessor disputes the fee payable to the Property Manager on the grounds that it is unjust the Lessor may refer the dispute to the Commissioner for Consumer Protection for assistance or the Real Estate Institute of Western Australia (Inc.) for arbitration.</p> |
| <p><b>7 Goods and Services Tax (GST)</b></p>                                                   | <p><b>The Property Manager and the Lessor acknowledge and agree that:</b></p> <p>7.1 If GST applies to any supply made under or in connection with this Agreement by either the Property Manager, the Lessor or a third party:</p> <p>7.1.1 the Property Manager may, in addition to any amount or consideration expressed as payable in respect of the supply, recover from the Lessor an additional amount on account of GST; and</p> <p>7.1.2 the Lessor will pay to or reimburse to the Property Manager 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 Property Manager and/or the Lessor in respect of that supply; and</p> <p>7.1.3 the amount payable by the Lessor to the Property Manager or to a third party in respect of that supply will be increased by the product of:</p> <p>7.1.3.1 the rate at which GST is imposed at that time; and</p> <p>7.1.3.2 the amount or consideration payable for the relevant supply.</p> <p>7.1.4 the Lessor will pay any additional amount on account of GST at the same time as the payment for the relevant supply is payable or at another time as directed by the Property Manager.</p> <p>7.2 The Lessor agrees to pay and indemnify the Property Manager against any taxation penalties and/or interest that may be charged or levied against the Property Manager in respect of any GST liability under or in connection with this Agreement.</p> <p>7.3 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 Lessor will on demand pay to the Property Manager by way of further consideration for the supply, an amount calculated in the manner specified in clause 7.1 including any penalties and/or interest incurred by the Property Manager under the GST Law.</p> <p>7.4 Clause 7 shall survive the expiration or termination of this Agreement.</p>                                                                                                                                                                                                                |
| <p><b>8 Information Collection Notice Privacy Act, 1988 Australian Privacy Principle 5</b></p> | <p>The Agent (whose contact details appear on this form) collects the personal information provided in this form in compliance with the provisions of the Privacy Act, 1988 and the Australian Privacy Principles. The Agent collects this information to enable it to provide the services and benefits the subject of this form and to enable it to conduct its business. Further details regarding the purposes for which the information is collected, the disclosures that are usually made of personal information collected by the Agent, the situations where the Agent is required to collect information by law, and any disclosure of information that may be made by the Agent overseas, can be obtained from the more detailed collection notice on the Agent's website. The Agent's privacy policy may also be accessed on that website. If the information collected in this form is not provided, the Agent may not be able to provide its services as effectively. Individuals who wish to access or correct information held about them or who wish to make any complaint regarding privacy should contact the Agent's privacy officer.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <p><b>9 Disputes</b></p>                                                                       | <p>The Lessor has the right to refer any dispute that arises with the Property Manager to a number of different institutions. Depending upon the nature of the dispute these institutions may include the Commissioner for Consumer Protection, the civil and criminal legal systems, the Western Australian Department of Consumer and Employment Protection and the Australian Competition and Consumer Commission.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <p><b>10 Additional Conditions</b></p>                                                         | <p>This Agreement includes the additional terms and conditions as specified in Item 13 and any annexures.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <p><b>11 General</b></p>                                                                       | <p>11.1 This Agreement is governed by and construed in accordance with the laws from time to time in force in Western Australia and the parties submit to the non-exclusive jurisdiction of the Courts of that State.</p> <p>11.2 If any provision of this Agreement is 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 that provision from this Agreement.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

INITIALS: Property Manager  Lessor 1  Lessor 2  Lessor 3



**EXCLUSIVE MANAGEMENT AUTHORITY  
FOR RESIDENTIAL PREMISES**



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**Annexure to Schedule**

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*This Annexure page is to be used only if there is insufficient space in the Schedule.  
Please insert the relevant corresponding Item number and heading.  
List Items, with appropriate sub-headings and cross reference with terms of the Agreement.*

| ITEM | Description: |
|------|--------------|
|      |              |

INITIALS: Property Manager  Lessor 1  Lessor 2  Lessor 3

**EXCLUSIVE MANAGEMENT AUTHORITY  
FOR RESIDENTIAL PREMISES**



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Please insert the relevant corresponding item number and heading.  
List items, with appropriate sub-headings and cross reference with terms of the Agreement.*

| ITEM | Description: |
|------|--------------|
|      |              |

INITIALS: Property Manager  Lessor 1  Lessor 2  Lessor 3

**PROPERTY INFORMATION**

For the Property at

Date of Handover  Settlement

Currently: Vacant  Tenanted  Fixed Term  Periodic

Expiration date of current fixed term

Current Property Managers

Keys and remotes

House  Duplex  Villa  Townhouse  Apartment  Unit

Furnished  Unfurnished

Single Level  Two storey  No in complex

Facilities: Security gates  Gym  Sauna  Spa  Pool  Tennis Court

Bedrooms  Bath  Toilets  Living Areas

Kitchen  Kitchen/meals  Kitch/meal/farm

Hot plates: Gas  Electric  Induction  Oven: Gas  Electric

Make, model & serial no.  Make, model & serial no.

Dishwasher  Make, model & serial no.

Gas bayonet: Located in:

Patio  Enclosed yard

Pool  Below ground  Above ground  Saltwater  Chlorine  In-pool cleaner

Pool pump/filter: Make, model & serial no.

Parking  1  2  3  On road

Garage  Carport  Undercover  Car bay  Door: remote/manual

Hot water system: Gas storage  Electric  Solar  Heat Pump  Instantaneous gas

Make, model & serial no.  Warranty: 5 years  10 years

Air conditioner: Ducted  Split system  Reverse cycle  Cooling only  Ceiling fans

Reticulation: Bore  Mains  Shares bore  Auto  Manual

Mains Powered Smoke Alarm(s)  Long Life Battery Smoke Alarm (no wall cavity)  RCD (x2)

Security: Window locks  Dead locks  Security screens doors  Roller shutters  Security windows screens   
Outside front light

Security alarm  Code:  Monitoring  Tenant to pay  Lessor to pay

Sewerage: Sewer  Septic

Septic tanks decommissioned Yes  No

Sheds:   Solar panels:

**Included in Rent:**  
Lawn Mowing Yes  No   
Gardening Yes  No   
Pool Service Yes  No   
Pool Chemicals Yes  No

**Areas excluded from Lease:**

Items under warranty:

Instruction manuals:

Pets: Yes  No  Inside  Outside  Type

Smokers: Yes  No  Inside  Outside

INITIALS: Property Manager  Lessor 1  Lessor 2  Lessor 3

# EXCLUSIVE MANAGEMENT AUTHORITY FOR RESIDENTIAL PREMISES

For the Property at

(address)

## EXECUTED AS AN AGREEMENT

Dated this  day of  20

Signed by or on behalf of the **Lessor**

If a corporation, then the Owner executes this Agreement pursuant to s.127 of the Corporations Act

Name

Signed by or on behalf of the **Lessor**

Name

Signed by or on behalf of the **Lessor**

Name

Signed for and on behalf of the **Property Manager**

### RECEIPT

The Lessor acknowledges receipt of a copy of this Agreement

Lessor's initials: \_\_\_\_\_ Dated: \_\_\_/\_\_\_/\_\_\_

Lessor's initials: \_\_\_\_\_ Dated: \_\_\_/\_\_\_/\_\_\_

Lessor's initials: \_\_\_\_\_ Dated: \_\_\_/\_\_\_/\_\_\_

### OFFICE USE ONLY

Copy of Agreement provided to Lessor

Property Manager's initials: \_\_\_\_\_ Dated: \_\_\_/\_\_\_/\_\_\_  
/ \_\_\_\_\_

#### Lessor - PLEASE NOTE

1. REIWA 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 REIWA is a breach of Copyright.

**NOTE: ALL PARTIES SHOULD INITIAL ALL PAGES**

INITIALS: **Property Manager**  **Lessor 1**  **Lessor 2**  **Lessor 3**

# exclusive appointment to act as agent manager of a strata company



TO:

ADDRESS

("the Agent")

FROM the Owners of

(Name of Scheme)

Strata Plan No

("the Strata Company")

ADDRESS

("the Property")

## 1. KEY WORDS

"Act" means the Strata Titles Act 1985;

"commission" means any commission, fee, discount or other benefit or incentive offered or given by or sought from an insurance company or agent, finance broker, property maintenance contractor, builder, pest controller, removalist, or other persons with whom the Agent conducts business;

"Agent's Services" means the Regular Services and the Special Services;

"Common Property" means the common property on the above strata plan;

"Contributions" means contributions payable by the proprietor of a lot on the Strata Plan under Sections 36(1) or 36(2) of the Act or under a by-law referred to in Section 42(8) of the Act;

"GST" means the Goods and Services Tax introduced pursuant to A New Tax System (Goods and Services Tax) Act 1999.

"Management Fee" means a fee calculated, payable and to be reviewed in the manner and at the times specified in the Schedule;

"Recovery of Costs" means the recovery of costs from the proprietor, mortgagee in possession or occupier of a lot on the Strata Plan including amounts recoverable under Sections 38(4) or 38(5) of the Act but excluding Contributions;

"Regular Services" means the regular services mentioned in the Schedule;

"Reserve Fund" means a reserve fund established under Section 36(2) of the Act;

"schedule" means the schedule to this agreement;

"Special Services" means the special services mentioned in the Schedule;

"term" means the term mentioned in the Schedule.

## 2. STRATA COMPANY'S WARRANTY

All necessary corporate action has been taken to authorise the Strata Company to enter into and observe and perform this Agreement.

## 3. EXCLUSIVE APPOINTMENT

The period of agency shall be for the period from / /  until / /

Select Option

At the conclusion of this period the Strata Company **AGREES/DOES NOT AGREE** (cross out whichever does not apply) to extend the period of the agency until twenty-eight (28) days written notice of termination is given by either the Strata Company or the agent to the other.

## 4. AGENT'S SERVICES

4.1 The Agent shall during the Term:

- (a) provide all the Regular Services; and
- (b) when directed by the Strata Company, provide Special Services as directed.

4.2 The Agent shall provide the Agent's Services in the manner directed by the Strata Company from time to time.

## 5. AGENT'S OBLIGATIONS

In performing its obligations under this Agreement, the Agent agrees to act with due care and diligence.

## 6. DELEGATION OF POWERS

6.1 To the extent necessary for the Agent to provide the Agent's Services, the Strata Company delegates to the Agent those of its powers, authorities, duties and functions which it may delegate.

6.2 The Agent may provide the Agent's Services by its principal, director or employee.

# exclusive appointment to act as agent manager of a strata company



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## 7. MANAGEMENT FEES

- 7.1 The Strata Company shall during the Term:
- (a) pay the Management Fees to the Agent; and
  - (b) reimburse the Agent for all reasonable costs and expenses properly incurred by the Agent in providing the Agent's Services.-6.2
- 7.2 The Strata Company shall:
- (a) pay to the Agent a fair and reasonable fee for any Agent's Services provided by necessity after the Term has ended; and
  - (b) reimburse the Agent for all reasonable costs and expenses properly incurred by the Agent in providing any Agent's Services after the Term has ended.
  - (c) the Strata Company shall pay to the Agent the fees received by the Strata Company in accordance with section 43 relative to inspections and services.
- 7.3 The Strata Company shall pay the Agent's fees, costs and expenses.
- 7.4 The Agent may apply the Strata Company's funds towards payment of the Agent's accounts for fees, costs and expenses.

## 8. AGENT'S INDEMNITY

- The Strata Company shall indemnify the Agent against all:
- (a) claims, liabilities and payments for which the Agent may become legally liable;
  - (b) suits, actions, proceedings, claims and demands instituted or made against the Agent; and
  - (c) costs and expenses incurred or payable by the Agent, arising out of or in connection with any act or omission of the Agent under this agreement or any act or omission of the Strata Company except to the extent that any relevant liability, loss or damage of the Agent has been caused or contributed to by the Agent's negligence or default under this Agreement.

## 9. EARLY TERMINATION

- 9.1 The Strata Company may, without affecting its rights at law, immediately terminate this agreement by notice to the Agent if:
- (a) the Agent breaches the Act or the Real estate and Business Agents Act 1978 and fails to remedy the breach (if capable of remedy) within 14 days from being notified of the breach by the Strata Company;
  - (b) the Agent becomes insolvent or, being a natural person, is declared bankrupt or enters into an arrangement or compromise with creditors or, being a corporation, is wound up or is presented with a petition for its winding up or resolves to go into liquidation or voluntary administration or enters into a scheme of arrangement;
  - or
  - (c) the Agent breaches this agreement and fails to remedy the breach (if capable of remedy) within 7 days from being notified of the breach by the Strata company.
- 9.2 The Agent, without affecting its other rights at law, may immediately terminate this Agreement by notice to the Strata company if the Strata Company breaches this Agreement and fails to remedy the breach (if capable of remedy) within 14 days from the Strata Company being notified of that breach by the Agent.
- 9.3 The Strata Company has the right to immediately terminate this Agreement without giving prior notice should the Agent have been guilty of a fundamental breach of the terms of the Agreement.

## 10. AGENT'S DISCLOSURE

- 10.1 The Strata Company acknowledges that the Agent may be offered Commissions in the course of providing the Services:
- 10.2 The Agent shall not demand, retain or receive a Commission unless:
- (a) the Agent has disclosed to the Strata Company the full nature, extent and amount of the Commission; and
  - (b) the Strata Company has consented in writing to the Agent seeking and retaining the Commission.
- 10.3 The Strata Company shall not unreasonably withhold its consent to the Agent seeking and retaining any Commission which is disclosed to the Strata Company in accordance with clause 10.2(a).

## 11. INTERPRETATION

- 11.1 All notices, directions, consents or other communications contemplated by this agreement shall be in writing.
- 11.2 Reference to a statute includes reference to statutes amending, consolidating or replacing that statute and any regulations, rules, by-laws and orders issued under any of the foregoing.
- 11.3 In this agreement the singular shall include the plural and the masculine gender includes the feminine gender and vice versa and person includes corporation.

## 12. THE SCHEDULE

### Regular Services

- (a) arranging routine maintenance, repair and replacement of the Common Property as authorised by the Council;
- (b) arranging inspections of the Common Property  times each year as authorised by the Council.
- (c) attending to correspondence;
- (d) paying accounts and outgoings authorised for payment by the Council;
- (e) preparing budgets and calculating the amounts of Contributions and Reserve Funds;
- (f) preparing and serving notices levying Contributions in accordance with Section 36(1);
- (g) collecting and banking Contributions into a Trust Account and issuing receipts;
- (h) keeping the Strata Company's books of account and preparing annual statements of account;
- (i) ensuring proper and appropriate insurances are effected and promptly renewed and making insurance claims as authorised by the Council;



# exclusive appointment to act as agent manager of a strata company



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- (j) preparing and issuing notices including notices of Annual General Meetings of the Strata Company but not extraordinary General Meetings;
- (k) attending and preparing and distributing minutes of Annual General Meetings of the Strata Company;
- (l) receiving and displaying notices and recording notices and orders served on the Strata Company;
- (m) having possession of and care for the records and documents of the Strata Company;
- (n) having safe custody of the common seal of the Strata Company;
- (o) preparing and issuing certificates under Section 43(1) of the Act, furnishing information and supervising inspections;
- (p) maintaining wage and related records required by law in respect of employees or contractors of the Strata Company and preparing and filing associated returns;
- (q) instructing a registered taxation agent in relation to lodgment of Income Tax Returns;
- (r) advising the Strata Company and Council on matters of compliance, procedure and management;
- (s) investing the Strata company's funds in an account approved by the Council and in a manner consistent with the Strata company's cash flow requirements;
- (t) generally assisting the Strata Company, the Council and its officers in exercising their powers and authorities and performing their duties and functions; and
- (u) attending to the following additional items (if any):

### Special Services

- (a) applying and making submissions to government and judicial authorities for consents, authorisations, licences, approvals, exemptions and other decisions and attending hearings and meetings conducted by government and judicial authorities;
- (b) instructing and attending conferences with lawyers;
- (c) preparing and issuing notices of extraordinary General Meetings of the Strata Company;
- (d) attending, and preparing and distributing minutes of, extraordinary General Meetings of the Strata Company;
- (e) preparing and issuing notices of Council meetings;
- (f) attending, and preparing and distributing minutes of, Council meetings;
- (g) attending at the Property for any purpose which is not a Regular duty;
- (h) arranging non-routine maintenance, repair and replacement of the Common Property;
- (i) liaising with consultants and builders;
- (j) preparing interim statements of account;
- (k) reconciliation of gas, water or electricity sub-meter accounts;
- (l) preparing and serving notices levying Contributions and recovering costs payable other than in accordance with Section 36(1);
- (m) collecting and banking Special Contributions; and
- (n) implementing the decisions of the Strata Company and Council which the Agent is not required to do as part of its Regular duties.

### 13. REVIEW OF MANAGEMENT FEES

At the end of each consecutive period of  months from the commencement of the Term the Agent may require the Management Fees to be reviewed. If the Agent requires a review, the Management Fees on review will be the Management Fees agreed between the Strata Company and the Agent but if the Strata Company and the Agent fail to agree the Management Fees within 28 days after the relevant review date each Management Fee on review will be calculated by multiplying the Management Fee payable immediately prior to the review date by a fraction obtained by dividing the Consumer Price Index All Groups (Perth) last published prior to the review date by the Consumer Price Index All Groups (Perth) last published prior to commencement of the Term (in the case of the first review) or the previous review date (in the case of each other rent review).

### INFORMATION COLLECTION NOTICE (GENERAL VERSION)

#### PRIVACY ACT 1988

#### AUSTRALIAN PRIVACY PRINCIPLE 5

The Agent (whose contact details appear on this form) collects the personal information provided in this form in compliance with the provisions of the Privacy Act, 1988 and the Australian Privacy Principles. The Agent collects this information to enable it to provide the services and benefits the subject of this form and to enable it to conduct its business. Further details regarding the purposes for which the information is collected, the disclosures that are usually made of personal information collected by the Agent, the situations where the Agent is required to collect information by law, and any disclosure of information that may be made by the Agent overseas, can be obtained from the more detailed collection notice on the Agent's website. The Agent's privacy policy may also be accessed on that website. If the information collected in this form is not provided, the Agent may not be able to provide its services as effectively. Individuals who wish to access or correct information held about them or who wish to make any complaint regarding privacy should contact the Agent's privacy officer.

# exclusive appointment to act as agent manager of a strata company



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## 14. MANAGEMENT FEES

**NOTICE: Fees charged by real estate agents are not fixed by law, and are to be agreed between the Strata Company and agent.**  
The following Management Fees, inclusive of GST, have been agreed.

### 14.1 Regular Services

(a) The Regular Services fee, inclusive of GST, for Regular Services is \$  per annum  Initials

The Regular Services Fee is calculated daily and is payable  **Select Option**

### 14.2 Special Services

The Special Services fee, inclusive of GST, for Special Services is calculated at the following hourly rates:

(a) Principals, directors, or senior management staff \$  per hour,  initials

(b) Clerical assistants and secretarial staff \$  per hour Inclusive of GST,  Initials

The Fees for Special Services are payable  **Select Option**

## 15. AGREEMENT TO PAY SEPARATE MARKETING EXPENSES

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

## 16. 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 Strata Company **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**

17. If the Strata Company disputes the fee payable to the Agent on the ground that it is unjust the Strata Company may refer the dispute to the Commissioner for Consumer Protection or the Real estate Institute of Western Australia for adjudication.

## 18. DISPUTES

Further, the Strata Company 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 Commissioner for Consumer Protection, the civil and criminal legal systems, the Western Australian department of Consumer and employment Protection, the Australian Competition and Consumer Commission, and the Real estate Institute of Western Australia (Inc.), the Real estate and Business .

EXECUTED this  day of  20

SIGNED by or on behalf of the Agent

A true copy of this document has been received by each of the signatories hereto

Council Member

Council Member

The Agent

Witness

Council Member

Council Member





APPROVED BY  
THE REAL ESTATE INSTITUTE  
OF WESTERN AUSTRALIA  
COPYING IS STRICTLY PROHIBITED  
FOR USE BY REIWA MEMBERS

**EXCLUSIVE APPOINTMENT TO ACT AS  
REAL ESTATE AGENT MANAGER OF A STRATA COMPANY**

|                                                                    |                                            |                                                                                                                                                                                                                                                                                                       |
|--------------------------------------------------------------------|--------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Strata Company</b>                                              |                                            |                                                                                                                                                                                                                                                                                                       |
| The Owners of _____                                                |                                            |                                                                                                                                                                                                                                                                                                       |
| Strata Plan/Survey-Strata Plan No _____                            |                                            |                                                                                                                                                                                                                                                                                                       |
| ABN _____                                                          |                                            |                                                                                                                                                                                                                                                                                                       |
| Address of scheme _____                                            |                                            |                                                                                                                                                                                                                                                                                                       |
| Postal address _____                                               |                                            |                                                                                                                                                                                                                                                                                                       |
| _____<br>["the Strata Company"]                                    |                                            |                                                                                                                                                                                                                                                                                                       |
| <b>Name and Address of Licensed Real Estate and Business Agent</b> |                                            |                                                                                                                                                                                                                                                                                                       |
| Licence details _____                                              |                                            | ABN _____                                                                                                                                                                                                                                                                                             |
| Trading name _____                                                 |                                            | Telephone _____                                                                                                                                                                                                                                                                                       |
| Address _____                                                      |                                            | Fax _____                                                                                                                                                                                                                                                                                             |
| _____<br>["the Agent"] Email _____                                 |                                            |                                                                                                                                                                                                                                                                                                       |
| <b>Particulars</b>                                                 |                                            |                                                                                                                                                                                                                                                                                                       |
| <b>Item 1</b>                                                      | <i>Commencement date of the Agency</i>     |                                                                                                                                                                                                                                                                                                       |
| <b>Item 2</b>                                                      | <i>Term of the agency</i>                  | From the Commencement date of the Agency until<br>...../...../..... or<br>Until the end of the Annual General Meeting in the year 20.....<br>which ever is the latter.                                                                                                                                |
| <b>Item 3</b>                                                      | <i>Extension period</i>                    | At the expiry date of the term the Strata Company <b>AGREES/DOES NOT AGREE</b> (cross out whichever does not apply) to extend the term of the agency until twenty eight (28) days written notice of termination is given by either the Strata Company or the agent to the other. <b>Select Option</b> |
| <b>Item 4</b>                                                      | <i>Review date</i>                         | The Service Fees will be reviewed on the following dates:                                                                                                                                                                                                                                             |
| <b>Item 5</b>                                                      | <i>Agreed Services Fee</i>                 | Fees charged by real estate agents are not fixed by law, and are to be agreed between the Strata Company and the Agent.<br><br>\$ _____ per annum, inclusive of GST [.....] initials                                                                                                                  |
| <b>Item 6</b>                                                      | <i>Percentage increase of services fee</i> | % _____ (if no figure is stated, then see clause 7.4)                                                                                                                                                                                                                                                 |
| <b>Item 7</b>                                                      | <i>Additional Services Fees</i>            | As per schedule 3 of the agreement <b>OR</b><br>\$ _____ per hour inclusive of GST [.....] initials                                                                                                                                                                                                   |
| <b>Item 8</b>                                                      | <i>Services Fees payment method</i>        | Monthly/quarterly (delete as applicable)<br>In advance /arrears (delete as applicable)                                                                                                                                                                                                                |

**Signatures**

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_  
The Common Seal of the Owners of \_\_\_\_\_  
.....(name of scheme)  
Strata/Survey-strata Plan No \_\_\_\_\_ was hereunto  
affixed on \_\_\_\_\_ in the presence of \_\_\_\_\_

SIGNED by or on behalf of the Agent

\_\_\_\_\_  
Council Member

PRINT NAME: \_\_\_\_\_

\_\_\_\_\_  
Council Member

PRINT NAME: \_\_\_\_\_

\_\_\_\_\_  
The Agent

PRINT NAME: \_\_\_\_\_

\_\_\_\_\_  
Witness

PRINT NAME: \_\_\_\_\_

\_\_\_\_\_  
Council Member

PRINT NAME: \_\_\_\_\_

\_\_\_\_\_  
Council Member

PRINT NAME: \_\_\_\_\_

A true copy of this document has been received by  
each of the signatories hereto



**Agreement**

**1. KEY WORDS**

- "Act" means the Strata Titles Act 1985 (WA);
- "Additional Services" means the Additional Services set out in Schedule 2;
- "Agent's Services" means the Agreed Services and the Additional Services;
- "Agreed Services" means the Agreed Services set out in Schedule 1;
- "Commission" means any commission, fee, discount or other benefit or incentive offered or given by or sought from an insurance company or agent, finance broker, property maintenance contractor, builder, pest controller, removalist, or other persons with whom the Agent conducts business;
- "Common property" means the common property on the strata plan;
- "Contributions" means contributions payable by the proprietor of a lot on the Strata Plan under Sections 36(1) or 36(2) of the Act or under a by-law referred to in Section 42(8) of the Act;
- "GST" means the Goods and Services Tax introduced pursuant to A New Tax System (Goods and Services Tax) Act 1999;
- "Recovery of Costs" means the recovery of costs from the proprietor, mortgagee in possession or occupier of a lot on the Strata Plan including amounts recoverable under Sections 38(4) or 38(5) of the Act but excluding Contributions;
- "Reserve fund" means a reserve fund established under Section 36(2) of the Act;
- "Schedule" means the schedules to this agreement;
- "Section" means section of the Act;
- "Services Fees" mean fees calculated and payable pursuant to Items 5, 7 and 8 of the Particulars and Schedule 3 and as reviewed in the manner and at the times specified in Item 6 of the Particulars;
- "Special Services" means the special services mentioned in the Schedule;
- "Strata Company" means the strata company created by law on registration of the Strata Plan /Survey Strata Plan;
- "Strata Plan/Survey-Strata Plan" means the strata/survey-strata plan registered by the Registrar of Titles in the Strata Company's name and given the number described on the front page of this agreement;
- "Term" means the term of this agreement stated in Item 2 of the Particulars.

**2. STRATA COMPANY'S WARRANTY**

The Strata Company warrants that all necessary corporate action has been taken to authorise the Strata Company to enter into and observe and perform this agreement.

The Strata Company represents and warrants to the Agent that the Strata Company's property does not contain any significant defects that would adversely affect the health or safety of any person.

**3. EXCLUSIVE APPOINTMENT AND TERM**

The Strata Company appoints the Agent as exclusive agent manager of the Strata Company for the Term and the Agent accepts the appointment commencing on the date referred to in Item 1 of the Particulars. At the end of the Term the appointment may be extended depending on the choice made in Item 3 of the Particulars.

**4. AGENT'S SERVICES**

- 4.1 The Agent will during the Term:
  - (a) provide all the Agreed Services; and
  - (b) when directed by the Strata Company or the strata council, provide the Additional Services.
- 4.2 The Agent will provide the Agent's Services in the manner directed by the Strata Company from time to time.

**5. AGENT'S OBLIGATIONS**

In performing its obligations under this Agreement, the Agent agrees to act with due care and diligence.

**6. DELEGATION OF POWERS**

- 6.1 To the extent necessary for the Agent to provide the Agent's Services, the Strata Company delegates to the Agent those of its powers, authorities, duties and functions which it may delegate.
- 6.2 The Agent may provide the Agent's Services by its principal, director, employee, or representative.

**7. SERVICES FEES**

- 7.1 The Strata Company will during the Term:
  - (a) pay the Services Fees to the Agent; and
  - (b) reimburse the Agent for all reasonable disbursements properly incurred by the Agent in providing the Agent's Services, including but not limited to postage.

[.....] initials

- 7.2 The Strata Company will:

- (a) pay to the Agent a fair and reasonable fee for any Agent's Services provided by necessity after the Term has ended;
- (b) reimburse the Agent for all reasonable fees properly incurred by the Agent in providing any Agent's Services after the Term has ended;
- (c) pay the Services Fees in accordance with Item 8 of the Particulars;
- (d) Reimburse bank and other disbursement fees including, but not limited to, postage bank fees, statutory charges, electronic fund transfer fees, BPay and credit card charges;
- (e) pay the fees for Additional Services in accordance with Item 7 of the Particulars

[.....] initials

- 7.3 The Agent is authorised to apply the Strata Company's funds towards the payment of the Agent's accounts for fees and disbursements.

**7.4 Review of Services Fees**

The Services Fees will be reviewed on the dates set out in Item 4 of the Particulars. Unless agreed otherwise, on the review dates the Services Fees will be increased by the percentage referred to in Item 6 of the Particulars or if no figure is stated then it will be increased by multiplying the Services Fee payable immediately prior to the review date by a fraction obtained by dividing the Consumer Price Index All Groups (Perth) for the quarter last published prior to the review date by the Consumer Price Index All Groups (Perth) for the quarter last published prior to the commencement of the Term (in the case of the first review) or the previous review date (in the case of each other Services Fee review).



8. AGENT'S INDEMNITY

- 8.1 The Strata Company acknowledges that:
(a) The Act confers responsibility on the Strata Company for the maintenance and repair of the Strata Company's property; and
(b) if as part of the Agreed Services or the Additional Services the Agent is required to carry out a function of the Strata Company relating generally to the maintenance and repair of the Strata Company's property:
(i) the responsibility of the Agent for the maintenance and repair of specific property is limited to only those services the Strata Company requests the Agent to carry out from time to time in respect of that specific property; and
(ii) the Agent is not liable for any loss arising from any:
(a) disrepair, defect or danger in the Strata Company's property that is not the subject of a request under clause 8.1(b)(i) from the Strata Company; or
(b) inherent defect or danger in the Strata Company's property, whether as designed or constructed.
8.2 The Strata Company indemnifies the Agent against all loss relating to or arising from the performance by the Agent of its obligations under this Agreement, except to the extent that the loss is caused by the Agent's negligence.
8.3 The Agent is not liable to the strata company if the Agent fails to do any act, if such failure arises from the strata company's failure to make the appropriate decision in relation to such act or to make sufficient money available to the Agent to enable the Agent to carry out its obligations under this Agreement.

9. EARLY TERMINATION

- 9.1 The Strata Company will, without affecting its rights at law, immediately terminate this Agreement by notice to the Agent if:
(a) the Agent breaches the Act or the Real Estate and Business Agents Act 1978 and fails to remedy the breach (if capable of remedy) within 14 days from being notified of the breach by the Strata Company;
(b) the Agent becomes insolvent or, being a natural person, is declared bankrupt or enters into an arrangement or compromise with creditors or, being a corporation, is wound up or is presented with a petition for its winding up or resolves to go into liquidation or voluntary administration or enters into a scheme of arrangement; or
(c) the Agent breaches this Agreement and fails to remedy the breach (if capable of remedy) within 14 days from being notified of the breach by the Strata Company.
9.2 The Agent, without affecting its other rights at law, may immediately terminate this agreement by notice to the Strata Company if the Strata Company breaches this Agreement and fails to remedy the breach (if capable of remedy) within 14 days from the Strata Company being notified of that breach by the Agent.
9.3 The Strata Company has the right to immediately terminate this Agreement without giving prior notice should the Agent have been guilty of a fundamental breach of the terms of the Agreement.
9.4 This agreement may be terminated (without penalty) at any time with the mutual consent of the parties.

10. AGENT'S DISCLOSURE

It is agreed that the Agent may not retain rebates, discounts and commissions paid to it by the providers of goods and services to the Strata Company described below unless the Strata Company has been otherwise notified in writing by the Agent..

Table with 3 columns: Name of company/person, Amount/percentage of rebate, discount or commission, Other information relating to the disclosure. The table is currently empty.

[.....] initials

11. INTERPRETATION

- 11.1 All notices, directions, consents or other communications contemplated by this agreement are to be in writing.
11.2 Reference to a statute includes reference to statutes amending, consolidating or replacing that statute and any regulations, rules, by-laws and orders issued under any of the foregoing.
11.3 In this Agreement the singular shall include the plural and the masculine gender includes the feminine gender and vice versa and person includes corporation.
11.4 Any notice to be served on the Strata Company or the Agent, under this agreement, may only be served either personally or by post, by facsimile or by email, at the address of that party appearing in this agreement, or at any other address subsequently notified by that party in writing to the other party.

PRIVACY ACT 1988 - COLLECTION NOTICE

The Agent uses personal information collected from the Strata Company and Lot Owners to act as the Strata Manager and to perform their obligations under this Agreement. The Agent may also use such information collected to promote the services of the Agent and/or seek potential clients.

The Agent may disclose information to other parties including media organisations, courts, on the internet, to potential lot owners, or to clients of the Agent both existing and potential, as well as to tradespeople, owners' corporations, government and statutory bodies, and to third parties as required by law.

Further, the Agent may disclose the information to other real estate and business agents who may in the future be purchasing or considering purchasing the Agent's real estate business, strata managements or other goodwill portion of the Agent's business.

The Agent will only disclose information in this way to other parties as: required to perform their duties under this agreement, to achieve the purposes specified above or as otherwise allowed under the Privacy Act 1988.

If the Strata Company or Lot Owners would like to access this information, they can do so by contacting the Agent at the address and contact numbers contained in this Agreement. The Owner can also correct this information if it is inaccurate, incomplete or out-of-date.

Real estate and tax law requires some of this information to be collected. If the information is not provided, the Agent may not be able to act effectively on the Owner's behalf or at all.

12. DISPUTES

- (a) If the Strata Company disputes the fee payable to the Agent on the ground that it is unjust the strata company may refer the dispute to the Business Agent's Supervisory Board or the Real Estate Institute of Western Australia for adjudication.
(b) Further, the strata company has the right to refer any other dispute that arises with the Agent to a number of different institutions. Depending upon the nature of the dispute these institutions may include the civil and criminal legal systems, the Western Australian Department of Consumer and Employment Protection, the Australian Competition and Consumer Commission, the Real Estate Institute of Western Australia (Inc) and the Business Agent's Supervisory Board.

Handwritten signatures and stamps: Commissioner for Real Estate and Consumer Protection, Commissioner for Consumer Protection.

**SCHEDULE 1 AGREED SERVICES****1.0 Accounting Services**

- 1.1 Pay accounts and outgoings.
- 1.2 Prepare budgets and calculate the amounts of contributions and reserve funds.
- 1.3 Prepare and serve notices of contributions determined in accordance with Section 36(1).
- 1.4 Collect and bank contributions into a trust account and issue receipts.
- 1.5 Keep the Strata Company's books of account and prepare an annual statement of account.
- 1.6 Invest the Strata Company's reserve funds in an account as directed by the council or the Strata Company.

**2.0 Insurance**

- 2.1 Effect and promptly renew insurance covers as instructed by the Council or the Strata Company.
  - 2.2 Make insurance claims, other than major claims.
- This item 2.0 is subject to the provisions of the Financial Services Reform Act and the Agent being an authorised representative or arranger of the insurer or broker.

**3.0 Secretarial**

- 3.1 Attend to routine correspondence.
- 3.2 Receive and display notices and record notices and orders served on the Strata Company.

- 3.3 Maintain Strata Company roll pursuant to section 35A.
- 3.4 Maintain minute records.
- 3.5 Retain the records, documents and common seal of the Strata Company.

**4.0 Meetings**

- 4.1 Prepare and issue notices of annual general meetings of the Strata Company but not extraordinary general meetings.
- 4.2 Attend and prepare and distribute minutes of annual general meetings of the Strata Company.

**5.0 Repairs and Maintenance**

- 5.1 Arrange routine maintenance, repair and replacement of the common property as authorised by the council or the Strata Company.

**6.0 General**

- 6.1 Advise the Strata Company and the council with regard to by-laws.
- 6.2 Advise the Strata Company and council on matters of compliance, procedure and management.
- 6.3 Generally assist the Strata Company, the council and its officers in the exercise of their powers and authorities and performance of their duties and functions.

**7.0 Other**

- 7.1 (insert if applicable)

**SCHEDULE 2 ADDITIONAL SERVICES****1.0 Strata Council Meetings**

- 1.1 Prepare and distribute notices for council meetings;
- 1.2 Attend, prepare and distribute minutes of council meetings.

**2.0 Extraordinary general meetings**

- 2.1 Prepare and distribute notices of extraordinary general meetings of the Strata Company;
- 2.2 Attend, and prepare and distribute minutes of extraordinary general meetings of the Strata Company.

**3.0 Repairs and Maintenance**

- 3.1. Arrange non-routine maintenance, repair and replacement of common property, liaise with consultants/builders for major works.
- 3.2 Liaise with developers relative to defect rectification in new buildings.

**Insurance**

- 4.1 Prepare and lodge major insurance claims.
- 4.2 Arrange insurance valuations on instruction from the Strata Company or the strata council.

**5.0 Accounting**

- 5.1 Engage consultants (at Strata Company cost) to assist in preparation for reserve fund budget and other financial reports requested by the Strata Company or the strata council.
- 5.2 Maintain wage and related records required by law in respect of employees or contractors of the Strata Company and prepare and file associated returns.
- 5.3 Submit invoices to the Strata Company treasurer for approval.
- 5.4 Make an application for a Strata Company tax file number, if required.
- 5.5 Make an application for a Strata Company Australian Business Number, if required.
- 5.6 Instruct a registered taxation agent in relation to lodgement of income tax returns.
- 5.7 Instruct a registered taxation agent in relation to lodgement of Business Activity Statements.
- 5.8 Register/deregister the Strata Company for GST, if applicable.
- 5.9 Assist auditor in provision of accounts and records for audit.
- 5.10 Prepare interim statements of account.
- 5.11 Reconciliation of gas, water or electricity sub-meter accounts.
- 5.12 Prepare and serve notices of contributions and recover costs payable other than in accordance with Section 36(1).

- 5.13 Collect and bank contributions determined other than in accordance with section 36(1).
- 5.14 Prepare and issue initial demand notifications for outstanding contributions.

**6.0 General**

- 6.1 Prepare and issue certificates under Section 43(1) of the Act, furnish information and supervise inspections.
- 6.2 Apply and make submissions to government and judicial authorities for consents, authorisations, licences, approvals, exemptions and other decisions and attend hearings and meetings conducted by government and judicial authorities.
- 6.3 Instruct and attend conferences, courts, tribunals or mediations, with lawyers.
- 6.4 Attend at the property for any purpose which is not an agreed service.
- 6.5 Implement the decisions of the Strata Company and council which the Agent is not required to do as part of its agreed services

**7.0 Secretarial**

- 7.1 Copy and forward to proprietors and residents newsletters and other material prepared by the Strata Company or the council.
- 7.2 Attend to non-routine correspondence.
- 7.3 Prepare documentation for solicitors, advisors or others in relation to proceedings or matters to which the Strata Company is a party.
- 7.4 Provide proprietors address labels.
- 7.5 Provide copies of documents, furnish information and supervise inspections as may be requested under section 43(1)(b) of the Act\*.
- 7.6 Prepare and issue certificates\* pursuant to section 43(1)(c) and (d) of the Act.  
\*charges in accordance with the regulations are to be paid by the applicant to the Strata Company.
- 7.7 Forward correspondence to consultants, legal advisors, occupiers, letting or selling agents or any other bodies.
- 7.8 Provide archive facilities.

**8.0 Other**

- 8.1 Any other service that may be agreed between the Strata Company/ council and Agent manager.
- 8.2 (insert if applicable)



**SCHEDULE 3 FEES (GST INCLUSIVE) FOR ADDITIONAL SERVICES**

Insert or delete items as may be applicable to your agency.  
Items not included in "Agreed Services" are available at the additional charges as identified below.

|     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                          |
|-----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------|
| 1.  | <p>The rate for the provision of the following services will be \$...../hour 9.00 am to 5.00 pm Monday to Friday and \$...../hour otherwise</p> <p>Adjourned meeting charges<br/>Attend meeting outside office hours<br/>Attend meeting at venue other than Agent's office<br/>Attend the property outside office hours<br/>Attend the property on weekends or public holidays<br/>Word processing<br/>Payroll attendance fee<br/>Rectification of Strata Company records as at take over<br/>Engagement of consultants<br/>Issue special levy notices<br/>Issue notice of overdue levy<br/>Place instructions for recovery of outstanding levies<br/>Provide client payment history<br/>Establishment of new management<br/>Handover of Strata Company records</p> | (.....) initials                                         |
|     | <p>The rate for the following services will be \$...../cheque:<br/>Process stop payments, dishonoured cheques</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | (.....) initials                                         |
| 3.  | <p>The rate for the following services will be \$...../box/annum:<br/>Archive records storage fee<br/>Retrieval of records</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | (.....) initials                                         |
| 4.  | <p>The rate for the following services will be \$...../book<br/>Provide new minute books</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | (.....) initials                                         |
| 5.  | <p>The rate for the following services will be \$...../seal:<br/>Provide new common seal</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | (.....) initials                                         |
| 6.  | <p>The rate for the following services will be \$...../annum:<br/>Maintain key register</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | (.....) initials                                         |
| 7.  | <p>The rate for the following services will be \$...../each<br/>Title searches eg strata plan, certificates of title</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | (.....) initials                                         |
| 8.  | <p>(i) The rate for the following services will be \$...../hour<br/>Prepare and issue certificates under Section 43(1) of the Act.</p> <p>(ii) The rate for the following services will be \$...../hour<br/>Furnish information and supervise inspections, under section 43(1)(b)</p> <p>(iii) The rate for the following services will be \$...../hour<br/>Provide copies per section 43(1a).</p>                                                                                                                                                                                                                                                                                                                                                                  | (.....) initials                                         |
| 9.  | <p>Provide address labels for Council members \$.....</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | (.....) initials                                         |
| 10. | <p>(i) Facsimile inwards \$.....</p> <p>(ii) Facsimile local outwards \$.....</p> <p>(iii) Facsimile long distance outwards \$.....</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | (.....) initials<br>(.....) initials<br>(.....) initials |
| 11. | <p>Lodgement of by-laws for registration \$.....</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | (.....) initials                                         |
| 12. | <p>Postage, petties and photocopies \$..... per .....</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | (.....) initials                                         |
| 13. | <p>Emails inwards or outwards \$.....</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | (.....) initials                                         |
| 14. | <p>Telephone attendances \$..... per 6 minute block</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | (.....) initials                                         |
| 15. | <p>Provide financial statements - other than annual statement \$.....</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | (.....) initials                                         |
| 16. | <p>Other</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | (.....) initials                                         |

## EXCLUSIVE AUTHORITY TO ACT AS MANAGING AGENT FOR COMMERCIAL/INDUSTRIAL PROPERTY

THIS AGREEMENT made the day shown in Item 1 of the Schedule hereto between the parties described in Item 2 of the Schedule being, unless otherwise described, firstly the owner of the premises to be managed ("the Client") of the one part and secondly the Managing Agent ("the Agent") of the other part, who shall be a member of the Real Estate Institute of WA (Incorporated), ~~described in Item 2 of the Schedule.~~

### THE PARTIES AGREE AS FOLLOWS: -

#### 1. APPOINTMENT OF MANAGING AGENT

1.1 The Client appoints the Agent to be its exclusive managing and leasing agent for the premises described in Item 4 of the Schedule for the period described in Item 5 of the Schedule subject to the authorities, terms and conditions following.

#### 2. DURATION OF AGREEMENT

2.1 The appointment of the Agent shall commence on the date shown and be for a term as shown in Item 5 of the Schedule and thereafter until 28 days notice of termination is given in writing by the Client to the Agent.

#### 3. DUTIES OF THE AGENT

3.1 The Agent agrees to use due diligence and best <sup>reasonable</sup> endeavours on behalf of the Client in the exercise of the following duties, powers and authorities and the Agent shall: -

- 3.1.1 ~~to~~ Collect all rents including minimum, variable, special and percentage rentals and all amounts due in respect of electricity or other fuels supplied promptly as and when the same shall fall due and are payable and shall give valid receipts therefor;
- 3.1.2 ~~to~~ Pay when due water rates, local authority rates and land tax and obtain reimbursement where appropriate from the lessees;
- 3.1.3 ~~to~~ Negotiate rent reviews, new leases, extensions of leases, options of renewal, options to purchase, rights of first refusal, assignments of leases, surrender of leases, as and when same shall be appropriate pursuant to instructions given from time to time by the Client;
- 3.1.4 ~~to~~ Pay insurance premiums taken out by the Client for the improvements of the Property and arrange for reimbursement and payment of premiums by lessess, where appropriate;
- 3.1.5 Negotiate leases for the occupation of any vacant space in the building in accordance with the instructions of the Client;
- 3.1.6 Terminate leases and tenancies with the consent of the Client and shall sign and serve in the name of the Client all such notices as may be appropriate;
- 3.1.7 ~~to~~ Deposit promptly all monies collected in the course of management of the building or otherwise incidental thereto in a trust account and may if necessary endorse any cheques or negotiable instruments drawn in favour of the Client for deposit into such bank account;
- 3.1.8 ~~to~~ Remit to the Client in such manner as may be agreed between them all monies held in the trust account and not required for the payment of disbursements in connection with the management of the building;
- 3.1.9 ~~to~~ Advise the Client promptly in writing of the service upon the Agent of any Writ, Summons, Plaintiff, Subpoena or other legal document including any notices, letters or communications setting out or making claims upon the Client or the building;
- 3.1.10 ~~to~~ Observe strictly any special conditions or instructions set forth in the Schedule;
- 3.1.11 ~~to~~ Notify the Client promptly and in writing of any substantial or major items of expenditure required in connection with the management of the building and in this respect the Agent shall secure the prior approval of the Client to all expenditure in excess of the amount shown in Item 6 of the Schedule in respect of any one item other than for monthly or recurring operating charges and/or emergency repairs required to protect the property from damage or to maintain the essential services.



#### 4. AUTHORITIES OF THE AGENT

- 4.1 The Agents shall have full and unrestricted authority to do any or all of the following for and on behalf of the Client: -
- 4.1.1 To terminate tenancies and leases and to sign and serve in the name of the Client such notices as may be necessary so to do;
  - 4.1.2 To evict tenants and recover possession of premises occupied by them; ~~the Lessee;~~
  - 4.1.3 To maintain or cause to be maintained in a good state of repair the building and all common areas thereof including, but not limited to, foyers, footpaths, service corridors, toilets, storerooms, parking areas, signs, gardens and landscaped areas and to make or cause to be made minor repairs and minor alterations required for the proper management of the building;
  - 4.1.4 To purchase such supplies as may be required for the operation and maintenance of the building;
  - 4.1.5 To advertise for, select, employ, direct, supervise and dismiss all employees such as may be reasonably required for the operation and maintenance of the building and to pay such wages as may be reasonably required for the employment of such persons who shall be deemed to be the employees of the Client and not of the Agent;
  - 4.1.6 To advertise in any medium and incur expenses for signboards, printed material and promotions in connection with leasing or management of all or part of the premises up to the amount shown in Item 9 of the Schedule and from time to time deduct the amount of such expenditure from rent payments;
- 4.2 The Agent shall at all times use its best endeavours to engage proper and competent workmen and contractors for the carrying out of any works required for the maintenance of the building but shall not be liable for any default or defect which may be caused by such workman or contractor.

#### 5. DEFAULT

- 5.1 If at any time: -
- 5.1.1 The Agent fails to perform any duty expressed to be performed by it in this agreement and such default is not remedied within thirty (30) days after the Client has given notice thereof to the Agent;
  - 5.1.2 The Agent is guilty of serious or persistent breach of any term of this appointment;
  - 5.1.3 The Agent is unable to pay its debts as and when they fall due or is unable to certify that it is able to pay its debts as they fall due, commences negotiations with any one or more of its creditors with a view to the general readjustment or rescheduling of its indebtedness, or enters or proposes to enter into any arrangement or composition with its creditors;
  - 5.1.4 The Agent or any person takes any corporate action or other steps are taken or legal proceedings are commenced by any person for the winding up, dissolution, bankruptcy or reorganisation or for the appointment of a receiver, trustee, official manager or similar officer of any or all of the revenues and assets of the Agent;
  - 5.1.5 The Agent ceases or threatens to cease or gives written notice of intention to cease to carry on the business it carries on at the date hereof;
  - 5.1.6 The Agent being an individual should die;
  - 5.1.7 Any distress, execution or sequestration or other process is levied or enforced upon or any order is made against the property and assets belonging to the Agent which are not paid out, removed or discharged within seven (7) days of such levy, enforcement or order;
  - 5.1.8 The Agent being an individual becomes incapacitated or unable to manage its affairs;
  - 5.1.9 The Agent causes the lessor to be in breach of any condition of any lease the subject of this appointment for a period exceeding seven (7) days;
- then in any such case and at any time thereafter the Client may by written notice to the Agent declare this appointment to be immediately terminated. *immediately terminate*
- 5.2 In the event that the Client shall dispose of its interest in the building or dispose of its right to receive the income thereof during the period of this appointment or any extension thereof (other than to a related or associated company), this appointment shall be terminated in every respect upon the date of such sale or disposal. *of it* *from it* *of the premises subject to clause 5.3*

exclusive authority to act as managing agent  
for commercial/industrial property



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CORPORATION 1988  
FOR USE BY REAL ESTATE AGENTS



5.2.1 If such sale or disposal shall take place within twelve (12) calendar months from the date of commencement of this appointment thereby terminating this appointment and the Agent is not or has not been instrumental in such sale or disposal and/or shall not be appointed as managing agent by the purchaser or new owner of the building on terms similar to those set out herein then the Client hereby undertakes to pay to the Agent compensation by way of liquidated damages an amount equivalent to the Agent's fees which would have been payable from the date of termination of this appointment for a period of three (3) calendar months thereafter as if such termination had not taken place which fees shall be calculated on the basis of the average gross rentals and other charges as defined in the Schedule paid for the three (3) months prior to such termination.

**6. REMUNERATION OF AGENT**

- 6.1 The Agent shall be entitled to be paid management fees for those duties described in 3.1, and for those authorities described in 4.1 at the rate shown in Item 7 of the Schedule.
- 6.2 The Agent is authorised to deduct from sums due to the Client, all fees, charges and out of pocket expenses as herein contained/ agreed.
- 6.3 The Agent shall be entitled to be paid fees for performance of any additional duties carried out pursuant to this Agreement including but without limiting the generality hereof, the duties set forth in Item 8 of the Schedule.

**7. ARBITRATION**

7.1 All questions or differences whatsoever which may at any time arise between the parties or their respective representatives touching this Agreement or the subject matter thereof or arising out of or in relation thereto respectively and whether as to construction or otherwise shall be referred to a single arbitrator appointed by the President for the time being of the Institute of Arbitrators in the State of Western Australia pursuant to the Commercial Arbitration Act, 2012.

**8. TERMINATION OF AGENCY**

- 8.1 This appointment may be terminated in the following ways:
  - 1) Pursuant to Item 5 of this Agreement, or
  - 2) At the expiration of the said Term stated in the Schedule, provided at least 28 days written notice is given by either party, or
  - 3) Should the Agent's appointment continue past the agreed TERM, either party may give 28 days prior written notice of their intention to terminate this appointment.

**9. AGENT'S INDEMNITY**

9.1 The Client indemnifies the Agent against any and all actions, suits, demands, claims, costs or other expenses brought against or made upon the Agent or incurred arising out of this appointment.

EXECUTED by the parties hereto:

(Individual)

SIGNED by the Client(s)

(Full Name)

(Corporation)

EXECUTED BY THE LESSOR PURSUANT  
TO ITS CONSTITUTION AND THE CORPORATIONS ACT

EXECUTED BY THE LESSOR PURSUANT  
TO ITS CONSTITUTION AND THE CORPORATIONS ACT

Sole / Director

Director / Secretary

Full Name of Director

Full Name of Director / Secretary

SIGNED by the Agent

REIWA.



exclusive authority to act as managing agent  
for commercial/industrial property



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CORPORATE MEMBER SINCE 1988  
FOR USE BY REIWA MEMBERS



**THE SCHEDULE**

ITEM 1. THE DATE OF AGREEMENT

ITEM 2. THE CLIENT  
Name:   
Address:   
Telephone:  Fax:  Email:   
Bank:

ITEM 3. THE AGENT  
Name: REIWA  
Address: 215 Hay Street, Subiaco, WA, 6008  
Telephone: 08 9380 8222 Fax: 08 9380 4024 Email: craig.bradley@reiwa.com.au

ITEM 4. THE PREMISES/BUILDING  
Name:   
Address:   
Legal Description:

ITEM 5. TERM OF AGREEMENT  
Commencement Date:   
Term:  years

**Notice: Fees charged by Real Estate Agents are not fixed by law, and are to agreed between client and agent.**

"GST" means the Goods and Services Tax introduced pursuant to A New Tax System (Goods and Services Tax) Act 1999.

Item 6. AMOUNT OF AUTHORISED EXPENDITURE including GST   initials

Item 7. MANAGEMENT FEES  
(i) The Management Fee is  % of the gross collections per annum, plus GST.  initials  
For example if the gross collections are \$ , then the fee is \$   
plus GST, totalling \$ , OR  
(ii) A fixed Management Fee \$  per annum plus GST. Total fee \$ , OR  initials  
(iii) A fixed Management Fee inclusive of GST \$  per annum, OR  initials  
(iv) As per attached schedule  initials

**Gross Collections:** The total dollar value of all monies collected by the Agent from the lessee. This includes rents and outgoings.

ITEM 8. ADDITIONAL FEES including GST   initials

ITEM 9. Other   initials

**If the Principal disputes the fee payable to the Agent on the ground that it is unjust the Principal may refer the dispute to the Commissioner for Consumer Protection or the Real Estate Institute of Western Australia for adjudication.**

Additional fees inclusive of GST shall apply to work outside the normal scope of management such as: -

1. Negotiating new leases.   initials
2. Negotiating renewal of existing leases.   initials
3. Negotiating extensions to existing leases.   initials
4. Negotiating rent reviews.   initials
5. Negotiating and preparing specifications/contracts and tender documents including drawing of tenders.  initials
6. Supervision and control of contractors undertaking major works as directed from time to time by the Client.  initials

**ACKNOWLEDGEMENT:**

The Client acknowledges having been given a true copy of this Exclusive Authority  signed

**INFORMATION COLLECTION NOTICE**

**PRIVACY ACT, 1988**

**AUSTRALIAN PRIVACY PRINCIPLE 5**

The Agent (whose contact details appear on this form) collects the personal information provided in this form in compliance with the provisions of the *Privacy Act, 1988* and the Australian Privacy Principles. The Agent collects this information to enable it to provide the services and benefits the subject of this form and to enable it to conduct its business. Further details regarding the purposes for which the information is collected, the disclosures that are usually made of personal information collected by the Agent, the situations where the Agent is required to collect information by law, and any disclosure of information that may be made by the Agent overseas, can be obtained from the more detailed collection notice on the Agent's website. The Agent's privacy policy may also be accessed on that website. If the information collected in this form is not provided, the Agent may not be able to provide its services as effectively. Individuals who wish to access or correct information held about them or who wish to make any complaint regarding privacy should contact the Agent's privacy officer.

**THE REAL ESTATE INSTITUTE OF WESTERN  
AUSTRALIA (INC)**

**PART IV OF THE COMPETITION AND  
CONSUMER ACT, 2010 & AUCTION CODE  
COMPLIANCE PROGRAM**

**MANUAL**

**APPLICABLE FROM 7 JANUARY 2000  
(as most recently amended on 4 November 2011)**

**MDS Legal  
16 Irwin Street  
PERTH WA 6000  
Phone: 9325 9353 Fax: 9221 2220  
E-mail: [mds@mdslegal.com.au](mailto:mds@mdslegal.com.au)**

# REIWA PART IV OF THE COMPETITION AND CONSUMER ACT, 2010 & AUCTION CODE COMPLIANCE PROGRAM

## MANUAL

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## 1. INTRODUCTION

### 1.1 REIWA COMPLIANCE

The Real Estate Institute of Western Australia (Inc) is committed, at all levels, to complying with the provisions of Part IV of the *Competition and Consumer Act, 2010 (CCA)* and all related legislation and regulations (**Part IV of the *Competition and Consumer Act***). The compliance program the subject of this manual was initially implemented pursuant to Federal Court orders made by His Honour Justice French on 8 October 1999. The term of that program was for a period of 6 years expiring on 8 October 2005. Since that time REIWA has implemented a voluntary program pursuant to the following resolution passed by the REIWA Council on 3 November 2005.

#### **Trade Practices Act Resolution of REIWA Council**

- (a) The Council of REIWA acknowledges the Institute's on-going commitment to compliance with Part IV of the *Trade Practices Act, 1974* ("the TPA") and related legislation prohibiting anti-competitive conduct. REIWA fully supports the philosophies behind the TPA, including prevention of anti-competitive conduct.
- (b) Notwithstanding the recent expiration of the formal requirements upon REIWA imposed by the orders of His Honour Justice French in the Federal Court on 8 October 1999 to maintain a TPA Compliance Programme, REIWA recognises the desirability of continuing such a programme. As such, REIWA is committed to continuing at all levels to fully conforming with Part IV of the TPA and, to assist it with that aim, to having an effective Compliance Programme.
- (c) Further, REIWA acknowledges the importance of the Council itself taking the lead in both establishing a culture of compliance with the provisions of Part IV of the TPA within REIWA and ensuring adherence to those provisions by all of REIWA's management and staff. REIWA also appreciates the importance of providing on-going guidance and education to its members in order to promote compliance by the real estate industry with the provisions of the TPA.
- (d) As part of the implementation of the policies set out above the REIWA Council resolves to:
  - (i) continue with an active formal TPA Compliance Programme;

- (ii) direct the ICO (REIWA's Chief Executive Officer) to maintain the form of the Compliance Programme in the terms of the written manual initially implemented by REIWA on 7 January 2000, as amended by the ICO from time to time to take into account
- REIWA's current circumstances,
  - the terms of the formal authorisation that has been provided to REIWA by the Australian Competition and Consumer Commission under Part VII of the TPA (the subject of a written determination dated 21 December 2001), and
  - the terms of the Australian Standard on Compliance Programmes AS 3806;
- (iii) maintain the Competition and Consumer Act Compliance Committee to review all matters in connection with compliance by REIWA with the TPA. That Committee shall be comprised of the President of REIWA, the Vice-presidents of REIWA, the ICO and a legal adviser from REIWA's retained solicitors. The Committee shall meet on a six-monthly basis and shall report directly to the REIWA Council. The purpose of the Committee is not to detract in any way from the role and responsibility of the Council in maintaining REIWA's compliance with the TPA but, rather, to assist the Council with that task.

## 1.2 AUSTRALIAN STANDARD AS3806

The Compliance Program the subject of this manual has also been prepared so as to comply with the Australian Standard on Compliance Programs AS3806 - 1998, as tailored to suit REIWA's particular circumstances.

## 1.3 COMPLIANCE WITH CCA & AUCTION CODE

Readers of this manual are urged to ensure that strict compliance with Part IV of the *Competition and Consumer Act*, the terms of REIWA Compliance Program and the terms of the Auction Code of Conduct occurs at all times. Any suggestions regarding the making of improvements to this manual or any queries relating to the terms of this manual or REIWA's compliance with Part IV of the *Competition and Consumer Act* or the Auction Code should be referred immediately to the ICO.

## 2. STRUCTURAL ELEMENTS

### 2.1 COMMITMENT

#### 2.1.1 The need for commitment

All levels of management of REIWA are committed to implementing an effective Compliance Program with respect to Part IV of the *Competition and Consumer Act* and the REIWA Auction Code. REIWA recognises that in order for the Compliance Program to be effective active commitment is needed from the REIWA Council, all REIWA committees, the CEO of REIWA and all management and staff at REIWA. REIWA regards the policy expressed by Council on 3 November 2005 (as set out in paragraph 1.1 above) as representing a policy to be embraced by all levels of REIWA.

#### 2.1.2 Persons to whom this manual is directed

All members of the REIWA Council and REIWA committees and all relevant staff are required, as part of their commitment to this Compliance Program, to be familiar with the terms of this manual. The term “relevant staff”, as used in this manual, means all REIWA staff who hold management positions, have substantial contact with the public or members of REIWA, or who procure from or supply to third parties goods or services on behalf of REIWA.

#### 2.1.3 The need to convey a clear compliance message

REIWA recognises the need for the REIWA Council, REIWA committees and the management of REIWA to convey to REIWA staff and members and the public the clear message that the organisation will comply with the provisions of provisions of Part IV of the *Competition and Consumer Act* and the Auction Code and that lip-service does not constitute compliance.

#### **2.1.4 The ICO and REIWA's Legal Adviser**

The day to day compliance with the terms of the REIWA Compliance Program shall be the responsibility of the internal Compliance Officer (**ICO**). The ICO shall be the CEO of REIWA. The ICO shall consult, as the ICO sees fit and as stipulated in this manual, REIWA's Competition and Consumer legal adviser, who shall be a partner of REIWA's retained external solicitors from time to time (**REIWA's Legal Adviser**).

#### **2.1.5 Approval of manual by REIWA's Legal Adviser**

The terms of this manual and the REIWA Compliance Program have been approved by REIWA's Legal Adviser prior to its implementation.

#### **2.1.6 Queries and suggestions**

The procedures and processes set out in this manual have been prepared with the aim of both complying with the Australian Standard on Compliance Programs AS3806 - 1998 and being easy to understand and achieve. However, should any reader of this manual have any queries regarding the terms of the Compliance Program or have any suggestions for improving the Compliance Program the reader is urged to make immediate contact with the ICO.

## **2.2 COMPLIANCE POLICY**

### **2.2.1 REIWA council policy**

As set out in paragraph 1.1 above, the REIWA Council has implemented a policy on 3 November 2005 with respect to compliance with Part IV of the CCA. The terms of that policy are set out in detail in paragraph 1.1 above.

### 2.2.2 Objectives of REIWA Compliance Program

The objectives of the REIWA Compliance Program are as follows:

- (a) to ensure that all levels of REIWA, including the Institution as a whole, the REIWA Council, REIWA committees and all REIWA staff, comply with the terms of Part IV of the *Competition and Consumer Act*;
- (b) to ensure that sufficient resources and procedures are made available to all levels of REIWA so as to enable compliance with Part IV of the *Competition and Consumer Act* and the Auction Code;
- (c) to enable effective education and training of all levels of REIWA and REIWA's general membership with respect to the terms of the Part IV of the *Competition and Consumer Act* and the need to comply with that Act and the Auction Code ;
- (d) to ensure that all breaches or potential breaches of Part IV of the *Competition and Consumer Act* and the Auction Code are identified expeditiously and to ensure that steps are implemented quickly to remedy any such problems;
- (e) to enable REIWA to ensure, as far as possible, that all contractors, sub-contractors, agents and distributors associated with REIWA comply with the terms of Part IV of the *Competition and Consumer Act* and the Auction Code.

### 2.2.3 Continuous monitoring of the REIWA Compliance Program

REIWA recognises that in order to be effective, the REIWA Compliance Program needs to be continuously assessed and monitored. The procedures and practices for ensuring that this occurs are set out in paragraphs 4.3 and 4.4 below.

## 2.3 MANAGEMENT RESPONSIBILITY

### 2.3.1 The role of management

All readers of this manual should be aware of the responsibilities of the REIWA management to ensure compliance with Part IV of the CCA and the Auction Code. Whilst the specific duties of the ICO, the Competition and Consumer Compliance Committee, the REIWA Council, REIWA committees and senior management are set out in the numerous provisions of this manual, all levels of management need to be aware of their responsibilities pursuant to the Compliance Program. Any specific issues with respect to the Compliance Program should be referred immediately to the ICO.

### 2.3.2 All levels of REIWA management to ensure compliance

All levels of REIWA management, including the REIWA Council, REIWA committees and the senior management of REIWA are responsible for ensuring that all those with whom those groups associate and/or supervise within REIWA comply with the terms of Part IV of the *Competition and Consumer Act*, the Auction Code and the terms of this Compliance Program. Further, those persons should use their best endeavours to ensure that the REIWA general membership and outside parties with whom REIWA has commercial dealings also comply with Part IV of the *Competition and Consumer Act* and the Auction Code. For the purposes of this manual, the senior management of REIWA are the following persons:

- (a) the CEO of REIWA;
- (b) the General Manager Operations/Chief Financial Officer of REIWA;
- (c) the Director, Learning;
- (d) the Director, Policy and Research;

- (e) the Director, Communications;
- (f) the Director, Agency Practice;
- (g) the Director, Business Services;
- (h) the Manager, Human Resources

## 2.4 RESOURCES

### 2.4.1 The resources provided by REIWA

The following resources are made available by REIWA, through the ICO, to all levels of REIWA, to assist in ensuring compliance with Part IV of the *Competition and Consumer Act* and the Auction Code :

- (a) the availability, at all times, of the ICO and, through the medium of the ICO, REIWA's Legal Adviser to attend to all issues and address all enquiries regarding the Compliance Program and Part IV of the *Competition and Consumer Act*;
- (b) this manual;
- (c) the provision of education and training as set out in paragraph 4.1 below;
- (d) the training and induction of staff as set out in paragraph 4.1 below;
- (e) the making available to all members of the REIWA Council, REIWA committees, REIWA staff, the executive and REIWA general membership Competition and Consumer reference material including the following:
  - (i) *The Annotated Competition and Consumer Act* by Russell Miller;
  - (ii) *Fair and Square*;



- (iii) *Summaries of the Competition and Consumer Act and the Prices Surveillance Act;*
- (iv) *Small Business and the Trade Practices Act;*
- (v) *Advertising and Selling;*
- (f) the provision of advice by the ICO, when need be, to the REIWA Council, REIWA committees, REIWA staff and REIWA members.

## 2.5 CONTINUOUS IMPROVEMENT

REIWA recognises that its continuous improvement with respect to its compliance with Part IV of the *Competition and Consumer Act* and the Auction Code involves an ongoing review of the Compliance Program and the operations of REIWA. Details of the procedures for monitoring and assessing the Compliance Program and reviewing the program are set out in paragraphs 4.3 and 4.4 below.

### **3. GUIDELINES FOR OPERATIONAL ELEMENTS**

#### **3.1 IDENTIFICATION OF COMPLIANCE ISSUES**

##### **3.1.1 Specific compliance issues**

REIWA's compliance with Part IV of the *Competition and Consumer Act* and the Auction Code needs to apply to all elements of REIWA's operations. Without limiting the scope of this statement the following issues require particular attention:

- (a) all articles, rules of practice, by-laws, regulations, policies and operating directives implemented by REIWA;
- (b) all forms produced by REIWA, including all forms made available to the REIWA general membership;
- (c) all contracts, arrangements and understandings entered into by REIWA including, but not limited to, all contracts entered into between REIWA and other training providers and/or TAFE colleges pertaining to the provision of training services by the non-REIWA party.

##### **3.1.2 The REIWA Council, the ICO, and the Competition and Consumer Act Compliance Committee**

The REIWA Council, the ICO, and the Competition and Consumer Act Compliance Committee referred to in paragraph 4.3.2 below are to consider and address all areas of the operations of REIWA that could give rise to breaches of Part IV of the *Competition and Consumer Act* or the Auction Code. Sufficient human resources and training facilities are to be provided to ensure that such breaches do not occur or, should they inadvertently occur, that they not be repeated.

### 3.1.3 **Advice of amendments to Part IV of the *Competition and Consumer Act***

In order to ensure that REIWA receives timely advice of relevant changes to Part IV of the *Competition and Consumer Act*:

- (a) REIWA's Legal Adviser will advise REIWA, by its CEO and president, of any amendments to Part IV of the *Competition and Consumer Act*;
- (b) REIWA's Legal Adviser (or REIWA's Legal Adviser's nominee) will attend senior management meetings on a six monthly basis and report on any changes to Part IV of the *Competition and Consumer Act*;
- (c) the ICO will report directly to the REIWA Council at meetings held by the Council on all aspects concerning Part IV of the *Competition and Consumer Act, 2010* and specifically make recommendations in the light of any amendments to that legislation.

## 3.2 **OPERATING PROCEDURES FOR COMPLIANCE**

### 3.2.1 **Check-lists of individual's responsibilities**

REIWA's Legal Adviser and the ICO are to prepare and maintain check-lists reflecting a summary of the responsibilities and roles of the REIWA Council, the ICO, REIWA committees and relevant staff. Those checklists are to be provided to each of those persons and groups.

### 3.2.2 **Review by REIWA's Legal Adviser of documents created after the introduction of the Compliance Program**

All future REIWA articles of association, contracts entered into between REIWA and other training providers and/or TAFE colleges

pertaining to the provision of training services by the non-REIWA contracting party (excluding contracts of employment or services with persons or entities to provide lecturing services and the like for courses run by REIWA), Articles, standard clauses in REIWA's forms, rules of practice and by-laws, will not be implemented without REIWA presenting those documents to REIWA's Legal Adviser for the REIWA's Legal Adviser's consideration and advice, specifically having regard to the provisions of Part IV of the *Competition and Consumer Act* or, alternatively, without REIWA making application for authorisation of those documents pursuant to provisions of Part VII of that Act.

3.2.3 (i) **Review by the REIWA's Legal Adviser of REIWA Arbitration and Tribunal Awards**

REIWA's Legal Adviser will review in draft all REIWA arbitration and tribunal awards prior to the issue of those awards to ensure that they comply with the provisions of Part IV of the *Competition and Consumer Act*.

(ii) **Reference of disciplinary matters to the Real Estate and Business Agents Supervisory Board (ACCC Authorisation Requirement)**

REIWA's Legal Adviser shall consider all disciplinary hearings conducted by the Professional Standards Tribunal to determine whether the conduct the subject of any adverse disciplinary finding could have amounted to a breach of the Real Estate and Business Agents Act, 1978 or the associated Code of Conduct. If REIWA's Legal Adviser is of the view that the conduct the subject of an adverse disciplinary finding could have amounted to a breach of that Act or the associated Code he shall immediately advise the ICO of his conclusions. REIWA, through the ICO or the ICO's delegate, shall report to the Real Estate and Business Agents Supervisory Board within 21 days of such a finding being made by a Tribunal, full details of all

adverse disciplinary findings where REIWA's Legal Adviser has considered that the subject matter of that adverse finding could have amounted to a breach of the Real Estate and Business Agents Act, 1978 or the associated Code of Conduct.

#### **3.2.4 The process of the conducting of reviews by REIWA's Legal Adviser of documents**

The process for referring to REIWA's Legal Adviser the documents detailed in paragraphs 3.2.2 and 3.2.3 above will be as follows:

- (a) the document will be provided to REIWA's Legal Adviser by the ICO, or the ICO's delegate, with an accompanying memorandum requesting REIWA's Legal Adviser to consider and advise REIWA with respect to that document, specifically having regard to the provisions of Part IV of the *Competition and Consumer Act*;
- (b) within 14 days of receiving the document from REIWA, or so soon thereafter as is reasonably required by REIWA's Legal Adviser, REIWA's Legal Adviser shall give written advice of any identified competition implications arising out of the document and recommend action to address those implications.

#### **3.2.5 Review by the ICO of minutes of meetings**

The ICO will review all minutes of all REIWA committees, divisions and groups prior to their dissemination to identify any issues that arise under the provisions of Part IV of the *Competition and Consumer Act* and will address those issues promptly.

#### **3.2.6 Action plan by the ICO to deal with compliance problems**

The ICO will implement the following action plan with respect to dealing with all problems, failures or faults:

- (a) the REIWA Council, REIWA committees, REIWA's Legal Adviser and REIWA staff are to report any problems, failures or faults with respect to REIWA's compliance with Part IV of the *Competition and Consumer Act*, the Auction Code or with the REIWA Compliance Program to the ICO;
- (b) the ICO is to enter into a log book kept by the ICO entitled *REIWA Part IV of the Competition and Consumer Act & Auction Code Compliance Program Log of Problems, Failures and Faults*, details of all problems failures and faults reported to the ICO or, alternatively, identified by the ICO, including:
  - (i) the date the issue arose;
  - (ii) the nature of the issue (including who reported the problem, failure or fault);
  - (iii) the steps taken by REIWA to address the issue;
  - (iv) the effectiveness of the remedial steps taken to attempt to resolve the problem, failure or fault one month after the date the issue arose and, if necessary, monthly thereafter until the issue is resolved;
- (c) the ICO, if the ICO feels it appropriate, will obtain advice from REIWA's Legal Adviser;
- (d) the ICO, if the ICO feels it appropriate, will refer the matter to the REIWA Council;
- (e) the ICO's log referred to in sub-paragraph (b) above will be reviewed at the six monthly meetings of the Competition and Consumer Act Compliance Committee referred to in paragraph 4.3.2 below.

### 3.2.7 **Monitoring of compliance**

Compliance by REIWA with Part IV of the *Competition and Consumer Act*, the Auction Code and compliance with the provisions of the REIWA Compliance Program are to be monitored in the manner set out in paragraphs 4.3 and 4.4 below.

### 3.2.8 **Education and training**

REIWA is to provide education and training to the REIWA Council, Arbitrators, members of the Professional Standards Committee, REIWA staff and REIWA general membership in the manner set out in paragraph 4.1 below including, as referred to in that paragraph, the provision of training programs to existing Arbitrators, members of the Professional Standards Committee, relevant staff (as defined in paragraph 2.1.2 above) and the REIWA general membership. Further, REIWA is to provide training at the time of the induction of new members of the REIWA Council, Arbitrators, members of the Professional Standards Committee and the Chairpersons of all other REIWA committees and REIWA staff.

### 3.2.9 **REIWA Auction Code of Conduct**

REIWA will collect data from its staff, members and any other available sources, including consumers, regarding the compliance by its members as a whole with the provisions of the Auction Code. Further, REIWA shall monitor the efficacy of the Auction Code in providing consumer protection in accordance with the general review procedures set out in section 4.4 of this manual. REIWA is also to promote the terms of the Auction Code to consumers and its members by use of methods which include, but are not limited to, providing seminars to members and taking reasonable steps to ensure that the terms of the Code are made available to consumers by members as is required under the provisions of clauses 4 and 5 of the Code.



### 3.3 IMPLEMENTATION

#### 3.3.1 Commencement of Compliance Program

The Compliance Programme referred to in this manual commenced on 7 January 2000 and was amended on 4 October 2002, 7 December 2005, 18 December 2006 and 3 November 2011.

#### 3.3.2 Provision of copies of this manual and amendments

Copies of this manual shall be provided to all members of the REIWA Council, all Arbitrators, all persons who are not legal practitioners sitting on Professional Standards Tribunals, the Chairpersons of all other REIWA Chapter committees, REIWA branches and all relevant staff (as defined in paragraph 2.1.2 above). Copies of this manual shall also be given to all new members of the REIWA Council, Arbitrators, all persons who are not legal practitioners sitting on Professional Standards Tribunals, Chairpersons of all other REIWA Chapter committees and relevant staff upon their induction into REIWA. A summary of the manual shall also be published in *REIWA News* on an annual basis. Further, all members of the REIWA Council, Arbitrators, all persons who are not legal practitioners sitting on Professional Standards Tribunals, the Chairpersons of all other REIWA Chapter committees, REIWA branches and relevant staff shall be advised in writing by the ICO of significant changes made to the manual and notice of those significant changes shall also be published in *REIWA News*.

#### 3.3.3 Up-to-date copies of the manual

Readers of this manual should note that complete up-to-date copies of the manual will be held at all times by the ICO and REIWA's Legal Adviser.

### 3.4 COMPLAINTS HANDLING SYSTEM

#### 3.4.1 ICO responsible for handling complaints

The ICO shall be responsible for dealing with all complaints relating to non-compliance by REIWA with Part IV of the *Competition and Consumer Act* or the Auction Code.

#### 3.4.2 Process for dealing with complaints

Complaints made by any person relating to the any non-compliance with Part IV of the *Competition and Consumer Act* by REIWA shall be dealt with in the following manner:

- (a) all members of staff, the REIWA Council, the REIWA committees or REIWA's Legal Adviser who become aware of a complaint being made by a member of REIWA or a member of the public or, alternatively, who wish to make a complaint themselves shall report that complaint immediately to the ICO;
- (b) the ICO is to acknowledge receipt of any complaint, by a letter, addressed to the complainant, within 3 days of receiving notification of that complaint advising the complainant that the complaint is being investigated and that the complainant is invited to make further written submissions, to be received within a further 5 days from the date of the ICO's letter;
- (c) within 14 days of REIWA's receipt of any complaint the ICO shall investigate the complaint, including by interviewing all appropriate staff and all relevant members of the REIWA Council and committees, and shall obtain all necessary advice from REIWA's Legal Adviser;
- (d) the ICO is to report monthly to the REIWA Council with respect to all complaints received by REIWA with respect to Part IV of the *Competition and Consumer Act*, the progress that

has been made with respect to the investigation of that complaint and any action taken relating to that complaint;

- (e) the ICO will report to the Competition and Consumer Act Compliance Committee whenever that committee meets as to all complaints received by REIWA since the last meeting of that committee, the progress or outcome of any investigation and action taken with respect to all complaints since the last meeting of that committee;
- (f) the ICO will keep a file or files in a central place, with respect to any complaints received by REIWA, with such file(s) containing hard copies of all documents relating to the complaint and clearly separating the documents relating to each particular complaint;
- (g) the ICO shall keep a log book entitled *Part IV of the Competition and Consumer Act Compliance Program Complaints Log Book* noting each complaint and the following details, such details to be recorded by the ICO within 14 days of the complaint being received by REIWA:
  - (i) the date the complaint was received by REIWA;
  - (ii) details of the complaint;
  - (iii) the outcome of the investigation by the ICO into the complaint;
  - (iv) any action taken by REIWA in respect to the complaint;
  - (v) the date upon which the logging of these details was completed.

## 3.5 RECORD-KEEPING

### Areas and nature of records

The areas for which records are to be maintained by REIWA and the nature of those records are as follows:

#### 3.5.1 Failures log

A log book with respect to all problems, failures and faults recorded with respect to the REIWA Compliance Program entitled *Part IV of the Competition and Consumer Act and the Auction Code Compliance Program Log of Problems Failures and Faults*, to be kept by the ICO in the form referred to in paragraph 3.2.6(b) above.

#### 3.5.2 Complaints log

A log book with respect to all complaints received by REIWA relating to any alleged breaches by REIWA of Part IV of the *Competition and Consumer Act* or the Auction Code entitled *Part IV of the Competition and Consumer Act and the Auction Code Compliance Program Complaints Log Book*, to be kept by the ICO in the manner referred to in paragraph 3.4.2(g) above.

#### 3.5.3 Complaints file(s)

A file or files containing all relevant documents in the possession of REIWA relating to each particular complaint received in connection with any alleged breach by REIWA of Part IV of the *Competition and Consumer Act*, such file(s) to be kept by the ICO in a central location in the manner referred to in paragraph 3.4.2(f) above.

#### 3.5.4 **Training programs**

Written records, to be kept in a clearly marked file maintained by the ICO in a central place, of all training programs conducted pursuant to the provisions of paragraphs 4.1.1, 4.1.2 and 4.1.3 below. Such written records are to include the date the training program took place, the name of REIWA's Legal Adviser who presented the training program, the names of all persons attending the training program and the position of each attending person (that is, whether the person is a member of the REIWA Council, an arbitrator, a member of the Professional Standards Committee, a member of any other REIWA committee, a general member of REIWA and, with respect to REIWA staff members, a description of the position of that attendee within REIWA).

#### 3.5.5 **Induction**

A written record, to be kept in a clearly marked file maintained by the ICO in a central place, of the training as part of the induction into REIWA of all new members of the REIWA Council, new Arbitrators, all persons who are not legal practitioners sitting on Professional Standards Tribunals, new Chairpersons of all other REIWA Chapter committees and Branches and members of REIWA staff pursuant to paragraph 4.1.4 below. These records are to include the date upon which the training took place, the person who provided the training, the nature of that training and, in the case of members of the REIWA Council, Arbitrators, all persons who are not legal practitioners sitting on Professional Standards Tribunals, the Chairpersons of the other REIWA Chapter committees and Branches and the senior management of REIWA, the dates upon which the person has met with the ICO to discuss REIWA's compliance with Part IV of the *Competition and Consumer Act* and the Auction Code and the REIWA Compliance Program and the date upon which a copy of this manual was provided to that person.

### 3.5.6 REIWA's Legal Adviser's review of rules, regulations, contracts, forms and awards

A documentary record to be kept by REIWA's Legal Adviser in a separate file maintained for this purpose of all reviews and advice given by REIWA's Legal Adviser with respect to:

- (a) all REIWA articles of association, contracts entered into between REIWA and other training providers and/or TAFE colleges pertaining to the provision of training services by the non-REIWA contracting party (excluding contracts of employment or services with persons or entities to provide lecturing services and the like for courses run by REIWA), standard clauses, rules of practice, by-laws, policies and operating directives proposed to be implemented by REIWA following the date of implementation of the REIWA Compliance Program and provided to REIWA's Legal Adviser by the ICO for consideration and advice by REIWA's Legal Adviser pursuant to paragraph 3.2.2 above;
- (b) all draft REIWA arbitration and tribunal awards provided to REIWA's Legal Adviser for REIWA's Legal Adviser to review pursuant to paragraph 3.2.3 above.

The documentary records to be kept by REIWA's Legal Adviser will include:

- (i) a description of the document reviewed;
- (ii) the date upon which REIWA's Legal Adviser reviewed the document;
- (iii) a copy of the written advice provided by REIWA's Legal Adviser of any identified competition restraint implications arising out of the document and any action recommended by REIWA's Legal Adviser to address those implications.

### 3.5.7 **REIWA's Legal Adviser's review of compliance program and advice of legislative changes**

A documentary record to be kept by REIWA's Legal Adviser in a separate file maintained for this purpose recording details of:

- (a) the advice provided by REIWA's Legal Adviser to REIWA, by its CEO and President, of any amendments to Part IV of the *Competition and Consumer Act* pursuant to paragraph 3.1.3(a) above;
- (b) monthly senior management meetings attended by REIWA's Legal Adviser (or REIWA's Legal Adviser's nominee) pursuant to paragraph 3.1.3(b) above.

This documentary record will include:

- (i) a description of the task concerned;
- (ii) the date upon which the reviews were conducted, the date upon which REIWA's Legal Adviser provided advice to REIWA of legislative amendments or the date upon which REIWA's Legal Adviser attended senior management meetings;
- (iii) details of the process of the review, the advice of legislative changes or the meetings with senior members of management; and
- (iv) any alterations made to the Compliance Program as a consequence of REIWA's Legal Adviser's review within the 3 week period referred to in paragraph 4.4.1(a) below.

### 3.5.8 **Review by ICO of minutes**

A documentary record is to be kept in a separate file in a central place to be maintained by the ICO containing details of the review by the ICO pursuant to paragraph 3.2.5 above of all minutes of all REIWA

committees, divisions and groups prior to their dissemination. This documentary record will include:

- (a) a brief description of the document;
- (b) the date upon which the ICO reviewed the document or the date the document was returned to the relevant committee, division or group;
- (c) a written record of any issues identified by the ICO arising out of the document with respect to the provisions of Part IV of the *Competition and Consumer Act* and the steps taken by the ICO to address those issues.

#### **3.5.9 Competition and Consumer Act Compliance Committee meetings**

A documentary record is to be kept in a separate file in a central place to be maintained by the ICO of all meetings of the Competition and Consumer Act Compliance Committee that take place pursuant to the provisions of paragraph 4.3.2 below. Such records are to include the dates of all such meetings, the names of persons attending those meetings, the matters discussed at those meetings and any decisions or recommendations made at those meetings.

#### **3.5.10 Summaries of REIWA's Legal Adviser's reviews, complaints and training programs**

A documentary record is to be kept in a separate file in a central place to be maintained by the ICO summarising:

- (a) the records of the reviews and advice prepared by REIWA's Legal Adviser pursuant to paragraphs 3.2.2, 3.2.3 and 3.5.6 above;
- (b) the log book entitled *Part IV Competition and Consumer Act and the Auction Code Compliance Program Complaints Log*



*Book* prepared by the ICO pursuant to the provisions of paragraphs 3.4.2(g) and 3.5.2 above;

- (c) the records kept by the ICO of the provision of training by REIWA's Legal Adviser pursuant to paragraph 3.5.4 above and paragraphs 4.1.1, 4.1.2 and 4.1.3 below.

These summary documents will be prepared by the ICO within 1 calendar month of each of the reviews conducted by REIWA's Legal Adviser referred to in paragraph 4.4.1(a) below.

### 3.6 IDENTIFICATION AND RECTIFICATION

#### 3.6.1 Meetings between ICO and REIWA's Legal Adviser

The ICO and REIWA's Legal Adviser shall meet regularly (bearing in mind REIWA's legal advisers generally attend at REIWA twice per week) to analyse the documentary records referred to in paragraph 3.5 above to ascertain whether there are any trends or on-going areas of concern regarding compliance by REIWA with Part IV of the *Competition and Consumer Act*. or the Auction Code The ICO shall take immediate steps to address any issues that are identified at these quarterly meetings and that appear to be unresolved.

#### 3.6.2 Meetings between REIWA's Legal Adviser and senior management

When the senior management of REIWA meet with REIWA's Legal Adviser on a six monthly basis as referred to in the provisions of paragraph 3.1.3(b) above discussions will take place with a view to identifying and taking steps to rectify any trends or on-going areas of non-compliance within REIWA with respect to Part IV of the *Competition and Consumer Act*.

### 3.6.3 **ICO reporting to REIWA Council**

When the ICO reports to the REIWA Council at meetings held by the Council pursuant to paragraph 3.1.3(c) above the ICO shall identify any trends or on-going areas of non-compliance and the Council shall give consideration to the steps that are being taken or should be taken to rectify that non-compliance.

### 3.6.4 **Trade Practice Act Compliance Committee and its reports to the REIWA Council**

When the Competition and Consumer Act Compliance Committee meets on a six monthly basis pursuant to paragraph 4.3.2 below that Committee shall identify any trends or on-going areas of non-compliance by REIWA with the provisions of Part IV of the *Competition and Consumer Act* and the Committee will consider implementing or recommending the implementing of steps to rectify those matters. Further, the ICO will provide a report to the REIWA Council following each quarterly meeting of the Compliance Committee to consider this report as set out in paragraph 4.3.2 below.

### 3.6.5 **Annual Audit by REIWA's Legal Adviser of membership applications (ACCC Authorisation Required)**

The ICO shall provide to REIWA's Legal Adviser within 14 days of 30 June each year summaries of all membership applications made to REIWA during the previous financial year. Those records should include the relevant membership application forms, supporting documents, a summary of the reasons for any rejection of a membership application, all documents relating to any hearing conducted with respect to a membership application, any reasons for decision delivered following any membership related hearings, relevant correspondence prepared by the REIWA Council or any relevant sub-committee, and any other documents that the ICO believes are relevant. Within a period of a further 14 days REIWA's Legal Adviser shall conduct an audit of the membership applications and hearings in the

light of the provisions of Part IV of the CCA and will subsequently provide a written report to the ICO of the result of that audit, together with any recommendations as to any remedial action that REIWA needs to take.

### 3.7 SYSTEMATIC AND RECURRING PROBLEMS

REIWA acknowledges that systematic and recurring problems are likely to carry significant risks for REIWA and could be more difficult to identify. Such problems can escalate over time. Consequently, when the individuals and bodies referred to in paragraph 3.6 above meet to analyse any trends or on-going areas of non-compliance with Part IV of the *Competition and Consumer Act* and/or the Auction Code they are to give particular attention to identifying and rectifying any systemic or recurring compliance problems.

### 3.8 REPORTING

#### 3.8.1 REIWA to encourage reporting of breaches

REIWA encourages the reporting of breaches or potential breaches of Part IV of the *Competition and Consumer Act* and the Auction Code and regards this reporting as being essential to ensure that REIWA and its members comply with the *Competition and Consumer Act* and the Auction Code. All members of the REIWA Council, Arbitrators, the Professional Standards Committee, other REIWA committees, staff and general members are encouraged to report to the ICO any breaches or potential breaches of the CCA or the Auction Code by REIWA, its members or any associated third parties. All these reports will be considered by the ICO thoroughly. Insofar as reports are made relating to conduct by REIWA itself (whether that conduct is by the REIWA Council, Arbitrators, REIWA committees, REIWA branches or REIWA staff), such reporting will be dealt with in the manner referred to in paragraph 3.4 above with respect to complaints and in the manner referred to in paragraph 3.2.7 with respect to the identification of problems, failures and faults. Such reporting is to be seen as being a

positive and non-threatening action designed to bring about solutions to problems. REIWA will manifest its desire to encourage reporting of breaches and potential breaches in the following ways:

- (a) the implementation of the REIWA Compliance Program in the manner set out in this manual;
- (b) the training of existing and future members of the REIWA Council, Arbitrators, members of the Professional Standards Committee, Chairpersons of all other REIWA committees, REIWA staff and general members in the manner referred to paragraph 4.1 below;
- (c) the giving of advice to the REIWA general membership that REIWA encourages the reporting of breaches or potential breaches of Part IV of the CCA and/or the Auction Code, with such advice being given by the ICO to members through the *REIWA News*.

### 3.9 MANAGEMENT SUPERVISION

REIWA acknowledges that management supervision is an integral part of an effective compliance program. This helps to ensure that staff fully understand REIWA's policies and operational procedures on compliance with Part IV of the *Competition and Consumer Act* and the Auction Code and how these issues effect their roles at REIWA. Further this supervision helps to ensure that staff carry out compliance procedures effectively. Senior management are therefore urged to ensure proper training and supervision of all staff with whom individual members of the REIWA senior management come into contact on a day-to-day basis insofar as compliance by those staff members with Part IV of the *Competition and Consumer Act* and the REIWA Compliance Program is concerned.

## **4. GUIDELINES FOR MAINTENANCE ELEMENTS**

### **4.1 EDUCATION AND TRAINING**

#### **4.1.1 Training programs required to be presented by REIWA's Legal Adviser**

REIWA's Legal Adviser shall provide training every 12 months concerning the provisions of Part IV of the *Competition and Consumer Act* and the Auction Code to REIWA's general membership and REIWA arbitrators, all persons who are not legal practitioners sitting on Professional Standards Tribunals and REIWA relevant staff as defined in paragraph 2.1.2 above who have been appointed to those positions during the previous 12 month period.

#### **4.1.2 Additional training programs**

Additional training programs may be provided by REIWA's Legal Adviser as the REIWA's Legal Adviser or ICO believe are necessary to maximise the extent of the education of the REIWA Council, members of REIWA committees, REIWA staff and general REIWA membership as to the terms of Part IV of the *Competition and Consumer Act* and the Auction Code.

#### **4.1.3 Content of training programs**

The training programs presented by REIWA's Legal Adviser shall all:

- (a) include examples illustrative of the nature of the activities of and the day-to-day work of the target audience;
- (b) be presented in language that the target audience understands rather than in jargon or technical terms;
- (c) include a method of presentation such that the audience participates in the training program and has an opportunity to pose questions of REIWA's Legal Adviser.

#### 4.1.4 Induction of new councillors, staff and others

All new members of the REIWA Council, new Arbitrators, new persons sitting on Professional Standards Tribunals (who are not legal practitioners), new Chairpersons of all other REIWA committees and new REIWA staff shall, as part of their induction to REIWA, are to be trained by the ICO or a member of the REIWA senior management delegated for that purpose by the ICO. This training shall take place with respect to Part IV of the *Competition and Consumer Act*, the need for compliance with that legislation by REIWA, the Auction Code and the provisions of the REIWA Compliance Program. This training shall include:

- (a) a face-to-face meeting with the trainer to discuss the significant elements of Part IV of the *Competition and Consumer Act*, and the Auction Code, the details of this compliance program and REIWA's policy with respect to compliance. The detail in which the trainer needs to address these issues will depend upon the seniority of the person within REIWA and the extent to which the activities of the person being trained might be effected by the provisions of the Part IV of the *Competition and Consumer Act* and the Auction Code;
- (b) in the case of the training of new members of the REIWA Council, new Arbitrators, new members of the Professional Standards Committee, new Chairpersons of all other REIWA committees and relevant staff (as defined in paragraph 2.1.2 above), the presentation by the trainer to the person concerned of a copy of this manual pursuant to paragraph 3.3.2 above. The person being trained is to be advised that he or she is required as part of the induction process to read the manual in detail and the person concerned shall be encouraged to raise any questions that the person may have with the ICO.

## 4.2 VISIBILITY AND COMMUNICATION

### 4.2.1 Publicising of the REIWA Compliance Program

The REIWA Compliance Program's existence and purpose and the obligations it places upon the members and staff of REIWA shall be publicised in the following ways so as to become a normal part of REIWA every-day organisational practice:

- (a) the conducting of training programs by REIWA's Legal Adviser pursuant to paragraphs 4.1.1, 4.1.2 and 4.1.3 above;
- (b) the training of new members of the REIWA Council, Arbitrators, members of the Professional Standards Committee, Chairpersons of all other committees and REIWA staff pursuant to paragraph 4.1.4 above;
- (c) the reporting to the REIWA Council by the ICO pursuant to paragraph 3.1.3(c) above;
- (d) the reporting by REIWA's Legal Adviser to the ICO, the President of REIWA and the senior management of REIWA pursuant to paragraphs 3.1.3(b) and (b) above;
- (e) the reporting to the REIWA Council by the Competition and Consumer Act Compliance Committee pursuant to paragraph 4.3.2 below;
- (f) the reviewing of documents by the ICO and REIWA's Legal Adviser pursuant to paragraphs 3.2.2, 3.2.3, 3.2.4 and 3.2.5 above;
- (g) the provision of copies of this manual to the persons and groups identified in paragraph 3.3.2 above;
- (h) the supervision of staff by senior management pursuant to paragraph 3.9 above;

- (i) reporting on the provisions of the REIWA Compliance Program and this manual, including provisions relating to the notification of breaches of Part IV of the *Competition and Consumer Act* and the Auction Code, in *REIWA News* pursuant to paragraphs 3.3.2 and 3.8 above;
- (j) the implementation of a complaints handling system as referred to in paragraph 3.4 above;
- (k) the implementation of a procedure for reporting compliance problems, failures and faults as detailed in paragraph 3.2.6 above.

### 4.3 MONITORING AND ASSESSMENT

#### 4.3.1 **Methods of monitoring and assessing the REIWA Compliance Program**

REIWA shall monitor and assess the effectiveness of the REIWA Compliance Program in the following ways:

- (a) day-to-day assessment and monitoring of the REIWA Compliance Program by the ICO;
- (b) assessment and monitoring by REIWA's Legal Adviser on an on-going basis as a consequence of the fulfilling of REIWA's Legal Adviser's role in the REIWA Compliance Program as detailed in this manual;
- (c) the meeting of REIWA's Legal Adviser with the ICO on a regular basis pursuant to paragraph 3.6.1 above and the meeting by REIWA's Legal Adviser with the REIWA senior management of REIWA on a six monthly basis pursuant to paragraph 3.1.3(b) above;
- (d) assessment and monitoring by the REIWA Council on an on-going basis, including an analysis of all reports provided to



it by the ICO, REIWA's Legal Adviser and the Competition and Consumer Act Compliance Committee.

- (e) the holding of meetings by the Competition and Consumer Act Compliance Committee on a six monthly basis pursuant to paragraph 4.3.2 below.

#### 4.3.2 **The Competition and Consumer Act Compliance Committee**

The Competition and Consumer Act Compliance Committee has been created by resolution of the REIWA Council on 7 December 1999. That Committee is comprised of the President of REIWA, the Vice-Presidents of REIWA, the ICO and REIWA's Legal Adviser. The Committee is to report directly to the REIWA Council in the manner referred to in this paragraph below. The purpose of the Committee is not in any way to detract from the commitment of the REIWA Council to being actively involved in ensuring full compliance by REIWA with the provisions of Part IV of the *Competition and Consumer Act* and the Auction Code. Rather, the purpose of the Committee is to assist the Council in this role and to aid in ensuring that no future breaches of the *Competition and Consumer Act* and the Auction Code are committed by REIWA or its members. The Committee will report to the REIWA Council by the ICO preparing a report for the Council following each six monthly meeting of the Committee and this report will be considered by the Council at its next usual meeting. The Committee will review the following documents and issues at every meeting:

- (i) any amendments that have been made to Part IV of the *Competition and Consumer Act* since the last meeting of the Committee;
- (ii) any issues arising out of the reviews of REIWA documents by REIWA's Legal Adviser and the ICO pursuant to paragraphs 3.2.2, 3.2.3, 3.2.4 and 3.2.5 above;

- (iii) the *Part IV of the Competition and Consumer Act Compliance Program Log of Problems, Failure and Faults* kept by the ICO pursuant to paragraph 3.2.6(b) above;
- (iv) any problems or issues that have arisen with the provision of training programs by REIWA's Legal Adviser or the provision of training as part of the induction of persons into REIWA pursuant to paragraph 4.1 above;
- (v) any problems or issues that have arisen with the REIWA Compliance Program or this manual;
- (vi) the *Part IV of the Competition and Consumer Act and the Auction Code Compliance Program Complaints Log Book* kept by the ICO pursuant to paragraph 3.4.2(g) above;
- (vii) the keeping of the records referred to in paragraph 3.5 above;
- (vii) any systemic or recurring problems with REIWA's compliance with Part IV of the *Competition and Consumer Act*;
- (viii) the effectiveness of management supervision of staff with respect to compliance by staff members with Part IV of the *Competition and Consumer Act*;
- (ix) the effectiveness of REIWA's publicising of the REIWA Compliance Program pursuant to paragraph 4.2 above;
- (x) any perceived failure to comply with Part IV of the *Competition and Consumer Act* or the Auction Code by the REIWA general membership or other persons or bodies with which REIWA deals.

#### 4.3.3 **Matters to be emphasised in monitoring the REIWA Compliance Program**

Those involved in monitoring and assessing the REIWA Compliance Program as referred to in paragraph 4.3.1 above shall have particular

regard to the effectiveness of the training of members of the REIWA Council, Arbitrators, members of the Professional Standards Tribunal, Chairpersons of all other REIWA committees, staff and the general membership of REIWA; the effectiveness of the risk prevention strategies contained in the REIWA Compliance Program; the effectiveness of the REIWA Compliance Program itself and this Manual; and the number, details and extent of any alleged breaches by REIWA of Part IV of the *Competition and Consumer Act* or the Auction Code.

#### 4.4 REVIEW

##### 4.4.1 Methods of review

This REIWA Compliance Program shall be reviewed in the following manner:

- (a) the Competition and Consumer Act Compliance Committee shall review the REIWA Compliance Program on an on-going basis pursuant to the provisions of paragraph 4.3.2 above;
- (b) the REIWA Council will review the effectiveness of the REIWA Compliance Program on, at least, an annual basis in the light of the reports it receives from the Competition and Consumer Act Compliance Committee pursuant to paragraph 4.3.2 above and from the ICO pursuant to paragraph 3.1.3(c) above.

##### 4.4.2 Purpose of reviews

The purpose of the review by REIWA of its Compliance Program is to ensure:

- (a) that the REIWA Compliance Program is still appropriate for the organisation's current operations;

- (b) that the REIWA Compliance Program is performing satisfactorily.

#### 4.5 LIAISON

##### 4.5.1 Liaison by the ICO with ACCC and reporting to the ACCC

The ICO will liaise with the ACCC by way of referring to the ACCC any difficulties that REIWA has with complying with the orders made by His Honour Justice French in the Federal Court on 8 October 1999 and seeking guidance on Part IV of the *Competition and Consumer Act* issues that might arise from time to time.

#### 4.6 ACCOUNTABILITY

##### 4.6.1 Accountability of the ICO

The ICO is directly accountable with respect to the implementation of the REIWA Compliance Program to the REIWA Council.

##### 4.6.2 Accountability of individual Council members, Arbitrators and committee members

Individual Council members, individual arbitrators and REIWA committee members are directly accountable with respect to the implementation of this REIWA Compliance Program to the REIWA Council in its capacity as the REIWA governing body.

##### 4.6.3 Accountability of REIWA staff and staff job descriptions

All members of REIWA staff are directly accountable to the ICO and the accountability of staff members and their individual responsibilities pursuant to the REIWA Compliance Program shall be included in staff job descriptions.

REIWA  
DISPUTE  
RESOLUTION  
MANUAL

# REIWA DISPUTE RESOLUTION MANUAL

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# PART 1

## REIWA CONCILIATION AND ARBITRATION PROCEDURES AS DETERMINED BY THE REIWA COUNCIL

## 1.1 PROCEDURES FOR CONCILIATION CONFERENCES

1. Pursuant to Article 44.5 of the REIWA Articles, the Council directs that all disputes referred to in that Article shall be referred to a Conciliation Conference and the parties to each dispute shall attend such a conference upon being provided with not less than fourteen (14) days notice under that Article.
2. The REIWA Council or the Executive Director of REIWA will nominate with respect to each Conciliation Conference a Conciliator who shall endeavour to arrange to meet the parties for a conference to be held no sooner than fourteen (14) days and no later than twenty eight (28) days after his or her appointment.
3. No less than seven (7) days before any Conciliation Conference the parties to the dispute shall provide to the Conciliator written submissions as to that party's arguments with respect to that dispute.
4. The Conciliator may conduct the proceedings in such manner as he or she considers appropriate having regard to the nature of the dispute. He or she shall perform the functions impartially, independently, fairly and objectively, giving proper consideration to the nature of the dispute, the level of formality required by the proceedings, the interests of both parties and the rights and the obligations of the parties with regard to the matter in dispute.
5. After termination of a Conciliation Conference the Conciliator shall not accept an appointment as arbitrator or otherwise provide assistance on behalf of one of the parties in any subsequent arbitration or litigation relating to the subject of the Conciliation Conference.



## 1.2 PROCEDURES FOR ARBITRATIONS

1. An Arbitration Panel shall be convened to conduct an Arbitration hearing under Article 44 of the REIWA Articles upon:
  - (a) REIWA receiving a written request for such a hearing from a REIWA member;
  - (b) REIWA receiving a written request for such a hearing from a member of the public who has agreed in writing to submit the dispute concerned and abide by an arbitration resolution as stipulated in Article 44.1.2 of the REIWA Articles; and/or
  - (c) the REIWA Council of its own motion directing that such a hearing be conducted

PROVIDED THAT nothing in this Dispute Resolution Manual shall require a member of the public who is not a member of REIWA to be a party to an arbitration hearing unless that entity has agreed in writing to participate in that hearing as required by Article 44.1.2 of the REIWA Articles.

2. Once an Arbitration hearing has been convened by the Arbitration Panel notice of the date of that hearing shall be given to all concerned no less than fourteen (14) days before the hearing.
3. Unless advised otherwise by the Arbitration Panel, the parties to an arbitration shall provide to the Arbitrator not less than seven (7) days prior to hearing of the arbitration copies of all documentary evidence that the party proposes relying upon at the hearing. Wherever possible, REIWA shall provide copies of any documentary evidence provided by a party prior to the hearing to all other parties to the arbitration.
4. The Licensees in bona fide control of any parties and any sales representatives involved in the dispute must wherever reasonably possible attend the Arbitration Hearing. Written confirmation of this attendance is required by REIWA from the relevant party to the dispute at least seven (7) days prior to the date of the Hearing.
5. An arbitration fee of such amount as the Council may fix from time to time and any further sum payable under Article 44 of the REIWA Articles is payable to the Institute by each party to any dispute which is referred to arbitration. The person requiring an arbitration must pay his or her fee when forwarding any written request for an arbitration or within 7 days of being requested to do so by the Executive Director of REIWA. Any other party to any arbitration hearing must pay his or her fee within seven (7) days of being requested to do so by the Executive Director of REIWA.

## PART 2

# CONCILIATION CONFERENCE AND ARBITRATION RESOURCES

## 2.3 REIWA CONCILIATION CONFERENCE GUIDELINES

1. Thank those present for attending.
2. Give some positive expectation that a solution will be reached today.
3. Make the following clear to the parties:
  - 3.1 That the Conciliation Conference is aimed to bring parties together in a spirit of understanding to hear their point of view and to see if a solution is available;
  - 3.2 That if no solution is reached at this meeting it does not compromise any future action in Arbitration;
  - 3.3 That all proceedings and statements here are “without prejudice” and can not be relied on or referred to at a future hearing;
  - 3.4 That in the event that an offer is made and not accepted that offer will not be referred to or prejudice the case in any Arbitration proceedings;
  - 3.5 That all matters here are confidential and any notes taken will be destroyed;
  - 3.6 That conciliators are chosen for their expertise and experience;
  - 3.7 That this is a matter of professional practice and in that regard you have considerable experience as a real estate agent. Also mention your own experience as an Arbitration Chairman;
  - 3.8 That this meeting will be conducted in an informal way, but that you might invite the Claimant to present his/her case first. You will then give the Respondent the opportunity to ask questions of the Claimant before presenting his/her case and you also may ask questions of the parties on any points which need clarification;
  - 3.9 That this dispute is between the parties and each party should address each other not the conciliator;
  - 3.10 That ideally the parties will reach their own agreement, however, the parties may ask questions of you to see how you think the case would go if it should proceed to Arbitration. Explain that if you wish to discuss an issue with one of the parties, this must be done in private. Explain that you can make recommendations but those recommendations need to be accepted by both parties;

- 3.11 That if the parties agree to a resolution, we will have a short note prepared and signed today and it is all over;
  - 3.12 If no resolution is reached today, the matter goes to Arbitration in the normal way;
  - 3.13 That it is undesirable to fail to reach a resolution today, in that the parties will need to spend more time at REIWA presenting their case and time equals money;
  - 3.14 That your function ceases here. Should Arbitration be necessary then a panel of three other Arbitrators will hear all the same evidence that has been presented today;
  - 3.15 That you have a copy of the whole file and that you have read it and are familiar with the facts provided by both parties;
  - 3.16 That there are 2 ground rules to the conciliation which are (i) no interruptions, and (ii) no abusive language.
4. You should then invite the Claimant to present his case.

## 2.4 REIWA ARBITRATION CONFERENCE GUIDELINES

### 1. INTRODUCTION

Where two or more parties have a dispute, or difference, arbitration in some instances may be used to determine the matters.

Arbitration, therefore, involves the administration of justice and findings of matters of law and of fact.

If the award - the outcome of the arbitration - is wrong in law this may lead to an appeal, if the award is wrong on the facts there can not be an appeal but there may be allegations of misconduct on the part of the Arbitrator to have the arbitration set aside.

There are two aspects to "good arbitration", that minimise the possibility of an appeal or allegations of misconduct, the proper conduct of the hearing and the award itself.

### 2. THE HEARING

#### 2.1 Conduct of Hearing

The arbitrator's involvement begins before the actual hearing itself. In general commercial arbitration, the Arbitrator is responsible for the administrative work necessary to bring about the arbitration and also conducts the preliminary conference. At this conference the parties discuss with the Arbitrator and agree such things as:

- the general nature of the dispute and the approximate amount of the claim and any counter-claim;
- attempts to settle the dispute;
- expected length of hearing;
- any supplementary matters which may be submitted to arbitration;
- the payment of the Arbitrator's fees;
- timetable for delivery of pleadings;
- whether a transcript of evidence is required; and
- the date for the hearing.

It is also customary for an Arbitrator to warn the parties that they should not communicate directly with the Arbitrator without sending copies of such communications to the other side. Verbal communication between the parties and the Arbitrator should not take place.

REIWA Arbitrators are very fortunate in that a great deal of the administrative work is carried out for them and the need for preliminary conference does not arise. The only preparation that they are required to do before the hearing is to read the correspondence and other papers relating to the dispute.

## 2.2 The Actual Hearing

In its simplest form, a hearing is where the arbitrator, the disputing parties, their lawyers, advisors and witnesses meet to determine the issues in dispute. The Arbitrator controls the procedures. The tenor of the meeting can range from informality to one of high formality. It is a time when each party is given the opportunity to argue the case and put forward evidence in support of that agreement.

The arbitration does not need to be complex have an excessively long period of hearing time for the arbitrator to understand the issues involved. In some disputes the issues are complicated by the animosity between the parties, the belief by each party that they are right and the parties ignorance of arbitration law and procedure. Most hearings have a degree of formality. It is this, and the Arbitrator's knowledge of arbitration law, procedures and experience, together with the judicial attitude which will work together for a well conducted hearing.

In REIWA arbitrations, of course, no legal representation is permitted but all of the other features mentioned above are there.

It is expected that prior to before the hearing both the arbitrator and the parties will understand the nature of the proceedings. The arbitrator would be expected to familiarise him or herself once more with the questions in issue by reading the documents and noting areas where he or she may need further explanation from the parties. It is often the practice for the parties to agree the questions which the Arbitrator needs to answer prior to the hearing. These questions themselves require close scrutiny by the Arbitrator. Sometimes they are drawn in a way which would give rise to ambiguous answers or they do not reflect the issues which have arisen between the parties.

If the parties have not agreed a set of questions to be answered by the Arbitrator, then the Arbitrator should pursue this aspect. A set of agreed questions prepared by the parties which are to be answered by the Arbitrator concentrates the minds of the parties to the issues involved.

The management of the hearing should be such that everything will be done by the Arbitrator to assist the progress of the hearing. He should manage the

hearing so that the matters which the parties raise can be handled in a proper and skilful manner. Most Arbitrators have checklists of the items which are required at the hearing, these include such obvious things as a notebook, pens, pencils, a Bible, texts of oaths and affirmations, copy of the *Commercial Arbitration Act*, files of the Claimant's documents, Respondent's documents and correspondence, envelopes for the filing of exhibits.

### 2.3 Procedure

The arbitrator at all times needs to show judicial ability and competence. Section 14 of the *Commercial Arbitration Act* ("the Act") allows the Arbitrator to conduct proceedings in such manner as he thinks fit but subject to the Act and any applicable Arbitration Agreement. This does not mean that the Arbitrator can proceed without applying the principles of natural justice such as the right to be heard. Section 22 of the Act states that the arbitrator shall determine matters according to law unless otherwise agreed in writing by the parties. The Act provides that if the parties agree in writing that the Arbitrator does not have to make a determination in accordance with the law, he has the discretion to determine a question by reference to considerations of general justice and fairness.

## HEARING SUMMARY PROCEDURE

|     | Claimant                                                                                                                                                                                                                                                                              | Respondent                                                                                                                                                                                                                                              |
|-----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.  | The Claimant opens the case by an address which briefly sets out the nature of the disputes, what the Claimant alleges and what evidence will be called on behalf of the Claimant; at the same time if there is a counterclaim, the Claimant will open a defence to the counterclaim. |                                                                                                                                                                                                                                                         |
| 2.  | <b>Examination-in-Chief</b><br>The claimant calls and examines the witness with the intention of seeking evidence to support the Claimant's case.                                                                                                                                     |                                                                                                                                                                                                                                                         |
| 3.  |                                                                                                                                                                                                                                                                                       | May cross-examine the Claimant's witness.                                                                                                                                                                                                               |
| 4.  | <b>Re-examination</b><br>If the witness is cross-examined the Respondent may re-examine the witness on any matter raised in cross examination. Respondent's case closed.                                                                                                              |                                                                                                                                                                                                                                                         |
| 5.  |                                                                                                                                                                                                                                                                                       | Respondent's case opens in a similar procedure to that of Claimant's opening.                                                                                                                                                                           |
| 6.  |                                                                                                                                                                                                                                                                                       | <b>Examination-in-Chief</b><br>Respondent calls and examines witnesses with the intention of seeking evidence which will support the Respondent's case.                                                                                                 |
| 7.  | Claimant may <b>Cross-Examine</b> the Respondent's witness.                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                         |
| 8.  |                                                                                                                                                                                                                                                                                       | <b>Re-Examination</b><br>If the witness is cross-examined the Respondent may re-examine the witness on any matter raised in cross-examination. Respondent's case closed.                                                                                |
| 9.  | Questions from the Arbitrator                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                         |
| 10. | Opportunity for the parties to examine-in-chief, cross-examine, re-examine on matter raised by the Arbitrator.                                                                                                                                                                        |                                                                                                                                                                                                                                                         |
| 11. |                                                                                                                                                                                                                                                                                       | <b>Respondent's Closing Address</b><br>Respondent speaks first unless Respondent has not called evidence. Puts forward a précis of Respondent's evidence and argument. It is frequently in writing and speaking is confined to some of the main points. |
| 12. | <b>Claimant's Closing Address</b><br>The procedures are similar to the Respondent's closing address.                                                                                                                                                                                  |                                                                                                                                                                                                                                                         |



## 2.4 Misconduct of the Hearing

The *Commercial Arbitration Act* does not define misconduct exhaustively, it merely states that it includes corruption, fraud, partiality and bias. Justice Atkin in the *Williams v Wallis & Cox* (1914) 2 KB 478, discussing the expression “misconduct” stated:

“That expression does not necessarily involve personal turpitude on the part of the Arbitrator, and such suggestion has been expressly disclaimed in this case. The term does not really amount to much more than such a mishandling of their arbitration as is likely to amount to some substantial miscarriage of justice.”

*London Export Corporation Ltd v Jubilee Coffee Roasting Ltd* (1958) 1 WLR 271, Justice Diplock, analysed the tasks of the Court when asked to set aside an award on the grounds of misconduct. According to His Honour, “misconduct” in the context of commercial arbitration embraced two distinct grounds for the setting aside of an award (i) a breach of the procedures upon which the parties have agreed; and (ii) a violation of the rules of natural justice. He stated that:

“Where the award has been made by the Arbitrator in breach of the agreed procedures, the Applicant is entitled to have it set aside, not because there has been necessarily any breach of the rules of natural justice, but simply because the parties have not agreed to be bound by an award made by the procedures in fact adopted.”

One can readily understand why an arbitration award should be set aside on the grounds of breach of an agreed procedure. The question of the breach of natural justice is somewhat more complex. Justice Marks in *Gas and Fuel Corporation of Victoria v Wood Hall Ltd* (1978) VR 385 stated:

“There are two rules of principles of natural justice. The first is that an Adjudicator must be disinterested and unbiased. This is expressed in the latin maxim *in casu sua*. The second principle is that the parties must be given adequate notice and opportunity to be heard. This is expressed in the latin maxim *audi alteram partem*. Another way of putting the first rule is that justice must not only be done but appear to be done and the second rule is that each party must be given a fair hearing and a fair opportunity to present its case. Transcending both principles are the notions of fairness and judgement only after a full and fair hearing given to the parties.”

On the basis of judicial decisions it is possible to draw the following principles relevant to the misconduct of Arbitrators:

- Misconduct can amount to some irregularity in the procedures adopted by the Arbitrator. It is not constituted by incorrect

findings of fact, errors of law and misconceptions in the nature of contentions put forward;

- Mistakes of law or fact or the mis-statement or misconception of the parties submissions by the Arbitrator, although not amounting to “misconduct” by themselves may in certain circumstances arouse in the mind of a fair-minded observer a reasonable suspicion that they stem from the failure to consider relevant contentions and/or submissions of a fair and unprejudiced mind;
- It may be relevant to determine whether the developed trend or pattern which had the effect or appeared with reason to have the effect of unfairly disadvantaging a party.

In a Victorian case the removal of an Arbitrator for misconduct was ordered. The misconduct referred to included accepting into evidence a book of documents without the approval of all parties, the Arbitrator persisting in communicating directly with one party when he was aware that both parties were represented by solicitors and the Arbitrator travelling to the building site, a journey of 20 kms with a representative of one of the parties. In this particular case the Court considered the Arbitrator’s conduct was such that not only should the Arbitrator’s award be set aside but that he should be forced to pay the costs of the parties to the arbitration.

### 3. The Award

The Award is the culmination of all the matters put before the Arbitrator for consideration. It occurs after he has analysed the evidence, made a determination and with very few exceptions committed the determination to writing. It must be a document which enables a successful party to enforce the award through the Courts if the unsuccessful party does not perform within the requirements of the award. The award is the outcome of a judgement by the Arbitrator where at least two conflicting views have been put to the Arbitrator and the effectiveness of the arbitration hearing is found in the award.

What are the requirements of an award? An award needs to be capable of being enforced in the Court. In order to achieve this, an award must meet the following requirements:

- **Time**

The award must be made and published within the time stated in the arbitration agreement. If no time is stated, then it must be published within a reasonable time;

- **Certainty**

The Arbitrator must state precisely what decision has been reached. It must be clear to the parties what is meant. The time for action needs to be stated.

- **Completeness**

The Arbitrator must answer all the questions submitted by the parties and must not go beyond those questions. Where the parties have not submitted questions to be answered by the Arbitrator, then the Arbitrator has to make determination on the issues, on the evidence put during the arbitration, but must not go beyond those issues;

- **Consistency**

Where there are several questions to be answered the answers must not be inconsistent, ambiguous or contradictory. Ambiguity may arise from the form of questions put by the parties. An Arbitrator needs to be alert and reject such questions;

- **Finality**

Section 23 of the *Commercial Arbitration Act* allows an Arbitrator to make an interim award at any time. If this is done the award should specifically state that it is an interim award. If it not then, the award is final and must leave nothing further to be done;

- **Enforceable**

The award must be legal and capable of being performed.

Unless the parties otherwise agree, the Act requires the Arbitrator to give reasons for decision. In the great majority of cases all anyone will want will be a short statement in a paragraph or so of what the case is about, the contentions on both sides, a summary of the principle findings of fact on the matters in issue and the reasons, stated quite shortly in non-legal language, why the Arbitrator has come down to one side or on the other.



## National Occupational Licensing System

### Property Occupations Interim Advisory Committee Communiqué #4 on Progress

(This paper reflects IAC advice to date and does not purport to outline settled government policy. It is provided for the purpose of communicating progress and responses are not sought at this time.)

#### Introduction

The National Occupational Licensing System (NOLS) is being developed to remove licensing inconsistencies across state and territory borders and provide for a more mobile workforce. Licence holders will be able to perform work in any state or territory with a single national licence. The NOLS will reduce red tape, improve business efficiency and the competitiveness and productivity of the national economy. Initially, four occupational areas will be covered by the NOLS: electrical, plumbing and gasfitting, refrigeration and air conditioning mechanics, and property occupations.

Interim Advisory Committees (IACs) have been established to provide policy advice to the COAG National Licensing Steering Committee in the development of national licensing for each occupational area. The Property Occupations IAC (POIAC) met on a number of occasions during 2010 to develop a series of proposals in relation to:

1. licence categories, scopes of work and licence types;
2. eligibility requirements, both skill based and non-skill based.

A summary of the advice to date of the POIAC follows. Please note that this information is provided on the following basis:

- This advice will inform the policy considerations of the National Licensing Steering Committee and the advice it provides to the Ministerial Council for Federal Financial Relations;
- The policy will be subject to public consultation through a Consultation Regulation Impact Statement (RIS) for this occupation which will be released in the second half of 2011. Following public consultation, a Decision RIS will need to be agreed by jurisdictions through the Ministerial Council;
- The summary represents the majority view of IAC members, noting that a consensus may not have been reached on all policy elements.

#### Current licence holders

The COAG decision to establish the NOLS agreed that all current holders of state and territory licences would be transitioned appropriately into the new licensing structures, with licence conditions if necessary, to ensure that they continue to be able to undertake their current work. The details of these transitional arrangements are still being developed.

#### Background

IACs are comprised of members with a wide range of expertise including in the fields of regulation, industry operations and practices (from both a union and employer perspective), safety, consumer advocacy, insurance (where relevant) and training. Each IAC is assisted in its consideration of policy by the views of an occupation-specific Regulator Working Group, comprising regulators from each jurisdiction.

Advice provided by the IACs will inform the Steering Committee and its development of the proposed regulations for the NOLS. In providing advice the IACs were required to take into account:

- the objectives and principles contained in the *Intergovernmental Agreement for a National Licensing System for Specified Occupations* signed by the Council of Australian Governments (COAG) on 30 April 2009; and

- the eight best practice regulation principles set out in COAG's *Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies*.

Where practicable a consistent approach to the development of licence policy has been taken across occupations.

Further background on the NOLS as well as future updates can be found at [www.nola.gov.au](http://www.nola.gov.au)

## **Progress with legislation and the establishment of the National Occupational Licensing Authority**

The *Occupational Licensing National Law Act 2010* (the National Law) was passed by Victoria's Parliament as host jurisdiction on Friday, 17 September 2010, and has so far been applied in Queensland and New South Wales. It is expected that other jurisdictions will pass the legislation by early 2011. The National Law can be found at [www.nola.gov.au](http://www.nola.gov.au).

The National Law establishes the framework for the NOLS and a new body, the National Occupational Licensing Authority (NOLA), which will administer the system. The NOLA Chair and Board are expected to be appointed in autumn 2011.

## **Proposed Licence Structure for Property Occupations**

### **1. Licence categories and scopes of work**

Following consideration of a range of options for licence categories, scopes of work and licence types for the property occupations, the POIAC has developed a proposal based on six licence categories. The licence categories and their scope of work are shown in Table 1.

Note that where the licensing structure proposed for the national licensing system includes subgroups not currently regulated in a particular jurisdiction (for example, auctioneers), the principles of the *Intergovernmental Agreement for a National Licensing System for Specified Occupations* state that that jurisdiction will not be required to extend its licensing to cover that subgroup.

Table 1: Proposed Work Categories and their Scopes of Work

| <b>Licence category</b> | <b>Scope of work</b>                                                                                                                                                                                                                                                                                                                                                                                         |
|-------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Estate agent            | Sale, purchase, lease or management of real property.<br><br>Act in an agency relationship for the sale, purchase, lease or management of real property. An estate agent is not authorised to conduct an auction of real property or act as a strata managing agent or a business agent.                                                                                                                     |
| Strata managing agent   | Management of any function of the body corporate or owners' corporation under a strata or community title scheme.<br><br>Exercise any function of a body corporate or owners' corporation in the management of the body corporate or owners' corporation under a strata or community title scheme. A strata managing agent is not authorised to act as an estate agent or a business agent or an auctioneer. |
| Business agent          | Sale, purchase and lease of a business<br><br>Act in an agency relationship for the sale, purchase and lease of a business. A business agent is not authorised to conduct an auction of real property or act as an estate agent or strata managing agent.                                                                                                                                                    |
| Auctioneer              | Conduct an auction of real property.                                                                                                                                                                                                                                                                                                                                                                         |

| <b>Licence category</b>         | <b>Scope of work</b>                                                                                                                                                                                                                                                                                                                                             |
|---------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                 | An auctioneer is not authorised to operate a trust account or act in an agency relationship as an estate agent or business agent, operate a real estate or business agent business, or act as a estate agent's representative or business agent's representative                                                                                                 |
| Estate agent's representative   | Act under the authority of a licensed estate agent in the sale, purchase, lease or management of real property. An estate agent's representative is not authorised to operate a trust account or operate a real estate or business agent business, or conduct an auction of real property, or act as a strata managing agent or business agent's representative. |
| Business agent's representative | Act under the authority of a licensed business agent in the sale, purchase and lease of a business. A business agent's representative is not authorised to operate a trust account or operate a business agent's or real estate agent's business, or conduct an auction of real property, or act as a strata managing agent or an estate agent's representative. |

It should also be noted that the majority of members of the POIAC supported the deregulation of the sale and auctioning of livestock as insufficient evidence of market failure has been identified. This position was strongly opposed by the member from the Australian Livestock and Property Agents Association (ALPAA).

## **2. Licence Types**

The POIAC has proposed that the regulations for property occupations should make provisions for issuing of a licence to:

- an individual; or
- a body corporate.

## **3. Eligibility requirements**

### **a) Skill-based eligibility requirements**

The POIAC has proposed that a skilled-based eligibility should be based on the qualifications or skill sets from the national Training Package (CPP07 Property Services Training Package).

A Certificate IV level qualification is proposed as appropriate for an estate agent, strata management agent and business agent. A skill set is proposed for an auctioneer, an estate agent's representative and a business agent's representative. The POIAC also proposed one skill set for an estate agent wishing to operate as a business agent and another for a business agent wishing to operate as an estate agent.

The majority of members have supported an approach that does not include experience requirements, additional to a properly delivered and assessed competency based qualification.

### **b) Non-skilled eligibility requirements**

The POIAC has proposed a range of non-skilled eligibility requirements include personal probity and financial probity.

## **4. Exemptions and conditions**

The POIAC has proposed a range of exemptions and conditions for the property occupations. These will be covered more fully in the Consultation Regulation Impact Statement which will be released in the second half of 2011.

### Next Steps

The POIAC will continue to provide advice on licensing policy during 2011 including for transitional processes. Draft regulations and a Consultation Regulation Impact Statement for each occupational area will be released for public comment early in the second half of 2011. The public will have 6 to 8 weeks to make comments on the proposals at this time.

#### Key dates

|                  |                                                                                                                                                                                                     |
|------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 Jan 2011       | Establishment of the National Occupational Licensing Authority                                                                                                                                      |
| Second half 2011 | Draft regulations and Consultation Regulation Impact Statement released for public comment                                                                                                          |
| End of 2011      | Ministerial Council for Federal Financial Relations to consider finalised regulations and Decision Regulation Impact Statement                                                                      |
| Early - Mid 2012 | Regulations to be adopted in all jurisdictions                                                                                                                                                      |
| 1 July 2012      | Commencement of the National Occupational Licensing System for the first four occupational areas: electrical, plumbing and gasfitting, refrigeration and air conditioning and property occupations. |

**APPLICATION TO THE ACCC  
BY REIWA PURSUANT TO PART VII  
OF THE *COMPETITION & CONSUMER ACT***

**For revocation of existing authorisation and  
substitution of new authorisation from ACCC**

10 January 2017

**SUBMISSIONS**

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## DEFINITIONS AND ABBREVIATIONS USED IN THESE SUBMISSIONS

**ACCC** means the Australian Competition and Consumer Commission.

**ACCC's 2001 Initial Determination** means the determination by the ACCC to grant authorisation to REIWA on 21 December 2001.

**ACCC's 2007 Authorisation** means the ACCC authorisation provided to REIWA under Part VII of the TPA pursuant to the ACCC's 2007 Determination, that commenced on 10 May 2007.

**ACCC's 2007 Determination** means the determination by the ACCC to grant authorisation to REIWA on 18 April 2007.

**ACCC Draft Determination Application by Property Media Group Pty Ltd for authorisation** means the application for authorisation numbers A91537-A91538 lodged by Property Media Group Pty Ltd and certain real estate agents to collectively bargain with online and print real estate advertisers

**ACCC's 2007 Minor Variation Determination** means the determination by the ACCC to grant a minor variation (relating to REIWA's Auction Code) to the ACCC's 2007 Determination dated 5 September 2007.

**ACCC's 2009 Minor Variation Determination** means the determination by the ACCC to grant a minor variation (relating to REIWA's Articles and MCPs) to the ACCC's 2007 Determination dated 1 April 2009.

**ACCC's 2012 Authorisation** means the ACCC authorisation provided to REIWA under Part VII of the CCA pursuant to the ACCC's 2012 Determination that commenced on 11 May 2012.

**ACCC's 2012 Determination** means the determination by the ACCC to grant authorisation to REIWA on 19 April 2012 (authorisation number A91280).

**AQF** means the Australian Qualifications Framework.

**Articles** means REIWA's Articles of Association.

**Auction Code** means the REIWA Auction Code of Conduct.

**CCA** means the Competition and Consumer Act, 2010.

**CPE Scheme** means REIWA's Compulsory Professional Education Scheme.

**Current Articles** means the form of the Articles that applies at present (i.e. as approved at the REIWA Annual General Meeting on 14 September 2011).

**Property Media Group Application** means the Application by Property Media Group Pty Ltd to the ACCC.

**Initial 2001 Application** means the REIWA application for authorisation under Part VII of the TPA lodged with the ACCC on 17 July 2000 (Application No. A70011).

**MCPs** means the REIWA Members' Codes of Practice.

**MLS** means the REIWA Multiple Listing Service.

**MLS By-Laws** means the REIWA Multiple Listing Service By-Laws.

**NOLS** means the Council of Australian Governments' National Operational Licensing System.

**Proposed Voluntary Accreditation Process** means a proposed voluntary specialist accreditation process

**PST** means the REIWA Professional Standards Tribunal.

**REBA Act** means the Real Estate and Business Agents Act, 1978.

**REBAS Board** means the Western Australian Real Estate and Business Agents Supervisory Board (the functions of which are now performed, in effect, by the Department of Commerce).

**REA Group Ltd** – a multi-national digital advertising company specialising in property.

**REIA** means the Real Estate Institute of Australia.

**REIWA** means the Real Estate Institute of Western Australia (Inc).

**reiwa.com** means the REIWA real estate internet marketing portal.

**reiwa.com Term and Conditions** means the general terms and conditions of reiwa.com.

**REIWA's Membership Framework** means the Articles, MCPs, Auction Code, reiwa.com Terms and Conditions, Proposed Voluntary Accreditation Process and the agreement to make available for use the Standard Exclusive Agency Forms, being the subject of this application.

**Standard Exclusive Agency Forms** means forms produced by REIWA containing standard clauses relating to the appointment by members of the public of real estate agents and business agents on an exclusive basis.

**Standard Forms** means any form produced or otherwise supplied by REIWA for use in agent transactions. These include the Standard Exclusive Agency Forms as well as a wide range of other forms.

**State Regulatory CPD Program** means the Western Australian State Licensing Compulsory Professional Development Program conducted by the REBAS Board/Department of Commerce.

**TPA** means the Trade Practices Act, 1974.

**Tribunal** means the Australian Competition Tribunal.

**2006 Application** means the REIWA application for authorisation under Part VII of the TPA lodged with the ACCC on 22 December 2006 (Application number A91026).

**2008 Minor Variation Application** means the REIWA application for a minor variation of the ACCC's 2007 Authorisation, lodged with the ACCC on 31 October 2008, that ultimately was approved by the ACCC's 2009 Minor Variation Determination.

**2010 Amendments** means amendments made by REIWA to the Articles in September 2010.

**2011 Amendments** means amendments made by REIWA to the Articles in September 2011.

**2012 Application** means the REIWA application for authorisation under Part VII of the CCA lodged with the ACCC on 7 November 2011 (application number A91280).

**2017 Application** means the REIWA application for authorisation under Part VII of the CCA lodged with the ACCC in January 2017 (i.e. the application the subject of these submissions).



## 1. INTRODUCTION

- 1.1 The Real Estate Institute of Western Australia (Inc.) (**REIWA**) seeks, pursuant to sub-section 91C(1) of the *Competition and Consumer Act, 2010 (CCA)*, the revocation of an authorisation granted to it on 19 April 2012 (authorisation number A91280) (**ACCC's 2012 Authorisation**) and the substitution of a new authorisation for the one revoked.
- 1.2 REIWA is an association of Western Australian real estate and business agents incorporated under the *Associations Incorporation Act, 2015 (WA)*.
- 1.3 REIWA was initially incorporated in 1918. Since that time REIWA has provided a multitude of services to real estate agents, business agents and the general public designed to provide an effective method of assisting in the delivery of real estate and business agency services to consumers in Western Australia at the highest level of professional and ethical standards.

### **Previous authorisation with respect to which revocation is sought**

- 1.4 On 7 November 2011 REIWA lodged an application (Application Number A91280): Public Register Number C2011/952) (**2012 Application**) with the Australian Competition and Consumer Commission (**ACCC**) pursuant to sub-section 91C(1) of the *Competition and Consumer Act, 2010 (CCA)* for the revocation of an earlier authorisation granted by the ACCC on 18 April 2007 (Application Number A91026: Public Register Number C2007/85) (**ACCC's 2007 Determination**).
- 1.5 REIWA successfully applied for, and was granted by the ACCC, the substitution of a new authorisation for the one

revoked. This was the subject of the ACCC's 2012 Determination.

1.6 The contracts, arrangements, understandings and/or conduct the subject of the 2012 Application related to the arrangements encapsulated by the REIWA Membership Framework<sup>1</sup>, including particular documents being:

- REIWA's Articles of Association (**Articles**);
- REIWA's Members' Codes of Practice (**MCPs**);
- Multiple Listing Service By-Laws (**MLS By-Laws**);
- 14 forms containing standard clauses relating to the appointment by members of the public of real estate agents and business agents on an exclusive basis (**Standard Exclusive Agency Forms**); and
- REIWA's Auction Code of Conduct (**Auction Code**).<sup>2</sup>

1.7 The ACCC's 2012 Determination granted the ACCC's 2012 Authorisation to REIWA in relation to the conduct and documents referred to above for a period of five years, subject to various conditions. The determination was made on 19 April 2012 and came into force on 11 May 2012.<sup>3</sup>

1.8 The expiry date for the ACCC's 2012 Authorisation is 11 May 2017.<sup>4</sup>

1.9 REIWA now seeks revocation of the ACCC's 2012 Authorisation and its substitution with a new authorisation.

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<sup>1</sup> See ACCC's 2012 Determination at para 5.8

<sup>2</sup> See ACCC's 2012 Determination at para 5.11

<sup>3</sup> See ACCC's 2012 Determination at para 5.15

<sup>4</sup> See ACCC's 2012 Determination at para 5.10

### **Application for substitution with a new authorisation**

- 1.10 REIWA seeks, in substitution of the ACCC's 2012 Authorisation, a new authorisation of its Articles, MCPs, Auction Code and agreements between REIWA and its members that give rise to the Standard Exclusive Agency Forms. REIWA does not seek re-authorisation of its MLS By-Laws but seeks authorisation of conduct not previously authorised, being its reiwa.com general terms and conditions (**reiwa.com Term and Conditions**) and a proposed voluntary specialist accreditation process (**Proposed Voluntary Accreditation Process**), (together, the documents and conduct referred to in this paragraph for which authorisation is sought in this application is referred to as the **REIWA Membership Framework**).
- 1.11 The Multiple Listing Service (**MLS**) was a service provided to members by REIWA in the past which was created and regulated by REIWA's MLS By-Laws. This was a system of marketing properties where details of properties for sale were provided to all eligible agents. Listing agents were able to make a unilateral offer to all other agents entitled to use the MLS that the listing agent was prepared to enter into a conjunctional agreement<sup>5</sup> with respect to a particular property. The details for properties that were listed with the MLS were then included in an online database known as "Total Property Market", that was available to REIWA Members only.
- 1.12 Over a period of time the use of the MLS system has been completely superseded by agents accessing online real estate portals, such that the MLS service has now been discontinued by REIWA and the MLS By-Laws are redundant.
- 1.13 In the case of its Articles, REIWA has made some relatively minor amendments to the form of the document that has been

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<sup>5</sup> A conjunctional agreement is one between a listing agent (that is, an agent authorised by the principal to sell the property) and another agent (the conjunctional agent) to share a fee arising from the introduction of a customer by the conjunctional agent to the listing agent. On making a conjunctional agreement, the conjunctional agent becomes a sub-agent of the listing agent.

previously authorised by the ACCC, as is detailed below in section 5 of this submission.

- 1.14 As to the Standard Exclusive Agency Forms, some relatively minor amendments have been proposed by REIWA to the form of those documents that have previously been authorised by the ACCC, as are detailed below.
- 1.15 The terms of REIWA's current Articles are set out in schedule "A" to these submissions. The changes (greater detail of which is set out in section 5 of these submissions) do not have a material impact upon the factors that are relevant to this authorisation application.
- 1.16 As to the MCPs and the Auction Code, those documents are in the same terms as the documents previously authorised in 2007, 2009 and 2012.
- 1.17 The MCPs are set out in Schedule "B" to these submissions.
- 1.18 The Auction Code is set out in Schedule "C" to these submissions.
- 1.19 The Standard Exclusive Agency Forms are set out in Schedule "E" to these submissions. REIWA seeks authorisation of the agreement between REIWA and its members, and the agreement between its members *inter se*, to produce these standard documents, rather than the documents themselves. The documents to which these agreements relate are as follows:
  - (i) Authority to Auction;
  - (ii) Authority to Auction – Rural;
  - (iii) Residential Exclusive Agency Selling Agreement (long version);
  - (iv) Residential Exclusive Agency Selling Agreement (short version);

- (v) Residential Exclusive Agency Selling Agreement – Unsolicited Consumer Contracts;
- (vi) Exclusive Selling Agency Agreement for Rural Property;
- (vii) Exclusive Selling Agency Agreement for Commercial and Industrial Property;
- (viii) Exclusive Appointment Agent to Sell a Business (including Land) (formerly called the Exclusive Appointment of Agent to Sell/Offer to Sell a Business);
- (ix) Exclusive Authority to Lease, Sub-lease or Assign Commercial/Industrial Premises;
- (x) Exclusive Authority to Act as Managing Agent for Residential Premises for a Short Term/Holiday Accommodation;
- (xi) Exclusive Authority to Act as Managing Agent of Residential Premises;
- (xii) Exclusive Appointment to Act as Agent Manager of a Strata Company;
- (xiii) Exclusive Authority to Act as Managing Agent for Commercial/Industrial Property.

1.20 All of these forms were previously the subject of the ACCC's 2012 Authorisation.<sup>6</sup> The terms of the Standard Exclusive Agency Forms that were the subject of the ACCC's 2012 Authorisation do not vary significantly from the documents that are the subject of the agreements for which authorisation is now sought. To the extent that those documents have been amended, those amendments are marked up in the attached schedule and REIWA contends that those amendments do not

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<sup>6</sup> As set out in paragraph 1.12 of the submissions, REIWA no longer conducts the MLS System and does not seek re-authorisation of the MLS By-Laws. Likewise, it no longer publishes the Multi-List Exclusive Plus Services Selling Agency Agreement Residential, known as the "*Internet Listing Service Selling Agency Agreement – Residential*" (including appointment options of exclusive agency, exclusive plus agency or multi-list exclusive agency), a document that was included in previous authorisation applications.

have a material impact upon the factors to take into account in assessing this application for authorisation.

- 1.21 Members of REIWA agree to be bound by the terms of REIWA's rules and regulations and, consequently, the documents for which authorisation is sought constitute a contract or, alternatively, an arrangement or understanding between REIWA and its members and between members *inter se*.<sup>7</sup>
- 1.22 REIWA contends that REIWA's Membership Framework is likely to result in public benefits that outweigh any potential anti-competitive detriment. In particular, the public benefits that arise from those aspects of REIWA's Membership Framework that provide for increased consumer information and compliance by REIWA Members with minimum standards of conduct and quality, reduced agency bias and transaction and operational cost savings justify the granting of a substituted authorisation on the same grounds as identified in the ACCC's 2012 Determination.<sup>8</sup>

### **Background and history to the Application**

- 1.23 REIWA's first application for authorisation under Part VII of the TPA was lodged with the ACCC on 17 July 2000. This application came about as a result of a prosecution launched by the ACCC against REIWA in 1998 with respect to breaches by REIWA of section 45(2) of the TPA.
- 1.24 Ultimately, on 8 October 1999 his Honour Justice French (as he then was) made consent orders declaring that, *inter alia*, various provisions of REIWA's Articles and MCPs contravened section 45(2)(a)(i) of the TPA and that REIWA (and its officers, employees, members and agents) be restrained from giving any further effect to the offending rules and rules of practice

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<sup>7</sup> See the declaration contained in paragraph 3(i) of the Orders made by his Honour Justice French in the Federal Court on 8 October 1999 and paragraph [6] of the Reasons for Decision in the *ACCC v REIWA* [1999] FCA 1387

<sup>8</sup> See ACCC's 2012 Determination at para 4.98

and that these rules and rules of practice be removed. REIWA was also ordered to enter into a trade practices corporate compliance program, which REIWA commenced on 7 January 2000.

- 1.25 Pursuant to the terms of the compliance program ordered by the Federal Court (and the terms of the REIWA Compliance Program Manual that was prepared by REIWA's retained lawyers) REIWA was required to present all its associated documents and forms (including, *inter alia*, its Articles of association, standard clauses and rules of practice) to its External Designated Compliance Officer for consideration and advice having regard to the provisions of Part IV of the TPA, and, if thought necessary, make an application to the ACCC for authorisation of those documents and forms pursuant to Part VII of the TPA.
- 1.26 Following the review by REIWA's lawyers it was decided that an application for authorisation under Part VII of the TPA be made. REIWA lodged its application with the ACCC on 17 July 2000 seeking authorisation in relation to its Articles, MCPs, MLS By-Laws and agreements between REIWA and its members that gave rise to the Standard Exclusive Agency Forms (**Initial 2001 Application**). Prior to lodging its application for authorisation, REIWA removed all the provisions contained in those documents that were the subject of the ACCC's prosecution against REIWA and removed all anti-competitive provisions identified in correspondence sent by the ACCC to REIWA on 23 September 1997.
- 1.27 Ultimately, the ACCC granted authorisation to REIWA on 21 December 2001 (**ACCC's 2001 Initial Determination**). During this time there was a complete overhaul of REIWA's documents and procedures so as to, subject to the authorisation application, ensure compliance with the provisions of Part IV of the TPA.

- 1.28 The ACCC's 2001 Initial Determination granted authorisation to REIWA for a period of five years commencing on 20 August 2002 and expired on 19 August 2007. The ACCC's 2007 Determination provided authorisation for a further five year period until 9 May 2012.
- 1.29 As detailed above, the ACCC's 2012 Determination provided additional authorisation for a further five year period until 11 May 2017.
- 1.30 Since the ACCC's authorisations in 2002, 2007 and 2012, REIWA's documents and procedures have continued to enhance the pro-competitive effect of REIWA's operations and enhance the public benefit derived from those operations.
- 1.31 Although REIWA recognises that there might be a possibility that some of REIWA's Membership Framework might be considered to have an anti-competitive effect, any public detriment constituted by any lessening of competition is, in the terms of the statutory authorisation test set out in sections 90(6) and 90(7) of the CCA, outweighed by the public benefit derived from those documents and agreements.
- 1.32 The substitute authorisation sought in this application is for substantially the same conduct as was the subject of the ACCC's 2012 Authorisation and, as with the application the subject of that authorisation, this current application is made under section 88(1) and section 88(1A) of the CCA.

### **General evaluation of the Application**

- 1.33 REIWA submits that the public benefits that flow from REIWA's Membership Framework include promoting high standards of real estate practice, and reducing the costs of transactions in the real estate industry.
- 1.34 REIWA also submits that each of its Articles, MCPs, reiwa.com Terms and Conditions, Auction Code and the agreement regarding use of its Standard Exclusive Agency Forms carry



with them a public benefit which would outweigh any anticompetitive effect of those arrangements.

1.35 REIWA contends that the public benefits that the ACCC has previously recognised result from REIWA's Membership Framework remain the case with respect to this 2017 Application. In particular, those public benefits include:

- encouraging members of REIWA to conduct real estate and business transactions with expertise and professionalism, resulting in benefits to consumers that engage REIWA Members as agents and reputation benefits for members of REIWA;
- transaction cost savings from reducing the cost of drafting certain documents and reducing the cost of handling disputes; and
- administrative cost savings arising from REIWA's ability to efficiently manage its membership fees and debt.<sup>9</sup>

1.36 The ACCC has previously considered that REIWA's Membership Framework may generate some anticompetitive detriments, namely:

- the effect of REIWA's Membership Framework upon competition amongst real estate agents, particularly any potential for exclusionary effects or the facilitation for anticompetitive coordination amongst competitors; and
- the effect of the prevalence of REIWA's Standard Forms, which may limit competition in relation to terms and conditions encapsulated in the Standard Forms.<sup>10</sup>

1.37 However, REIWA remains of the view, previously shared by the ACCC, that potential exclusionary effects and/coordination

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<sup>9</sup> See ACCC's 2012 Determination in the summary section at page ii

<sup>10</sup> See ACCC's 2012 Determination in the summary section at page ii

that may arise from REIWA's Membership Framework are likely to be limited.<sup>11</sup>

1.38 The ACCC has previously found that the potential detriment arising from the potential exclusionary effect of the Standard Forms is likely to be mitigated by REIWA making the Standard Exclusive Agency Forms available to non-members and all its Standard Forms available to training providers. The ACCC has also considered that making these standard forms available is unlikely to have an undesirable chilling effect upon competition in relation to terms and conditions.<sup>12</sup> REIWA contends that these findings remain the case in relation to REIWA's current application.

1.39 To ensure that the public benefit generated by the 2012 Application outweighed the anticompetitive detriment, the ACCC granted the ACCC's 2012 Determination subject to a number of conditions relating to access to forms.<sup>13</sup> REIWA remains prepared to agree to the imposition of these conditions in relation to the 2017 Application.

## **2. GENERAL AUTHORISATION PRINCIPLES**

2.1 This application for revocation and substitution by REIWA of the authorisation granted to it is made pursuant to section 91C(1) of the CCA and pursuant to sections 88(1) and 88(1A) of the CCA. Under section 91C(1), a person to whom an authorisation was granted is entitled to apply to the ACCC for a revocation of the existing authorisation and the substitution of a new authorisation.

2.2 The test regarding authorisation in this case is contained in sections 90(6) and 90(7) of the CCA, which state that the ACCC shall not authorise a provision of a proposed contract,

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<sup>11</sup> See ACCC's 2012 Determination in the summary section at page ii

<sup>12</sup> See ACCC's 2012 Determination in the summary section at page ii

<sup>13</sup> See ACCC's 2012 Determination in the summary section at page ii

arrangement or understanding, other than exclusionary provision unless it is satisfied in all the circumstances that:

- (i) the provision of the proposed contract, arrangement or understanding in the case of section 90(6) would result, or be likely to result, or in the case of section 90(7) has resulted, or is likely to result, in a benefit to the public; and
- (ii) that benefit, in the case of section 90(6) would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if the proposed contract or arrangement was made and the provision was given effect to, or, in the case of section 90(7), has resulted, or is likely to result, from giving effect to the provision.

2.3 In order to identify and weigh the public benefit and public detriment generated by arrangements for which authorisation has been sought, the ACCC applies the “future with-and-without test” established by the Australian Competition Tribunal (**Tribunal**).<sup>14</sup> Under this test, the ACCC compares the public benefit and anti-competitive detriment generated by arrangements in the future if the authorisation is granted with those generated if the authorisation is not granted. Effectively, this requires the ACCC to predict (the prediction being referred to as the “counterfactual”) how the relevant markets will react if authorisation is not granted.<sup>15</sup>

2.4 Public benefit is not defined in the CCA but the Tribunal has stated the term should be given its widest possible meaning. In particular it includes:

*... anything of value to the community generally, any contribution to the aims pursued by society including as*

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<sup>14</sup> *Qantas Airways Ltd* [2004] ACompT 9 at [151] *Australian Performing Rights Association* (1999) ATPR 41-701 at 42,936. See also for example: *Australian Association of Pathology Practices Incorporated* (2004) ATPR 41-985 at 48,556; *re Media Council of Australia (No. 2)* (1987) ATPR 40-774 at 48,419

<sup>15</sup> See ACCC’s 2007 Determination at para 5.10, p 7

*one of its principal elements... the achievement of the economic goals of efficiency and progress.*<sup>16</sup>

- 2.5 Public detriment is also not defined in the CCA but the Tribunal has given the concept a wide ambit, including:

*... any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievements of the goal of economic efficiency.*<sup>17</sup>

- 2.6 In the context of applying the net public benefit test in sub-section 90(8)<sup>18</sup> of the CCA, the Tribunal commented that:

*...something more than a negligible benefit is required before the power to grant authorisation can be exercised*<sup>19</sup>

- 2.7 When applying the statutory test of balancing public benefit against public detriment, the ACCC must predict what would be likely to happen in practice in the absence of its authorisation of REIWA's documents and forms such that the documents and forms would not be operative.

- 2.8 The ACCC and its predecessor, the Trade Practices Commission, have commented upon the worth of self-regulatory schemes in industry, in general, and with respect to the real estate industry in particular, on a number of occasions. It has been acknowledged that self-regulatory schemes have the potential to encourage competition and to create efficiency and the ability to develop and grow within the industries to which the schemes relate. The ACCC has commented that self-regulatory schemes are acceptable where they:<sup>20</sup>

<sup>16</sup> Re *7-Eleven Stores* (1994) ATPR 41-357 at 42, 677. See also *Queensland Co-operative Milling Association Ltd* (1976) ATPR 40-012 at 17,242

<sup>17</sup> Re *7-Eleven Stores* (1994) ATPR 41-357 at 42,683

<sup>18</sup> Sub-section 90(8), in effect, provides that the test is that when conduct is likely to result in such a benefit to the public, it should be allowed to take place

<sup>19</sup> Re *Application by Michael Jools, President of the NSW Taxi Drivers Association* [2006] ACompT 5 at para 22

<sup>20</sup> Re *Quilted Products Manufacturers' Association of Australia* (1988) ATPR (Com) ¶ 50 – 070; Re *Real Estate Institute of Australia Ltd* (2000) ATPR ¶ 41 - 775

- (i) cover a substantial proportion of the members of the particular industry;
- (ii) have commercially significant incentives to comply with the relevant code of practice;
- (iii) provide industry based forums for complaint arbitration including the ability to appeal; and
- (iv) are flexible in regards to public input.

2.9 In the past, the ACCC have accepted, including with respect to REIWA, that industry association codes have the capacity to generate public benefits where, for example, they encourage improvements in professional standards or promote improved consumer protection.<sup>21</sup>

2.10 Further, self-regulatory schemes have been encouraged where such schemes:

- (v) enhance the efficient operation of industry by putting beyond doubt the machinery and procedural matters of the trade and enabling buyers and sellers to avoid the cost of being concerned with those matters so as to enable them to focus their attention on the main price and service aspects of the bargains being struck between them;
- (vi) contribute to quality and safety in goods or services and serve as a reminder to business people of their obligations to consumers;
- (vii) make business people and consumers better informed;
- (viii) assist in promoting honesty and fairness in trading and/or encourage compliance with the law (e.g. the consumer protection provisions of the CCA).

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<sup>21</sup> See the ACCC's 2012 Determination at para 1.36

- 2.11 Self-regulatory schemes would normally only risk breaching the CCA if they:
- (i) restrict price competition;
  - (ii) restrict those non-price matters that are an important part of the usual bargaining process in the industry;
  - (iii) prohibit or inhibit advertising as opposed to guarding against deceptive advertising; or
  - (iv) limit entry to the trade.<sup>22</sup>

### 3. REIWA

- 3.1 REIWA was incorporated in 1918 under the *Associations Incorporation Act, 1895* (legislation now superseded by the *Associations Incorporation Act, 2015*).
- 3.2 REIWA's objects are set out in Article 3 of its Articles. That Article is in the following terms:

#### **Objects**

3. *The object and purpose of REIWA shall be to ensure that REIWA members enjoy a reputation as highly professional real estate and/or business agency practitioners operating in a sustainable business environment. In particular, REIWA shall strive to ensure:*
- 3.1 *As to reputation:*
    - 3.1.1 *The public knows the REIWA brand and understands the benefits of using a REIWA agent.*
    - 3.1.2 *REIWA members understand the importance of professional conduct and customer service on the reputation of the industry.*

<sup>22</sup> See *Applications for Authorisation by the Real Estate Institute of South Australia* (1988) ATPR 50 – 075 at pp 57,335 – 57,336; *Re The Real Estate Institute of Tasmania* (1987) ATPR(COM.) 50 – 062 at p 57,211; *Re The Real Estate Institute of The Australian Capital Territory* (1985) ATPR(COM.) 50 – 087 at p 55,102 and *Re The Real Estate Institute of Queensland* (1983) ATPR(COM.) 50 – 057 at pp 55,219

3.2 *As to professional standards:*

3.2.1 *REIWA sets the standard for professional conduct in real estate practice in Western Australia and REIWA members are leaders in real estate practice.*

3.2.2 *To enhance the experience of their customers REIWA members continually strive for excellence in all facets of real estate practice.*

3.2.3 *REIWA members understand the regulatory environment in which they operate and are committed to generating consumer confidence in the real estate transaction.*

3.3 *As to a sustainable business environment:*

3.3.1 *REIWA members operate in a regulatory and fiscal framework that is conducive to profitable and efficient real estate businesses.*

3.3.2 *REIWA members enjoy a range of cost competitive, innovative REIWA services that assist them to run efficient and profitable businesses.*

3.3 REIWA is governed under its Articles by a Council that comprises of 9 councillors elected by the membership. Two of those councillors represent regional areas of Western Australia.<sup>23</sup>

*REIWA Networks and Branches*

3.4 REIWA also operates (by way of sub-committees under Article 93 of its Articles) networks and branches that, in the case of the branches, are based on geographical regions in Perth and the country areas of Western Australia (Albany, Avon Valley, Broome, Bunbury, Busselton, Eastern Suburbs, Fremantle, Geraldton Mid-West, Goldfields/Esperance, Karratha, Mandurah, Melville, Northern Suburbs, Rockingham, Southern

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<sup>23</sup> See Article 53 of REIWA's Articles

River, Southern Suburbs, Swan-Hill and Western Suburbs). In the case of the networks, those sub-committees are based on specialist disciplines within the real estate industry (buyers' agents, commercial agents, rural agents, auctioneering, business agents, property management, co-chairs, sales consultants and strata titles).

- 3.5 These branches and networks provide significant benefit to REIWA Members in the form of services such as information, training, guest speakers, reviewing documents and forms, social events and interest-group lobbying.

#### *Numbers of Real Estate Agents and REIWA Members*

- 3.6 REIWA Members comprise the majority of real estate agents who are actively involved in real estate businesses in Western Australia. It is not possible to precisely identify what percentage of active real estate agents are members of REIWA as it is not possible to precisely say how many people in total are actually practising as real estate agents in Western Australia.<sup>24</sup>
- 3.7 The 2016 WA Department of Commerce Annual Report shows that 4,271 entities (including individuals) currently hold triennial certificates.<sup>25</sup> REIWA understands from information provided to it by the Department of Commerce that, of these 4,271 triennial certificates, 1,398 are issued to corporate entities (including companies, partnerships and sole traders) and 2,873 are held by individuals. It is estimated that a significant proportion of the holders of real estate triennial certificates, particularly individuals who hold those certificates, are not conducting their own individual real estate businesses. In other words, many individuals who hold triennial certificates (who are not conducting their own businesses) would be employees/partners/directors of corporate entities that hold

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<sup>24</sup> A significant number of persons who hold real estate licenses under the *Real Estate and Business Agents Act, 1987* are not actively involved in conducting real estate businesses

<sup>25</sup> The licensing requirement under the *Real Estate and Business Agents Act, 1987* that is needed to conduct a real estate business



triennial certificates or who are not active in the real estate industry. These statistics can be compared with statistics available at the time that REIWA lodged the 2012 Application that recorded that 1,248 corporate entities held triennial certificates and 2,385 individuals held triennial certificates. The comparison in these statistics reflect (contrary to the Sydney and Melbourne markets) a generally depressed real estate industry in Western Australia since 2012, particularly over the last two calendar years.

- 3.8 REIWA's membership statistics identify that it has 1,142 Corporate Members (i.e. companies, partnerships and sole traders). Virtually all of these Corporate Members would be expected to be conducting active real estate and/or business agency business.<sup>26</sup>
- 3.9 Therefore REIWA estimates that approximately 90% of active real estate businesses in Western Australia are members of REIWA. The current number of Corporate Members of REIWA is comparable to the 1,076 Corporate Members at the time of the 2012 Application. Again, this lack of substantive increase in membership numbers reflects a relatively static real estate industry since the time of the 2012 Application.
- 3.10 Although REIWA has not conducted any recent research in relation to this issue, REIWA estimates that the percentage of sales of residential real estate properties in Western Australia that are conducted by agents who are members of REIWA remains at approximately 80% (as was the case at the time of the 2012 Application).
- 3.11 REIWA also estimates that approximately 50% of businesses that *solely* practise as business agents are members of REIWA.

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<sup>26</sup> REIWA's membership structure is based upon the entity that conducts a real estate business (whether it be a corporation, partnership or sole trader) being a Corporate Member. Ordinary Members of REIWA are individuals and, subject to certain exceptions, all directors, partners and sole traders associated with Corporate Members must be Ordinary Members. REIWA currently has 1,725 Ordinary Members and 1,109 Associate Members (employees of Corporate Members who are not Ordinary Members of REIWA but who choose to take up this category of membership).

*REIA*

3.12 The peak body of real estate agents in Australia is the Real Estate Institute of Australia (**REIA**). REIWA nominates a representative to the REIA Board.

*REIWA Membership Services and Internet Advertising Market*

3.13 The main areas of membership services provided by REIWA are:

- (i) **Commercial Services.** REIWA provides members with standard forms, access to legal advice, software for the management of home inspections, employment opportunities, fuel and vehicle discounts and other training benefits achieved through partnerships with third party providers.
- (ii) **Information and Data Services.** To assist in the marketing of properties and knowledge of relevant real estate matters, REIWA provides comprehensive information services to members including information alerts, statistics, market research and economic commentary.
- (iii) **Advocacy Services.** REIWA acts as a “voice” for real estate agents in Western Australia in dealing with governments and regulators. REIWA regularly confers with those entities in relation to real estate matters and potential changes to real estate legislation. REIWA has representation on the WA Government Property Industry Advisory Council.
- (iv) **Professional Development Services.** These services include the provision of training to real estate agents, sales representatives, property managers and strata property managers; the formulation of rules and best practice standards; the provision of arbitration services; the provision of a telephone enquiry service to

members of the public,<sup>27</sup> the maintenance of a complaints and disciplinary system for the use of members of REIWA and, in the case of auctions, members of the public; the provision of telephone advice to members of REIWA and the production of standard legal forms for the use of members and the public.

- (v) **Internet Services.** Whilst REIWA estimates that 98% of real estate sales in Western Australia are conducted by real estate agents (as distinct to sales by proprietors personally without the assistance of an agent), the marketing of real estate in Western Australia has significantly altered over the last ten years as a consequence of the rise of the internet. REIWA provides its members with a comprehensive suite of internet services, including a real estate marketing portal (**reiwa.com**), related data and associated services (such as allowing prospective tenants to book property viewing times).

Since the 2012 Application the rise of the provision of real estate marketing services through internet portals has continued. So too has the continuation of the demise in the use of print advertising, such as newspapers.

REIWA is of the view that, with respect to the provision of real estate marketing services, nearly all buyers search for property online and most consumer enquiries regarding real estate (both sales and leasing) originate from the internet.

The continued use of some print media by real estate agents reflects a continuing view amongst agents, in

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<sup>27</sup> The REIWA Public Enquiries Service enables members of the public to obtain free advice from REIWA as to real estate consumer matters. Statistics kept by REIWA show that in 2015-2016 17,949 calls were received by the service, which is a substantial increase from the 15,914 recorded in 2010-2011

REIWA's opinion, that consumers are often attracted to agents who they perceive are selling houses in their locality and agents therefore use print media as a means of promoting their profile within a certain area. Further, print advertising may be used for high-end property marketing and is sometimes used as a complimentary marketing method to internet marketing.

In a draft determination published by the ACCC in relation to a recent application for authorisation under part vii of the CCA<sup>28</sup> the ACCC made a number of comments about the real estate advertising markets.

Consumers are increasingly looking online when considering purchasing, renting or selling a home. Online research is now the primary tool used by property seekers with REA reporting that 86% of potential buyers use online as their main tool to search for property. The main benefit of digital advertising is that properties can be searched for at any time and free of charge. Property seekers have access to a great deal of additional information on a property through online research. A study by Google in 2012 found that real estate searches grew 253% between 2008 and 2012.<sup>29</sup>

The ACCC has noted that it has previously concluded that the supply of online and print advertising services are likely complimentary and not directly substitutable for other vendors or property seekers.<sup>30</sup>

The ACCC has also concluded that consumers are increasingly looking online when considering purchasing or selling a home. It is reported that 86% of

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<sup>28</sup> Application for authorisation numbers A91537-A91538 lodged by Property Media Group Pty Ltd and certain real estate agents to collectively bargain with online and print real estate advertisers including collective boycott activities in certain circumstances. Draft Determination dated 25 August 2016 (**Property Media Group Application**)

<sup>29</sup> See the draft determination in the Property Media Group Application at para 67.

<sup>30</sup> See the draft determination in the Property Media Group Application at para 100

potential buyers use online research as their main tool to search for property.<sup>31</sup>

As was the case at the time of the 2012 Application, the provision of online real estate marketing services in Western Australia is dominated by realestate.com.au (REA Group Ltd).

Data regarding internet access in relation to real estate marketing and portals in Western Australia is kept by the data gathering company, Nielsen Holdings PLC. Nielsen keeps extensive data regarding online real estate portal advertising in Australia, including in Western Australia.

The Nielsen data for the month of August 2016 shows that the three major competitors in the online real estate portal market in Western Australia are realestate.com.au, reiwa.com and domain.com (conducted by the Fairfax Group).

The Nielsen data records that in the Western Australian market realestate.com.au has a 60% share of the unique audience to online real estate marketing (566,770 audience in Western Australia) per month, reiwa.com has a 16% share (156,248 audience per month) and domain.com has a 24% share (223,158 audience per month). A table setting out the market share amongst major websites for real estate advertising in Western Australia is set out below:

| <b>Web Site</b>   | <b>Unique Audience</b> | <b>Percentage of Total</b> | <b>Page Views</b> | <b>Page View per Person</b> | <b>Total Minutes</b> | <b>Time per Person</b> |
|-------------------|------------------------|----------------------------|-------------------|-----------------------------|----------------------|------------------------|
| REIWA             | 156,248                | 16                         | 5,408,267         | 35                          | 5376029              | 0:34:24                |
| Domain            | 223,158                | 24                         | 1,106,747         | 5                           | 1,796,630            | 0:08:03                |
| Realestate.com.au | 566,770                | 60                         | 23,240,981        | 41                          | 25,240,981           | 0:44:32                |

<sup>31</sup> See draft determination in the Property Media Group Application at para 101

These statistics can be contrasted with those set in the 2012 Application that were based on data kept by the organisation “Hitwise”. That data reflected that realestate.com.au had a 38% share of visits to online real estate marketing sites in Western Australia, reiwa.com had a 12% share and domain.com had a 5% share. While this can partly be explained by limitations upon the relevant data-gathering by Hitwise (as was noted in the 2012 Application), including that those statistics were skewed against WA-based portals, some trends are apparent from the current data. This includes that the real estate advertising portal market in Western Australia is dominated by realestate.com.au, domain.com has increased its market share and reiwa.com remains an important competitor in the market.

This is further confirmed by an analysis of domestic traffic data kept by Nielsen in July 2016 the category of “home and fashion – real estate/apartments”.

|                                         | <b>Average Daily Unique Browsers</b> | <b>Percentage</b> |
|-----------------------------------------|--------------------------------------|-------------------|
| <b>market</b>                           | 143,201                              |                   |
| <b>Realestate.com.au</b>                | 92,890                               | 64.86             |
| <b>domain</b>                           | 28,533                               | 19.92             |
| <b>realcommercial</b>                   | 3,170                                | 2.21              |
| <b>Commercialrealestate</b>             | 2,167                                | 1.51              |
| <b>Reiwa</b>                            | 22,205                               | 15.50             |
| <b>Property.com</b>                     | 1,684                                | 1.17              |
| <b>APM Australian Property Monitors</b> | 12                                   | 0.00008           |

Therefore, reiwa.com is still a significant participant in the market in Western Australia for the delivery of online real estate marketing services and, in REIWA’s submission, provides consumers with a competitive localised option to the bigger national dominators of the market, realestate.com.au and domain.com.

*Rules, Codes and Forms*

- 3.14 By Article 12 of REIWA's Articles, members of REIWA agree to be bound by REIWA's Articles, the MCPs and all other rules and regulations, both at the time that they apply for membership and pursuant to any changes made to the Articles.
- 3.15 As a consequence of the operations of the REIWA Council, the REIWA management and REIWA's system of sub-committees and advisors, REIWA's Articles, the MCPs, the Auction Code, the reiwa.com Terms and Conditions and the Standard Forms are constantly reviewed.
- 3.16 The legislative framework within which real estate and business agents practise in Western Australia is primarily governed by the provisions of the *Real Estate and Business Agents Act, 1978 (REBA Act)*. That Act and its associated Regulations and Code of Conduct provide the basis for the conducting and governing of real estate and business agency practice in Western Australia.
- 3.17 As is detailed in section 5 below previously REIWA had provisions in its Articles and MCPs which mirrored some of the consumer protection provisions of the REBA Act. At the 2008 Annual General Meeting of REIWA those provisions were deleted from REIWA's Articles and these changes to REIWA's Articles were the subject of the minor variation to the ACCC's 2009 Minor Variation Determination. However, REIWA retains a role in supporting and supplementing the consumer conduct provisions of the REBA Act and the associated Code of Conduct. If REIWA receives consumer-based complaints from non-members, REIWA still continues to endeavour to mediate such matters and continues to inform those non-members of their ability to refer matters to the Department of Commerce and the ACCC. Further, REIWA's MCPs continue to contain in clause 10 a provision which prohibits members from knowingly engaging in misleading or deceptive conduct. Additionally, bearing in mind that there are no legislative provisions that

mirror REIWA's Auction Code of Conduct, REIWA still continues to apply the terms of its Auction Code in full and consumers are entitled to bring complaints regarding breaches of the Auction Code to REIWA Tribunals.

#### *Licensing of Agents in WA*

3.18 The REBA Act provides a licensing scheme for agents in Western Australia. Those licensing requirements are relatively straightforward. Indeed, the combined effect of the number of real estate agents operating in Western Australia; the relatively straightforward requirements for obtaining a licence; the low capital cost of establishing an agency; the use of a commission basis for selling; and the benefits derived from REIWA's Articles, codes and forms ensure that there are no significant barriers to entry into the real estate industry in Western Australia.

3.19 The practice of real estate in Western Australia is characterised by a large number of agents strongly competing for listings and business.

#### *REIWA's Reputation*

3.20 REIWA maintains a high reputation amongst the public in Western Australia. Research conducted for REIWA by the organisation Knowledge Solutions identified a 93% awareness of the existence of REIWA by respondents. Further, as of April 2016, 73% of respondents regarded the importance of an agent being a member of REIWA as being either "extremely important" or "important".



## 4. THE MARKET

- 4.1 In Western Australia there are a number of markets for the provision of real estate and business agency services. Relevantly to this application, another area of competition is likely to be the provision of services to real estate and business agents, including real estate online marketing services. REIWA and others compete to provide services to real estate and business agents.<sup>32</sup>
- 4.2 There may be additional (related but separate) areas of competition to provide training to real estate agents (including compulsory training and non-compulsory training) and to provide standard form contracts for using in contracting between real estate and business agents and consumers.<sup>33</sup>
- 4.3 The relevant principles that apply in defining a particular market and were set out by the Tribunal in *Re Tooth & Co Ltd; re Tooheys Ltd*.<sup>34</sup> Those principles are as follows:
- It is first necessary to identify the areas of close competition relevant to the matter under consideration.
  - The market should comprehend the maximum range of business activities and the widest geographic area within which, given a sufficient economic incentive, buyers can switch from one supply source to another and sellers from one production flow to another.
  - The long-range substitution possibilities are important rather than the short-term transitory ones.
  - At the extremities of the market there is such a break in substitution possibilities that firms within its boundaries would collectively possess substantial market power.

<sup>32</sup> See 2012 Determination at para 4.6

<sup>33</sup> See 2012 Determination at para 4.9

<sup>34</sup> (1979) ATPR 40-113

- Within the bounds of the market substitution possibilities may be more or less intense and more or less immediate; the field of substitution is not necessarily homogeneous but may contain within it submarkets such that their competitive relationship have a wider effect upon the function of the market as a whole.

4.4 The market is a multi-dimensional concept - with dimensions of product, functional level, space and time.

4.5 The significance of the concept of substitution in considering the definition of a market was underlined in *Re Queensland Co-Op Milling Association Ltd and Defiance Holdings Ltd*.<sup>35</sup>

*We take the concept of the market to be basically a very simple idea. A market is the area of close competition between firms or, putting it a little differently, the field of rivalry between them ... Within the bounds of the market there is substitution - substitution between one product and another, and between one source of supply and another, in response to changing prices. So a market is the field of actual and potential transactions between buyers and sellers amongst whom there can be strong substitution, at least in the long run, if given a sufficient price incentive ... Whether such substitution is feasible or likely depends ultimately on customer attitudes, technology, distance, and cost and price incentives.*

4.6 The following comment about geographic dimensions made by Von Kalinowski in *Anti-Trust Laws and Trade Regulations* (Matthew Bender, New York, 1981), Volume 3, paragraphs 18-96, was cited in *Australia Meat Holdings Pty Ltd v Trade Practices Commission*<sup>36</sup>:

*Any geographic market ... must be one that corresponds to the commercial realities of the industry and represents*

<sup>35</sup> (1976) ATPR 40 - 012 at p 17,247

<sup>36</sup> (1989) ATPR 40-932

*an economically significant trade area. Because the geographic market determination looks to actual trade patterns, it is not required that geographical boundaries be drawn with exactitude ...*

- 4.7 Substitution possibilities in the real estate and business agency industry, for practical purposes, largely exist within the localised areas within which agency businesses operate. The provision of real estate and business agency services in Western Australia is characterised by those services being delivered on a localised basis. Consequently, country areas of Western Australia are made up of a number of different regions for the purposes of the delivery of real estate and business agency services, as is the metropolitan area of Perth. For example, there is little or no competition or substitution possibilities between agents operating in Broome and Esperance or Armadale and Cottesloe.
- 4.8 While some agencies may form part of franchise groups, those franchise groups are made up of a number of different businesses and whilst some of those businesses may operate in competition when they are located in similar geographic areas, the businesses do not compete against each other if they are located in separate regions.
- 4.9 That said, REIWA has noted over the past five years since 2012 Application, the beginnings of a trend of some agencies seeking to provide real estate services beyond just a local market. In particular, there are two agencies in Western Australia, *Sell Lease Property* and *Oneagency* who provide real estate services throughout the Perth metropolitan area. Particular the Sell Lease agency operates from one central office owned by one entity, rather than using a franchise model or having a series of branch offices. REIWA understand that Sell Lease property employs up to 128 sales representatives.
- 4.10 In the 2016 financial year Sell Lease Property was ranked first on the reiwa.com website for the number of properties sold and

reported to that website. Sell Lease sold 594 from a total of 39,676 sales reported from all agencies state-wide to reiwa.com.

- 4.11 Therefore, although the activities of agencies such as Sell Lease Property only represent a very small fraction of the total residential sales of property in Western Australia, the model used by Sell Lease Property appears to be a successful one and this may indicate that it will be used by other agents in the future.
- 4.12 Another development noted by REIWA is the efforts and plans being made by agencies located in the Eastern States to operate real estate businesses in Western Australia (with an appropriate licence and triennial certificate under the REBA Act,
- 4.13 There is nothing contained in REIWA's Membership Framework which prevents market participants from moving into different geographic markets or innovating in the ways set out above.
- 4.14 Particularly since the late 1990's, when REIWA's Articles and rules were amended to remove restrictions placed upon real estate agents from soliciting listings, there is nothing in REIWA's Articles, rules or directives that prevents consumers from moving from one real estate (or business agency) business to another. Exclusive agency agreements are usually for a limited period so the fact that a number of sellers may have appointed one agent as their exclusive agent at a particular point of time does not preclude other agents from moving into the same locality.
- 4.15 Statistics kept by REIWA show that the average period that it takes for a residential property to sell in the present (depressed) market is 73 days.<sup>37</sup>

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<sup>37</sup> Being the average for the August quarter 2016 as calculated by REIWA with reference to its own data. This period is comparable to a period of 79 days at the time of the 2012 Application and is at historically

- 4.16 Given the matters set out above, REIWA contends there are a number of markets within Western Australia for the delivery of real estate and business agency services that are based on geographical areas.
- 4.17 Further, in addition to geographic-based markets, various specialty markets exist within Western Australia for the delivery of agency services. These include markets for rural services, commercial property services, business broking and leasing.
- 4.18 It is submitted that the analysis of the delivery of real estate services in Western Australia by reference to localised geographic markets and various specialty markets is preferable to referring to the relevant market as existing for the whole of Western Australia. It is highly unlikely that a seller in Kalgoorlie would use the services of a real estate agent from Broome to sell a property in Kalgoorlie no matter what commission benefits or other services might be offered by the Broome agent. The primary motivating factor for users of real estate or business agency services is to achieve the highest price and quickest sale or lease possible. That aim is most obviously satisfied by using an agent with a local knowledge. Consequently, sellers of real estate and businesses use agents who operate locally. Whilst the use of modern technology such as the internet might suggest the existence of broader-based geographic markets it is submitted that these modern technological advantages are still primarily used by providers of agency services and consumers to access real estate and business services provided by local agents. This is underlined by reference to the entire focus of popular real estate internet sites such as *realestate.com.au* or *reiwa.com* that arrange property listings with reference to geographical localities.
- 4.19 Support for the view that the appropriate definition of the relevant market in this case is one that is local in character has been found in the past in a Commission determination with

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high levels. In September 2006 an historical low average of 35 days was reached and REIWA estimates that the long-term average period is approximately 45 days.

respect to an application for authorisation by *The Estate Agents' Co-operative Limited* in relation to its multiple listing service.<sup>38</sup>

- 4.20 Identical considerations apply when identifying the relevant markets in Western Australia as applied when the relevant markets in New South Wales were considered. As with New South Wales, the markets for real estate agency services for the sale of residential properties in Western Australia are characterised by a large number of small local real estate agency businesses.
- 4.21 Nevertheless, REIWA accepts that potentially there has been an enlargement of the geographical area within which many real estate and business agents compete to provide services due to the increased use of the internet to advertise and deal in property.<sup>39</sup> However, except for the limited number of exceptions referred to above (and the potential for this to expand in the future), REIWA reiterates that the provision of real estate and business agency services in Western Australia continues to be dominated by highly localised competition and characterised by a large number of small, local real estate agencies, albeit with considerable overlap across the boundaries between geographic areas, especially in metropolitan regions.
- 4.22 Another area of competition likely to be affected by this application is the provision of services to real estate and business agents. In this area of competition, REIWA and others compete to provide services to real estate and business agents. This includes the provision of real estate advertising services, the provision of training to real estate agents and the provision of standard form contracts for use in contracting between real estate and business agents and consumers. However, REIWA's role is restricted to providing such services to real estate and business agencies in Western Australia.

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<sup>38</sup> Dated 26 April 2000. Authorisation No A90678.

<sup>39</sup> See the ACCC's 2012 Determination at para 4.8

4.23 REIWA reiterates the submissions made by it in paragraph 3.13 above regarding the market for the provision of internet services in which it competes, including its comments arising out of the Property Media Group Application. In the ACCC's draft determination regarding the Property Media Group Application, the following findings were made by the ACCC regarding competition between online real estate advertising providers and REIWA endorses those conclusions as being correct<sup>40</sup>:

- REA and Domain are clearly the largest providers of online real estate advertising in Australia in terms of online audience (with a unique audience of 4.962 million and 3.538 million in March 2016 respectively). There are also a number of 'mid-tier' platforms (often providing services to niche sectors), as well as real estate agent's own websites and apps (such as LJ Hooper, Century 21 and Raine and Horne) and some small recent entrants.<sup>41</sup>
- A 2014 Nielsen study reported that 57% of survey respondents always or often visit realestateview.com.au when looking for a property and 10% of property seekers visit realestateview.com.au exclusively.
- REIWA reports that its property listing website attracts more than 1 million visits from over 400,000 unique visits per month.
- Confidential information provided to the ACCC shows that in November 2015 a significant number of property seekers used both realestate.com.au and domain.com.au in the preceding 12 months to find potentially suitable properties.

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<sup>40</sup> See the draft determination by the ACCC in relation to the ACCC Draft Determination Application by Property Media Group Pty Ltd for authorisation at para 1.2

<sup>41</sup> The mid-tier platforms include reiwa.com

- During its consultation process, the ACCC found evidence of real estate agents recommending the use of Facebook in marketing strategies to prospective vendors.
- Online advertising suppliers compete to be perceived as the number one portal. There is evidence that both REA and Domain regularly introduce new features to their platforms in order to maintain the attractiveness to users of their products – for example, both businesses introduced Apple Watch and Android Wear platforms to the market in 2015, Agent profiles in 2014, school search functionality in 2015 and Domain introduced “Facebook Chatbot” in May 2016.
- The significant market presence of REA and Domain makes it difficult for other online real estate platforms to attract a large number of users to their platforms.
- There is some price competition between the leading real estate advertising platforms, particularly in response to lower demand levels in specific regions in order to increase audience share. For example, REA has lower listing rates in Western Australia and the ACT, where it experiences lower demand for its online for its online.

4.24 Although significantly behind REA and Domain in market share, REIWA provides valuable competition in Western Australia in online real estate marketing.

4.25 REIWA’s own efforts to improvise in relation to the provision of its online real estate services have caused it to innovate in a significant way, including with the introduction of additional data services to consumers, the introduction of an agent profiling service to consumers (which does not seek to charge commissions from the agent or the consumer) and increased services to assist members (including a service that assists in the valuing of properties known as “PriceFinder” and an online house inspection service known as “Home Open Manager”).



4.26 REIWA also provides education services to real estate and business agents (including compulsory and non-compulsory training) and provides standard form contracts for use in contracting between real estate and business agents and consumers.

4.27 REIWA continues to provide training to members of the real estate industry in competition with a large number of organisations in Western Australia. In particular, REIWA provides training to enable individuals to obtain qualifications as licensed real estate agents or registered sales representatives. There are currently 15 organisations in Western Australia with the ability to provide the requisite training to allow a person to become a licensed real estate agent. Of these, 7 are currently conducting courses. There are 28 organisations that can provide the requisite training to allow a person to become a registered sales representative, of which 8 are currently in operation. Further, REIWA provides training to licensed real estate agents and sales representatives to allow those agents and sales representatives to comply with the requirements of the State Regulatory CPD Program. In providing these CPD services REIWA competes with other organisations. These competing organisations include the government-funded TAFE (Technical and Further Education) colleges, a further three registered training organisations who provide mandatory courses under the approval of the Department of Commerce to deliver these services (Aspire Performance Training, Livepm and West Coast Property Training) and a further 43 providers of elective training who are registered with the Department of Commerce.

4.28 As to the preparation of standard forms for use in the real estate industry:

- there are many agents who prepare their own forms;
- there are a number of franchise groups that provide their members with forms;

- the Department of Commerce provides the real estate industry with relevant forms associated with various pieces of legislation of Western Australia. The Department of Commerce also makes available for download from its website prescribed residential tenancy agreements; and
- the national-based business CoreLogic Australia supplies forms to the real estate industry. CoreLogic Australia is a wholly owned subsidiary of CoreLogic (NYSE:CLGX), which describes itself on its website as being the largest property data and analytics company in the world.

4.29 REIWA makes forms available in a pre-printed format and through an electronic cloud-based product known as REA Forms Live. REIWA has 192 forms covering all facets of real estate and business transactions and REIWA estimates that 92% of its membership (1,082 businesses) subscribe to its form service. The subscription for this service is based on an amount of \$121 per office per annum, plus a per-form download price that equates to some 35c - \$1.50 per form.

4.30 CoreLogic makes forms available in an electronic based produce known as “ADL Forms” to all states of Australia. REIWA does not have any market information as to how many customers or users CoreLogic has for its forms in Western Australia but estimates, based upon anecdotal advice, that approximately 30 – 40 real estate businesses use the CoreLogic forms in Western Australia.

4.31 CoreLogic has 59 forms available for real estate agents covering residential sales and residential property management. The price for subscribing to these forms is \$440 per office per annum for unlimited usage for desktop devices (i.e. no download charges for individual forms).

*Previous ACCC assessments of the relevant markets in relation to REIWA authorisation applications*

- 4.32 In the ACCC's 2007 Determination<sup>42</sup> and the ACCC's 2012 Determination<sup>43</sup> the ACCC stated that it considered that the primary area of competition affected by the conduct proposed by REIWA was likely to be, as submitted by REIWA, the provision of services by real estate and business agents in Western Australia. The provision of such services was likely to be highly localised and characterised by a large number of small, local real estate agencies, but there was likely to be considerable overlap across the boundaries between geographic areas, especially in metropolitan regions.
- 4.33 In the ACCC's 2012 Determination<sup>44</sup> the ACCC considered that, since 2007, it is likely that the increased use of the internet to advertise and deal in property has enlarged the geographical area within which many real estate and business agents compete to provide services. However, the ACCC considered that it was unnecessary for the purposes of that application to precisely define the boundaries of geographic competition in this regard.
- 4.34 In both the ACCC's 2007 Determination and the ACCC's 2012 Determination,<sup>45</sup> the ACCC further considered that another area of competition likely to be affected by the proposed conduct was for the provision of services to real estate and business agents. The ACCC considered that this was an area of competition in which REIWA and others compete to provide services to real estate and business agents. Further, the ACCC noted in the ACCC's 2012 Determination that there may be additional related but separate competition to provide training to real estate agents (including compulsory training and non-compulsory training) and to provide standard form

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<sup>42</sup> See the ACCC's 2007 Determination at page 8

<sup>43</sup> See the ACCC's 2012 Determination at para 4.5

<sup>44</sup> See the ACCC's 2012 Determination at para 4.8

<sup>45</sup> See the ACCC's 2007 Determination at page 9 and the ACCC's 2012 Determination at paras 4.6 and 4.9

contracts for use in contracting between real estate and business agents and consumers.

- 4.35 For the reasons referred to above, REIWA considers that the findings by the ACCC in 2007 and 2012 remain pertinent to the consideration of this current application for authorisation by REIWA.

*The significance of the market analysis to the provision of real estate services in WA*

- 4.36 The significance of the analysis of the definition of markets applicable to the provision of real estate and business agency services in Western Australia is that, while REIWA provides services to members that operate throughout Western Australia, those services are then utilised in a number of separate geographic and speciality based markets.

- 4.37 Most significantly, REIWA does not impose any barriers to entry into any of those markets.

- 4.38 In Western Australia licensed agents, including members of REIWA, are in competition with each other to provide real estate and business agency services to members of the public. The way in which licensed agents and members of REIWA compete include:

- (i) providing a better and more comprehensive level of service to members of the public and, in particular, more effective and more innovative marketing and promotion services for the sale and leasing of properties and the sale of businesses on behalf of members of the public;
- (ii) promoting the advantages in, *inter alia*, expertise, experience and reliability associated with the name and reputation of the agency, the principals and sales representatives employed by the agency and any network to which the agency belongs; and

- (iii) providing or endeavouring to provide real estate and business agency services to members of the public at lower cost through competition with respect to fees.

4.39 The services provided by REIWA encourage competition and reduce any barriers to entry to the markets by making it easier for new businesses to operate. REIWA supplies numerous membership services as detailed above in section 3 of these submissions. These services lower business costs significantly.

4.40 Evidence of the ease of entry into agency markets in Western Australia and the role that REIWA plays in that process is illustrated by the following statistical data:

- (i) the Australian Bureau of Statistics Real Estate Services Industry Survey for 2002-2003 (published on 22 April 2004<sup>46</sup>). This survey reflected that Western Australia had 933 real estate businesses operating in 995 locations and employing 6,543 persons in 2002-2003. This represented 11.4% of the total number in real estate businesses in Australia and it is significant to note that Western Australia is recorded in the Australian Bureau of Statistics Australian Demographic Statistics for June 2006 as having 9.95% of the Australian population. This may be compared with States like Victoria, which has 24.71% of the population but only has 17.7% of the total number of Australian real estate operations. South Australia has 7.54% of the population but only has 6.8% of the total number of Australian real estate operations.
- (ii) the Australian Bureau of Statistics Real Estate Services Industry Survey for 2002-2003 also records that Australian real estate is dominated by small businesses. 93.7% of real estate businesses employ fewer than 20 persons and these businesses account for 71.55% of

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<sup>46</sup> REIWA understands that no similar survey has been conducted by the Australian Bureau of Statistics since the publication of its survey on 22 April 2004. However, REIWA is of the view that the findings of that survey remain applicable in 2016

industry employment. REIWA believes that real estate in Western Australia is dominated by small businesses in a manner that is consistent with the Australia-wide statistics.

- (iii) REIWA's own records show that it has a membership that covers 1,142 real estate business as at October 2016 (compared with 1,076 business in September 2011 and 864 business in April 2007). Members are spread throughout all regions of the State, including the metropolitan area having 1,020 businesses as at October 2016 (compared with 860 in September 2011 and 689 in April 2007) and regional areas having 159 businesses in October 2016 (compared with 217 business in September 2001 and 175 businesses in April 2007).

- 4.41 The above statistical data shows that a very large number of agency businesses continue to operate in Western Australia and, on a state-wide basis, the number of those businesses has remained steady since 2011 despite a significant downturn in the real estate industry and the number of real estate transactions since that time. While the number of regional based businesses has decreased by some 26%, this is a reflection of the depressed state of the market in those areas. The number of Perth metropolitan based businesses has increased by approximately 18%.

#### *Declining WA Property Market*

- 4.42 Landgate<sup>47</sup> has reported as follows with respect to the Western Australian property market.<sup>48</sup>

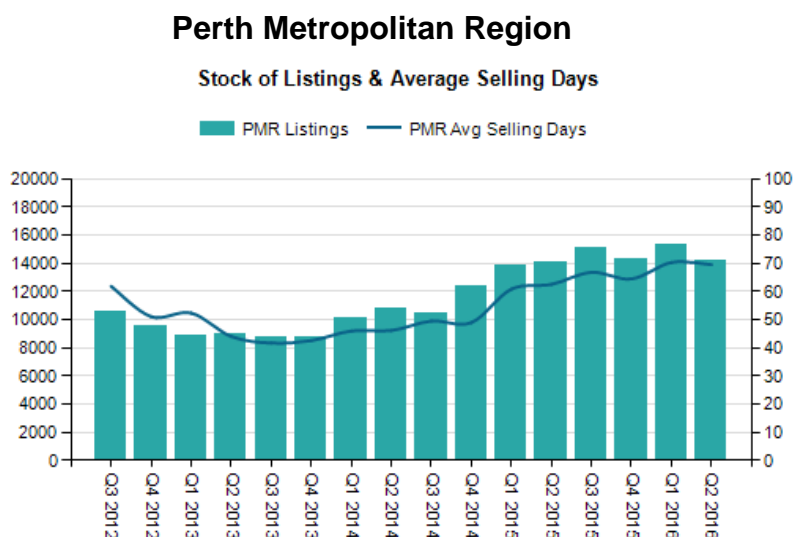
*A large proportion of Landgate's revenue is dependent on the activity of the property market. This year, the WA property market has been significantly weaker than expected. With the softening of the economy and low*

<sup>47</sup> Landgate is the business name of the Western Australian Land Information Authority, which is the statutory authority to the WA Minister for Lands.

<sup>48</sup> See the Landgate Annual Report for 2015/2016 at page 34

*consumer confidence, the outlook for the property market is predicted to remain subdued over the next few years.*

- 4.43 Landgate has published the following graph to reflect listing stock and average selling days in the Perth metropolitan region:



- 4.44 REIWA's own records from reiwa.com record that the average selling days for the sale of a house has increased from 62 days in the three months to August 2015 to 67 days in the three months to August 2016.
- 4.45 Median house rentals have decreased from a high of nearly \$500 per week in late 2012 to \$380 per week in the third quarter of 2016. Median rentals for units has decreased from a high of over \$450 per week in early 2013 to \$350 per week in the third quarter of 2016.
- 4.46 REIWA's records show that the quarterly vacancy rate for residential properties has increased from 3.2% in the third quarter of 2013 to 5.9% in the second quarter of 2016.
- 4.47 The above statistical analysis reflects the depth of the downturn in the property industry in Western Australia in recent years.

*Small businesses in WA Market*

- 4.48 The vast majority of real estate and business agency businesses in Western Australia are small in size and those businesses are widely spread throughout the State.
- 4.49 Notwithstanding the state of the property industry in Western Australia, the continuing number of real estate businesses being conducted in Western Australia supports the conclusion that there are no barriers to entry into the respective agency markets in Western Australia and competition within the industry remains healthy.
- 4.50 Much of the ability of small businesses to enter into the market and successfully operate is due to the fact that REIWA supplies the services referred to in section 3 of the submissions above and those services assist these businesses enormously.
- 4.51 Indeed, Western Australia in the Australian Bureau of Statistics Real Estate Services Industry Survey for 2002-2003 is recorded as having the lowest concentration of franchised agents in Australia, with only 33.1% of agents being members of franchise groups. This compares with states like Tasmania, New South Wales and South Australia with concentrations of 60.2%, 53.9% and 51.3% respectively. REIWA submits that similar statistics are likely to apply to Western Australia in 2016 as was the case as referred to in the 2012 Application. REIWA's internal records show that only approximately 16% of its Corporate Members are franchisees.



## 5. REIWA'S ARTICLES

- 5.1 REIWA's Articles were completely reviewed and to a significant extent, redrafted during 2006. This occurred in consultation with REIWA's retained lawyers that have been engaged by REIWA since 1998 and have previously assisted REIWA in preparing its Trade Practices Act and Auction Code Compliance Program and its Initial 2001 Application for authorisation made to the ACCC in 2000-2002. When redrafting the Articles, REIWA's lawyers paid close attention to the provisions in Part IV of the then-TPA.
- 5.2 It is reiterated that REIWA's redrafted Articles were the subject of the ACCC's 2007 Determination, the ACCC's 2009 Minor Variation Determination and the ACCC's 2012 Determination. Subject to the relatively minor amendments referred to below, REIWA's Articles remain largely the same as those for which authorisation was provided in the ACCC's 2012 Determination.

### **Amendments to REIWA's Articles since the ACCC's 2012 Determination**

- 5.3 The form of the current Articles is reproduced at schedule "A" to these submissions.
- 5.4 The following amendments were made to REIWA's Articles at its 2012 Annual General Meeting:
- (i) Article 13 was expanded so as to provide added protection of REIWA's intellectual property rights. The terms of those amendments are as follows (as tracked in red):  
  
13. Members of REIWA shall not in any way assist or in any other way be a party to the breach by any Person of REIWA's intellectual property rights or any unauthorised use by a Person of REIWA's membership services.

Members of REIWA shall not:

13.1 In any way infringe any intellectual property rights held by REIWA including, but not limited to, REIWA's copyright and REIWA's rights in designs, patents, confidential information and trademarks.

13.2 In any way assist or in any other way be a party to the breach by any Person of REIWA's intellectual property rights (including, but not limited to, REIWA's copyright and REIWA's rights in designs, patents, confidential information and trademarks) or any unauthorised use by a person of REIWA's membership services.

- (ii) Article 25.7 was amended so as to provide that the power of REIWA's PST to order the restitution of monies be limited to no more than \$25,000 in total. This amendment was made so as to prevent REIWA Members from seeking to use the REIWA disciplinary process (that is designed to enhance consumer protection in accordance with REIWA's Members' Codes of Practice) to litigate disputes regarding many millions of dollars and thereby circumvent the civil courts process at REIWA's administrative cost.
- (iii) Article 26 was amended so as to reflect the alteration of the relevant statutory regulator in Western Australia from the Real Estate and Business Agents Supervisory Board to the Department of Commerce. Article 26 required REIWA's CEO to refer matters to the State Government regulator should a PST refuse to deal with a particular complaint.
- (iv) Article 94 was amended to extend the time that REIWA has to hold an annual general meeting from three months following 30 June of each year to four months.

5.5 The following amendments were made to REIWA's Articles in 2013:

(i) Article 94 was amended so as to stipulate that REIWA's Annual General Meeting needed to be held within four months of the end of REIWA's financial year. This amendment was made so as to comply with the then applicable legislative requirements under the *Associations Incorporation Act, 1987*. The amendments were in the following form:

94. The Annual General Meeting shall be held ~~within four months of 30 June in~~ each calendar year on a date and at a time the Council determines but no later than within 4 months of the end of REIWA's financial year (and provided for in Article 112 below) and shall be convened by not less than 14 days' notice being provided to members.

(ii) Articles 2, 56-57 and 59-63 were amended to enable electronic voting at REIWA elections. Those amendments took the following form:

Added definitions in Clause 2:

**"Ballot Paper"** means either the physical piece of paper by which votes can be cast in an election for candidates listed on that paper or an electronic voting form contained on an Electronic Voting Site;

**"Electronic Vote"**, in relation to an election, means a vote cast in the election by means of an electronic ballot form;

**"Electronic Voting Site"**, in relation to an election, means a secure internet site approved or managed by the Returning Officer for the

purposes of enabling eligible voters to cast an Electronic Vote in the election;

“Scrutineers” means the two persons appointed by the Council pursuant to Article 56.

55. The Chief Executive Officer will act as the Returning Officer to conduct elections for the members of the Council PROVIDED THAT the Chief Executive Officer may appoint a delegate to perform all or some of the duties of the Returning Officer set out in these Articles.

56. At the meeting of the Council held in July each year, prior to the Annual General Meeting, the Council will appoint two ~~s~~Scrutineers to observe the conduct of the Council election process and who will be required to:

56.1 advise the Returning Officer of any issues or problems that arise in their view with respect to that election process; and

56.2 report to the Annual General Meeting as to any observations by them of any issues or problems with the Council election process.

PROVIDED THAT, to the extent that the election is conducted by the casting of an Electronic Vote on an Electronic Voting Site, the Scrutineers shall not participate in that aspect of the election process.

57. ...

58. ...

59. Prior to the preparation of the ~~b~~Ballot ~~p~~Paper for the election of Councillors there shall be a draw conducted or caused to be conducted by the Returning Officer in the presence of the ~~s~~Scrutineers to determine the order of the names of the candidates appearing on the ~~b~~Ballot ~~p~~Paper. The candidates shall be entitled to attend the draw but it is not mandatory for them to do so.

59A. The election of Councillors is able to be conducted, in the discretion of the Returning Officer (such discretion to be exercised prior to the draw referred to in Article 59 above), by the casting of votes on a Ballot Paper that is a physical piece of paper and/or by the casting of an Electronic Vote on an Electronic Voting.

60. Following the draw referred to in Article 59 above, ~~voting papers~~Ballot Papers shall be prepared or caused to be prepared by the Returning Officer, ~~consisting of a ballot paper~~ upon which shall be printed or otherwise identified the names of all candidates. The Returning Officer shall:

60.1 post or cause to be posted a ~~voting paper~~Ballot Paper to each member who is entitled to vote as soon as practicable; and/or

60.2 if the Returning Officer determines, as provided for in Article 59A above, that voting shall be permitted to occur by the

casting of an Electronic Vote on an Electronic Voting Site, give notice to members entitled to vote of that fact.

60A. In the case of a ballot that is conducted that enables the casting of Electronic Votes, the Returning Officer is to ensure that each member who is entitled to vote is provided with notice of all the necessary information required in order to vote in the election, including (but not limited to):

60A.1 the internet address of the Voting Site; and

60A.2 the passwords (if any) required to access the voting site.

60B. In the case of a ballot that is conducted that enables the casting of Electronic Votes, the Returning Officer is to ensure that the Voting Site contains:

60B.1 instructions for voting;

60B.2 a method of declaration of identity and entitlement to vote; and

60B.3 any other information that the Returning Officer considers appropriate.

61. To ensure secrecy in the election process the Returning Officer will prepare or cause to be prepared ~~b~~Ballot ~~p~~Papers in such a way so as to keep confidential the manner in which a member has voted but in a way by which the Returning Officer can readily ascertain which members have actually voted and to prevent multiple voting.
62. 62.1 Members entitled to vote in Council elections shall mark on their ~~b~~Ballot ~~p~~Papers in a manner directed by the Returning Officer those candidates for whom the member wishes to vote. The number of candidates selected by the member on the ~~b~~Ballot ~~p~~Papers shall be equal to or less than the number of vacant Council positions the subject of the election.
- 62.2 No vote shall be counted unless the ~~b~~Ballot ~~p~~Papers is received by the Returning Officer not later than two business days prior to the time set for the commencement of the General Meeting at which the ~~voting papers~~Ballot Papers are to be used.

63. As ~~voting papers~~Ballot Papers are received by the Returning Officer they shall be ~~placed unopened in a closed ballot box which shall be kept~~stored in a secure closed ballot box or, in the case of Electronic Votes, in a secure electronic format, in the custody of the Returning Officer. ~~Neither the Returning Officer nor any other person shall count or access the contents or substance of Ballot Papers until the formal voting procedure occurs as set out immediately below.~~ The Returning Officer ~~or the Returning Officer's delegate, in the presence of the scrutineers,~~ shall open the ballot box and access any Electronic Votes prior to the commencement of the Annual General Meeting and count the votes received according to the following procedure:

63.1 the Returning Officer ~~or the Returning Officer's delegate~~ shall first ascertain the identity of the Person who has purported to vote and shall reject the vote of any member not qualified to vote;

63.2 the Returning Officer ~~or the Returning Officer's delegate~~ shall then proceed to open access and count the valid ~~b~~Ballot ~~p~~Papers;

63.3 the Returning Officer ~~or the Returning Officer's delegate~~ shall then total the number of votes cast for each candidate;



63.4 this procedure, in so far as it applies to Ballot Papers that are physical pieces of paper, shall be conducted in the presence of the Scrutineers. However, in so far as the procedure applies to Electronic Votes, the procedure shall not be conducted in the presence of the Scrutineers.

5.6 The following amendments were made to REIWA's Articles in 2014:

- (i) Articles 2 and 53 were amended so as to alter REIWA's electoral boundaries for the purposes of the election of the members of its Council. In particular, the Mandurah and Murray shires were brought within the metropolitan electorate. Further, the ability for Ordinary Members to vote in relation to regional members of the REIWA Council was altered so that the voting rights became dependent upon a person's place of business, not their place of residence. REIWA considered that this change more correctly reflected the interests served by those appointments to the REIWA Council. The form of these changes to Articles 2 and 53 were as follows:

**“Regional members”** means those members of REIWA, no matter their category of

membership, who:

- (a) in the case of members who are natural persons, whose principal place ~~of Residence~~ where that person conducts or is engaged in business is outside of the Perth Greater Capital City Statistical Area, as that area is defined and published from time to time by the

~~Australian Bureau of Statistics pursuant to section 6(d) of the Australian Bureau of Statistics Act, 1975 metropolitan region of Perth as defined in section 6 and the third schedule of the Metropolitan Region Town Planning Scheme Act, 1959~~; or,

- (b) in the case of members who are not natural persons, whose registered office pursuant to section 36 of the *Real Estate and Business Agents Act, 1978* is located outside of the Perth Greater Capital City Statistical Area, as that area is defined and published from time to time by the Australian Bureau of Statistics pursuant to section 6(d) of the Australian Bureau of Statistics Act, 1975 metropolitan region of Perth, as that term is defined in section 6 and the third schedule of the Metropolitan Region Town Planning Scheme Act, 1959,

### **Membership of Council**

53. The Council shall comprise nine individuals and:

53.1 all nine of those members shall be either Ordinary members or Life members of REIWA and in order to be eligible to stand for election or appointment as a member of the Council, the member concerned:

- (a) must have been an Ordinary and/or Life member for no less than

three consecutive years immediately prior to the General Meeting at which time the person becomes a member of the Council; and

- (b) must not be a member whose membership is under suspension.

53.2 two of those members shall be elected by Ordinary and/or Life members of REIWA who are Regional Members and whose membership is not under suspension. For this purpose Western Australia shall be divided into two regional electoral areas and the regional members of the Council shall be elected from each of those two regions, with only Ordinary and/or Life members whose principal place of residence is inside the regional area concerned and whose membership is not under suspension, being eligible to vote for that regional member of Council. The two regional electoral areas shall be as follows, with reference to the non-metropolitan regions defined in section 4 and detailed in schedule 4 of the *Planning and Development Act, 2005*:

53.2.1 the Northern and Eastern Regional Electoral Area, made up of the regions of Kimberley, Pilbara, Gascoyne, Mid-west, Goldfields-Esperance and the Wheatbelt;

53.2.2 the South-Western Regional Electoral Area, made up of the regions of Peel, the South-West and the Great Southern.

PROVIDED THAT, to the extent that the two regional electoral areas referred to in Articles 53.2.1 and 53.2.2 above include any portion of the Perth Greater Capital City Statistical Area (as that area is defined and published by the Australian Bureau of Statistics pursuant to section 6(d) of the *Australian Bureau of Statistics Act, 1975*), that portion shall be excluded from those regional electoral areas.

53.3 seven of those members of the Council shall be elected by the Ordinary and/or Life members of REIWA. All Ordinary and/or Life members of REIWA whose membership is not under suspension shall be eligible to vote for those seven positions, including Ordinary and/or Life members who are Regional Members

5.7 In 2015 the following changes were made to REIWA's Articles:

- (i) Article 11 was amended so the system used by REIWA to require members to complete annual declarations as to their compliance with eligibility for membership was altered so as to enable the REIWA Council to, at its discretion, not require these declarations to be provided each year and to stipulate with great flexibility the nature of the information required to be given. The terms of these amendments were as follows:

**Annual membership return**

11 Should the REIWA Council at any time, at its sole discretion, think it desirable that a member and/or any class or classes of membership provide information pertaining to those members' eligibility for membership, their compliance with the terms of these Articles and/or any other information relating to their membership, the Council may require members to ~~Each member shall~~ complete and return to the Chief Executive Officer an annual declaration before 30 June each year in a form to be determined by the Council certifying:

11.1 whether the member continues to comply with the various criteria for membership of the individual categories of membership referred to in these Articles; ~~and~~

11.2 any other information ~~determined by the Chief Executive Officer as being appropriate relevant~~ to determine whether a member

complies with the provisions of these Articles; and/or

11.3 any other information relating to the member's membership of REIWA.

This amendment now provides the opportunity for the Council to determine when declarations are required.

(ii) Articles 55 to 58 were amended so as to make slight alterations to the timing of steps to be taken in the REIWA electoral process. These alterations were minor and were made to reflect the fact that the REIWA Council meets in June, but not always in July, and to avoid the opening closing dates of the nomination period on a non-business day.

5.8 It is reiterated that the various changes to REIWA's Articles set out above since the 2012 Application was made do not have a material impact upon competition issues with the substantive matters to be considered in relation to REIWA's application for authorisation.

## **Continuing Professional Development Scheme**

### *Background*

5.9 In the ACCC's 2012 Determination the scope of the conduct by REIWA that was the subject of the authorisation included its CPE Scheme. Within the Determination the "CPE Scheme" was defined as being REIWA's Compulsory Professional Education Scheme consisting of seven hours of compulsory professional education training per year, of which 3.5 hours is proposed to be a course developed and provided by REIWA and 3.5 hours that can be provided by other training providers.<sup>49</sup>

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<sup>49</sup> See the ACCC's 2012 Determination at page iv

- 5.10 The issue of REIWA's scheme was the subject of considerable analysis by the ACCC in the ACCC's 2012 Determination.
- 5.11 REIWA's CPE Scheme arose out of concerns on the part of REIWA that the Western Australian Government's current regulatory regime for licenced and registered real estate agents was expected to come to an end in approximately May 2013. This was as a result of a decision by the Council of Australian Governments to introduce a National Occupational Licensing System (**NOLS**) in order to remove licensing inconsistencies across state and territory borders and to provide for a more mobile workforce. Pursuant to a paper prepared by the Council of Australian Government's Property Occupations Interim Advisory Committee entitled "Communiqué #4 on Progress" the aim of the NOLS was to reduce red tape, improve business efficiency and the competitiveness and productivity of the national economy.<sup>50</sup>
- 5.12 Under the current Western Australian state licensing system, individuals are required to achieve a Diploma in order to obtain their relevant licence, being a Level 5 qualification pursuant to the Australian Qualifications Framework (**AQF**), as well as participate in mandatory professional development.<sup>51</sup>
- 5.13 Under the proposed NOLS, licence eligibility would have required real estate agents, strata management agents and business agents to attain a Certificate IV qualification, being a Level 4 qualification under the AQF. This would have meant a lowering of the educational standard requirement to obtain a licence.<sup>52</sup> Further, the NOLS would have been unlikely to include compulsory continuing professional development as a licensing or registration requirement (note that no intention of imposing such a requirement was made in the Property

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<sup>50</sup> A copy of that document appears at Schedule H to these submissions.

<sup>51</sup> The State government's prescribed Compulsory Professional Development program commenced in early January 2007 for real estate and business broking agents. It was then extended to all sales representatives, including those with restricted certificates (property managers), from 1 January 2009.

<sup>52</sup> See *Australian Qualifications Framework*, First Edition, July 2011, p 15

Occupations Interim Advisory Committee paper at Schedule “H”).

- 5.14 In light of that impending (it was believed) NOLS, REIWA wished to implement the CPE Scheme, in the event that NOLS did not require the existing level of training.
- 5.15 REIWA proposed to implement the scheme on the basis that its Articles provided (under Article 8.4) that an eligibility for membership of REIWA was that any applicant had to agree to complete Continuing Professional Education. The definition of “Continuing Professional Education” in Article 2 provided that the requirements for that education were to be “in the manner from time to time prescribed by Council.”
- 5.16 A failure of an existing member to comply with that Article would result in the member being liable to be expelled. In this regard, if an Ordinary or an Associate Member, who was a licenced real estate agent and/or business agent, did not complete the CPE Scheme requirements, the member would be in breach of REIWA’s Article 12 (which provides that members must at all times adhere to the Articles, Codes and Rules of REIWA). Pursuant to Article 21, a breach of Article 12 would make an Ordinary Member liable to expulsion from REIWA and, consequently, the Corporate Member would also cease to be a member.
- 5.17 The structure of the CPE Scheme, as envisaged by REIWA, was that all licensed Ordinary and Associate Members would be required to attend compulsory professional development courses each year that met the following requirements:
- (i) one full day of CPE per year (7 hours); and
  - (ii) of that one day a licensed member would:
    - spend the equivalent of half a day at a professional development course developed and provided by REIWA; and



- meet the remaining half-day requirement by attending breakfast meetings; courses provided by third parties, including through franchise groups and other training providers; conferences, and other REIWA-run courses and conferences; and/or participating in the REIWA Public Enquiries Service<sup>53</sup> or in the delivery of training.

5.18 Under the current State licensing Compulsory Professional Development program (**State Regulatory CPD Program**), participants are required to accumulate a minimum of 10 CPD points per annum, which equates to 10 hours training, with 3 hours having to be spent at a mandatory course. As such, REIWA's full-day requirement was less onerous than the current licensing requirement.

5.19 REIWA proposed that it would formulate the CPE Scheme so as to balance the need to provide effective professional training whilst not placing onerous time or costs pressures upon members attending the course. REIWA proposed to develop 4 courses designed to satisfy the purposes of the CPE Scheme and it envisaged that the cost to a member would be approximately \$150.00 for a half-day course. This was comparable to the fees charged by other professional training providers for these types of courses was the subsidised funding amount provided by the State government for attendees at mandatory courses under the current State Regulatory CPD Program.

5.20 Further, in regards to members in rural areas, REIWA currently provides courses for such agents in their relevant areas. REIWA proposed to continue this practice to ensure that members in rural areas were not burdened with the need to have to travel long distances to attend a REIWA course.

5.21 In approximately April 2011, REIWA conducted an electronic survey seeking members' attitudes to the proposed CPE

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<sup>53</sup> The telephone enquiries service provided by REIWA free of charge to members of the public.

Scheme. 16% of members responded to the survey. Of those that responded 77% were in favour of the proposal.

- 5.22 Notwithstanding that members would be required to attend a half-day REIWA course, REIWA proposed to give members a wide choice of providers in order to satisfy the residual half-day requirement of the CPE Scheme, providing flexibility and variety for members. In this regard, REIWA proposed not to provide specific authorisations of eligible courses or providers, but would publish guidelines concerning how the requirements of the CPE Scheme could be met.
- 5.23 REIWA did not propose imposing an obligation upon registered staff of a Corporate Member (i.e. non-REIWA Ordinary Members or Associate Members) to undertake CPE in order for the Corporate Member to retain membership.

#### *Analysis by ACCC in 2012 Determination*

- 5.24 It is reiterated that the ACCC analysed the Proposed CPE Scheme in detail in its 2012 Determination. Ultimately, the conduct formed part of REIWA's Membership Framework authorised by the ACCC.
- 5.25 However, the following conditions were imposed by the ACCC in the ACCC's 2012 Determination:

#### **CONDITIONS OF AUTHORISATION**

The ACCC **revokes** authorisations A91026 **and grants** authorisation A91280 in substitution. The substitute authorisation is granted on condition that:

- C1 REIWA must make available any of its Standard Exclusive Agency Forms to any person who seeks access. This access must be provided within seven calendar days and at the same price that REIWA Members are charged for the Standard Exclusive Agency Forms.

- C2 REIWA must make available to any Training Provider, upon request, any form produced or otherwise supplied by REIWA for use by an Agency Business (the **Standard Forms**). This access must be provided within seven calendar days and free of charge.
- C3 REIWA must publish on the homepage of its website a notice stating the means by which it will make available the:
- (a) Standard Exclusive Agency Forms in compliance with C1; and
  - (b) the Standard Forms available in compliance with C2.
- C4 REIWA must record contact details of any Training Provider who seeks access from REIWA to any Standard Form. Following any material change to any of the Standard Forms, REIWA must undertake its best endeavours to provide the revised version of the relevant Standard Form to all Training Providers who sought access from REIWA to the previous version of the Standard Form in the preceding 12 months.

Where:

**Agent** means a person who is a Real Estate Agent or a Business Agent, or both a Real Estate Agent and a Business Agent.

**Agency Business** means the business of an Agent.

**Business Agent** means a person whose Agency Business either alone or as part of or in connection with any other business, is to act as Agent for consideration in money or money's worth, as commission, reward, or remuneration, in respect of a business transaction.

**Business Sales Representative** means a person who on behalf of an Agent negotiates a business transaction

**Real Estate Agent** means a person whose business either alone or as part of or in connection with any other Agency Business, is to act as Agent for consideration in money or money's worth, as commission, reward or remuneration, in respect of a real estate transaction.

**Real Estate Sales Representative** means a person who on behalf of an Agent or a developer negotiates a real estate transaction.

**Training Provider** means a person that:

- (i) is not associated with an Agency Business;
- (ii) provides training relating to Business Agents, Business Sales Representatives, Real Estate Agents or Real Estate Sales Representatives;
- (iii) is registered as a registered training organisation with the Western Australian Training Accreditation Council (TAC), established under the Vocational Education and Training Act (WA) 1996 or the Australian Government Australian Skills Quality Authority (ASQA) pursuant to the *National Vocational Education and Training Regulator Act, 2011* (Cth) or their successors; and
- (iv) is authorised by TAC or ASQA (or their successors) to conduct in Western Australia Diploma of Property Services (Real Estate) courses or, alternatively, authorised to deliver specific units of competency within those courses.

- 5.26 As detailed in section 4 of these submissions, the ACCC has in the past considered that an area of competition in which REIWA and others compete is the provision of services to real estate and business agents. These services include the provision of training to real estate agents (including compulsory training and non-compulsory training).<sup>54</sup>
- 5.27 In assessing REIWA's CPE Scheme the ACCC noted that it was not publicly known at that stage whether NOLS would include ongoing professional development training requirements. Further, it was unclear whether the current Western Australian State Government obligations would continue if NOLS did not include such requirements.<sup>55</sup>
- 5.28 REIWA had submitted that it would not adopt its CPE Scheme unless there were no government training obligations. The ACCC considered that the only future scenario under which the REIWA CPE Scheme would be adopted is one in which there were no government training obligations. The ACCC considered such a scenario in order to assess the benefits and detriments of the conduct.<sup>56</sup>
- 5.29 In the situation where there are no government training obligations for agents, and absent authorisation, the ACCC considered that the demand for and take-up of ongoing training courses would be based on the business value agents place on those courses.<sup>57</sup>
- 5.30 The ACCC considered that most individual consumers lack significant experience in the conduct of real estate and business property transactions. As a result, most consumers are generally unable to easily distinguish well trained agents from others (information asymmetry). In particular, consumers are generally unable to easily and reliably make this distinction prior to appointing the agent and engaging in (often high value)

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<sup>54</sup> See the ACCC's 2012 Determination at paras 4.6 and 4.9

<sup>55</sup> See the ACCC's 2012 Determination at para 4.14

<sup>56</sup> See the ACCC's 2012 Determination at para 4.16

<sup>57</sup> See the ACCC's 2012 Determination at para 4.18

property transactions. As a result of this difficulty, agents may not capture the full benefit of investing in training, such as by winning more business from vendors, since those vendors may have difficulty in easily identifying these agents as being well trained. Accordingly, agents may place a lower business value on training courses, leading to lower demand for courses than would be expected in a market where consumers were fully aware of the level of training of all agents.<sup>58</sup>

- 5.31 The ACCC considered that the likely drop in demand for training from current levels, absent any government or REIWA imposed training obligations, was difficult to estimate. The ACCC considered that the level of voluntary take-up of quality fundamentals training in particular was likely to be substantially lower than both the then current levels and the efficient level, particularly if agents had no mechanism to signal that they had up-to-date knowledge.<sup>59</sup> The ACCC noted that, in economic terms, an efficient level of training participation is one in which the benefit to society from the last training unit (or “marginal unit”) is equal to the cost of delivering that unit of training; in other words the marginal benefit is equal to the marginal cost.
- 5.32 The ACCC considered that absent authorisation there was likely to be some demand for REIWA and other training providers to continue to provide some professional development training, a portion of which was likely to include fundamentals training. However, it was unclear whether any training provider could justify the cost of developing and running a quality fundamentals training course.<sup>60</sup>
- 5.33 The ACCC also noted that demand in some regional areas may mean that no provider could justify the cost of providing regular training. As a result, agents in these areas would need to travel further to access the likely remaining ad hoc

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<sup>58</sup> See the ACCC’s 2012 Determination at para 4.18

<sup>59</sup> See the ACCC’s 2012 Determination at para 4.20

<sup>60</sup> See the ACCC’s 2012 Determination at para 4.21

professional development, increasing the effective cost of attendance.<sup>61</sup>

5.34 The ACCC considered that compared with the alternate scenario, REIWA's CPE Scheme would effectively ensure that 80-90% of Western Australian real estate agents (REIWA Members) would undergo some ongoing professional development.<sup>62</sup>

5.35 REIWA's Articles do not define what form the CPE Scheme will take. The ACCC therefore restricted its grant of authorisation to the form of CPE Scheme described by REIWA and outlined above in this section of these submissions.<sup>63</sup>

5.36 In analysing the CPE Scheme as part of its assessment of "public benefit" in the ACCC's Determination, the ACCC accepted that REIWA's CPE Scheme, which would require participation in training as a requirement of membership, would result in significantly higher participation in ongoing training than under a voluntary scheme. The ACCC also considered that there may be an incentive for REIWA to offer a good standard of training for its mandatory fundamentals component in order to allow it to maximise the reputation for skill and expertise of the agents that are its members and minimise dispute resolution costs. By comparison, the quality of training offered under a voluntary system may be less consistent with the mandatory fundamentals training offered by REIWA under its proposed CPE Scheme.<sup>64</sup>

5.37 The ACCC noted that the infrequency with which consumers interact with agents meant that there was likely to be a delay in consumers' recognition of the effects of any decrease in agents' professional knowledge under a system where training was voluntary. However, as lower standards are recognised over time, real estate and business agents as a whole could

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<sup>61</sup> See the ACCC's 2012 Determination at para 4.22

<sup>62</sup> See REIWA's submission in support of the 2012 Application at para 3.7 and the ACCC's 2012 Determination at para 4.23

<sup>63</sup> See the ACCC's 2012 Determination at paras 4.24 and 5.9

<sup>64</sup> See the ACCC's 2012 Determination at para 4.42

suffer from decreased reputation and consumer confidence in their abilities.<sup>65</sup>

- 5.38 The ACCC summarised its position by stating that it considered that REIWA's CPE Scheme was likely to result in greater public benefits by ensuring that agents had a better level of understanding of their professional obligations and best practice than would be the case in a situation in which training was voluntary and determined solely by agent demand.<sup>66</sup>
- 5.39 When considering the issue of "public detriment" in the context of REIWA's CPE Scheme, the ACCC noted that the sources of potential public detriment could include the foreclosure of REIWA's competitors in the provision of ongoing professional development training services, in the event that REIWA's CPE Scheme was adopted.<sup>67</sup>
- 5.40 The ACCC stated that it considers that anti-competitive detriment may arise where conduct that is the subject of an authorisation application provides an applicant with an enhanced ability or incentive to foreclose rivals in a relevant market(s) including through price and non-price constraints upon competitors.<sup>68</sup> It was noted by the ACCC that, in this instance, foreclosure refers to a variety of potentially anti-competitive strategies including that REIWA, in imposing a non-price restraint on competitor training providers, may prevent those providers from being able to provide ongoing professional training to real estate agents as efficiently as REIWA.
- 5.41 REIWA submitted to the ACCC that a number of factors existed that contributed to its view that it would be more efficient for REIWA to be the sole provider of the mandatory component of its CPE Scheme. Without the efficiencies

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<sup>65</sup> See the ACCC's 2012 Determination at para 4.43

<sup>66</sup> See the ACCC's 2012 Determination at para 4.44

<sup>67</sup> See the ACCC's 2012 Determination at para 4.64

<sup>68</sup> See the ACCC's 2012 Determination at para 4.78



arising from being the sole provider of such training to its members, REIWA also submitted that it would not be in a position to ensure the delivery of quality fundamentals training to agents. REIWA contended that it did not have the financial resources or manpower to properly supervise the quality of training provided by other organisations that may participate in the CPE Scheme. However, REIWA also considered that guaranteed minimum standards for delivery of course content and course delivery is integral to the effectiveness of achieving the public benefits discussed above.

- 5.42 The national real estate institute, REIA, submitted that it would be impractical for REIWA not to be the sole provider of the mandatory fundamentals training component of the CPE Scheme given the likely complexity and costs associated with monitoring and auditing multiple external providers. REIA also noted that REIWA Members would have a wide choice of providers for the other half of their CPE.<sup>69</sup> The ACCC received information from the Department of Commerce which provided some support for the view that administering ongoing professional development through a tender process and auditing training providers' content would be likely to involve considerable cost.<sup>70</sup>
- 5.43 As set out above, the ACCC considered that if there was no government training obligation for ongoing training for real estate agents or business agents and there was no REIWA CPE Scheme, the amount of ongoing training, particularly fundamentals training, undertaken by agents would likely decrease. The ACCC considered that if REIWA's CPE Scheme was implemented, agents' demand for fundamentals training would likely to be satisfied by the mandatory fundamentals training delivered by REIWA. Other training providers could continue to compete to supply training to non-REIWA Members as well as supplying training to make up the

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<sup>69</sup> See the ACCC's 2012 Determination at para 4.87

<sup>70</sup> See the ACCC's 2012 Determination at para 4.88

other 3.5 hours of elective CPE required of all REIWA Members. The ACCC also noted that a number of real estate and business agent licensing trainers were likely to remain as additional potential competitors to provide ongoing training.<sup>71</sup>

5.44 However, the ACCC also stated that there was a potential that REIWA may secure a sizeable portion of the elective CPE provided to REIWA Members. Given the convenience of acquiring all compulsory training as a package from REIWA, the ACCC considered that agents may have a reduced incentive to seek out elective CPE from alternative providers.<sup>72</sup>

5.45 The ACCC considered that the level of competition to provide ongoing training following adoption of the CPE Scheme was likely to be influenced by the quality of training provided by REIWA (both mandatory fundamentals training and the elective component of the CPE Scheme) and the quality of training provided by others. The ACCC considered that REIWA had an interest in providing training to a good quality level in order to satisfy its members' business needs, to generate reputational benefits for its members and to minimise its costs of its dispute resolution processes.<sup>73</sup>

5.46 In addition, the ACCC considered that regardless of the market share of competitors, REIWA's ability to increase its training prices and/or reduce the quality of its training would be constrained by:

- its status as representative body of the training participants and the control its members as a whole exert over its overall actions;
- the flexible nature of REIWA's compulsory elective training requirements;

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<sup>71</sup> See the ACCC's 2012 Determination at paras 4.89 – 4.91

<sup>72</sup> See the ACCC's 2012 Determination at para 4.92

<sup>73</sup> See the ACCC's 2012 Determination at para 4.93

- the number of experienced providers of real estate training (including both initial licensing training and ongoing professional development training).<sup>74</sup>

5.47 In particular, the ACCC considered that any potential public detriment likely to arise under the CPE Scheme would be less than the public detriment likely to arise from the alternative of there being no required training at all, which would likely lead to a substantially lower training rate. That is, in a scenario where there was no government mandated training requirement, the REIWA CPE Scheme was likely to result in a net public benefit. Notwithstanding this assessment, the ACCC noted that should significant concerns arise once the proposed CPE Scheme was operational, particularly in relation to the quality or price of the mandatory fundamentals training component provided by REIWA, this would be taken into account in any future reauthorisation or revocation decision.<sup>75</sup>

5.48 The ACCC ultimately concluded that, in relation to the issue of compulsory training for real estate and business agents, any potential public detriment likely to arise from the adoption of the CPE Scheme was less than the public detriment likely to arise from the alternative. That is, if government ceased to require agents to undertake any continuing education, REIWA's proposed CPE Scheme was likely to lead to better outcomes for the public than the alternative of no requirement for compulsory ongoing training for real estate agents.<sup>76</sup>

5.49 The ACCC also concluded that it considered that the public benefits that arise from REIWA's Membership Framework and CPE Scheme provide for increased consumer information and compliance by REIWA Members with minimum standards of conduct and quality, reduced agency bias and transaction and operational cost savings.<sup>77</sup>

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<sup>74</sup> See the ACCC's 2012 Determination at para 4.94

<sup>75</sup> See the ACCC's 2012 Determination at para 4.95

<sup>76</sup> See the ACCC's 2012 Determination at para 4.97

<sup>77</sup> See the ACCC's 2012 Determination at para 4.98

*Current position with Government Regulated Mandatory Training Requirements*

- 5.50 The WA State Government requirements for mandatory training for real estate and business agents remains largely as described in the 2012 Application. The reforms envisaged by COAG as part of the proposed NOLS model have not been implemented.
- 5.51 In a Council of Australian Governments communiqué dated 13 December 2013, the position was stated as follows:

***NATIONAL OCCUPATIONAL LICENSING SCHEME***

*COAG noted that, following the outcome of extensive State-based consultation, the majority of States decided not to pursue the proposed National Occupational Licensing Scheme reform. Most jurisdictions identified a number of concerns with the proposed NOLS model and potential costs. States instead decided to investigate approaches that would increase labour mobility and deliver net benefits for businesses and governments.*

*To this end, States agreed to work together via the Council for the Australian Federation (CAF) to develop alternative options for minimising licensing impediments to improving labour mobility and to manage the orderly disestablishment of the National Occupation Licensing Authority from early 2014.*

- 5.52 As such, the NOLS model has been abandoned.
- 5.53 Nevertheless, REIWA believes that there remains some prospect that a national occupational licensing regime will be introduced in the future that includes, as one of its features, that real estate and business agents will not be required to undergo compulsory continuing training. While governments

were not able to reach agreement in relation to the NOLS model REIWA believes, as a consequence of its involvement with stakeholders in Western Australia and at a national level, that there remains some prospect that mandatory continuing training will be removed as a licensing requirement at a government level in the future.

- 5.54 Although the prospects of the removal of government requirements for mandatory training have decreased since the 2012 Application was made, REIWA wishes to maintain the current authorisation of this aspect of its Articles in case that situation changes during the course of the authorisation now applied for by REIWA. Should the government requirements for mandatory continuing training be removed during the period of the authorisation now applied for, REIWA would wish to avoid the time and cost that would necessarily be involved in REIWA needing to make an application to the ACCC for a variation of its authorisation (and the related need for it to amend its Articles).
- 5.55 REIWA considers that competition issues, including issues of public benefit and public detriment and the assessment of the relevant counterfactual remain the same as were applicable at the time of the ACCC's 2012 Determination and analysed earlier in this section.

*Additional Matters Regarding Public Benefit, Public Detriment and the Counterfactual*

- 5.56 In addition to the issues regarding public benefit, public detriment and the counterfactual referred to above, the following additional points can be made:
- 5.57 Significant public benefit is derived from the fact that consumers can be assured that real estate and business agents with whom they deal, if they are members of REIWA, comply with criteria that are designed to ensure agents

maintain a high level of expertise and skill (e.g. see paragraph 3.20 above)

- 5.58 The CPE Scheme will ensure that REIWA agents are well-informed of developments in sound real estate and business agency practice and the law, including amendments to statutory obligations. This will in turn reduce the potential for legal proceedings, which are often costly and stressful for consumers.
- 5.59 REIWA submits that the requirement for members to satisfy half their CPE requirements through a course provided by REIWA enables REIWA (which is in a unique position because of its dealings with the regulator and its role in providing information to its members and the public) to ensure that the most pressing and important issues concerning the real estate industry are addressed and that the individuals providing the relevant information have the requisite knowledge and skill to do so. This is therefore in the best interests of the consumer as REIWA is unable to monitor or control the material covered by other professional development providers.
- 5.60 A practical example of the benefits of this scheme is provided by the current consumer dangers and regulatory actions associated with identity theft and the fraudulent transferring of real estate. Over recent years there have been a number of incidents in Western Australia where, as a consequence of identity theft originating overseas, attempts have been made to fraudulently transfer real estate out of the hands of registered proprietors to innocent buyers. Approximately five years ago there were instances where criminals illegally obtained the paid "*purchase price*" and, under the Torrens System of property ownership, the registered proprietors lost ownership of the properties concerned in favour of the innocent purchasers. Whilst the defrauded prior registered proprietors were able to make claims against a statutory fidelity fund, the incidents caused considerable government concern and public fear.

- 5.61 In an effort to combat the risks associated with the fraudulent conduct concerned and avoid a repeat of the incidents, the Western Australian State Government, through Landgate and the Department of Commerce, have introduced a series of best practice requirements upon real estate agents and settlement agents. REIWA has conferred with and been consulted with widely by the Government and Regulators in the formulation of these requirements.
- 5.62 Notwithstanding subsequent attempts by criminals to perpetrate additional property frauds over recent years in an effort to defraud registered proprietors from their ownership of property, most of those attempts have been thwarted. The provision of compulsory training and education to real estate agents with respect to these issues has markedly contributed to this significant consumer protection.
- 5.63 Compliance with these requirements, which in some instances involve complexity, and the subsequent consumer protection, warrant the type of education envisaged by REIWA in its CPE Scheme. If REIWA did not have its CPE Scheme and if there were no compulsory government required education there would be a significant risk that many real estate members of REIWA would not obtain the training reasonably necessary to properly address this important area of consumer protection.
- 5.64 It is reiterated that REIWA's proposed CPE Scheme seeks to ensure the delivery of services to the real estate and business agency industries at a high standard. This in turn provides increased protection to consumers and substantially enhances the efficiency of the real estate industry, thereby actually enhancing the competitive environment between agents.
- 5.65 It is reiterated that REIWA is in a unique position to identify appropriate course content for this training.
- 5.66 There is no evidence that the current WA State Regulatory CPD Program represents a barrier to entry to the market and

there is no reason to expect that the REIWA CPE Scheme will produce such a barrier. Indeed, the CPE Scheme will not place an onerous requirement upon REIWA Members with respect to time or cost and will be less onerous than the State Regulatory CPD Program.

- 5.67 Western Australia has had a strong culture over a number of years of requiring persons who provide professional services to undertake, either through regulatory requirements or through requirements of professional associations, ongoing education and training. This includes real estate agents, lawyers (Legal Practice Board of Western Australia), settlement agents (Department of Commerce), architects (Architects Board of Western Australia) and accountants (Association of Certified Practising Accountants (CPA Australia) and the Institute of Chartered Accountants in Australia).
- 5.68 If there were no system of compulsory education in Western Australia there would be a danger that agents would be left unaware of important developments in the law, including amendments to statutory obligations (including the anti-identity theft requirements referred to above).
- 5.69 Essentially, without a CPE scheme in place, after an agent completed their initial training to obtain educational requirements, that agent may remain in the real estate industry for the remainder of their career and receive no further formal training. Bearing in mind that some careers may span over 40 years and laws, rules and procedures relating to real estate can change significantly over time, there is a serious risk that an agent's knowledge of the fundamentals of real estate transactions would decrease so as to cause potential danger to consumers. Given that many transactions handled by agents include complex commercial, industrial and rural transactions there is a danger that consumers will face an increased risk of becoming involved in costly litigation due to the nature of such transactions. Further, for many consumers



the sale, purchase and/or leasing of residential properties represents the most significant financial transaction of their lives.

### **Other matters of significance under REIWA's Articles**

5.70 The ACCC's 2001 Initial Authorisation Determination, the ACCC's 2007 Determination and the ACCC's 2012 Determination dealt with a number of additional topics that arise for consideration under REIWA's Articles. Those topics are set out in the following pages of this section of REIWA's submissions. However, it is reiterated that, save for the amendments referred to at the beginning of this section of these submissions, the terms of REIWA's Articles have remained the same as were dealt with in the ACCC's 2012 Determination.

### **Ability to gain membership of REIWA**

5.71 Pursuant to Article 7, not all persons who are licensed real estate agents under the REBA Act are entitled to become members of REIWA. In this regard, REIWA's Articles provide for a system whereby individuals, corporations and partnerships are entitled to membership. Further, as a result of a special resolution of REIWA at the Annual General Meeting held on 19 September 2007, Articles 7 and 8 were amended to permit real estate franchisors to become Corporate Members and hence, to allow the directors of those franchisors to become Ordinary Members. This increased the number of entities in the Western Australian real estate industry who are entitled to become REIWA Members.

5.72 Article 8 requires members to comply with a number of criteria designed to ensure that members of REIWA achieve a minimum standard of conduct. REIWA submits that this, in turn, provides a sound basis for consumer protection. Article 8 does not contain any subjective criteria and does not allow for the exercise of any discretion. Article 8 contains criteria that

include that a person's licence is not currently suspended under the REBA Act, that the person is not of unsound mind, has not been convicted of certain indictable offences and does not have certain stipulated involvements with entities that are indebted to REIWA or are indebted to REIWA Members pursuant to arbitration awards. These criteria can be contrasted with subjective criteria in section 27 of the REBA Act that require individuals who become licensed real estate agents (where those individuals are natural persons) to be of "*good character and repute and fit and proper persons*". (The additional criteria introduced by the 2011 Amendments to Article 8.4 have been dealt with above and will not be dealt with specifically under this section of REIWA's submissions).

- 5.73 The requirement for applications for membership to be dealt with in accordance with the principles of natural justice/procedural fairness is contained in Article 9, by ensuring that decisions to refuse membership are accompanied by written reasons and that unsuccessful applicants are given a right to appeal to the Appeals Board.

*Public Benefit*

- 5.74 Consumers continue to benefit significantly from REIWA's membership criteria because they can be assured that real estate agents and business agents with whom they deal, if they are REIWA Members, comply with criteria designed to ensure honesty and integrity in the real estate industry. Given REIWA's high reputation in the Western Australian community, the public reasonably expects that prospective and ongoing REIWA Members will satisfy and comply with stipulated membership criteria.
- 5.75 In addition, REIWA's membership structure focuses on individuals being active in the real estate and business agency industries. As a result, this concentrates the delivery of REIWA services upon the real estate and business agency

industries as a whole, as opposed to focussing on a group of individuals who may or may not be involved in those industries.

*Previous ACCC determinations*

5.76 In previous ACCC determinations the ACCC has accepted that the potential anti-competitive detriments due to exclusionary effects are likely to be limited since:

- REIWA's Membership Framework provides for objective and fair admissions and appeal processes along with clear on-going requirements for its members; and
- the cost of REIWA membership and accessing members' services is not prohibitive.<sup>78</sup>

5.77 In addition, the ACCC has found in its previous considerations of REIWA authorisation applications that potential anti-competitive detriments due to coordination are likely to be limited since:

- REIWA's Membership Framework encourages improvements in professional standards, promotes improved consumer protection and it is likely to reduce disputes; and
- REIWA's Membership Framework does not set prices or restrict price decisions.<sup>79</sup>

5.78 In the ACCC's 2012 Determination, the ACCC stated that it had not received any information to contradict its previous view regarding REIWA's Membership Framework. Accordingly the ACCC has considered that there is only limited anti-competitive detriment from this aspect of REIWA's Membership Framework.<sup>80</sup>

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<sup>78</sup> See ACCC's 2012 Determination at para 4.66

<sup>79</sup> See the ACCC's 2012 Determination at para 4.67

<sup>80</sup> See the ACCC's 2012 Determination at paras 4.68 and 4.96. See also the ACCC's 2007 Determination at paras 7.32, 7.34-7.36, 7.43, 8.39-8.41, 9.12-9.23, 10.24 and 11.14-11.16. See also the ACCC's 2001 Initial Determination at paras 5.25 and 5.27

*Public Benefit v Anti-Competitive Effect/Public Detriment*

- 5.79 Any anti-competitive effect or public detriment arising out of REIWA's membership structure is effectively avoided by the fact that its admission procedures and assessment criteria are open, transparent and reviewable. The membership eligibility provisions set objective criteria that are, in the case of most real estate and business agents, relatively easy to achieve. This is supported by the fact that some 90% of active real estate agents are members of REIWA and 80% of residential sales in Western Australia are effected by REIWA Members.
- 5.80 In the ACCC's 2007 Authorisation, the ACCC noted that it considers it reasonable to expect that prospective REIWA Members agree to abide by REIWA's rules and that, overall, REIWA's admission requirements are sufficiently objective and unlikely to result in a subjective or arbitrary exclusion of an otherwise suitable applicant.<sup>81</sup>

*The Counterfactual*

- 5.81 Given that the majority of REIWA's members, persons and entities are actively involved in the real estate industry, a future without REIWA's membership criteria would create a real estate industry in Western Australia in which the majority of its players would not have to adhere to the reasonable minimum standards contained in the membership requirements of REIWA's Articles. As such, the public benefit derived from consumers having a level of confidence in engaging a member of REIWA would decrease significantly and the protection of consumers would be threatened.
- 5.82 In the ACCC's 2012 Determination, the ACCC concluded that, absent authorisation, the likely alternative future is a situation in which REIWA continues to represent Western Australian real estate and business agents, and to provide them with certain services, albeit in a more limited capacity.<sup>82</sup> This is

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<sup>81</sup> See ACCC's 2007 Determination at paras 7.34 and 7.36, p 15

<sup>82</sup> See the ACCC's 2012 Determination at para 4.12

consistent with the counter-factual identified by the ACCC in the ACCC's 2007 Determination.<sup>83</sup>

- 5.83 The ACCC concluded that REIWA's activities are likely to extend only to such matters as providing general information to its members and the public. In particular, the ACCC noted that it is unlikely REIWA would continue to produce the Standard Exclusive Agency Forms for use by real estate agents and consumers.

## **Insurance**

- 5.84 Under Article 8.3, REIWA Members are required to maintain a minimum level of professional indemnity insurance.

### *Public Benefit and previous ACCC determinations*

- 5.85 The ACCC has previously noted that compulsory professional indemnity insurance is likely to provide benefit to the public.<sup>84</sup> Indeed, the sole reason for this requirement is for consumer protection as this provides an avenue of redress for consumers as a consequence of an agent's actions.

### *Public Benefit v Anti-Competitive Effect/Public Detriment*

- 5.86 REIWA submits that there is no, or very little, public detriment resulting from this requirement and indeed, the public benefit derived from this provision significantly outweighs any potential anti-competitive effect.

### *The Counterfactual*

- 5.87 REIWA submits that if the ACCC did not authorise the ability for REIWA to require its members to be adequately insured, in the future, consumers would run an increased risk of being unable to recover damages from an impecunious agent in the event that the agent acted negligently.

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<sup>83</sup> See the ACCC's 2007 Determination at para 6.15 – 6.16

<sup>84</sup> See ACCC's 2007 Determination at para 7.37, p 15

## Annual Membership Returns

- 5.88 An ongoing requirement of membership of REIWA is that members provide REIWA with an annual declaration certifying compliance with its Articles (Article 11).
- 5.89 As mentioned at the commencement of this section of the submissions, in 2015 Article 11 was amended so as to provide the REIWA Council with an opportunity to exercise a discretion as to when declarations are required and the content of those declarations. This amendment was made so as to enable REIWA to more efficiently manage the commercial costs involved in having members complete these returns.

### *Public Benefit and previous ACCC determinations*

- 5.90 This provision enables REIWA to readily ensure that its members continue to comply with the membership eligibility criteria contained in the Articles. In turn, this ensures that the consumer protection benefits that are derived from those provisions are enforced.
- 5.91 The ACCC has previously noted that as this provision is likely to increase compliance with REIWA's objectives and its Code of Practice and as such, is likely to generate a public benefit.<sup>85</sup>

### *Public Benefit v Anti-Competitive Effect/Public Detriment*

- 5.92 REIWA submits that any anti-competitive detriment is significantly outweighed by the public benefit derived by ensuring members' compliance with REIWA's membership criteria.

### *The Counterfactual*

- 5.93 If the ACCC did not authorise this provision, REIWA would have practical difficulties in monitoring members' compliance with the membership criteria. As such, it is reiterated, that the

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<sup>85</sup> See ACCC's Determination at paras 7.33 and 7.43

consumer benefits that are derived from the provisions could not be enforced.

### **Membership Subscriptions**

5.94 Articles 14 to 17 contain provisions allowing REIWA to levy annual subscriptions. These provisions were amended by the 2010 Amendments.

5.95 REIWA submits that its membership fees remain modest.

5.96 In this regard, an annual Corporate Membership fee (i.e. the fee charged of business to be members of REIWA) is \$831.60. The annual membership fee for an Ordinary Member (i.e. the full membership for individuals) is \$100.10 per member. The annual fee charged of the Corporate Member for each registered sales representative or property manager is \$88.00 per individual. Membership fees for members whose principal place of business is outside of the Perth metropolitan area are subject to a 10% discount.

#### *Public Benefit*

5.97 As noted in section 3 above, REIWA provides a multitude of services to its members. The ability to do so is greatly supported by the financial resources it receives from members in form of membership fees.

#### *Previous ACCC determinations*

5.98 The ACCC has previously accepted that REIWA's membership fees are not a significant barrier to obtaining membership and do not result in a significant public detriment.<sup>86</sup>

#### *Public Benefit v Anti-Competitive Effect/Public Detriment*

5.99 Given the large variety of services provided by REIWA Members and their businesses, REIWA submits that its fees do not provide a significant barrier to obtaining membership.

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<sup>86</sup> See ACCC's 2001 Initial Determination at para 5.79, p 25

Indeed, the public benefit derived from the ability for REIWA to provide the services that it does (due largely to the payment of fees) far outweighs any anti-competitive effect or public detriment created as a result of imposing subscription fees. This is evident from the fact that, as noted previously in section 3 above, the majority of active real estate agents in Western Australia are REIWA Members.

#### *The Counterfactual*

5.100 Significant public benefit is derived from the fact that REIWA Members are able to obtain the services identified in section 3 above, including free access to legal advice from REIWA's retained lawyers on matters relating to real estate and business transactions with which they are involved on the "Legal Hotline". This reduces transaction costs and provides consumer protection as members are entitled to obtain free legal advice on the Legal Hotline involving matters including the interests of their consumer clients. Without the ACCC's authorisation of the provisions relating to membership subscriptions, REIWA would be unable to provide the extensive services that it is currently able to provide, including the provision of information to its members and the public. For example, without the financial resources gained from membership fees, it is unlikely that REIWA would be in a position to maintain its Public Enquiries Service. As set out in a footnote to paragraph 3.13(iv) above, this service dealt with 17,949 calls in 2015 – 2016.

#### **Suspension of REIWA Trading Services to Members**

5.101 Under Article 18, REIWA has the ability to cease supplying membership services to a member if that member owes to REIWA a debt in excess of REIWA's stipulated trading terms. However, REIWA does not, under this provision, have the ability to terminate or suspend a membership for unpaid debts.



5.102 As submitted in the 2006 Application and the 2012 Application, the ability to cease supplying services to a member who has failed to pay for earlier services is in keeping with what one would expect to be normal commercial rights.<sup>87</sup>

*Public Benefit*

5.103 REIWA, by the appropriate enforcement of its commercial rights and the controlling of its level of debts, is able to deliver the services referred to in section 3 above. This has thereby helped promote the delivery of real estate and business services. This continues to produce public benefit in that the efficiency of real estate business sales transactions has been enhanced and the cost of those transactions has reduced.

*Public Benefit v Anti-Competitive Effect/Public Detriment*

5.104 Any anti-competitive effect of this provision has been limited by REIWA limiting its ability to act in this situation to merely ceasing supplying services, rather than expelling or suspending a member from REIWA. REIWA therefore submits that this provision does not amount to a barrier to continuing membership of REIWA. Further, in any event, if a person is aggrieved by a decision under this Article, that individual continues to be able to appeal such a decision to an independent Appeals Board pursuant to the general appeal provisions contained in Article 43.

*The Counterfactual*

5.105 It is submitted that if the ACCC did not authorise the arrangement in Article 18, REIWA would have difficulties providing trading services to members. Further, where members remained indebted to REIWA, the trading service would not be profitable.

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<sup>87</sup> See 2006 Application at para 5.29, and 2012 Application at para 5.67

## **Cessation of Membership and Disciplining of Members**

- 5.106 Articles 21 to 23 contain provisions whereby membership of REIWA may be terminated as a consequence of a failure of a member to comply with the criteria of membership or, alternatively, due to the member having breached one of REIWA's disciplinary provisions.
- 5.107 These Articles have been the subject of previous authorisations by the ACCC in 2001, 2007 and 2012 (pursuant to the ACCC's 2001 Initial Determination, the ACCC's 2007 Determination and the ACCC's 2012 Determination).
- 5.108 The provisions in REIWA's MCPs and Auction Code can, through the threat of disciplinary action, be enforced and if necessary, matters are dealt with by the REIWA Professional Standards Tribunal (**PST**). The powers and procedures of the PST are clearly defined in Articles 23 to 33. Under Article 28, aggrieved persons are afforded principles of natural justice/procedural fairness by having the ability to appeal the termination of a membership pursuant to Articles 43 to 51 to an Appeals Board.

### *Previous ACCC determinations*

- 5.109 REIWA's disciplinary procedures have been the subject of extensive analysis in the ACCC's Initial 2001 Determination, the ACCC's 2007 Determination and in the ACCC's 2009 Minor Variation Determination.
- 5.110 In the ACCC's 2001 Initial Determination, the ACCC noted REIWA's submission that, as a consequence of the considerable benefits of reputation enjoyed by REIWA Members, expulsion from REIWA carried with it a corresponding significant commercial detriment. Consequently, the ACCC noted that public detriment could arise if REIWA's membership and disciplinary processes could be used to inappropriately deny or remove membership (or penalise members), as this would reduce the ability of

excluded agents to compete effectively in the market and therefore affect the overall intensity of competition to the detriment of consumers.<sup>88</sup> In this regard, the ACCC has previously noted that any potential public detriment of this nature will be minimised if the organisation's disciplinary processes are open, transparent and provide procedural fairness.<sup>89</sup>

5.111 In the ACCC's 2001 Initial Determination, the ACCC found that it was satisfied that REIWA met these criteria, subject to the following conditions relating to transparency:<sup>90</sup>

- REIWA is required to make public information on the number and nature of complaints received or disputes raised, the time taken to deal with complaints and disputes, the outcome of disciplinary hearings and dispute resolution processes, as well as the number and outcome of appeals. As a result, REIWA agreed in 2001 to include this information in its Annual Report. REIWA continues with this procedure.
- REIWA is required to report to the Real Estate and Business Agents Supervisory Board (**REBAS Board**) (now the Department of Commerce), within 21 days of a finding being made, full details of all adverse disciplinary findings where REIWA's legal advisor considers the subject matter of that adverse finding *could* amount to the breach of the REBA Act or the associated Code of Conduct. Subsequently, REIWA introduced clause 3.5.6 into its Part IV Competition and Consumer Act 2010 and Auction Code Compliance Manual whereby it has adopted a procedure that requires REIWA's legal advisor to consider all disciplinary hearings conducted by the PST to determine whether the conduct the subject of any adverse disciplinary finding *could* have amounted to a

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<sup>88</sup> See ACCC's 2001 Initial Determination at paras 5.29 to 5.30, p 15

<sup>89</sup> See ACCC's 2001 Initial Determination at para 5.31 and ACCC's 2007 Determination at para 7.39, p

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<sup>90</sup> See ACCC's 2001 Initial Determination at para 5.32, p 15

breach of the REBA Act or the associated Code of Conduct. If the legal advisor is of the view that the conduct the subject of an adverse disciplinary finding could have amounted to a breach of that REBA Act or the associated Code, he or she is required to immediately advise the REIWA Internal Compliance Officer of his or her conclusion.

5.112 Further, in the light of this condition, at the REIWA Annual General Meeting held on 17 September 2008, REIWA passed the following amendments to the Articles, which were subsequently authorised in the ACCC's 2009 Minor Variation Determination):

- Article 26 was amended so as to ensure that, if a PST declines to hear or determine a matter pursuant to this Article, the CEO must then refer the matter to the REBA Board (now the Department of Commerce), if, in the opinion of the PST or the CEO, the matter might amount to a breach of the provisions of the REBA Act or the associated Code of Conduct; and
- Article 28.4 was amended so as to require the outcome of any disciplinary hearing conducted by a PST to be communicated to all REIWA Members through the REIWA publication, REIWA News, or an equivalent publication. However, the PST retained a discretion (subject to appeal pursuant to Article 43) to rule that the identity of the member not be published if it considered that this would substantially be unfair in the circumstances.

5.113 Details of the most significant features of the Articles with respect to provisions dealing with the cessation of the entitlement to membership and disciplinary provisions, and the overall structure of these procedures, as previously authorised by the ACCC, are as follows:

- (i) Article 21 provides that if the CEO of REIWA determines that a member does not comply with the criteria for membership in Articles 7 and 8 (which includes the requirement to maintain a minimum level of professional indemnity insurance), that particular individual shall cease to be a member of REIWA immediately upon notice of that fact being provided to that member by the CEO. Given the fact that REIWA Members enjoy the considerable benefits of a high reputation, the ability for a member's membership to be revoked acts as a motivation for REIWA Members to comply with the various criteria for membership. Ensuring that REIWA Members comply with, for example, the requirement of compulsory professional indemnity insurance, is of significant importance and benefit to consumers. If a person who receives such a notice makes a written request to the CEO within 14 days that the issue of that member's compliance with the criteria of membership be referred to a PST for Determination, the CEO is required to convene such a PST hearing and to reinstate the membership of that person until further order of the PST. The hearing of the PST is conducted in accordance with the provisions of Article 28 and the person has the usual right of independent appeal pursuant to Articles 43 to 51. This process therefore ensures that a person is still afforded procedural fairness/natural justice;
- (ii) PSTs have the power to hear all disciplinary matters and are made up of three individuals chosen by the CEO from a panel of individuals previously approved by the REIWA Council. The members of each PST are not required to be members of REIWA but PST hearings must be chaired by a legal practitioner. This requirement reduces the risks of inadvertent breaches of the principles of procedural fairness and also gives the PST a higher level of independence;

(iii) Under Article 24, the CEO is required to refer *all* complaints to a PST for hearing. In this regard, the Articles underwent a significant change in 2008. In REIWA's 2009 Minor Variation Application lodged on 31 October 2008, REIWA sought to amend Article 24 such that only members of REIWA (and not members of the public) are able to bring complaints that a member had breached one or more of REIWA's Articles or MCPs. However, the ability of any person, including members of the public, to make a complaint that a member of REIWA had breached REIWA's Auction Code was maintained (see Articles 24.1 and 24.2). Changes were also made to the MCPs and Auction Code as a consequence of these amendments. Given that the consumer-based provisions remain in the Code of Conduct under the REBA Act, consumers are still able to bring such matters before the REBA Board (now the Department of Commerce) and, if prosecuted, the State Administrative Tribunal. Therefore, the consumer protection previously provided by REIWA's disciplinary procedures and non-Auction Code matters are retained by virtue of the state legislative provisions. If REIWA receives consumer-based complaints from non-members, REIWA continues to endeavour to mediate such matters and continues to inform those non-members of their ability to refer matters to the Department of Commerce, the Ministry of Fair Trading and the ACCC. In respect to Auction Code matters, REIWA continues to apply the terms of its Auction Code in full and consumers are not restrained in any way in bringing Auction Code matters before REIWA PSTs.<sup>91</sup>

In its 2009 Minor Variation Determination, the ACCC authorised the requested variations. The ACCC noted that the ability for consumers to bring complaints against REIWA Members in relation to breaches of the MCPs

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<sup>91</sup> See REIWA's 2008 Minor Variation Application at paras 36 to 39, p 10

would be retained as a result of the consumer protection provisions contained in the REBA Act and Fair Trading legislation and as such, the protection afforded to consumers would be retained. The ACCC also stated that this view was supported by the REBA Board and Consumer Protection Division of the Western Australian Department of Commerce.<sup>92</sup>

Accordingly, the ACCC noted that, while complaints in respect of MCP matters would no longer be dealt with in accordance with REIWA's disciplinary processes, it was satisfied that they would still be dealt with effectively.<sup>93</sup>

- (iv) In the ACCC's Initial 2001 Determination, the ACCC imposed a requirement on REIWA to introduce provisions whereby parties to disputes were advised early of the existence of alternative dispute resolution and, where PSTs or arbitration panels decline to hear or determine disputes, they are required to provide written reasons for the decision to all parties to the dispute. As a result of the ACCC's advice, REIWA instituted a process whereby a standard notice is given to all parties who are involved in arbitrations or who are complainants in PST hearings. The form of the notice is as follows:

*REIWA provides a system of resolving disputes related to real estate matters, dealing with complaints by REIWA members regarding the conduct of REIWA members and dealing with complaints from the public regarding breaches by members of REIWA's Auction Code. Those matters are determined by REIWA Arbitration Panels and REIWA Professional Standards Tribunals. However, there are also alternative legal systems and other redress mechanisms available to persons involved in disputes with*

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<sup>92</sup> See ACCC's 2009 Minor Variation Determination at paras 5.4 and 5.5, p 10

<sup>93</sup> See ACCC's 2009 Minor Variation Determination at para 5.8, p 10

*agents. The Department of Commerce regulates the practice of real estate in Western Australia, has the power to investigate the conduct of real estate agents and can take disciplinary action with respect to such conduct. Further, the Department of Commerce is able to investigate breaches of various consumer laws in Western Australia. The Australian Competition and Consumer Commission can investigate breaches of a number of Federal laws, including misleading or deceptive conduct, unconscionable conduct and anti-competitive conduct. Disputes relating to real estate matters might also, depending upon the circumstances, be matters that can be made the subject of proceedings in the civil Courts (for example, breach of contract, negligence or misleading or deceptive conduct) or the criminal Courts (for example, fraud or stealing).*

If REIWA receives a telephone call from an aggrieved consumer, the consumer is informed that they may, if they wish, voice their concerns with the Department of Commerce. All callers to the Public Enquiries Service provided by REIWA automatically listen to a pre-recorded message which makes the caller aware of the existence of the Department of Commerce.

REIWA's statistics regarding arbitrations and disciplinary matters reflect a marked decrease in the use of the REIWA disciplinary processes and arbitration services. REIWA considers that this is as a result of increased activity by the Public Enquiries Service, the success of REIWA's conciliation process and the removal of the ability of members of the public to bring complaints regarding breaches of REIWA's Rules and Codes (except for the Auction Code), as explained in sub-



paragraph (iii) above. Further, the vast majority of complaints regarding real estate agents and business agents and disputes between those agents are now dealt with by the Department of Commerce or are the subject of civil litigation. Consequently, since 2012, REIWA has not conducted any formal mediations, nor has it conducted any PST hearings. Nevertheless, the existence of the possibility of PST hearings is a very material reason for agents to comply with REIWA's Rules and Codes.

As to REIWA's conciliation processes, REIWA's statistics regarding its dealing with these types of matters show that in 2015/2016 a total of 22 written concerns and enquiries were received from the public and 15 written concerns and enquiries were received from members. As to concerns raised by the public, one was raised by a tenant, seven were raised by owners of tenanted properties, six were raised by buyers and eight were raised by sellers. As to concerns raised by members, 13 were raised regarding inaccurate advertising and two were raised regarding disputed commissions. 92% of these concerns and enquiries were resolved in the same monthly period in which they were lodged. All 37 concerns raised by the public and by members were ultimately resolved by informal conciliation conducted by REIWA.

- (v) Pursuant to Article 26, PSTs have the power to decline to hear or determine a matter on the ground that the matter is not within the capacity of the PST to determine, the matter is frivolous or vexatious or it is otherwise inappropriate for the PST to hear or determine the matter concerned.
- (vi) As mentioned above, Article 26.3 offers a further level of consumer protection by requiring the CEO, where a PST declines to hear or determine a matter pursuant to Article

26, to refer the matter to the REBA Board (now Department of Commerce) if, in the opinion of the PST or CEO, the matter might amount to a breach of the provisions of the REBA Act or the Code of Conduct issued pursuant to the REBA Act.

(vii) Under Article 25, the PST is given the power to:

- terminate or suspend a person's membership with REIWA;
- impose monetary penalties not exceeding \$10,000.00, or such ultimate maximum sum as prescribed from time to time by the REIWA Council, as a result of any breach of REIWA's Articles, Codes or Rules;
- require the individual the subject of a hearing to undertake a course of further training provided by REIWA or another service provider as stipulated by the PST;
- impose a reprimand;
- dismiss the matter without penalty; and
- order the restitution of any monies held or received by the member the subject of the hearing to any persons determined by the PST to be entitled to those monies, to a maximum of \$25,000 in total.

The PST's ability to order that an individual undertake a further course of training is a power that is consistent with orders requiring the retraining of professionals that are available to other disciplinary bodies. However, the PST is afforded discretion as to whether the person must undertake a course provided by REIWA or by some other service provider.

- (viii) Article 27 allows any person who has made a complaint pursuant to Article 24 to withdraw that complaint before a hearing commences. This prevents a potential situation arising where a complainant may no longer wish to proceed with the complaint (the complainant may well realise that the complaint lacks foundation) without the need for a full hearing to take place. However, even if a complainant does withdraw a complaint, REIWA, through its CEO, is given the ability to elect to continue the hearing if it thinks appropriate.
- (ix) REIWA Members are afforded natural justice/procedural fairness as a result of Article 28, which requires a PST to, amongst other things, provide the defendant member with written notice of the nature of the matter to be heard as well as copies of any documentary evidence proposed to be considered by the PST at the hearing. It is also reiterated that an individual has a right to appeal to the Appeals Board pursuant to the provisions of Articles 43 to 51.
- (x) Pursuant to Article 42, individuals are entitled to legal representation at any hearing or appeal conducted pursuant to the Articles or any of REIWA's Codes or Rules, if the decision-maker conducting that hearing or appeal considers that such legal representation is necessary to enable the party concerned to effectively present a party's case and it is otherwise appropriate in the circumstances for the party to be legally represented.
- (xi) Article 29 provides that a PST does not have the power to make any costs orders with respect to the hearing of any matters before it. REIWA considers that it would be inappropriate to give the PST the ability to make costs orders for or against REIWA and the defendant member, particularly given that the tribunal system is a summary process and provision of a beneficial customer service. However, cost orders can be made in relation to hearings

before the Appeals Board pursuant to the provisions of Article 49.

- 5.114 In 2010 Article 28.4 was amended to clarify the timing of the communication of the outcome of any hearing to REIWA Members through REIWA News. In particular, that communication is to take place upon the latter of either the determination of any appeal or, if there is no appeal, upon the expiration of the time permitted under Article 43 for an appeal to be lodged.
- 5.115 This amendment was made because REIWA considered that if a member has been found by a PST to have breached a membership Rule or Code and the member has then appealed that finding, it would be unfair to identify that member prior to the Appeals Board delivering its decision.

*Public Benefit*

- 5.116 REIWA reiterates its submission that its disciplinary processes produce a public benefit in that they assist in ensuring compliance with other REIWA Rules (for example, the MCPs and the Auction Code) that themselves produce a public benefit. The provisions are clear, there is no potential for subjective or arbitrary decisions and there is protection of procedural fairness.
- 5.117 As determined by the ACCC's 2009 Minor Variation Determination, the amendment to Article 24.2 removing the rights of members of the public to bring complaints against members in respect of non-Auction Code matters does not lessen the public benefit derived from REIWA's disciplinary process. Rather, the lessening of the administrative and legal costs to REIWA that have resulted from the amendments have enabled REIWA to devote greater resources to providing services to its members and consumers (and thereby enhancing the delivery of real estate services in Western Australia) and in turn, provide a greater public benefit. In the

ACCC's 2009 Minor Variation Determination, the ACCC noted that the processes contained in the REBA Act for bringing complaints against real estate agents in Western Australia appear to be effective and affordable.<sup>94</sup> Further, the REBA Board (and now Department of Commerce) and State Administrative Tribunal are able to bring a greater degree of independence and administrative expertise to the consideration of consumer complaints, have greater investigative and prosecutorial powers to consider complaints and are able to impose greater sanctions on real estate agents than REIWA.<sup>95</sup>

*Public Benefit v Anti-Competitive Effect/Public Detriment*

5.118 Any anti-competitive effect or public detriment caused through REIWA's disciplinary process and ongoing membership eligibility criteria is, as noted by the ACCC, avoided or minimised by the fact that the provisions are expressed clearly and without ambiguity, are objective and not based on discretionary terms and provide for the principles of natural justice/procedural fairness to be complied with. REIWA reiterates its submission that its disciplinary processes remain open and transparent and provide procedural fairness.

*The Counterfactual*

5.119 If the ACCC does not grant authorisation for REIWA's disciplinary and ongoing membership eligibility provisions, REIWA will be unable to ensure that its membership criteria are complied with, thereby reducing the consumer protection which is already afforded by those provisions. For example, if REIWA were unable to end the membership of a member if that member did not adhere to the requirement to maintain a minimum level of professional indemnity insurance, that agent could potentially hold himself or herself out as a REIWA Member, notwithstanding that member potentially being unable

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<sup>94</sup> See ACCC's 2009 Minor Variation Determination at para 5.6, p 10

<sup>95</sup> See ACCC's 2009 Minor Variation Determination at para 5.6, p 10

to satisfy a damages claim by an aggrieved consumer arising from that agent's conduct. Further, enabling REIWA Members to bring complaints before the PST regarding other members engaging knowingly in misleading or deceptive conduct and enabling the public to bring complaints regarding breaches of the Auction Code is desirable and would be unavailable if authorisation were not granted.

### **Dispute Resolution**

- 5.120 REIWA's arbitration process is dealt with in Articles 34 to 41. These Articles have been the subject of previous authorisations by the ACCC and have not been altered in any way.
- 5.121 Article 34 relates to the creation and maintaining of REIWA Arbitration Panels. These panels provide an efficient and cost effective method for resolving disputes in the real estate industry, as an alternative to both members and consumers having to become involved with the civil court system.
- 5.122 Under the Articles, REIWA Members must submit disputes to REIWA for resolution if the disputes:
- (i) are disputes between member agents to which any of REIWA's Articles, Codes or Rules relate or which otherwise arise out of the provision of real estate or business agency services by one or more members of REIWA; and
  - (ii) any disputes between members of REIWA and members of the public to which any of REIWA's Articles, Codes or Rules relate or to which otherwise arise out of the provision of real estate or business agency services by one or more members of REIWA; provided that the member or the public concerned agrees in writing to submit the dispute to the REIWA Arbitration Panel to be determined pursuant to these Articles and to abide by such a determination.

5.123 Arbitration Panels must adhere to the provisions of the *Commercial Arbitration Act*, 1985 in regards to the resolution of disputes, except insofar as the terms of that Act are lawfully modified by REIWA's Articles, Codes or Rules and/or the terms of REIWA's Dispute Resolution Manual, which is a document approved by the REIWA Council and its current form as incorporated into these submissions as schedule "G".

5.124 Amongst other things, REIWA's Dispute Resolution Manual requires:

- upon REIWA receiving written requests from a member or member of the public, or upon the Council directing that a hearing be conducted, an Arbitration Panel must be convened;
- parties be given no less than 14 days' notice of the date of the hearing;
- unless advised otherwise by the Arbitration Panel, all parties must provide the Arbitrator all documentary evidence that they propose to rely on at the hearing, no less than 7 days before the hearing. REIWA is also required to provide copies of evidence provided by one party to all the parties, where this is possible;
- there is a need to attend, if required, a conciliation conference; and
- parties may be required to lodge monies into the REIWA Council's trust account, where those monies are identified to be the extent of any dispute.

5.125 Pursuant to Article 38, an Arbitration Panel shall not determine any dispute in which the subject matter of that dispute exceeds \$50,000.00, or such other sum as shall be stipulated from time to time by the REIWA Council.

5.126 As noted in paragraph 5.113(iv) above, with respect to all arbitrations and PST complaints, REIWA provides advice to parties and complainants of the existence of alternate legal systems.

*Public Benefit and previous ACCC determinations*

5.127 In the ACCC's 2001 Initial Determination, the ACCC noted that REIWA's system of arbitration panels produces a public benefit by assisting to resolve disputes in the real estate industry.<sup>96</sup>

5.128 In the ACCC's 2007 Determination, the ACCC considered that, insofar as REIWA's arbitration process provides a cost effective method for resolving disputes in the real estate industry, it is likely to provide a public benefit.<sup>97</sup>

5.129 It is submitted that REIWA's system of arbitration panels continues to produce public benefit by assisting to resolve disputes in the real estate industry.

*Public Benefit v Anti-Competitive Effect/Public Detriment*

5.130 Any anti-competitive detriment caused by the requirement that REIWA Members submit disputes to an Arbitration Panel is mitigated by the requirement that the dispute resolution process be conducted in accordance with the *Commercial Arbitration Act*, 2012, the process being limited to disputes not exceeding \$50,000.00 and REIWA advising all parties and complainants that alternative dispute resolution options exist.<sup>98</sup>

*The Counterfactual*

5.131 REIWA's dispute resolution process provides a method by which circumstances surrounding a grievance caused by an agent's conduct, whether that complaint originates with another REIWA Member or a member of the public, can be resolved without the need for a hearing by the court. Although

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<sup>96</sup> See ACCC's 2001 Initial Determination at para 5.60, p 21

<sup>97</sup> See the ACCC's 2007 Determination at para 7.38, p 16

<sup>98</sup> As found by the ACCC in its 2007 Determination at para 7.38, p 16



over recent years the use of this service has waned, the ability of members and the public to be able to access this dispute resolution service still represents a valuable option, forming a valuable adjunct to the REIWA public enquiry service (referred to in paragraph 3.13 above). Further, the fact that REIWA does not frequently need to conduct formal arbitration is reflective of the success of its public enquiry service and the ability of REIWA often to informally resolve disputes between real estate agents and members of the public.

5.132 Further, a future without REIWA's dispute resolution procedures in place would mean a future where consumers could only seek advice and institute proceedings through the Courts, at greater costs to businesses and consumers.

### **Appeals**

5.133 REIWA's appeal provisions are contained in Articles 43 to 51 and have been the subject of previous authorisation by the ACCC. The Articles provide for the formulation of an independent decision-making body, an Appeals Board, made up of the following individuals:

- a chairperson, being a legal practitioner appointed by the President of the Australian Institute of Arbitrators and Mediators, who is a member of that Institute but is not a member of REIWA and is not a licensed real estate/business agent or sales representative under the REBA Act;
- a consumer representative who is appointed by the REIWA Council but who is not a licensed real estate/business agent or sales representative under the REBA Act and who is not a member of REIWA; and
- an individual appointed by the REIWA Council who is a licensed real estate or business agent under the REBA Act.

- 5.134 REIWA submits that the benefit of having one representative on the Appeals Board who is a practising real estate agent is the practical and unique knowledge held by real estate agents about many matters that are brought before the Appeals Board.
- 5.135 Pursuant to Article 48, appeals to the Appeals Board from decisions of the PST are by way of re-hearing and not by way of hearing *de novo*. However, appeals to the Appeals Board from the decision or action of any other person (such as the CEO) are by way of hearing *de novo*. The additional costs involved in the hearing *de novo* process makes it undesirable in relation to appeals from tribunals where a full hearing is provided at first instance.

*Public Benefit and previous ACCC determinations*

- 5.136 The procedural fairness that flows from the existence of an independent Appeals Board hearing process compliments the public benefit that consumers already derive from the various consumer protection provisions contained in REIWA's MCPs and Auction Code.
- 5.137 The ACCC has previously considered that the inclusion of fair and transparent appeals processes may provide a public benefit to the extent that they facilitate compliance with a fair and transparent Code of Conduct.<sup>99</sup>
- 5.138 The ACCC has previously satisfied itself that the Appeals Board is sufficiently independent of REIWA and the processes used by the Appeals Board are open, transparent and provide procedural fairness.<sup>100</sup> In particular, the ACCC noted that REIWA's appeals processes provide a fair and independent final hearing for prospective or existing REIWA Members of any adverse decision made under the Articles. The ACCC has expressed the view that this results from a requirement that the

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<sup>99</sup> See the ACCC's 2007 Determination at para 7.40, p 16

<sup>100</sup> See the ACCC's 2001 Initial Determination at para 5.73, p 24 and the ACCC's 2007 Determination at paras 7.41 and 7.42, p 16

three-member Appeals Board consist of two independent members, one being a legal practitioner appointed by an independent party and the other a consumer representative who is not a member of REIWA.<sup>101</sup>

5.139 The ACCC has also noted that public detriment could arise if any member of the Appeals Board was also part of the original decision-making body, as this would reduce the independence of the Board.<sup>102</sup>

*Public Benefit v Anti-Competitive Effect/Public Detriment*

5.140 Any anti-competitive effect or public detriment that flows from these provisions is significantly outweighed by the public benefit that is derived by ensuring an independent appeals process and a protection of the rights of natural justice.

*The Counterfactual*

5.141 Without the existence of an independent Appeals Board there would be a lessening of the public benefit derived from REIWA's PST process because the rights of natural justice would be undermined.

## 6. REIWA.COM GENERAL TERMS AND CONDITIONS

6.1 In sections 3 and 4 of these submissions substantial detail has been given regarding the operations of the REIWA service, reiwa.com, and its position in the relevant market.

6.2 As part of the provision of these services, REIWA requires the users of the service who are members of REIWA to agree to a set of standard terms and conditions (**reiwa.com Terms and Conditions**).

6.3 The current form of the reiwa.com Terms and Conditions appears at schedule B to these submissions.

<sup>101</sup> See ACCC's 2007 Determination at para 7.42, p 16

<sup>102</sup> See ACCC's Initial 2001 Determination at para 5.73, p 24

- 6.4 REIWA applies for authorisation of the conduct that gives rise to these terms and conditions.
- 6.5 The terms of the reiwa.com Terms and Conditions are consistent with reasonable terms and conditions for the delivery of services of this nature.
- 6.6 However, REIWA wishes to draw particular attention to the rights provided to it under clause 17 of those conditions, in particular, the ability provided to REIWA to suspend the delivery of services to the member concerned when there has been a default by the member that has not been remedied after a period of seven days following the giving of a notice of that breach.
- 6.7 “Services” is defined in clause 1 of the reiwa.com general conditions as meaning *“the various functionalities available to subscribers to the [reiwa.com website], including but not limited to the functionalities known as Feature Property, Banner Advertising, Headline Property, eFlyer, Realform and Real Inspection, Pricerfinder and any functionalities made available by REIWA from time-to-time.”*
- 6.8 The consideration of these provisions of the reiwa.com terms and conditions give rise to similar issues referred to above in section 5 of these submissions regarding Article 18 of REIWA’s Articles and the ability of REIWA to cease supplying membership services to a member if that member owes to REIWA a debt in excess of REIWA’s stipulated trading terms.
- 6.9 The ability to suspend supplying services to a member who has failed to pay for earlier services is in keeping with what one would expect to be normal commercial rights.

#### *Public Benefit*

- 6.10 REIWA, by enforcing its commercial rights and the controlling of its debts is able to more efficiently deliver the services set out in section 3 above. This consequently helps promote the

delivery of real estate and business services by REIWA and its members. This continues to produce public benefit in that the efficiency of real estate business sales transactions has been enhanced and the cost of those transactions has reduced.

*Public Benefit v Anti-Competitive Effect/Public Detriment*

6.11 Any anti-competitive effect of this provision has been limited by REIWA not having the ability to expel or suspend the member from actual membership of REIWA. The condition in the terms and conditions does therefore not amount to a barrier to continuing membership of REIWA.

*The Counterfactual*

6.12 If the ACCC did not authorise the conduct that gives rise to the reiwa.com Terms and Conditions and, thereby, cast doubt upon the ability of REIWA to suspend the delivery of reiwa.com services to members, the ability of REIWA to deliver the reiwa.com services in a manner that is as commercially as now occurs would be prejudiced. In turn, this would impact upon the overall ability of REIWA to deliver its services to its members and the public in an efficient manner. It is stressed that under the *Associations Incorporation Act, 2015*, REIWA is a not-for-profit association.

## **7. THE MEMBERS' CODES OF PRACTICE**

7.1 REIWA's MCPs are designed to impose regulation upon the conduct of REIWA Members to assist in the efficient delivery of real estate services and to provide consumer protection.

7.2 The MCPs are promulgated by the REIWA Council pursuant to Article 54 of REIWA's Articles.

- 7.3 The MCPs promote professionalism in the practice of real estate and business agency services; promote consumer protection; promote higher standards of real estate practice; assist with the supply of a cost effective mechanism for the enforcement of standards of real estate practice and are an important contributor to the efficient operation of real estate and business sales transactions in Western Australia.

#### **History of the authorisation of the MCPs**

- 7.4 REIWA's MCPs were initially authorised by the ACCC in REIWA's application for authorisation in 2000/2002.<sup>103</sup>
- 7.5 The terms of the MCPs were then further authorised in 2007<sup>104</sup> and in 2012.<sup>105</sup>
- 7.6 The terms of the MCPs have not changed from the form authorised by the ACCC in 2012. Indeed, the form of the MCPs authorised in 2012 was the same as the form of the authorisation granted in 2007, save for amendments made to the MCPs following amendments to the REIWA's Articles at REIWA's September 2008 Annual General Meeting. Those changes were the subject of a minor variation of authorisation A91026 granted by the ACCC in the ACCC's 2009 Minor Variation Determination.<sup>106</sup>
- 7.7 As discussed above at paragraph 5.113(iii) of these submissions, REIWA amended its Articles at this time so as to remove the ability for members of the public to make complaints that REIWA Members had breached one or more of the MCPs (the ability for members of the public to bring complaints with respect to breaches of the Auction Code of Practice remains). Clause 10 of the MCPs was amended so as to delete the requirements that members must act in the best interests of their principals, act in accordance with the

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<sup>103</sup> See the ACCC's 2001 Initial Determination at pp 26-38

<sup>104</sup> See the ACCC's 2007 Determination at pp 17-21

<sup>105</sup> See the ACC's 2012 Determination at pp 4.98 and 5.11

<sup>106</sup> See the ACCC's 2009 Minor Variation Determination at p 11

instructions of the member's principal and act with due skill, care and diligence. Further, clause 10 was amended such that the requirement that members act fairly and honestly and the requirement that members not engage in harsh or unconscionable conduct is limited to members' dealings with other members (and not the member's dealings with the public). Members are still prohibited from knowingly engaging in any misleading or deceptive conduct.

- 7.8 In support of its application for this minor variation, REIWA submitted that the consumer protection provisions that were removed from the MCPs were analogous to those contained in the Code of Conduct under the REBA Act and consumers are still able to bring complaints against members in relation to such matters before the Real Estate and Business Agents Supervisory Board (now the Department of Commerce) and, if prosecuted, the State Administrative Tribunal. In the instance of the Auction Code, where no such analogous provisions are contained in State legislation, the provisions of the Auction Code have remained.
- 7.9 In support of the application for minor variation, REIWA submitted that there was no effective lessening of the public benefit as a consequence of the amendments. This was particularly due to the ability of consumers to continue to be able to bring matters before the State regulator. REIWA submitted that there was no "*consumer need*" to have a disciplinary forum that deals with non-Auction Code consumer complaints and the separation of the prosecutor from the determining tribunal, as enshrined in the State Administrative Tribunal system, represents a significant procedural fairness advantage to the REIWA system. The State Administrative Tribunal brings a far greater degree of independence and an administrative expertise to the consideration of consumer complaints than REIWA PSTs are able to provide. The State regulator has considerably greater resources to investigate complaints and collate evidence for bringing prosecutions.

REIWA's powers to investigate are minimal unless persons are voluntarily prepared to co-operate. Further, the State Administrative Tribunal is able to impose considerably greater sanctions against real estate agents than REIWA PSTs. REIWA submitted that the anticipated reduction in administrative and legal costs as a result of it no longer considering such consumer complaints would enable it to devote greater resources to the provision of real estate services and thereby provide a greater public benefit to consumers by the delivery of enhanced services.

7.10 In essence, the ACCC accepted these submissions in the ACCC's 2009 Minor Variation on 1 April 2009.<sup>107</sup>

*Previous Findings by ACCC regarding MCPs*

7.11 In light of the fact that the terms of the MCPs have not altered since the time of the ACCC's 2012 Authorisation (and, as set out above, the form of the MCPs at this time was largely in the same form as was the subject of the ACCC's 2007 Authorisation) and in light of the fact that the relevant circumstances surrounding the operation of real estate in Western Australia that are dealt with by the MCPs have not changed, REIWA submits that the specific observations made by the ACCC regarding the public benefit derived from specific aspects of the MCPs continue to apply.<sup>108</sup>

7.12 The ACCC's 2012 Determination did not contain detailed analysis of individual provisions within the MCPs. However the ACCC has previously commented upon specific provisions in the MCPs as set out below.

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<sup>107</sup> See the ACCC's 2009 Minor Variation at pp 10-12

<sup>108</sup> See the ACCC's 2001 Initial Determination at pp 26-38, the ACCC's 2007 Determination at pp 17-21 and the ACCC's 2012 at pp 4.60 and 4.98



## **Clause 1 – Obtaining an Agency to Sell**

7.13 Clause 1 of the MCPs requires that REIWA Members obtain written authority from principals before offering a property for sale and, on receipt of such authority, conduct relevant title searches. This clause provides public benefit insofar as it increases contractual certainty for the seller and the seller's agent. This certainty arises from the requirement that there be a written agreement between the parties along with the imposition of a discipline on the real estate agent to determine the status of the property (i.e. encumbrances) prior to agreeing to sell it.

### *Public Benefit and Previous ACCC Determinations*

7.14 The ACCC has previously, in effect, accepted the submission set out above.<sup>109</sup> REIWA submits that the circumstances of the real estate industry in Western Australia have not changed and the public benefit that is derived from this clause remains.

## **Clause 2 – Interference with Contracts or Agreements**

7.15 Clause 2 of the MCPs provides that where an agent has entered into an agency agreement, members must not induce or attempt to induce a breach of, or interference with, that agency agreement.

7.16 Prior to entering into any agency agreement for the sale or lease of a property or business an agent must enquire of the prospective principal whether that principal has entered into any prior agency agreements in connection with the subject sale or lease that impose any liabilities to pay a fee or impose any other obligations upon a principal and, if so, what the terms of that prior agency agreement are. Further, an agent must not solicit or accept any agency if the agent is aware that any other agency is in force which may oblige the vendor/lessor to pay two fees or expose the vendor/lessor to a claim for damages for breach of contract in the event of a sale

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<sup>109</sup> See ACCC's 2007 Determination at p 17

or lease taking place, unless the agent gives a prior written statement to the vendor/lessor that the vendor/lessor may be so liable if a further agency agreement is signed.

*Public Benefit and Previous ACCC Determinations*

- 7.17 The ACCC accepted in the ACCC's 2001 Initial Determination that this provision produces a public benefit given that it reflects the common law.<sup>110</sup> The ACCC accepted that these provisions produce a public benefit by assisting to inform sellers/lessors of their potential obligations to pay two commissions. The provision requiring advice to be provided that a seller/lessor may be liable to pay two fees or exposed to a claim of damages for breach of contract if multiple agreements are entered into is identical to one authorised by the ACCC as part of REIA's Code of Conduct on 23 November 1999.
- 7.18 The ACCC also found in the ACCC's 2007 Determination that, insofar as clause 2 is used to prevent sellers/lessors from unwittingly breaching contracts or having to pay multiple commissions, it is likely to provide some public benefit.<sup>111</sup>
- 7.19 In the ACCC's 2007 Determination, the ACCC noted that it would be concerned if, for example, the requirement in clause 2 reduced the preparedness of agents to accept offers to sell a property simply on the basis that they would not be an exclusive agent. Additionally, the ACCC stated that it would be concerned if this provision was used by agents to determine which other agents they were competing against and using that information to decide whether they would list a property or not.
- 7.20 REIWA submits that there is no evidence that the potential issues that the ACCC has expressed concern about in fact arise in practice. REIWA is not aware of any such problems arising.

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<sup>110</sup> See the ACCC's 2001 Initial Determination at para 6.2, p 26-27

<sup>111</sup> See ACCC's 2007 Determination at para 8.11, p 18

- 7.21 REIWA submits that there has been no change in circumstances in the practice of real estate in Western Australia to reduce the public benefit that arises from this clause.
- 7.22 The soliciting provisions are to the benefit of consumers because the agent is forced to enquire as to whether the seller has a current agency agreement with another agent. The statutory Code of Conduct only requires that an agent must not knowingly place a seller in a position of paying two fees. Further, the agent is not permitted to place the seller in a position of paying two fees to two agents unless the seller is aware of the implication of the action of entering into another selling agency agreement. In other words, the clause requires that there be a full disclosure to consumers of the attendant risks associated with potentially entering into two agency agreements. Without these provisions sellers might unknowingly be placed in a position where they would be liable to pay two fees.

### **Clause 3 – Agency Agreements**

- 7.23 Clause 3 of the MCPs requires agents to clearly explain to seller/lessors their rights and responsibilities in respect of any agency agreement and provide a copy of the agreement to the seller/lessor at the time it is signed. Further, agents who hold an exclusive appointment are not permitted to take action against a seller/lessor for recovery of a fee when a property and/or business has been sold or leased by a second agent who was not aware of the existence of the exclusive appointment and who is being paid a fee, unless the vendor or lessor was made fully aware of his or her responsibilities under the exclusive agency agreement at the time that the first agreement was signed.
- 7.24 This rule protects consumers by requiring agents to fully explain to sellers/lessors their rights and responsibilities under agency agreements. The second of these provisions also

provides a practical rule for resolving disputes between agents when exclusive agency appointments overlap. The provision assists in ensuring that consumers are only charged one commission, which is the purpose behind the statutory Code of Conduct provision which requires agents not to knowingly induce or attempt to induce a person to enter into an agency contract that would make the person liable to pay more than one commission.<sup>112</sup>

#### *Public Benefit and Previous ACCC Determinations*

- 7.25 In the ACCC's 2001 Initial Determination the ACCC found that the provisions outlined above provide a public benefit by ensuring that sellers/lessors make informed decisions about the consequence of the arrangements they enter into with real estate and business agents.<sup>113</sup>
- 7.26 Similar comments were made by the ACCC in its 2007 Determination.<sup>114</sup>
- 7.27 REIWA submits that there has been no change of circumstances so as to reduce the public benefit that flows from this provision.

#### **Clause 4 – Conjunctive Agreements**

- 7.28 A conjunctive agreement is one between a listing agent (being an agent authorised by the principal to sell the property) and another agent (the conjunctive agent) to share a fee arising from the introduction of a buyer by the conjunctive agent to the listing agent. On making a conjunctive agreement, the conjunctive agent becomes a sub-agent of the listing agent.<sup>115</sup>
- 7.29 The use of conjunctive agreements in Western Australia adds effectiveness to competition in real estate and business

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<sup>112</sup> See the Code of Conduct pursuant to section 101 of the REBA Act at clause 3(2)

<sup>113</sup> See the ACCC's 2001 Initial Determination at para 6.6, p 27

<sup>114</sup> See the ACCC's 2007 Determination at para 8.13, p 18

<sup>115</sup> See the ACCC's 2001 Initial Determination at pp 27-28

agency markets and enables property and businesses to be sold and leased with greater efficiency. The use of conjunctural sales in concert with the exclusive listing of properties and businesses produces an efficient way of selling or leasing a property or business.

- 7.30 The REBA Act Code of Conduct<sup>116</sup> and the MCPs<sup>117</sup> require agents to act in the best interests of their principals except where it would be unreasonable or improper to do so. This effectively means that listing agents are required in the vast majority of circumstances to enter into conjunctural agreements when approached by non-listing agents.
- 7.31 Clause 5 of the MCPs provides for minimum levels of service to be provided by members of REIWA when they act as conjunctural agents and clauses 4 and 5 of the MCPs stipulate provisions for the effective operation of conjunctural agreements between members of REIWA, subject to those members being able to agree to the contrary.
- 7.32 Specific provisions concerning conjunctural agreements in REIWA's MCPs were amended pursuant to the requirements of the ACCC with respect to REIWA's previous application for authorisation.<sup>118</sup>
- 7.33 The use of conjunctural agreements in leasing is very rare.
- 7.34 The use of conjunctural agreements in the sale of properties adds to competition in the real estate and business agency markets and enables properties to be sold and leased with greater efficiency. In particular, the existence of conjunctural agents places greater competitive pressure on listing agents to quickly and efficiently find buyers than would otherwise be the case.

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<sup>116</sup> Clause 2

<sup>117</sup> Clause 10.1

<sup>118</sup> See the ACCC's 2001 Initial Determination at pp 27-34

- 7.35 The use of conjunctive agreements increases the efficacy and public benefit associated with the exclusive agency agreement system. In particular, the use of conjunctive agents maximises the exposure of sellers and properties or businesses to numerous agents. Conjunctive agreements also give buyers an effective method of accessing a wide range of properties. Whilst it is relatively rare for buyers to appoint agents to act for them when purchasing properties (and thereby become liable to pay the agent a fee), buyers frequently approach agents on the basis that the agents will locate a suitable property for the particular buyer and then introduce the buyer to that property. The incentive for the agent to become involved in this process is that, upon introducing the buyer to the property, the agent concerned can enter into a conjunctive agreement with the listing agent and thereby share in the listing agent's fee.
- 7.36 Given the importance of conjunctive agreements, there is a substantial public benefit in ensuring that the system operates clearly and efficiently. In particular, it would not be in the interests of sellers or buyers for agents to be embroiled in disputes with each other over the terms of conjunctive agreements or for non-listing agents to be reluctant to enter into conjunctive agreements because of the potential for disputes or because the system is unwieldy.
- 7.37 REIWA notes that most conjunctive agreements between agents tend to be verbal and often the terms of those verbal agreements do not contain details. The conjunctive provisions in the MCPs can therefore be an effective way of providing certainty to conjunctive agreements and thereby resolving disputes. In turn, this results in non-listing agents continuing to have confidence in the conjunctive system and provides a corresponding confidence in both sellers and buyers in participating in the conjunctive agency system.
- 7.38 In the submissions provided by REIWA in support of the 2006 Application (the subject of the ACCC's 2007 Determination),

REIWA noted that it had previously stated that over 90% of arbitrations conducted by REIWA concerned disputes between agents regarding the terms of conjunctural agreements. It also noted that the number of those arbitrations, however, had fallen over the previous four years and had dropped to an average of only one per year. This trend has continued over the past five years and it is reiterated that no arbitrations have been held over that time. All other disputes between agents concerning conjunctural fees that have been referred to REIWA have been able to be resolved by mediation conducted by REIWA. REIWA contends that this is evidence of the success that has been derived in producing certainty with the system of conjunctural sales as a consequence of the terms of the MCPs. This produces significant public benefit in that the conjunctural system of sales is encouraged and the overall transaction costs associated with sales is reduced on an industry-wide basis because unnecessary time and money being spent on legal arguments is avoided.

*Public Benefit and Previous ACCC Determinations*

7.39 In the ACCC's 2001 Initial Determination, the ACCC noted that the scope of REIWA's application for authorisation did not extend to determining whether conjunctural agreements *per se* provide a public benefit outweighing any associated public detriment. The ACCC had only been asked to consider whether the rules in the MCPs regulating the making of conjunctural agreements by REIWA Members provided a net public benefit. However, the ACCC noted that it is relevant to this issue that conjunctural agreements play a significant and beneficial role in the Western Australian real estate industry, particularly given the high incidence of exclusive agency agreements. Consequently, the ACCC commented that it would be concerned if any provisions in the MCPs restricted the use or effectiveness of conjunctural agreements.<sup>119</sup>

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<sup>119</sup> See the ACCC's 2001 Initial Determination at para 6.19 at p 29

7.40 Similar comments were made by the ACCC in the ACCC's 2007 Determination. The ACCC noted that it was not assessing whether the use of conjunctive agreements by real estate agents in Western Australia is either good or bad but only whether the rules set out by REIWA to govern conjunctive agreements restrict competition or benefit the public. In relation to the preamble to clause 4 of the MCPs (as to which, further detail is given below), the ACCC stated that it would consider any attempts by an industry group or professional association to set or restrict price decisions as being highly anti-competitive. The ACCC considered therefore that a statement or provision contained within a code which makes it clear to users that no such restrictions apply, while not necessarily providing a public benefit, may serve to decrease any potential detriment arising from the arrangement.<sup>120</sup>

7.41 The ACCC did, however, consider that provisions in clause 4.2 of REIWA's MCPs had the potential to restrict competition. In particular, the requirements that conjoining agents identify prospective buyers to the listing agent and that the listing agent then not approach that prospective buyer if a conjunctive agreement is not entered into, could raise competition concerns. The ACCC accepted, however, that agents who had been approached by prospective buyers are not obliged to introduce them to listing agents and would probably be less likely to do so if they thought they might be circumvented. Therefore, the ACCC considered that, to the extent that agents consider conjunctive agreements to be an effective mechanism for selling properties and in the best interests of their clients, provision 4.2 might provide some benefit.<sup>121</sup>

7.42 With respect to the remaining provisions of clause 4, the ACCC considered that, insofar as those provisions encourage the efficient use of conjunctive agreements which leads to

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<sup>120</sup> See the ACCC's 2007 Determination at paras 8.23 – 8.24, p 19

<sup>121</sup> See, generally, the ACCC's 2007 Determination at paras 8.23 – 8.27, pp 19-20



fewer disputes, the provisions are likely to generate a public benefit.

- 7.43 In all of the circumstances described above, REIWA submits that the public benefit that has previously been acknowledged by the ACCC as flowing from the MCP's provisions regarding conjunctional sales continues to exist.
- 7.44 Further detail regarding specific provisions contained in the MCPs concerning conjunctional agreements and provisions regarding fee negotiation and relations between agents, sellers and buyers are set out below.

#### Fee negotiation

- 7.45 In the preamble to clause 4 of the MCPs it is noted that listing agents have complete freedom to negotiate the fee for a sale or a lease with a vendor or lessor both as to the method of its calculation and to its amount. It is also noted in the preamble that the listing agent has complete freedom to negotiate the sharing of the fee with other agents participating in the sale or lease. In the ACCC's 2001 Initial Determination the ACCC found that there was a public benefit flowing from this provision.<sup>122</sup> The ACCC also noted in its 2001 Initial Determination that REIWA's standard agency agreements contain an equivalent provision to the above.

#### Relations between agents, sellers/lessors and buyers/lessees

- 7.46 Provisions dealing with these issues are set out in MCP clause 4. Upon the making of various alterations to MCP clause 4 as identified by the ACCC, the ACCC found in the ACCC's 2001 Initial Determination that these provisions provide a public benefit that outweighs any public detriment by facilitating the effective and efficient operation of the conjunctional agreement system.<sup>123</sup> Specific features of MCP clause 4, in the form that

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<sup>122</sup> See the ACCC's 2001 Initial Determination at para 6.21, p 30

<sup>123</sup> See the ACCC's 2001 Initial Determination at para 6.24, pp 33-34

currently exists in the MCPs (following upon the making of the changes identified by the ACCC) are set out below.

- 7.47 MCP clause 4.1 requires agents entering into a conjunctive agreement to ensure that all of the conditions of that agreement are clearly agreed. In the absence of any express agreement to the contrary between the listing agent and the conjunctive agent, the onus is on listing agents to propose the terms of the agreement to conjunctive agents and conjunctive agents to prepare a written agreement.
- 7.48 These provisions are designed to avoid vagueness with respect to the terms of conjunctive agreements and thereby avoid disputes and this produces public benefit.
- 7.49 Subject to express agreement to the contrary, if an agent has a prospective buyer or lessee and requests a listing agent to conjoin, the prospective buyer or lessee must first be identified to the listing agent pursuant to the terms of MCP clause 4.2.
- 7.50 This provision aims to avoid any disputes about whether or not the listing agent had earlier contact with the prospective purchaser and introduced that person to the property. The requirement is often determinative of whether a conjunctive agent is entitled to a fee or not.
- 7.51 Pursuant to MCP clause 4.2, unless otherwise agreed, conjunctive agreements remain in force with respect to the prospective buyer or lessee until the listing agent's authority to sell or lease the property or business expires.
- 7.52 This provision avoids the potential for disputes caused by uncertainty about when a conjunctive agreement expires. In particular, if such uncertainty exists, it might be possible for a listing agent to argue that a conjunctive agent is not entitled to a fee because the agreement expired after a prospective buyer was introduced to a property but before the contract for sale was signed.

- 7.53 Pursuant to MCP clause 4.2, agents are required to agree to act in conjunction with fellow agents unless satisfied that it is not in the best interests of the seller or lessor. Further, a listing agent who has been informed of a prospective buyer by a prospective conjunctional agent is prevented from approaching that buyer if a conjunctional agreement is not subsequently entered into unless the listing agent has previously introduced the buyer to the relevant property. This provision encourages the use of conjunctional agreements.
- 7.54 By clause 4.4 of the MCPs, conjunctional agents are prohibited from breaching their common law duty of fidelity to listing agents including, unless agreed to the contrary, the requirement that conjunctional agents not use for their own personal benefit, to the detriment of the listing agent, information acquired in the course of his or her employment as the conjunctional agent. Further, conjunctional agents are entitled to make direct contract with sellers, both during and after the period of the conjunctional agreement, but all offers to purchase the relevant property must be either put to the seller through the listing agent or, alternatively, the listing agent must be informed by the conjunctional agent of the fact of such an offer being put to the seller prior to the seller's acceptance of that offer.
- 7.55 This provision reflects the common law duty of fidelity upon a conjunctional agent that includes not misusing the relationship so as to gain advantage for the sub-agent to the detriment of the principal agent. Whilst the provision enables conjunctional agents to present offers directly to sellers, the requirement that listing agents be informed of that contact avoids potential dangers that could arise if listing agents were bypassed in this process. In particular, sellers usually provide listing agents with a large amount of information and discuss various issues, such as any special conditions that might need to be placed in the final contract. Very often, the conjunctional agent will not have been privy to this information. Further, a conjunctional agent

will often not be aware of other offers or potential offers. Unless the listing agent is involved in the process of putting offers to the seller, there is a danger that the interests of the seller will not be served (such as, the best price not being obtained or important special conditions being left out of the agreement).

7.56 By clause 4.2(b) of the MCPs, listing agents are prohibited from approaching the prospective buyer/lessee the subject of a conjunctual agreement unless the conjunctual agent is informed of the matters to be raised with the buyer/lessee beforehand, it is otherwise agreed by the listing and conjunctual agent, or the buyer/lessee approaches the listing agent.

7.57 This provision allows some contact between a listing agent and buyer, which may, in some circumstances, be to the benefit of the seller/lessor and purchaser without undermining the position of the conjunctual agent or creating doubt about who introduced the buyer to the property.<sup>124</sup> Without this rule, the position of the conjunctual agent would be undermined. In addition, the potential for disputes as to whether the conjunctual agent had introduced the buyer or lessee would be increased, which would reduce the commercial attractiveness of conjunctual agreements. The provision also prevents purchasers from having to deal with multiple agents.

7.58 By MCP clause 4.5, listing agents must within 24 hours of receiving an offer from a conjoining agent, present it to the seller or lessor and notify the conjoining agent that the offer has been presented. The listing agent must provide an explanation to the conjoining agent if an offer is not presented within 24 hours. If an offer is rejected, the listing agent must return it to the conjoining agent with written notification of the rejection signed and dated by the seller or lessor.

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<sup>124</sup> See the ACCC's 2001 Initial Determination at para 6.25, p 34

- 7.59 This rule protects the interests of sellers, lessors, buyers and lessees.
- 7.60 Clauses 4.6 and 4.7 of the MCPs set out provisions regulating the processing of contracts of sale between the listing agent and conjunctional agent and the payment of conjunctional agreement fees. These provisions also facilitate the orderly and effective use of conjunctional agreements and provide a mechanism for ensuring certainty in the process, so as to avoid the potential for future disputes, make the process of conjunctional sales more attractive to agents and assist in the efficient delivery of real estate and business agency services to consumers.
- 7.61 REIWA underlines that the provisions in the MCPs relating to conjunctional sales facilitate the orderly use of conjunctional agreements. It is reiterated that, as appropriate, the provisions are made subject to the right of agents to agree to the contrary.

#### **Clause 5 - Reasonable contact with buyers/lessees**

- 7.62 Under MCP clause 5 a listing or conjunctional agent who intends to claim a fee on the basis of introducing a prospective buyer or lessee to a property or business must ensure that reasonable contact is maintained with that prospective buyer or lessee. The term “reasonable contact” includes, but is not limited to, when reasonably practicable:
- for the sale or lease of a property, communicating with the prospective buyer or lessee at least once in the 14 days before the contract is entered into.
  - for the sale or lease of a business, communicating with the buyer or lessee at least once in the 28 days before the contract is entered into; and
  - carrying out at least one inspection of the property or business concerned with the prospective buyer or lessee.

7.63 Further, clause 5.2 of the MCPs provides that, unless otherwise agreed, in addition to maintaining reasonable contact, conjunctive agents must perform the following tasks to claim a fee:

- introduce the buyer or lessee to the property or business; and
- provide the listing agent with the name of the buyer or lessor.

7.64 The concept of agents needing to “introduce” a purchaser to a property to obtain a fee is a common one in the real estate industry. Indeed, REIWA’s Standard Exclusive Agency Forms define the term “introduce” to mean that the entity who claims to have introduced the buyer concerned has been the effective cause of the relevant sale. This definition reflects the common law approach to the concept of “introduce” in a real estate setting.

7.65 The provisions of clause 5 of the MCPs further ensure the orderly working of the conjunctive agreement system and ensure that agents provide a minimum level of services to buyers.

#### *Public Benefit and Previous ACCC Determinations*

7.66 In the ACCC’s 2001 Initial Determination the ACCC noted that generally agents were entitled to a commission where their introduction of the buyer is the effective cause of sale. The ACCC accepted that the provisions in clause 5 assist in establishing whether an introduction was the effective cause of the sale. Accordingly, they provide a public benefit by reducing the potential for disputes between agents and sellers/lessors, and between listing and conjunctive agents, on this issue.<sup>125</sup>

7.67 Similarly, in the ACCC’s 2007 Determination the ACCC accepted that if the provisions outlined in clause 5 provide

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<sup>125</sup> See the ACCC’s 2001 Initial Determination at para 6.30, p 35

greater certainty for parties, leading to fewer disputes, they are likely to generate some public benefit.<sup>126</sup>

### **Conflicts of interest**

7.68 Clause 7 of the MCPs requires agents to comply with the REBA Act (and the associated Code of Conduct for Agents and Sales Representatives made under that legislation) in relation to conflicts of interest.

#### *Public Benefit and Previous ACCC Determinations*

7.69 In the ACCC's Initial 2001 Determination the ACCC found that, to the extent that the conflict of interest provisions in the legislation provide a public benefit, the MCP's provision also provides a public benefit.<sup>127</sup>

7.70 In the ACCC's 2007 Determination the ACCC stated that it considers that REIWA Members would have to comply with these provisions irrespective of this clause in the MCP but, to the extent that the MCP's increased awareness of conflict of interest issues, it may provide some benefit.<sup>128</sup>

### **Clause 8 - Advertising**

7.71 Under clause 8 of the MCPs advertising must clearly show an agent's full trading name and telephone number. All advertising or marketing materials must display the agent's full trading name together with the telephone number of the agent's principal licensed office or relevant branch office (other requirements that previously existed in this MCP relating to the prominence to be given to those details were deleted as part of the requirements of the ACCC's 2001 Initial Determination in relation to the MCPs).<sup>129</sup>

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<sup>126</sup> See the ACCC's 2007 Determination at para 8.31, p 20

<sup>127</sup> See the ACCC's 2001 Initial Determination at para 6.32, p 36

<sup>128</sup> See the ACCC's 2007 Determination at para 8.33, p 20

<sup>129</sup> See the ACCC's 2001 Initial Determination para 6.37, p 36

7.72 It is noted that the REBA Act requires advertisements to contain such details as are sufficient to identify agents.<sup>130</sup> The requirement that agent's details be included with advertising enables consumers to ascertain who has been behind an advertisement or other promotion.

#### *Previous ACCC Determinations*

7.73 In the ACCC's 2007 Determination the ACCC stated that it considers that any restrictions on advertising in the context of an industry code, other than general requirement that advertisements not be misleading or deceptive, are likely to produce a public detriment. However, in this instance, the ACCC noted that the provisions contained in clause 8 essentially replicate advertising requirements contained in the REBA Act and are therefore enforceable with or without the MCP.<sup>131</sup>

#### **Clause 9 - Signs**

7.74 By clause 9 of the MCPs "for sale", "for lease" and "auction" signs may only be erected if valid written authority has been granted by the principal and must be taken down on or before the day of settlement. All signs should be kept in good order and condition so as not to detract from the value of the property and/or business concerned or in the immediate vicinity and, where an agent is engaged by a strata company and manages the strata company only, that agent may, with the authority of the strata company, erect a sign which clearly conveys that the authority is limited to the management of the strata company.

7.75 These provisions carry with them the public benefit of providing a minimal but sensible level of regulation of the use of real estate signage so as to underline the need to comply with a principal's instructions, to not mislead consumers with respect to strata company signage and to advance consumer

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<sup>130</sup> See Section 62(2) of the *Real Estate and Business Agents Act, 1978*

<sup>131</sup> See the ACCC's 2007 Determination at para 8.35, pp 20-21



protection by maintaining the quality of signs. (An earlier provision in the MCPs that prohibited agents from erecting standard managing agency signs on strata title buildings unless the agent managed all of the properties or businesses in the complex was removed as part of the ACCC's requirements in the ACCC's Initial 2001 Determination).<sup>132</sup>

#### *Previous ACCC Determinations*

7.76 In the ACCC's 2007 Determination the ACCC found that these requirements are unlikely to raise trade practice concerns.<sup>133</sup>

### **Clause 10 – Conduct of Agents**

7.77 MCP 10 sets out standards that members of REIWA must comply with in the conduct of their real estate businesses. As mentioned in paragraph 7.7 above, MCP 10 initially contained consumer protection provisions that could be enforced by consumers bringing complaints before REIWA PSTs. MCP 10 was amended by REIWA in 2008, as authorised by the ACCC in its minor variation of authorisation the subject of the ACCC's 2009 Minor Variation Determination, so as to remove the consumer protection provisions, save for a requirement that agents not knowingly engage in misleading or deceptive conduct. The other provisions now contained within MCP 10 require members to act fairly and honestly in their dealings with other members and preclude members from engaging in harsh or unconscionable conduct in their dealings with other members.

7.78 Whilst the remaining provisions in MCP clause 10 are not able to be used directly by consumers to make complaints to REIWA PSTs, it is submitted that the conduct prescribed by these provisions continues to provide public benefit because the provisions are transparent, clearly stated and require a standard of conduct amongst real estate agents that is desirable. Ensuring that this standard of conduct is

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<sup>132</sup> See the ACCC's Initial 2001 Determination at para 6.38-6.41, p 37

<sup>133</sup> See the ACCC's 2007 Determination at para 8.36, p 21

maintained, including the avoidance of knowingly engaging in misleading or deceptive conduct, produces a public benefit.

#### *Previous ACCC Determinations*

7.79 It is reiterated that the ACCC found in its 2009 Minor Variation Determination that the changes made by REIWA to MCP clause 10 did not result in a reduction in the net benefit to the public generated by authorisation A91026.<sup>134</sup>

#### *The Counterfactual*

7.80 In applying the “*future with-and-without test*”, it is submitted that if the MCPs were not authorised in the manner sought by REIWA, the delivery of real estate services within Western Australia would be adversely effected in that the MCPs prescribe behaviour by its members that produce transaction efficiencies and minimum standards of conduct that produce public benefit. The specific public benefits that have been identified above would be lost if the MCPs did not contain the provisions that have been identified in these submissions.

## **8. THE AUCTION CODE OF CONDUCT**

8.1 The provisions of the Auction Code were the subject of the authorisation provided by the ACCC in its 2012 Determination.<sup>135</sup> The terms of the Auction Code have not altered since that Determination.

8.2 The terms of the document were initially finalised by REIWA in consultation with the ACCC. The document was created in part as a consequence of an approach made by the ACCC to REIWA in October 2003. Subsequently, drafts of the Auction Code were presented to the ACCC for comment.

<sup>134</sup> See the ACCC’s 2009 Minor Variation Determination at para 5.12, p 11

<sup>135</sup> See the ACCC’s 2012 Determination at para 4.98

8.3 Suggestions made by the ACCC at a meeting between officers of the ACCC and officers of REIWA on 6 July 2004 and in a letter from the Regional Director of the ACCC dated 23 March 2005 were taken into account in the final draft of the document.

8.4 Matters addressed by REIWA in drafting the Code that arose out of the meeting with the ACCC on 6 July 2004 include the following:

- that the Code have a stated objective;
- that there be a provision as to how real estate agents deal with members of the public with respect to the conduct of auctions;
- that the Code include a provision whereby terms such as “auctioneer” and “the public” are defined;
- that the Code include provisions requiring members not to engage in high pressure tactics, unconscionable conduct or harassment in respect to auctions;
- that the Code include a provision whereby the fact that a vendor bid is being made must be identified by the auctioneer contemporaneously with each such vendor bid being made. This provision was to be in addition to the provision contained in the original draft Code requiring the identification of persons bidding on or behalf of the seller before the auction commences.

8.5 Further amendments made to the Auction Code following upon the letter from the Regional Director of the ACCC dated 23 March 2005 included the following:

- the objects of the Code were supplemented with provisions setting out the methods by which those objects would be achieved;
- examples were provided by way of a footnote to clause 3.2 of the Code of the types of activities that might give

rise to a breach of prohibitions upon high pressure tactics, harassment and unconscionable conduct;

- clause 9 of the Auction Code was introduced so as to bring to the attention of consumers and others the existence of REIWA's complaints-handling system.

8.6 Clause 7 of the Code was introduced so as to reflect the fact that REIWA will promote the terms of the Auction Code to consumers and its members, REIWA collects data with respect to the Auction Code in accordance with procedures set out in its Part IV Competition and Consumer Act, 2010 and Auction Code Compliance Manual, REIWA reviews the terms of the Auction Code and its efficacy in accordance with the procedures set out in that Manual and consumers and members may access the Compliance Program by making written contact with REIWA.

8.7 Further to or in addition to the provisions referred to above, the Auction Code includes the following significant matters:

- (i) by Auction Code clause 3.1, agents must act at all times with honesty and fairness when dealing with members of the public;
- (ii) by Auction Code clause 3.2, agents must at no time act in an unconscionable manner, unduly harass or coerce any members of the public or apply sales pressure that in all the circumstances is unfair;
- (iii) by clause 4.1 of the Code, agents are prohibited from advertising a property as being for sale by auction unless there is intended to be a genuine auction and unless a legally valid written authority to action has been executed by the seller;
- (iv) by clause 4.2 of the Code, prior to the auction the agent shall make available for inspection to any person who so

requests the terms and conditions on which the sale of the property by auction will be undertaken;

- (v) by Auction Code clause 4.3, if applicable, the agent shall specify in the terms and conditions of sale referred to in clause 4.2 that the seller reserves the right to bid for the property either personally or through an agent and shall identify the number of those reserved bids;
- (vi) by clause 4.4 of the Auction Code, the agent shall make the Code available for inspection prior to the auction by providing copies of the Auction Code to any person to whom the agent gives a copy of the terms and conditions of the auction;
- (vii) by clause 4.5 of the Auction Code, if a seller so instructs, the agent must inform the public in all advertising devised by the agent with respect to the property that offers for the property may be considered prior to the auction;
- (viii) by clause 5.1 of the Auction Code, the terms and conditions of the auction sale shall be on display and available for inspection together with the Code at the auction. Any portion of the terms and conditions relating to the description of the property shall be read aloud by the auctioneer at the commencement of the auction;
- (ix) by clause 5.2 of the Auction Code, before commencement of the bidding for the property, the auctioneer is required to announce whether the seller is selling with a reserve price. It is not necessary for the reserve price to be disclosed to bidders;
- (x) by clause 5.3 of the Auction Code, if the seller has reserved the right to bid for the property either personally or through an agent, the auctioneer is required to announce that fact prior to the commencement of the bidding and shall at that time specify whether the auctioneer, the seller or some other person on behalf of

the seller will be making the bids. Where the auctioneer has been appointed to bid on behalf of the seller all bids made on behalf of the seller shall be so made by the auctioneer and notice of that fact shall be given prior to the commencement of the bidding for the property. Where the seller or some other person other than the auctioneer shall be bidding on behalf of the seller the auctioneer is required to identify that person prior to the commencement of the bidding. The auctioneer is required to announce prior to the commencement of bidding for the property the maximum number of bids which shall be made during the auction by the seller or on behalf of the seller. The auctioneer shall announce, contemporaneously with any bid made by or on behalf of the seller, the fact that the bid has been made by or on behalf of the seller. Neither the agent nor any sales person engaged by the agent shall make or assist any person in making a bid on behalf of the seller in contravention of any announcement made by the auctioneer;

- (xi) by clause 5.4 of the Auction Code, if a property is to be sold at auction without reserve no bid shall be made by or on behalf of the seller;
- (xii) by clause 5.5 of the Auction Code, the auctioneer shall ensure that the amount of any bid is clearly stated;
- (xiii) by clause 5.6 of the Auction Code, the auctioneer shall resolve any disputed bid in accordance with the terms and conditions of sale governing the auction;
- (xiv) by clause 5.7 of the Auction Code, when any person asks the auctioneer whether a current bid was made by or on behalf of the seller the auctioneer MUST respond by advising whether or not the bid was made by or on behalf of the seller;

(xv) by clause 5.8 of the Auction Code, under no circumstances may a bid made on behalf of a seller by an auctioneer or a real estate agent be at or in excess of any seller's reserve price;

(xvi) by clause 5.9 of the Auction Code, the auctioneer shall always clearly announce when the property is about to be sold under the hammer;

(xvii) by clause 6 of the Auction Code, dummy bidding is prohibited.

8.8 Minor amendments have been made to the Auction Code since the ACCC's 2007 Determination. Those minor amendments were the subject of the ACCC's 2007 Minor Variation Determination and the ACCC's 2009 Minor Variation Determination.

8.9 By virtue of the ACCC's 2007 Minor Variation Determination, clause 5.4 was amended so that the requirement that if a property is to be sold at auction without reserve, no bid should be made by or on behalf of the seller, does not apply to any auction where a Court has ordered that the auction will take place without reserve. The purpose of this amendment was to avoid the difficulties that could arise with this requirement when a Court orders that an auction take place without reserve. Such orders are made by Courts occasionally in, for example, family law disputes. It was submitted by REIWA in support of its application for variation that when a Court orders that an auction take place without reserve and where the parties are at liberty to bid, it is likely that the seller who is bidding is also a genuine buyer. There is therefore not the same risk that a non-seller bidder will be misled into thinking that a person he or she is bidding against is a buyer when that is not the case. It was noted by REIWA that the seller will still be publicly identified as a seller as a consequence of other obligations contained in the Auction Code.

8.10 In the ACCC's 2007 Minor Variation Determination the ACCC accepted that the proposed variation was minor and that the variation would be unlikely to result in a reduction in the net benefit to the public that arose from the original authorisation. The ACCC noted that it would be detrimental to restrict sellers from using REIWA Members should they choose to bid at an auction where the Court had made an order in the terms contemplated.<sup>136</sup>

8.11 Additional amendments were made to clause 8 of the Auction Code as a consequence of the matters the subject of the ACCC's 2009 Minor Variation Determination. In particular, in the light of the deletion of most of the consumer protection provisions contained in clause 10 of the MCPs, clause 8 of the Auction Code was amended so as to ensure that those consumer protection provisions remained available to the benefit of consumers with respect to auctions. It is reiterated that whilst the general consumer protection provisions that had in the past been contained in clause 10 of the MCPs mirrored provisions that existed in the REBA Act Code of Conduct, that Code of Conduct does not address matters concerned with auctions with the specificity of the REIWA Auction Code. For this reason, the consumer protection provisions have been retained by REIWA in its Auction Code. The ACCC considered in the ACCC's 2009 Minor Variation Determination that these amendments to the Auction Code simply maintained the status quo in this respect and that there was no reduction in the net benefit to the public.<sup>137</sup>

#### *Public Benefit*

8.12 The Auction Code produces public benefit in that it clearly prescribes the minimum levels of conduct of real estate agents, real estate sales representatives and auctioneers involved in auctions. This promotes consumer protection in that the terms of the Auction Code promote transparency,

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<sup>136</sup> See the ACCC's 2007 Minor Variation Determination at paras 6.5 – 7.5, pp 5-6

<sup>137</sup> See the ACCC's 2009 Minor Variation at paras 5.10 and 6.3, p 11



honesty and fairness in the conduct of auctions and assist with the efficient delivery of the auction process.

- 8.13 The effect of the Auction Code is to require REIWA Members to adhere to the terms of the document and to enable REIWA and members of the public to enforce the Auction Code by reference to an established disciplinary process.
- 8.14 It is noteworthy that the Auction Code deals specifically with issues with respect to auctions that have attracted wide-spread media and consumer attention in Australia, including the practice of dummy bidding (auctioneers taking “bids” from non-existent, fictitious bidders) and vendor bids. Dummy bids are banned completely and vendor bids are regulated so as to be transparent and exercisable in a manner that is not misleading or deceptive to potential buyers. On the other hand, the practice of vendor bidding that carries with it the benefit of often enabling the process of the taking of bids at auctions to commence (and thereby overcoming the frequent reluctance of people to start the bidding process at an auction), is maintained.
- 8.15 REIWA notes that the terms of its Auction Code are generally consistent with the suggested statutory provisions contained in the draft paper produced pursuant to a working group established by the Ministerial Council on Consumer Affairs entitled “*Conduct Harmonisation for Occupations in the National Occupational Licensing System. Property Agent Occupations Conduct Policy Development Paper – Conduct Element: Auctions*”, dated September 2011.

*Public Benefit v Anti-Competitive Effect/Public Detriment*

- 8.16 Any anti-competitive effect brought about by the requirement that REIWA Members comply with the Auction Code is substantially outweighed by the fact that the Auction Code provides considerable consumer protection, transparency and

efficiencies in the auction process. The terms of the Auction Code are clear, certain and transparent.

#### *Previous ACCC Determinations*

- 8.17 In the ACCC's 2007 Determination the ACCC reiterated its stated view that self-regulatory codes that specify standards of conduct for industry participants can potentially deliver consumer protection benefits and reduce regulatory burdens for business. However, detriments may arise if provisions of a code restrict or hinder competitive forces. In this instance, the ACCC noted that the REBA Act had no specific provisions relating to auctions and auctions in Western Australia are regulated by the *Auction Sales Act, 1973*. The *Auction Sales Act* is designed to regulate a broad range of options from real estate to wool and livestock to motor vehicles. However, the *Auction Sales Act* contains only limited guidance in relation to the conduct of an auction and has no specific provisions relating to the conduct of a real estate related auctions.<sup>138</sup>
- 8.18 The ACCC also considered that to the extent the Auction Code is to be made available to the public at auctions it is generally to be promoted. It is likely that the Auction Code will raise awareness amongst industry participants and the public of their consumer protection rights and responsibilities and therefore generate a public benefit. This is notwithstanding that some of the consumer protection provisions in clause 8 of the Auction Code are also found in other legislative provisions.<sup>139</sup>
- 8.19 The ACCC also considered that, as the Auction Code requires an auctioneer to make certain disclosures about the seller prior to the auction, including identifying them, and also requires them to prevent the seller from bidding in certain

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<sup>138</sup> See the ACCC's 2007 Determination at paras 10.14 and 10.15, p 27

<sup>139</sup> See the ACCC's 2007 Determination at para 10.17, p 28

circumstances, the Auction Code is likely to generate a public benefit.<sup>140</sup>

- 8.20 The ACCC noted that REIWA's outright prohibition on dummy bidding is likely to generate a public benefit by ensuring transparency and avoiding false or misleading representations.<sup>141</sup>
- 8.21 Overall, the ACCC concluded that the Auction Code is likely to provide a level of protection for consumers that is beyond that provided by legislation and is therefore likely to generate a public benefit.<sup>142</sup>
- 8.22 In the ACCC's 2012 Determination the ACCC stated that an industry association code of conduct or practice generally sets out specific standards of conduct for the association in relation to the manner in which it deals with members as well as how its members deal with their customers. However, as association codes often involve agreements between competitors, they have the potential to raise competition concerns. Parties wishing to set up or participate in such codes may seek to have them authorised on public benefit grounds.<sup>143</sup>
- 8.23 The ACCC also stated that industry association codes have the capacity to generate public benefits where, for example, they encourage improvements in professional standards or promote improved consumer protections.<sup>144</sup>
- 8.24 When addressing REIWA's Membership Framework as a whole (including its codes) the ACCC concluded in the ACCC's 2012 Determination that the framework was likely to result in public benefits in the form of:

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<sup>140</sup> See the ACCC's 2007 Determination at para 10.21, p 28

<sup>141</sup> See the ACCC's 2007 Determination at para 10.23, p 28

<sup>142</sup> See the ACCC's 2007 Determination at para 10.24, p 28

<sup>143</sup> See the ACCC's 2012 Determination at para 1.35

<sup>144</sup> See the ACCC's 2012 Determination at para 1.36 and 1.47

- encouraging and assisting members of REIWA to conduct real estate and business transactions with expertise and professionalism, resulting in benefits to consumers that engage REIWA Members as agents and reputation benefits for members of REIWA;
- transaction cost savings from reducing the costs of drafting certain documents and reducing the costs of handling some disputes; and
- administrative cost savings arising from REIWA's ability to efficiently manage its membership fees and debt.<sup>145</sup>

8.25 REIWA submits that the observations made by the ACCC in the ACCC's 2007 Determination and the ACCC's 2012 Determination remain applicable to the Auction Code and there have been no changes in circumstances that diminish the public benefit that is produced by the Auction Code.

*REIWA Reviews of the Efficacy of the Code of Conduct*

8.26 Pursuant to clause 7 of the Auction Code, REIWA is required to review the terms of the Auction Code and the efficacy of its terms in providing consumer protection. REIWA is also required to promote the terms of the Code. These procedures are to take place in accordance with the terms set out in the REIWA Part IV of the Competition and Consumer Act and Auction Code of Conduct Compliance Program.

8.27 REIWA regularly conducts audits of auctions conducted by members to monitor compliance with the Auction Code. Since 2011, 36 separate audits have occurred and REIWA pays an amount of \$250 for each auction attendance and report performed as part of that audit process. Since 2012 there have been no reports of dummy bidding or other non-compliance with the Auction Code, save for some isolated

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<sup>145</sup> See the ACCC's 2012 Determination at pp 4.94 and 4.98

incidents of the physical copy of the Auction Code not being displayed at the actual auction.

8.28 When observers conduct these audits, the written report that they prepare addresses the following five main issues:

- were the terms and conditions of the auction on display?
- was the Auction Code on display?
- if the auctioneer had been appointed to bid on behalf of the seller, had all such bids been made by the auctioneer?
- did the auctioneer announce contemporaneously with any bid by a seller that it was a seller's bid?
- were there any concerns about dummy bidding?

8.29 The listing agency connected with the auction was not aware that the auction was the subject of an audit or any other observation.

8.30 REIWA has not received notice of any concerns from members of the public regarding any breaches of the Auction Code.

#### *The Counterfactual*

8.31 In applying the "*future with-and-without test*" to the Auction Code, REIWA submits that it would be detrimental to the conduct of auctions and consumer protection for the Auction Code to be discontinued. The Auction Code produces the public benefits that have been identified above and referred to by the ACCC in the ACCC's 2007 Determination. The Auction Code is expressed in clear and certain terms and it would be detrimental to the public for this regulation of the conduct of auction by REIWA Members to be removed.

## 9. STANDARD EXCLUSIVE AUTHORITY AGENCY AGREEMENTS

- 9.1 REIWA produces over 150 standard form contracts for use by its members in relation to various property transactions. 13 of the standard forms include clauses appointing agents to sell or manage property on an exclusive basis. These include standard form contracts that may be used by agents and their clients to, for example, enter into agreements to sell or lease a property.
- 9.2 REIWA seeks authorisation of the agreement between it and its members, and the agreement between its members *inter se*, to produce and make available the Standard Exclusive Agency Forms.<sup>146</sup>
- 9.3 These Standard Exclusive Agency Forms are made available by REIWA to non-member real estate agents and the public. REIWA proposes to continue to make these forms available to non-member agents and the public.<sup>147</sup>
- 9.4 The agreements made available to non-members and the public mirror the form of the agreements produced by REIWA for its members.
- 9.5 Exclusive agency or listing agreements can generally be stated to be the appointments by principals of agents to sell or lease a property or business on the basis that if a sale or lease of the property or business occurs during the term of the exclusive agency, whether or not that sale or lease takes place as a

<sup>146</sup> In the ACCC's 2007 Determination the ACCC noted that whilst REIWA had appeared to seek authorisation for the standard form contracts themselves, it is the agreement between REIWA Members to make available for use the standard forms which is the relevant conduct that may raise concerns under the *Trade Practices Act, 1974* (now *Competition and Consumer Act, 2010*). See the ACCC's 2007 Determination at para 11.3, p 29

<sup>147</sup> As a condition of the ACCC's Initial 2001 Determination, REIWA was required by the ACCC to produce standard exclusive agency agreements specifically identified to be for non-REIWA Members (see the ACCC's Initial 2001 Determination at paras 8.53 – 8.54, p 56)

result of the introduction by the agent of a buyer or lessee, the agent will be entitled to the agreed commission.

- 9.6 It is important to note that nothing in REIWA's Articles, MCPs or any other documents or directives require agents to be appointed by principals on an exclusive basis or protects the position of exclusive agents. Rather, exclusive agency is but one type of arrangement which may be made between agents and sellers or lessors. Indeed, REIWA also produces standard forms for open (non-exclusive) listings of properties and does not seek to induce members of the public to enter into exclusive agency agreements rather than alternatives such as open listings.
- 9.7 REIWA's Standard Exclusive Agency Forms with respect to the sale of properties provide an option for sellers to reserve the right to sell the property themselves directly to buyers without having to pay a commission.
- 9.8 Previous REIWA rules that prohibited soliciting, restricted advertising and otherwise protected the position of exclusive listing agents were removed in 1998-1999. Further, the provisions contained in the MCPs relating to conjunctional agreements (MCP clauses 4 and 5) have been designed to complement the exclusive agency agreements and to facilitate the sale of property by the use of conjunctional agreements. The facilitation of the use of conjunctional agreements is done in a manner that does not provide protection to the listing agent or impose any impediment upon another agent negotiating with the consumer for a different appointment at the end of the exclusive period.<sup>148</sup>
- 9.9 The preserving of the right of sellers to appoint agents on an exclusive basis is vital for the efficient delivery of real estate and business agency services in Western Australia. The appointment of agents on an exclusive basis provides

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<sup>148</sup> See the discussion on conjunctional agreements in the ACCC's 2001 Initial Determination at pp 27-34

maximum incentive for agents to use their best endeavours to sell or lease properties or businesses. The system by which agents are appointed on an exclusive basis still produces competition between agents and, in concert with the possibility of negotiating conjunctional sales, produces the most efficient possible method of selling or leasing most real estate and businesses.

- 9.10 It is reiterated that the Standard Exclusive Agency Forms are set out at Schedule “E” to these submissions. REIWA seeks authorisation of the agreements between it and its members and the agreements amongst REIWA Members to make available these forms for use. The Standard Exclusive Agency Forms are listed in section 1 above.
- 9.11 The form of the documents that appear at Schedule E to these submissions are in the same form that were the subject of the ACCC’s 2102 Determination, excepting insofar as the forms (and the index to those forms) that appear at Schedule E have been annotated to reflect amendments.

*Public Benefit from Standard Exclusive Agency Forms*

- 9.12 It is stressed that REIWA’s Standard Exclusive Agency Sale Agreements contain provisions that specifically allow principals to elect to be able to sell the property or business concerned themselves without incurring a liability to pay the agent a commission. Indeed, principals are specifically required to make an election in the standard forms as to whether or not they wish to retain this right. Consequently, all of the Standard Exclusive Agency Forms referred to in section 1 above that relate to the sale of properties or businesses include the making of such an election by the principal. Forms relating to the leasing of property do not include such an election because those agreements are in the nature of appointments of ongoing property managers rather than for the purpose of achieving a single event such as a sale.



- 9.13 In REIWA's 2006 Application to the ACCC, REIWA provided evidence that total property sales in the Perth metropolitan area between 1 July 2005 and 30 June 2006 amounted to 52,008 residential sales and 15,243 sales of land, being a total of 67,251 sales. REIWA calculated that virtually all sales of property in the Perth metropolitan area take place pursuant to exclusive agency agreements, rather than open agency agreements. REIWA believes this is still the position in 2016. Property listings in the past were entered into the system by REIWA. Nowadays that data is entered by members themselves when they list properties on the reiwa.com internet site and details of the type of listing agreement are not available to REIWA. However, REIWA is able to ascertain from the records that it still keeps that the total number of forms sold in 2015/2016 for residential exclusive listing amounts to 34,875. Only 1,243 forms for use in non-exclusive sales were sold during that period. REIWA is also of the view that the percentage of sales conducted by exclusive appointments of agents is slightly lower in smaller country areas given the less formal nature of dealings between agents in those areas.
- 9.14 One of the prime benefits of providing incentives to agents to endeavour to sell properties and businesses vigorously and thereby provide a more efficient system of marketing real estate and businesses is that information about a property or business is more widely disseminated into the market. This effect is obviously pro-competitive. If exclusive agency agreements were prohibited it is likely that individual sellers would be required to carry much greater responsibility for promoting their own properties. Either sellers would have to place their own advertisements at their own cost with respect to properties or, alternatively, they would have to pay numerous agents to place similar advertisements. That is likely to be less efficient and more expensive for sellers.

- 9.15 In some country towns, where there are relatively more intimate business connections between different agents, and information regarding listings is more easily provided to the market, there is consequently a greater use of open listing agreements.
- 9.16 The Standard Exclusive Agency Forms produced by REIWA do not provide for any set terms for any period of exclusive agency.
- 9.17 A further advantage to a seller of the use of the exclusive agency agreement system, and therefore a matter of public benefit, is that a seller has an identifiable source for the listing of the property or business concerned. In other words, when an exclusive agent is appointed that agent becomes solely responsible for the marketing and selling of the property. Unless the seller wishes, the seller does not have to go to the trouble of speaking and dealing with numerous agents and/or potential buyers. The time and effort needed to sell a property or business is borne by the exclusive agent.
- 9.18 It is reiterated that previous rules protecting the position of listing agents in exclusive agreements by prohibiting soliciting by non-listing agents and restrictive non-price competition such as marketing and advertising were removed by REIWA in 1998-1999.
- 9.19 The wide-spread use of exclusive agency agreements has a beneficial effect upon the delivery of real estate and business agency services by real estate and business agents. Exclusive agency agreements provide significant incentive to agents to commit substantial time and resources to marketing a property because such a commitment, if successful in securing a final transaction such as a sale, will usually produce the payment of a commission. However, with other types of listing authorities such as open agreements, agents will often have little incentive to commit significant time and resources to marketing because such a commitment would be wasted if a buyer for

whatever reason, ultimately places an offer through another listing agent.

- 9.20 The public benefit brought about by the exclusive agency agreement system is heightened by the competition between agents that is involved in the obtaining of an exclusive listing in the first place. Prior to entering into an exclusive agency agreement with a particular agent a seller is able to consult with numerous agents and assess those agents' levels of commission, qualifications, experience and proposed marketing strategies for the property or business. The most significant motivating factor for a seller of a property or business is the prospect of maximising the price achieved for the sale of a property or business and minimising the time it takes to achieve that sale.
- 9.21 The benefit of this competition to consumers has also been significantly amplified since the deregulation of agent's fees occurred in the late 1990s.
- 9.22 The incentive provided to agents to sell pursuant to exclusive agency agreements is increased by the fact that exclusive agency agreements are for a finite period, after which the agent is in danger of losing the right to market a property or business and agents can, in practice, be required to share a fee with a conjunctional agent unless they sell the property themselves first.
- 9.23 It is axiomatic that the more effort that an agent puts into selling a property or business the greater the likelihood that the property will sell quickly and for the highest possible price. Ultimately, of course, that is the aim of all sellers. Maximising the efficiency of the sale of properties and businesses through the exclusive agency agreement system therefore maximises the efficiency of the entire industry of selling real estate and businesses and consequently provides public benefit.

- 9.24 Statistics kept by REIWA show that for the 2005/2006 financial year the exclusive listing periods chosen by consumers in exclusive agency agreements primarily vary from between 30 to 90 days, with the 90 day period being the most common. Although, for the reasons set out earlier in this section, REIWA no longer keeps these statistics, REIWA's observations lead it to conclude that the period of 90 days is the most common period for listings used by the industry in Western Australia in 2016. It should also be noted that REIWA's statistical data tends to confirm this conclusion in the sense that the average period for which residential properties are on the market before sale is currently approximately 72 days. However, REIWA is also aware of a minority of agents who routinely request longer periods for exclusive listings than 90 days and, in the case of an agent in Bunbury, that period is up to 180 days.
- 9.25 The limited term of an exclusive agency agreement provides further benefit to sellers in that agents have pressure placed upon them not to over-inflate the value of properties or businesses in an endeavour to successfully obtain the initial listing of the property. It is common practice for sellers to consult with numerous agents to obtain appraisals as to the value of the property before entering into a listing contract. Any incentive that an agent may have to over-inflate the value of a property or business in an effort to obtain a listing authority is tempered substantially by the fact that the agent will only have a limited time to sell the property or business and, if the property or business is marketed at too high a price, the chances of that sale occurring during the period of the exclusive agency will be severely limited. Further, the failure of an agent to be able to sell a property at a price approximating the value the agent initially placed upon the property will often lead to disgruntled clients who, it would be expected, would have no hesitation in taking a listing away from an agent and giving it to another agent at the expiration of the exclusive period.

- 9.26 The use of the exclusive agency system has also resulted in a climate that encourages specialisation amongst real estate and business agents. Consequently, agents in Western Australia frequently specialise in the type of properties they sell and, for example, there are agents who specialise in the sale of commercial properties, shops, service stations and business broking. This further increases the efficiency of the selling of real estate and businesses and produces further public benefit.
- 9.27 The use of the exclusive agency system also operates so as to make the contractual position of the seller with respect to real estate and business agents clear. Where a seller has a contractual relationship with only one agent the person to whom the seller may owe a liability to pay a commission is clear. If a seller, on the other hand, has a series of open agency agreements with various agents the identity of the person to whom the seller owes a duty to pay a commission may be less clear. Traditionally, the event that gives rise to the liability for a seller to pay a commission is when a seller has been “introduced” to a property. An extensive body of common law has developed by way of interpretation of this term. Consequently, the term is used in both exclusive agency agreements and open agency agreements. However, the practical application of the term “introduced” and, in particular, the ascertaining of which agent has in fact “introduced” a purchaser to a property is a matter that can result in considerable dispute. In open agency agreements sellers can be presented with multiple claims from agents as to who has “introduced” the buyer. This can leave unwitting sellers in a position where they become embroiled in disputes involving numerous agents as to who is entitled to a commission. The risk of this occurring is further heightened when different agents have used different forms. However, the danger of this problem arising for sellers is almost entirely avoided when there is an exclusive listing pursuant to an exclusive agency agreement. As a seller only owes a potential liability to pay a commission to one agent any disputes between agents that

might arise as to who has “introduced” a buyer will usually only arise in a context of conjunctive agreements between the listing agent and other conjunctive agents. The resolution of that dispute becomes a matter for the agents themselves, and in any event, REIWA provides an arbitration service so as to minimise the overall costs to business of those disputes. This results in lower transaction costs and lowers the barriers to entry by agents into the market caused by high business costs.

9.28 Given the right of a listing agent to be paid a fee pursuant to an exclusive agency agreement, no matter whether another real estate agent introduces a buyer to the property, there is an inherent lessening of the potential of disputes between agents that might otherwise arise if agreements such as open agency agreements were more frequently used. In particular, if a seller provides a number of agents with open agency agreements and the commission is ultimately only payable to the agent who actually introduces the buyer to the property, there can be significant disputes between agents as to who actually performed the introduction. However, given the nature of exclusive agency agreements and the fact that the exclusive/listing agent is the only agent entitled to a fee, there are fewer grounds for dispute. Other agents wishing to become involved in introducing buyers to the property are free to enter into conjunctive agreements with listing agents and thereby *share* in the commission payable to the listing agent.

9.29 The supply by REIWA of standard forms obviates the need for agents and sellers/lessors to negotiate individual contracts for each listing. This reduces transaction costs, ensures that the market functions in accordance with well-established practices and reassures consumers that they have the protection of contracts prepared by a reputable body such as REIWA.

*ACCC's 2001 Initial Determination*

9.30 It has previously been accepted in TPA/CCA authorisation applications that there may be advantages for sellers in

appointing agents on an exclusive agency basis and pursuant to common forms of appointments. The practice of whether or not sellers enter into exclusive agency agreements should be a matter for negotiation between a client and an agent without recommendations by an institute. In the past, exclusive agency agreements have been authorised under the TPA/CCA.<sup>149</sup>

9.31 The use of exclusive agency agreements was considered in the context of an application for authorisation with respect to a multiple listing service in New South Wales.<sup>150</sup> It is noteworthy that in that case authorisation was sought of a rule that made it mandatory for all members of a multiple listing service who entered into exclusive agency agreements with sellers (as distinct from open agency agreements) to list that particular property in the multiple listing service concerned. Authorisation of that rule was provided by the ACCC, notwithstanding that the use of exclusive agency agreements formed an integral part of the multiple listing service.

9.32 It was noted by the Trade Practices Commission that it is permissible for a seller to specifically bind himself not to sell as a principal without paying a commission to an agent.<sup>151</sup> However, forms should not as a matter of course favour one party over another. These types of forms should provide a choice to sellers between providing agents with the sole right to sell a property or reserving the right for a seller to sell a property himself or herself without paying a commission.<sup>152</sup> As set out in paragraph 9.7 above this option is expressly provided for in the relevant REIWA Standard Forms.

9.33 In the ACCC's 2001 Initial Determination the ACCC recognised that the public benefit and detriment flowing from the

<sup>149</sup> See *Re v Real Estate Institute of South Australia (1988) ATPR 50-075 at p 57,334*; *Re v Real Estate Institute of Tasmania (1987) ATPR (COM) 50-062 at p 57,211*; *Re The Real Estate Institute of the Australian Capital Territory (1985) ATPR (COM) 50-087 at p 55,102*; *Re The Real Estate Institute of Queensland (1983) ATPR (COM) 50-057 at p 55,219*

<sup>150</sup> See *Re The Estate Agents' Cooperative Limited (26 April 2000) Authorisation No. A90678*.

<sup>151</sup> See *Re The Real Estate Institute of Queensland (supra) at p 55,225*

<sup>152</sup> See *Re The Real Estate Institute of Tasmania (supra) at p 57,209*; *Re The Real Estate Institute of Queensland (supra) at p 55,225*.

agreements that give rise to REIWA's Standard Exclusive Agency Forms needs to be assessed in light of the fact that:

- given the process for selling individual properties (e.g. residential properties) is generally similar, it is inevitable that standard agreements between agents and sellers/lessors will be used so as to reduce transaction costs;
- while sellers/lessors, strictly speaking, may choose whether or not to use the Standard Forms, given that there appear to be no competing standard forms available, it is inevitable that REIWA's forms will be extensively used in practice;
- individual agents appear likely to continue to prefer exclusive listings, and therefore these agreements will continue to be the primary mechanism through which properties and businesses are marketed in Western Australia;
- given these considerations, any public benefit or detriment flowing from REIWA's Standard Exclusive Agency Forms will, in practice, be significant.<sup>153</sup>

9.34 In the ACCC's previous determination<sup>154</sup> the ACCC analysed a number of issues arising out of REIWA's Standard Exclusive Agency Forms that might produce public benefit or detriment. Ultimately, subject to various matters discussed in the following paragraphs, the ACCC concluded that it was prepared to grant authorisation to the Standard Exclusive Agency Forms, subject to certain alterations being made to those forms. The alterations required by the ACCC all continue to be included in the Standard Exclusive Agency Forms that are the subject of this authorisation application. The issues raised in the previous authorisation application are as follows:

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<sup>153</sup> See the ACCC's 2001 Initial Determination at para 8.5, p 46

<sup>154</sup> See the ACCC's 2001 Initial Determination at pp 46-56



### Term of Exclusive Agency Sale Agreement

9.35 The Authority to Auction form provides for the agent to have the exclusive right to sell a property following an unsuccessful auction for a period to be agreed by the seller and agent. During the 2000 – 2002 authorisation process REIWA agreed to alter its standard auction agreement to make it clear that a seller has a right to elect whether or not the listing agent will have an exclusive period to sell the property following the auction should the auction not succeed. The ACCC accepted that this amendment to the authority addressed its concerns on the matter.<sup>155</sup>

9.36 The ACCC expressed the view that the including of provisions in the non-auction sale authorities that provided a right for an agent to have a non-exclusive rights period to sell a property following the expiration of the exclusive rights period might operate to give consumers the impression that such a subsequent period was standard practice. Further, such a provision might appear to prevent the seller appointing a new exclusive agent at the end of the original agent's exclusive rights period, thereby restricting competition.<sup>156</sup> REIWA subsequently amended its agreements to delete reference to a non-exclusive period.

### Fees in Exclusive Selling Agency Agreements

9.37 In response to a number of concerns by the ACCC regarding the manner in which fees were agreed to be paid to agents in the Standard Exclusive Selling Agreements REIWA agreed in 2001 to make a number of changes to its Standard Selling Agreements. In particular the following changes were made:

- fees should be payable on settlement;
- the Authority to Auction Form was amended to allow different fees to be paid to agents if the property is sold at

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<sup>155</sup> See the ACCC's 2001 Initial Determination at paras 8.11-8.12, pp 47-48

<sup>156</sup> See the ACCC's 2001 Initial Determination at para 8.11, p 47-48

or after an auction and to provide that these fees are negotiable;

- definitions of “introduced” and “introduction” were included in the Standard Exclusive Agency Forms;
- the provision requiring fees to be paid to agents after the expiry of the exclusive rights period in certain circumstances was substituted with a provision entitling agents to a fee on a sale that took place outside of the exclusive rights period if:
  - the purchaser was introduced to the property during the exclusive rights period; and
  - the seller elected in the agency agreement to be liable to pay a commission if a buyer introduced during the exclusive rights period entered into a contract an agreed number of days after the expiration of the exclusive period.

9.38 Ultimately, the ACCC concluded that the alterations to the Exclusive Selling Agreements brought about by the previous authorisation process produced a public benefit outweighing any public detriment by providing agents with appropriate incentives to sell sellers’ properties.<sup>157</sup>

#### Marketing costs in Standard Exclusive Selling Agency Agreements

9.39 In response to concerns expressed by the ACCC in its 2001 draft Determination regarding the requirements that sellers/lessors and agents agree on maximum marketing charges and expenses and, unless otherwise agreed, sellers pay for all agreed marketing costs incurred by the agent whether or not the property is sold, REIWA agreed in 2001 to make the following changes to its Standard Selling Agency Agreements:

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<sup>157</sup> See the ACCC’s 2001 Initial Determination at paras 8.22-8.25, pp 50-51

- the forms would specifically inform sellers that agents must meet certain regulatory requirements regarding the identification of their businesses and advertising; and
- the forms would provide sellers with an option to negotiate whether or not they would pay for agents complying with these requirements.

9.40 REIWA pointed out to the ACCC that, in practice, providing these identification details benefits sellers because, for example, highlighting that a reputable agency is handling a sale can attract sellers and provide a contact point for prospective buyers.

9.41 The ACCC concluded that REIWA's amendments to the Standard Selling Agreements addressed its concerns on this issue. In particular, the ACCC agreed that agent's obligations under the MCPs benefits sellers and that there should therefore be scope for sellers and agents to agree that sellers pay some or all of the costs of meeting these obligations.<sup>158</sup>

#### Term of agreement in Exclusive Managing Agent Agreements

9.42 Exclusive Managing Rights Agreements provide for the appointment of an agent for a fixed term but also provide for an automatic "holding over period" in that, at the expiry of the agreed term, the arrangements are to continue until 28 days' written notice is given of termination.

9.43 In response to concerns about these provisions raised in the 2001 draft Determination by the ACCC, REIWA submitted that many commercial agreements, for example leases, provide for holding over periods. The purpose of these provisions is to prevent a situation arising where some sort of legal relationship continues but there is a lack of certainty as to exactly what the terms of that relationship are. These

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<sup>158</sup> See the ACCC's 2001 Initial Determination at para 8.31, p 52

situations can lead to unnecessary disputes and litigation. Managing Agency Agreements typically last for lengthy periods of time. A requirement that new contracts needed to be entered into at the end of each fixed term would appear to be inconvenient for both parties. Holding over provisions frequently operate to the benefit of owners when, for example, they are overseas and fail to remember to renew the management authority.

- 9.44 REIWA proposed in 2001 that it would amend the Standard Exclusive Managing Agent Agreements to allow owners to elect whether or not the holding over provisions would apply. The ACCC accepted that REIWA's proposed amendment satisfied the ACCC's concerns on the matter.<sup>159</sup>

#### Fees in Exclusive Managing Agent Agreements

- 9.45 In the ACCC's 2001 Initial Determination the ACCC expressly concluded that the standard provision contained in Managing Agent Agreements providing that agents' selling fees are to be agreed between the owner and the agent provided a public benefit as it informs consumers of their rights.<sup>160</sup>

#### Indemnities in Exclusive Managing Agent Agreements

- 9.46 In response to concerns expressed by the ACCC in its 2001 draft determination, REIWA submitted that the provision providing that an owner indemnifies the agent in relation to all matters arising from the Management Agent Authority applied where the agent was sued due to a cause of action linked to the property itself (for example, fire through faulty wiring, personal injury caused by faults in a property), which is able to be covered by public liability insurance (this is different to where agents are sued because of their negligence). REIWA submitted that it was entirely fair that an owner indemnify an agent for such actions.

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<sup>159</sup> See the ACCC's 2001 Initial Determination at para 8.36, p 53

<sup>160</sup> See the ACCC's 2001 Initial Determination at para 8.38, p 53

- 9.47 The ACCC in the ACC's 2001 Initial Determination determined that the indemnity provisions in the Exclusive Managing Agents Agreements did not result in a significant public detriment. The ACCC found that this was the case given that the indemnity applies to causes of action linked to the property of the owner, and that owners can sue managing agents if they have acted negligently.<sup>161</sup>

#### Termination of Exclusive Managing Agent Agreements

- 9.48 In its 2001 draft Determination the ACCC expressed concern that, in particular, Managing Agency Agreements for residential and commercial property only allowed termination where the agent failed to rectify a breach of the agreement within 28 days (30 days for commercial agreements). In response, REIWA submitted that lessors possess a right to earlier termination under the common law. However, REIWA was also prepared to add clauses to the Standard Management Agreements whereby agents were required to act with due care and diligence and owners were able to terminate a management agreement without giving notice should the agent breach the terms of the agreement in such a way that there was a "fundamental breach" of the agreement or a repudiation of the agreement by the agent.
- 9.49 The ACCC concluded that it was satisfied that the additional termination provisions REIWA proposed to add to the Managing Agency Agreements appropriately addressed the ACCC's concerns.<sup>162</sup>
- 9.50 Following amendments made by REIWA to the Exclusive Management Authority for Residential Premises in 2016, agents may only unilaterally terminate the agreement on 28 days' notice if the lessor has given instructions that are unlawful, a breach of the REBA Act or its associated Code of Conduct or are unreasonable.

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<sup>161</sup> See the ACCC's 2001 Initial Determination at para 8.42, p 54

<sup>162</sup> See the ACCC's 2001 Initial Determination at para 8.47, p 55

### Liquidated damages in Exclusive Managing Agent Agreements

- 9.51 In its 2001 draft Determination, the ACCC noted that liquidated damages clauses are contained in the Exclusive Managing Agent Agreements for residential property and residential premises for short term or holiday accommodation. The liquidated damages are payable for the wrongful termination of the management authority by the owner and are set at an amount equal to 50% of the management fee that would have been payable, if the agreement had not been terminated, for the unexpired period of the agency.
- 9.52 It was proposed by the ACCC in its 2001 draft Determination that the level of liquidated damages should be negotiable. However, REIWA subsequently submitted that liquidated damages clauses aimed to provide an accurate calculation of the actual damages that will be suffered if a contract is breached. If liquidated damages clauses do not provide such a legitimate pre-estimation of actual damages that would be suffered, the liquidated damages clause concerned may be unenforceable. REIWA submitted that it would be difficult to see how such a calculation in a property management agreement could be the subject of negotiation, particularly as agents and consumers are unlikely to be aware of the intricacies of determining liquidated damages. Further, requiring the matter to be negotiated would result in substantial disputes and litigation as to whether or not the negotiated liquidated damages figure amounted to a legitimate calculation of the actual damages that would be suffered if a contract is breached.
- 9.53 The ACCC ultimately concluded in its 2001 final Determination that it accepted that it would generally not be feasible to require the amount of liquidated damages to be negotiated, given the technical nature of the matter. However, the ACCC was not necessarily satisfied that a 50% rate was justified in all

cases. Consequently, to obtain authorisation, it required REIWA to add a note to the liquidated damages provisions in the relevant standard agreements to the effect that REIWA considers that a 50% rate provides an accurate calculation of the actual damages that will usually be suffered if an agreement is terminated in a manner that attracts liquidated damages. However, if a lessor considers that circumstances exist which could justify a different rate, they may seek the agent's agreement to that rate.<sup>163</sup> Such a provision was subsequently added to the forms identified by the ACCC and REIWA proposes maintaining that provision in those documents.

#### Disputes provisions

- 9.54 REIWA was required by the ACCC, as a condition of the authorisation pursuant to the ACCC's 2001 Initial Determination, in respect of references in all its Standard Exclusive Agency Forms to disputes between consumers and agents, to include reference to rights to access the legal system and any other available redress mechanisms not already mentioned.<sup>164</sup>
- 9.55 Subsequently, REIWA amended its Standard Exclusive Agency Forms to include a provision whereby the vendor/owner/strata company is informed that it has the right to refer any dispute that arises with an agent to a number of different institutions. Depending upon the nature of the dispute these institutions may include REIWA, the Department of Commerce, the civil and criminal legal systems and the ACCC. REIWA proposes to continue to include this notification in its Standard Exclusive Agency Forms.

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<sup>163</sup> See the ACCC's 2001 Initial Determination at para 8.51, pp 55-56

<sup>164</sup> See the ACCC's 2001 Initial Determination at para 8.52, p 56

Production of Standard Exclusive Agency Forms for non-REIWA Members

- 9.56 The ACCC's 2001 Initial Determination by the ACCC required REIWA to make available Standard Exclusive Agency Forms specifically identified to be for non-REIWA Members. Those agreements were required to mirror the terms of the standard agreements for REIWA Members and REIWA was required to make those agreements available for purchase by non-REIWA agents and members of the public for a price reflecting the cost of producing the agreements.<sup>165</sup>
- 9.57 REIWA subsequently made these forms available through independent retail outlets for sale to non-REIWA Members in a manner described to the ACCC in a letter sent by REIWA's solicitors dated 8 April 2002. REIWA will continue to make its Standard Exclusive Agency Forms available for sale to non-REIWA Members upon request.

*ACCC's 2007 and 2012 Determinations*

- 9.58 The authorisation granted by the ACCC in the ACCC's 2007 Determination in relation to REIWA's Standard Exclusive Agency Forms was granted for the agreement by REIWA Members to make the standard form documents available for use, rather than for the actual documents themselves or the contracts signed between agents and clients. It followed that the ACCC assessed whether the agreement by those competing real estate and business agents in Western Australia (as represented by REIWA) to make the standard form contracts available for use produced a net public benefit. The ACCC noted that naturally such an assessment would require consideration of the provisions and words contained in the standard form contract but those forms themselves would not be authorised.<sup>166</sup>

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<sup>165</sup> See the ACCC's 2001 Initial Determination at paras 8.53-8.54, p 56

<sup>166</sup> See the ACCC's 2007 Determination at paras 11.3 – 11.6, p 29



9.59 In the ACCC's 2012 Determination the ACCC noted that, generally, the ACCC considers that anti-competitive detriment may arise from agreements between competitors of the type encapsulated in REIWA's Membership Framework, if membership:

- has an exclusionary effect and is considered necessary to compete, or significantly assists a business to compete, in the relevant industry; and/or
- makes coordination (rather than competition) between firms beyond the terms of the authorised agreement more likely and also across the market more generally.<sup>167</sup>

9.60 Further, the ACCC noted in the ACCC's 2012 Determination that it has previously considered that the existence of Standard Forms prepared by REIWA raises two opposing sources of potential public detriment:

- the public detriment that may arise from the exclusionary effect of denying access by non-REIWA Member agents and other training providers to forms which are effectively the industry standard, particularly the Standard Exclusive Agency Forms; and
- the public detriment that may arise from the reduced incentive for a certain form of non-price competition, namely agents competing through the different terms and conditions in their contracts. This incentive may be reduced due to the widespread availability and use of the Standard Exclusive Agency Forms, instead of each agent designing and offering its own distinct terms and conditions.<sup>168</sup>

9.61 The ACCC also considered that widespread use of a single set of standard form contracts within an industry may result in the terms and conditions encapsulated in the contracts becoming

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<sup>167</sup> See the ACCC's 2012 Determination at para 4.65

<sup>168</sup> See the ACCC's 2012 Determination at para 4.69

accepted as the industry standard. This may generate an anti-competitive outcome as the standard terms establish industry benchmarks, reducing the potential for negotiation of more appropriate terms and conditions by consumers and innovation by agents.<sup>169</sup>

9.62 The ACCC noted that it also considered that while agents may not intentionally reduce their flexibility, the fact that these matters are conveniently included in the standard form contract, coupled with an understanding that most other competitors are likely to be using the same forms, may diminish their incentive to be flexible and/or innovate in relation to terms and conditions. Thus, in the view of the ACCC, although REIWA's agreement to make its Standard Exclusive Agency Forms available resolved the issue of exclusionary effects upon agents in relation to these forms, it may potentially reduce certain forms of non-price competition between agents.<sup>170</sup>

9.63 However, the ACCC concluded that any public detriment arising from a loss of this form of non-price competition was likely to be limited since:

- the Standard Exclusive Agency Forms do not establish the level of fees and charges;
- the Standard Exclusive Agency Forms clearly explain that all aspects of the terms and conditions in the forms can be negotiated;
- there are a large number of real estate and business agents in the real estate industry in Western Australia and these agents have an incentive to seek new ways to gain a competitive advantage; and

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<sup>169</sup> See the ACCC's 2012 Determination at para 4.75

<sup>170</sup> See the ACCC's 2012 Determination at para 4.76

- there was no compulsion for an agent to use the Standard Exclusive Agency Forms.<sup>171</sup>

9.64 REIWA reiterates its observations regarding the real estate market and the use of its Standard Forms within that market in section 4 of these submissions. This includes, but is not limited to, the REIWA submission that there are other providers of forms similar to those produced in Western Australia by REIWA, including real estate franchise groups and CoreLogic. Individual agents also prepare their own forms, often with the assistance of legal advisers.

9.65 It is reiterated that the ACCC also noted that any public detriment arising from the exclusionary effect of REIWA's Standard Forms is likely to be limited provided REIWA continues to make its forms available on the terms it has agreed.

9.66 REIWA maintains its position that it is prepared to make available its Standard Exclusive Agency Forms to non-member real estate agents and the public. Further, it is prepared to make available all of its Standard Forms to registered training organisations. It is reiterated that the ACCC considered in the ACCC's 2012 Determination that any public detriment arising from the exclusionary effects of the Standard Forms was likely to be limited provided REIWA continued to make its forms available on the terms it had agreed.

9.67 It is also reiterated that the ACCC has accepted in the ACCC's 2012 Determination that REIWA's Membership Framework, including the use of its Standard Forms, results in transaction costs savings, including avoiding the need to obtain professional legal advice and other administration fees. If transaction costs are high this can reduce the incentive to enter into agreements that increase welfare or lead to

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<sup>171</sup> See the ACCC's 2012 Determination at para 4.77

inadequately documented agreements. Actions which reduce transaction costs can therefore improve economic efficiency.<sup>172</sup>

### *The Counterfactual*

- 9.68 In applying the “*future with-and-without test*”, REIWA submits that the circumstances applicable to the ACCC’s 2012 Determination remain unchanged and the public benefits identified in relation to that determination remain. If the Standard Exclusive Agency Forms were not prepared by REIWA for the use of members and the public, it is likely that there would be an increase in transaction costs given the need for agents to seek independent assistance with the drafting of appropriate forms. There is also a risk that the certainty and clarity of these arrangements that has arisen out of REIWA’s long association with drafting such forms would be lost if REIWA ceased producing the forms.
- 9.69 REIWA notes that whilst many agents do use the REIWA Standard Forms, of course REIWA Members are not obliged to use the forms and some choose not to. It is estimated that the majority of REIWA Members use the Standard Forms due to the certainty and clarity that the forms provide. However, when agents produce their own forms it is REIWA’s experience that sometimes those forms lack clarity and are poorly drafted. This produces potential dangers for consumers who are parties to those forms, including the increased prospect of disputes and legal costs.
- 9.70 It should also be noted that the various provisions contained within these forms that were inserted as a consequence of the ACCC’s Initial 2001 Determination continue to exist in REIWA’s forms and these provisions provide fairness to consumers. Those clauses may well be absent from forms prepared by individual agents.

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<sup>172</sup> See the ACCC’s 2012 Determination at paras 4.46, 4.47 and 4.52

- 9.71 In the ACCC's 2012 Determination the ACCC noted that it is unlikely REIWA would continue to produce the Standard Exclusive Agency Forms by use by real estate agents and consumers if authorisation was not granted.<sup>173</sup>

## **10. CONDITIONS OF AUTHORISATION IMPOSED IN 2012 DETERMINATION**

- 10.1 As detailed in section 5 of these submissions, the ACCC's 2012 Determination imposed conditions upon a grant of authorisation to REIWA of REIWA's Membership Framework. Those conditions included, in effect, that REIWA make available to the public its Standard Exclusive Agency Forms and make available to registered training providers all of its forms. The manner in which the availability of those forms was to be publicised was set out in the conditions that are reproduced at paragraph 5.25 above.
- 10.2 REIWA was required to publish on the home page of its website a notice stating the means by which it would make available its forms.
- 10.3 REIWA continues to be prepared to agree to the imposition of these conditions upon any grant of authorisation made by the ACCC.
- 10.4 In 2016 the ACCC noted that REIWA appeared to have failed on its website to include a notice of availability of the forms.
- 10.5 However, as was detailed in a letter to the ACCC dated 4 November 2016, a notification was included at the foot of every page of REIWA's desktop website that stated, "for REIWA forms for non-members and RTOs, call us on 9380 8222".
- 10.6 Nevertheless, the version of the site accessible from mobile devices did not include this notice. This omission occurred due to inadvertence on REIWA's part. Following being alerted

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<sup>173</sup> See the ACCC's 2012 Determination at para 4.12

to this omission, REIWA has placed on its mobile website a similar notice to the one that appears on the desktop site.

10.7 Further, following the adoption of a more “minimalist style” of website in 2014, the prominence and content of a number of notices that appeared on REIWA’s site, including the notice regarding the availability of forms, was changed. While the form of the notice that appeared on REIWA’s desktop website still complied with the requirements of the 2012 condition, and REIWA had no evidence that the form of the notice on its website had precluded anyone from being aware of the availability of its forms, REIWA nevertheless decided to amend the notices that appeared on all its online platforms.

10.8 The following wording (on all versions of the site) was added to the home page on or about 23 September (i.e. in addition to the wording referred to above):

*certain REIWA forms are available to non-members and RTOs by calling us on 9380 8222.*

10.9 A link to a separate more detailed page is then provided (under the heading “more”) that sets out the availability of the forms with reference, in effect, to the entire condition imposed under the authorisations.

10.10 Greater prominence was given to this wording on both the desktop and mobile versions of the website. A larger font was used on the desktop version and it was given greater “stand-alone” prominence.

10.11 REIWA has also put in place a process to ensure that no further amendments can be made to the formatting of the home page of the website (in respect of both the desktop and mobile versions of the site) without a greater level of oversight by senior management. A written log will be kept by the CEO of REIWA, Mr Neville Pozzi, of these requests for changes and the fact that any approval of those changes has been given after consideration has been given to the *Competition and*

*Consumer Act, 2010*, the terms of the REIWA's Competition Compliance Policy and the terms of the authorisation provided by the ACCC pursuant to Part VII of the CCA.

10.12 REIWA has received approximately 20 requests from members of the public and/or non-member agents for its Standard Exclusive Agency Forms since 2012. Further, West Coast Property Training, the TAFE Colleges and the Law College of Australia has obtained copies of the Standard Forms during that period.

## 11. PROPOSED REIWA ACCREDITATION SCHEME

11.1 REIWA has made a determination to introduce an accreditation scheme for its Ordinary Members and Associate Members that would enable individuals to obtain specialist accreditation in relation to specific areas of real estate and business broking practice (**Proposed Voluntary Accreditation Process**). The categories of accreditation would be as follows:

- Accredited Auctioneer;
- Accredited Buyers' Agent;
- Accredited Commercial and Industrial Representative – Sales and Leasing;
- Accredited Commercial and Industrial Representative – Property Management;
- Accredited Property Manager;
- Accredited Sales Representative;
- Accredited Rural Representative;
- Accredited Strata Manager.

- 11.2 Such an accreditation scheme would provide official recognition of a person having a particular education/training status and having attained and maintained a specific level of experience and knowledge for a specialist aspect of real estate or business broking transactions.
- 11.3 The scheme would provide the opportunity for industry practitioners to differentiate themselves from other practitioners when they are promoting their services to consumers of real estate and business broking services.
- 11.4 Further, such a scheme would provide consumers with a method to identify industry practitioners who have submitted to additional training and achieved, consequentially, a recognition of a specific level of expertise in their chosen field of practice.
- 11.5 It is proposed that the mandatory criteria that would apply to all applicants is that accredited persons would need to:
- be an Associate Member or Ordinary Member of REIWA;
  - be a licensed real estate agent/business broker or registered sales representative under the REBA ACT;
  - have attained the mandatory continuing professional development requirements stipulated by the Department of Commerce for the past two consecutive years and be undertaking a maintenance of those requirements for the current year;
  - have a minimum of five consecutive years' experience within the category of specialisation.
- 11.6 The additional professional development that each person would need to complete in order to obtain this accreditation could be completed through any training provider (i.e. not just the training services provided by REIWA), subject to the need for the courses to be provided by the training providers being courses approved by the Department of Commerce as elective



units within the current Department of Commerce State Regulatory CPD Program. REIWA has produced the following summary of the speciality criteria for each category of the proposed accreditation.

### Accreditation category specialty criteria

| <b>Category</b>                                                                                        | <b>Specialty training</b>                                                      | <b>Experience measure</b>                                                                                                                                                         | <b>Maintenance requirements</b>                                                                                                                                                                                                                                                                  |
|--------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><i>Commercial - sales and leasing</i></p> <p>AND</p> <p><i>Commercial - property management</i></p> | No specialty training (most commercial reps have a diploma).                   | Interview to determine standing and experience of candidate.                                                                                                                      | <p>45 additional hours of Professional Development over 3 years</p> <p>Topics: asset management, facilities management, trust accounting, OSH.</p> <p>Other CPD electives offered elsewhere.</p>                                                                                                 |
| <i>Rural representative</i>                                                                            | <p>Up to four units of the diploma (to be determined)</p> <p>Rural seminar</p> | <p>Minimum of 5 sales of 10 hectare lots or greater per annum over a 3 year period.</p> <p>AND</p> <p>Interview or statement substantiating ethics, knowledge and experience.</p> | <p>7 additional hours of PD per annum.</p> <p>Topics: Ethics, marketing, consumer, ACL, REBA Act, Residential Tenancy Act, offer and acceptance, negotiation, finance, property tax, strata, auction code and requirements, valuation methods.</p> <p>Other CPD electives offered elsewhere.</p> |
| <i>Sales Representative</i>                                                                            | Up to four units of the diploma (to be determined)                             | <p>No volume or value of transaction measure.</p> <p>Interview or statement substantiating ethics, knowledge and experience.</p>                                                  | <p>7 additional hours of PD per annum.</p> <p>Topics: Ethics, marketing, consumer, ACL, REBA Act, Residential Tenancy Act, offer and acceptance, negotiation, finance, property tax, strata, auction code and requirements, valuation methods.</p> <p>Other CPD electives offered elsewhere.</p> |

- 11.7 The proposed accreditation would be provided to successful applicants for a period of three years so as to align with the standard period for the provision of licensing and triennial certificates under the REBA Act.
- 11.8 To reduce the administrative costs of managing such a scheme, accredited individuals would make annual declarations to demonstrate their compliance with the necessary criteria for the categories of accreditation (as distinct from a process of wide-spread auditing).
- 11.9 The proposed accreditation scheme would be managed by an Accreditation Governance Committee. The members of that Committee would be the CEO of REIWA and two current REIWA Council Members. That Accreditation Governance Committee would be responsible for managing the finances of the scheme, the policies and procedures of the scheme, the resources made available to manage the scheme and the decision-making processes involved in the scheme.
- 11.10 Further there would be an Accreditation Committee that would be made up of three Ordinary Members of REIWA. That committee would manage the process by which applications for accreditation were reviewed and the making of decisions in relation to the accreditation, including the granting, maintaining, renewing and withdrawing of accreditation awards.
- 11.11 Panels of assessors would be appointed with respect to each specialist area and these panels would be made up of approved experts in each of these areas. These panels would design objective testing and assessment criteria, conduct testing and assessment pursuant to those criteria and refer applications for accreditation to the Accreditation Committee for final decisions.
- 11.12 It is proposed that the administration of the system would be assisted by two administrators employed by REIWA who would

have responsibilities for the development and maintenance of the accreditation scheme and the administration of the scheme.

- 11.13 With respect to determinations as to the granting of accreditation to applicants by the Accreditation Committee, dissatisfied applicants would be entitled to appeal to an Appeals Committee. The Appeals Committee would be made up of the CEO of REIWA, two retired REIWA Council Members and one Ordinary Member of REIWA. The responsibilities of the Appeals Committee would be to determine the outcome of appeals and to organise communication of that outcome to appellants.
- 11.14 REIWA would ultimately prepare a set of clearly worded and transparently written rules, criteria and procedures for the administration of the system.
- 11.15 Specialist accreditation for real estate agents is already provided in Australia and New Zealand. In particular, an independent private organisation known as “Certified Practising Real Estate Agent” exists (see the website [www.cprea.com.au](http://www.cprea.com.au)).
- 11.16 Further, the organisation known as the “Strata Community Australia” has a “Strata Community Manager Accreditation Program” for its members that provides a nationally recognised professional qualification system for strata managers. In Western Australia, South Australia, Queensland and Tasmania there are no statutory licensing requirements for strata managers. The Strata Community Manager Accreditation Program recognises four levels of experience based on the number of years the person has been a member of the Strata Community Australia and the educational standing of the individual concerned.
- 11.17 Other professional organisations in Australia provide specialist accreditation programs. For example, the Law Society of

Western Australia provides a family law accreditation system for specialist family law practitioners. To become an accredited family law specialist an applicant must:

- be a member of the Law Society of Western Australia;
- hold a current practising certificate;
- have at least five years' practising experience;
- have had substantial involvement (at least 25%) in family law practice over the past three years;
- possess three references in support of the application;
- successfully complete the Accredited Family Law Specialist assessment program.

11.18 In order to continue to remain accredited as an Accredited Family Law Specialist, a practitioner is required to:

- be a current financial member of the Law Society of Western Australia;
- hold a current practising certificate;
- pay the prescribed annual fee as it falls due;
- complete a minimum of CPD points in approved accreditation activities each year;
- participate in re-accreditation every three years.

11.19 Notwithstanding that REIWA has not yet finalised the details of its Proposed Voluntary Accreditation Process it wishes to seek authorisation of the conduct giving rise to that program. This is particularly the case given that it is likely that such a program will be introduced during the period of any authorisation now granted by the ACCC.

- 11.20 The prospect of REIWA's Proposed Voluntary Accreditation Process giving rise to any anti-competitive effect, including being any barrier to entry to the real estate industry is low. Nevertheless, REIWA considers it prudent to include its proposed program in REIWA's Membership Framework that is the subject of this authorisation application. It is reiterated that persons would be entitled to obtain the necessary additional education to obtain accreditation from any training provider so long as the courses being offered are recognised by the Department of Commerce as part of its current mandatory education scheme.
- 11.21 Further, there will be no restriction upon the ability of real estate agents or business brokers to practise within the relevant specialist areas if a person does not have the specialist accreditation. Rather, the obtaining of special accreditation enables an individual to identify themselves as having that specialisation and, in turn, enables consumers, if they wish, to seek out such specialists.

*Public Benefit*

- 11.22 Consumers currently have access to various real estate agent referral websites, such as "Rate My Agent" and "OpenAgent" that offer to refer consumers to suitable agents. However, agents who participate in such websites to the full extent possible can be required to pay to the entities that conduct such services substantial commissions. Further, the ranking of agents on these sites is usually, at least in part, dependent on the lodging of "testimonials". The ability for consumers to distinguish between agents based on actual experience and expertise by using these websites is severely limited.
- 11.23 However, the introduction of specialist accreditation in Western Australia will enable consumers to be able (should they wish) to seek to obtain reference to a real estate (or business broker) with respect to objectively defined criteria.

*Anti-Competitive Effect/Public Detriment*

11.24 REIWA considers that the risk of anti-competitive effect and public detriment is low. While an additional level of expertise recognition in the market might be seen as amounting to the presentation of a form of barrier to entry to the market, REIWA considers that the risk of this occurring is low. This is particularly the case given that, as has been set out above, the accreditation scheme will be entirely voluntary and applicants will be entitled to obtain training from multiple education providers.

*The Counterfactual*

11.25 There currently is no wide-spread specialist accreditation system used within the Western Australian real estate or business agency industry. If REIWA does not introduce such a system it is unlikely that any alternate provider of such a service would be able to provide the level of public benefit referred to above. This is particularly the case given the high level of regard in which REIWA is held by consumers (see section 3 of these submissions), REIWA's wide membership base and REIWA's existing administrative infrastructure.

**12. CONCLUSION**

12.1 For the reasons set out in the submissions, REIWA submits that the re-authorisation under Part VII of the CCA of its Membership Framework (being its Articles, the MCPs, the Auction Code, the Proposed Voluntary Accreditation Process and the agreement that gives rise to the Standard Exclusive Agency Forms) is warranted. In particular, any anti-competitive effect of these documents is outweighed considerably by the resulting public benefit.

12.2 REIWA seeks authorisation of its Articles, the MCPs, the Auction Code, the Proposed Voluntary Accreditation Process

and the agreement that gives rise to the Standard Exclusive Agency Forms for a further period of 5 years.

- 12.3 Should the ACCC wish to discuss any of the provisions of the documents the subject of this application for authorisation or should the ACCC require any further information the ACCC is invited to contact REIWA's legal advisors, MDS Legal (attention: Paul Donovan or Helen Burnside).