

Terms of Service

This agreement ("Agreement") is between users of vendorable.com and any related service, tool or application ("Website") and the operator of the Website ("Vendorable").

If you use the Website in relation to a transaction of and/or concerning real estate located in one of the following jurisdictions, Vendorable means the entity described opposite in the list that follows, otherwise, Vendorable means Vendorable Pty Ltd (ACN 168 378 890):

- Australia - Vendorable Pty Ltd (ACN 168 378 890)
- New Zealand - Vendorable Limited (Company Number 5859262)
- United Kingdom - Vendorable Limited (Company Number 9778443)
- United States - Vendorable LLC (File Number 5881091)

This Agreement also governs the rights and obligations as between users of the Website in their capacity as users of the Website.

A reference to "you" means an intending user or user (as the case requires) of the Website and a reference to "your" is a reference to you in the possessive form.

A reference to "we" or "us" is a reference to Vendorable and a reference to "our" or "ours" is a reference to us in the possessive form.

Important Notice

This document is important and should be considered carefully by anyone intending to use the Website. Should you have any questions you may contact us by email at useragreement@vendorable.com.

As this agreement may be updated from time to time, users of the Website should consider carefully whether any change to this agreement may affect them, and whether any change is suitable to their continued use of the Website.

This Agreement was last changed on 15 June 2018.

The material on the Website is copyright © 2014 - 2018 Vendorable.

Vendorable and you agree as follows:

Acknowledgement as to Use

1. By using the Website and continuing to use the Website you acknowledge and agree that you have had sufficient time to read and understand this Agreement. If you do not wish to be bound by this Agreement you agree to cease using the Website and notify Vendorable by email to useragreement@vendorable.com so that we may deactivate any of your accounts on the Website.

Licence to Use Website

2. We grant you a non-exclusive, worldwide, non-transferable licence to use the Website in accordance with the terms and conditions set out in this Agreement.

3. You may access and use the Website (including any incidental copying that occurs as part of that use) in the normal manner and may also print and/or store electronically one copy of any page within the Website for your own personal, non-commercial use and otherwise you may print and/or store electronically such pages within the Website as may be necessary for your compliance with any record keeping law.
4. You must not add any content to the Website:
 - a. unless you hold all necessary rights, licences and consents to do so;
 - b. that would cause you or us to breach any law, regulation, rule, code or other legal obligation;
 - c. that is or could reasonably be considered to be obscene, inappropriate, defamatory, disparaging, indecent, seditious, offensive, pornographic, threatening, abusive, liable to incite racial hatred, discriminatory, blasphemous, in breach of confidence or in breach of privacy;
 - d. that would bring us, or the Website, into disrepute; or
 - e. that infringes the intellectual property or other rights of any person.
5. The Website contains links to other websites as well as content added by people other than us. We do not endorse, sponsor or approve any such user generated content or any content available on any linked website. Other websites have may have terms of use and/or policies, including privacy policies. These are separate to our own.
6. You acknowledge and agree that:
 - a. we retain complete editorial control over the Website and may alter, amend or cease the operation of the Website at any time in our sole discretion;
 - b. the Website will not operate on a continuous basis, and may be unavailable from time to time (including for maintenance purposes); and
 - c. we may host and otherwise export your personal data within and outside of the European Union.

Intellectual Property Rights

7. Nothing in this Agreement constitutes a transfer of any intellectual property rights. You acknowledge and agree that, as between you and us, we own all intellectual property rights in the Website.
8. By posting or adding any content onto the Website, you grant us a perpetual, non-exclusive, royalty-free, irrevocable, worldwide and transferable right and licence to use that content in any way (including, without limitation, by reproducing, changing, and communicating the content to the public) and permit us to authorise any other person to do the same thing.
9. You consent to any act or omission which would otherwise constitute an infringement of your moral rights, and if you add any content in which any third party has moral rights, you

must also ensure that the third party also consents in the same manner.

10. The licence in clause 8 will survive any termination of this Agreement.
11. You represent and warrant to us that you have all necessary rights to grant the licences and consents set out in clauses 8 and 9.

Warranties

12. You represent and warrant to us that:
 - a. you have the legal capacity to enter this Agreement; and
 - b. you have complied with clause 4.

Liability

13. To the full extent permitted by law, we exclude all liability in respect of loss of data, interruption of business or any consequential or incidental damages.
14. To the full extent permitted by law, we exclude all representations, warranties or terms (whether express or implied) other than those expressly set out in this Agreement.
15. This agreement is to be read subject to any legislation which prohibits or restricts the exclusion, restriction or modification of any implied warranties, conditions, guarantees or obligations. If such legislation applies, to the extent possible, we limit our liability in respect of any claim to, at our option:
 - a. in the case of goods:
 - i. the replacement of the goods or the supply of equivalent goods;
 - ii. the repair of the goods;
 - iii. the payment of the cost of replacing the goods or of acquiring equivalent goods;
or
 - iv. the payment of having the goods repaired, and
 - b. in the case of services:
 - i. the supply of the services again; or
 - ii. the payment of the cost of having the services supplied again.

Assignment

16. You must not assign, sublicense or otherwise deal in any other way with any of your rights under this Agreement.
17. We may assign, sublicense or otherwise deal with the benefit of this Agreement to us and any of our rights and or obligations hereunder without requiring your consent.

Severance

18. If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

Further Assurance

19. Each party must at its own expense do everything reasonably necessary to give full effect to this Agreement and the events contemplated by it.

Applicable Law

20. This Agreement will be governed by and construed and interpreted in accordance with the laws of the State of New South Wales, save as otherwise stated.

Jurisdiction

21. The parties irrevocably submit to the exclusive jurisdiction of the courts of the State of New South Wales, save as otherwise stated.

Policies

22. You acknowledge and agree that all of our policies published on the Website are part of this Agreement, including but not limited to:
 - a. Privacy Policy.

Promotion

23. As part of the Website and our marketing materials, you agree that we may publish your use of the Website and in so doing we may:
 - a. display your business name;
 - b. display your logos and trademarks;
 - c. display the details of any jobs you may advertise as being available; and
 - d. display the details of proposals as to the performance of advertised jobs you may make.
24. In displaying any jobs advertised and any proposals made to visitors of the Website who are not signed in, it is our intention, but without being bound to do so, to disassociate your name and other information which may identify you from such jobs and such proposals.

Accounts

25. If you register to use an account with the Website ("Account"), you agree to provide accurate, complete and true information on any and all forms you access on the Website.

26. You must update your information provided to the Website to maintain its accuracy, completeness and truthfulness.
27. You authorise us to verify your identity through any means we consider expedient.
28. In the event we are unable to verify your identity to our satisfaction we may close, suspend, or limit you access to the Website and any Account, which you may have registered.

Differentiation of Users

29. Where you offer or intend to offer your services on the Website you agree with Vendorable to be bound by the provisions of the Agent Rules.
30. You agree that you intend to offer your services on the Website if you open an Agent Account.
31. Where you invite offers or intend to invite offers for services on the Website you agree with Vendorable to be bound by the provisions of the Owner Rules.
32. You agree that you intend to invite offers for services on the Website if you open an Owner Account.
33. You may operate one Agent Account and one Owner Account only and may do so in either capacity as an Agent User or as an Owner User but may never act in both capacities at the same time. For example, you are prohibited from inviting offers for services on the Website and offering your services in respect of that invitation.

Services

34. Vendorable operates the Website to facilitate the introduction of agents to owners who may wish to contract with agents and to facilitate any ongoing relationship between them ("Vendorable Service") and in particular, but without limitation:
 - a. Owner Users may advertise the availability of a job for an agent to perform;
 - b. Agent Users may make proposals to Owner Users as to the performance of advertised jobs;
 - c. Owner Users may enter into agency agreements with Agent Users;
 - d. Owner Users and Agent Users may track the progress of jobs the subject of agency agreements;
 - e. Owner Users may provide their opinion about Agent Users through scoring of Agent User's attributes and testimonials;
 - f. Owner Users may view the opinions about Agent Users of other Owner Users.
35. You acknowledge the content produced by Agent Users and Owner Users in their use of the Vendorable Service is not that of Vendorable, and in that regard you agree:
 - a. to use such content at your own risk;

- b. that no warranty or representation about the accuracy or reliability of such content is made by Vendorable;
- c. to hold Vendorable harmless from all liability for any damage you may suffer relying on anything contained in or omitted from such content, to the full extent permitted by law; and
- d. to conduct your own due diligence and prevention of fraud measures in relation to users of the Website and such content.

Service Fee

36. In consideration of the Vendorable Service, you agree that we are entitled to be paid a fee, calculated and payable as follows ("Service Fee"):

- a. If a job posted on the Website by an Owner User relates to the sale of property and:
 - i. the Owner User is introduced to an Agent User through the Website;
 - ii. the Owner User appoints that Agent User, their associate, employer or related corporation (regardless of whether the appointment is transacted through the Website); and
 - iii. the Agent User, their associate, employer or related corporation becomes entitled to a fee for service from the Owner User arising out of substantially the same subject matter as the job posted by the Owner User on the Website; then

Service Fee = $(C \times 5\%) + T$, where:

- C is the whole fee for service (e.g. commission) payable and/or paid to the Agent User, their associate, employer and/or related corporation, including any and all consumption taxes (e.g. GST or VAT) and not including marketing or other costs reimbursed by the Owner User; and
- T is the cumulative rate of any and all consumption taxes we must pay to the relevant taxation and/or revenue authority multiplied by $(C \times 5\%)$

to be paid to us by the Agent User, their associate, employer and/or related corporation upon the earliest of either completion of the sale of the property or payment to the the Agent User, their associate, employer and/or related corporation of any part of C.

For example, if the agent's commission is 2% and the owner's property in Australia where the GST rate is 10% sells for \$500,000 then our fee is $2\% \times \$500,000 \times 5.5\% = \550 .

For example, if the agent's commission is 1% and the owner's property in New Zealand where the GST rate is 15% sells for \$500,000 then our fee is $1\% \times \$500,000 \times 5.75\% = \287.50 .

- b. If a job posted on the Website by an Owner User relates to the lease of property and:
 - i. the Owner User is introduced to an Agent User through the Website;

- ii. the Owner User appoints that Agent User, their associate, employer or related corporation (regardless of whether the appointment is transacted through the Website); and
- iii. the Agent User, their associate, employer or related corporation becomes entitled to a fee for service from the Owner User arising out of substantially the same subject matter as the job posted by the Owner User on the Website; then

Service Fee = $(L \times 25\%) + T$, where:

- L is the whole fee for service (e.g. letting fee) payable and/or paid to the Agent User, their associate, employer and/or related corporation, including any and all consumption taxes (e.g. GST or VAT) and not including marketing or other costs reimbursed by the Owner User upon any letting of the property;
- T is the cumulative rate of any and all consumption taxes we must pay to the relevant taxation and/or revenue authority multiplied by $(L \times 25\%)$

to be paid to us by the Agent User, their associate, employer and/or related corporation upon any letting of the property.

For example, if the agent's letting fee is 1 week of rent plus GST and the owner's property in Australia where the GST rate is 10% is rented for \$500 per week then our fee is $\$550 \times 25\% + \$25 = \$151.25$.

For example, if the agent's letting fee is 1 month of rent plus GST and the owner's property in New Zealand where the GST rate is 15% is rented for \$5000 per month then our fee is $\$5750 \times 25\% + \$187.50 = \$1,653.13$.

Owner Rules

37. The provisions under this heading apply to Owner Users.

38. Where you:

- a. are a co-owner of property;
- b. hold property as trustee;
- c. have a right to deal with property (e.g. under a power of sale, through foreclosure or as representative of an insolvent or deceased estate);
- d. you are an employee, contractor, agent, officer or other representative of the owner of property, and/or of a trustee holding property on trust and/or of a person having a right to deal with property; and/or
- e. otherwise,

you warrant and represent to us and Agent Users that you have all necessary consents and authorisations to deal with such property in your use of the Website and to enter into an agency agreement on the terms set out in the Agency Agreement Rules.

39. You acknowledge that, in the event you procure services from an Agent User ("Agent

Services"), those services are separate from any Vendorable Service, and in that regard you agree:

- a. that Vendorable provides no warranty and makes no representation as to the quality of the Agent Services;
 - b. that Vendorable provides no warranty and makes no representation as to the ability of Agent Users to provide and/or complete the Agent Services;
 - c. that Vendorable provides no warranty and makes no representation as to the lawfulness of the Agent Services;
 - d. that Vendorable provides no warranty and makes no representation as to the lawfulness for any person to carry out the Agent Services;
40. If you post a job on the Website, unless it is with our consent in writing, you must not then negotiate an agency agreement with an Agent User outside of the Website concerning substantially the same subject matter as the job you posted on the Website.
41. If you post a job on the Website and you appoint an Agent User introduced to you through the Website, their associate, employer or related corporation (regardless of whether the appointment is transacted through the Website) and the Agent User, their associate, employer or related corporation becomes entitled to a fee for service from you arising out of substantially the same subject matter as the job you posted on the Website, then you agree:
- a. we are entitled to be paid our Service Fee from the funds, if any, held on your behalf in an agent's, lawyer's, or other representative's or third party's trust (or equivalent, including escrow) account ("Trust Account"), which are the deposit arising from the transaction arranged by the Agent User, their associate, employer or related corporation ("Deposit");
 - b. we are entitled to claim through you, as an ultimate beneficiary, to recover the Service Fee from the Trust Account and/or the owner of the Trust Account; and
 - c. you irrevocably authorise the owner of the Trust Account to pay to us the Service Fee from the Deposit.
42. Where you accept an Agent User's bid by clicking the "Accept Bid" (or similarly worded) button, you acknowledge that you have entered into a binding agency agreement on the terms set out under the Agency Agreement Rules.
43. You acknowledge that any estimate of the selling price or rent of your property from an Agent User is:
- a. an opinion only;
 - b. based on the Agent User's experience in the market;
 - c. based on the particular locality of the property;
 - d. without any detailed analysis or inquiries;

- e. gratuitous;
- f. potentially without the Agent User being licensed to carry out property valuations;
- g. without the assumption of any liability to you by the Agent User if the Agent User's opinion is later proved to have been erroneous; and
- h. should not be relied on by you in marketing the property.

Agent Rules

- 44. The provisions under this heading apply to Agent Users.
 - 45. You warrant and represent to us and Owner Users that you have all necessary consents and authorisations to enter into an agency agreement on the terms set out in the Agency Agreement Rules, including on behalf of your employers, associates and/or related corporations.
 - 46. If a job has been posted on the Website, unless it is with our consent in writing, you must not then attempt to negotiate an agency agreement with the Owner User, their associates, clients, principals, employers or related corporations concerning substantially the same subject matter as the job posted on the Website.
 - 47. You agree:
 - a. "Confidential Information" means any information:
 - i. given or disclosed by or on behalf of an Owner User in and/or in connection with its use of the Website (whether recorded or not and if recorded whether by writing or any other means upon which there is marked any words, figures or symbols which are capable of carrying a definite meaning to persons conversant with them) including but not limited to:
 - A. the details of any job posted on the Website by the Owner User; and
 - B. the contact details of the the Owner User, their associates, clients, principals, employers or related corporations;
 - ii. relating to any discussions, negotiations, terms or agreement between an Owner User and Agent Users in connection with a job posted on the Website;
- but does not include information which:
- i. is in or comes into the public domain in any way without a breach of your obligations pursuant to this clause;
 - ii. can be shown by you to have been legitimately known to you prior to its receipt from us and which was not obtained under a duty of confidence from a third party;
 - iii. is independently developed by you without reliance on or use of the Confidential Information; and

- iv. is communicated in response to a valid order of a court, tribunal, and/or government body or otherwise as required by law or as necessary to establish any right under this clause;
- b. the onus of establishing that information is excepted from the meaning of Confidential Information falls on you;
- c. that the Confidential Information is crucial to our goodwill and business;
- d. to at all times hold all Confidential Information which comes into your possession in full and complete confidence;
- e. take all steps necessary to ensure there is no unauthorised access to the Confidential Information;
- f. you must not disclose the Confidential Information except to those of your officers, employees and professional advisers who have a need to know and then only to those who:
 - i. have a need to know the information, but only to the extent they have a need to know certain aspects of it;
 - ii. before disclosure are informed of the confidentiality obligations contained in this Agreement and directed by you and agree with you to keep the Confidential Information confidential and to use the Confidential Information solely for and/or in connection with your use of the Website and any appointment of you as an agent;
- g. you must ensure each of your officers or employees to whom Confidential Information is disclosed keeps the Confidential Information confidential and uses the Confidential Information solely for and/or in connection with your use of the Website and any appointment of you as an agent;
- h. you must ensure that if any of your officers or employees leaves your employment or if you end your engagement with any professional advisers that all Confidential Information held in such persons' possession, power or control is returned to you;
- i. you must not copy, publish or circulate (or authorise or permit any person or entity to copy, publish or circulate) the Confidential Information;
- j. to only use the Confidential Information or and/or in connection with your use of the Website and any appointment of you as an agent;
- k. without limiting anything else contained in this Agreement, you must not use any Confidential Information for the purpose of obtaining a commercial advantage over us;
- l. to do anything reasonably required by us to restrain a breach of this clause or any infringement of our rights arising under this clause;
- m. upon our request, to deliver to us (and/or on our direction destroy or erase) all Confidential Information in your possession, power or control;

- n. that neither we nor any of our officers, employees or agents have made or make any representation, either express or implied that the Confidential Information does not infringe the intellectual property rights of any other person or entity;
- o. you will make your own assessment and evaluation of the Confidential Information and that any reliance you place on the Confidential Information will be at your own risk;
- p. that neither we nor any of our officers, employees or agents, make or give any representation, warranty or assurance either express or implied to you that the Confidential Information or any part of it is complete, been audited or independently verified;
- q. that we have a valid title and/or rights to all of our intellectual property rights subsisting in the Confidential Information and you undertake not to take any action which might or would:
 - i. invalidate or put into dispute our title and/or rights to any of our industrial and intellectual property rights forming part of the Confidential Information; and
 - ii. oppose any application for registration or invalidate any registration of our industrial or intellectual property rights forming part of the Confidential Information,

and you must not assist any other person or entity directly or indirectly in any of the above acts;

- r. without limiting our rights at law, to indemnify us in respect of all claims, losses, damages, liabilities, loss of profits, costs or expenses of any kind incurred directly or indirectly by us as a result of a breach by you of any of your obligations under this clause;
- s. that damages alone may be inadequate compensation for a breach of this clause and that we will be entitled to apply to any court for interim or permanent injunctive relief or both restraining you from committing any threatened breach or breach of the provisions of this clause without proving that we have suffered any actual damage.
- t. the right to apply for injunctive relief is cumulative and in addition to any other rights or remedies which we may be entitled to;
- u. the obligations of confidentiality under this clause will continue to apply to you (and any permitted assignees) for as long as is permitted by law.

48. You agree:

- a. to pay or procure payment to us of the Service Fee; and
- b. without limiting our rights at law, to indemnify us in respect of all claims, losses, damages, liabilities, loss of profits, costs or expenses of any kind incurred directly or indirectly by us as a result of a breach by you of any of your obligations under this clause.

49. Where you have been appointed as an agent you agree to diligently and accurately advise us of:
- a. in respect of the sale of property:
 - i. where the property has not been sold and your appointment has ended, the date the appointment is ended;
 - ii. the date that a binding contract is entered into for the sale of the property;
 - iii. the price that the property is being sold for pursuant to the contract;
 - iv. the expected date that the contract will be completed;
 - v. the actual date that the contract is completed;
 - vi. if the contract is not completed, the date that the contract was terminated, rescinded or otherwise ended.
 - b. in respect of the leasing of property:
 - i. where the property has not been leased and your appointment has ended, the date the appointment is ended;
 - ii. the date that a binding lease for the property is granted;
 - iii. the rent that the tenant is paying pursuant to the lease;
 - iv. the term of the lease;
50. You agree that when you make a bid on an Owner User's job, you make an irrevocable offer to enter into a binding agency agreement on the terms set out under the Agency Agreement Rules.
51. You agree that where you have made a bid based on % commission, you will not be able to change this to a fixed commission nor increase the % numeral should you wish to change your bid by "re-bidding".
52. You agree that where you have made a bid based on fixed commission, you will not be able to change this to a % based commission nor increase the fixed commission sum should you wish to change your bid by "re-bidding".

Agency Agreement Rules

53. The provisions under this heading are the "Agency Agreement Rules".
54. These Agency Agreement Rules are the agreement governing the agency between an Owner User, who has posted a job on the Website, and an Agent User whose bid for the job the Owner User has accepted ("Agency Agreement").
55. The profiles of the Agent User and the Owner User respectively form part of the Agency Agreement.

56. Subject to the following clause, the information contained in the job and the bid to which the Agency Agreement relates are part of the Agency Agreement.
57. These Agency Agreement Rules apply in precedence to any agreement document included as part of that Agent User's bid on the job, unless these Agency Agreement Rules state that the Owner User and Agent User may otherwise agree, in which case the relevant provision from the agreement document will prevail should there be any conflict.
58. If the Owner User includes terms and conditions for the appointment of the Agent User with the job which the Owner User has posted on the Website and states in the job that certain clauses of the Agency Agreement Rules will not apply then such of those clauses will not apply to the Agency Agreement and the terms and conditions included by the Owner User with the job will form part of the Agency Agreement.

Definitions

59. "Offering Price" means the Agent User's upper price estimate for the Property entered by the Agent in their bid for the job.
60. "Property" means the property described by the Owner User in the job posted on the Website.
61. "Related Services" means advertising and promoting the Property for sale and/or lease through third-parties and as further described by the Agent User in the cost and/or strategy details of their bid for the job.
62. "Reimbursement" means the marketing costs and other costs described by the Agent User in their bid for the job, being the total cost of the Related Services.
63. "Remuneration" means:
 - a. where the Agent User has been appointed to sell the Property, one of:
 - i. the fixed commission sum entered by the Agent User in their bid for the job ("Fixed Commission"); or
 - ii. the % of the Sale Price, such % figure having been entered by the Agent User in their bid for the job ("% Commission");but not both;
 - b. where the Agent User has been appointed to lease the Property, the period of the Rent, such period of rent having been entered by the Agent User in their bid for the job, plus any and all consumption taxes the Agent user must pay to the relevant taxation and/or revenue authority calculated by reference to the period of the Rent ("Letting Fee"); and
 - c. where the Agent User has been appointed to manage the Property:
 - i. the % of the Rent collected by the Agent User, such % figure having been entered by the Agent User in their bid for the job, excluding the period of Rent for which the Agent User is entitled to the Letting Fee; and

ii. the periodic fixed sum(s) entered by the Agent User in their bid for the job;

("Management Fee").

64. "Rent" means the rent that the Property will have been leased for, including any increases, exclusive of any and all consumption taxes (e.g. GST or VAT).
65. "Sale Price" means the price that the Property will have been sold for inclusive of any and all consumption taxes (e.g. GST or VAT).

Interpretation

66. A reference to an Agent User in these Agency Agreement Rules includes the Agent User's employers, associates and related corporations.
67. A reference to the Owner User in these Agency Agreement Rules includes whomever of the Owner User's co-owners, employers, clients, associates, related corporations and/or other entities owns the Property.
68. A reference to the Property being sold means:
- a. the introduction of a purchaser to the Property who enters into an enforceable contract for sale and completes the contract; and/or
 - b. an arrangement where value for the Property is provided and the title to the Property is transferred.
69. A reference to the Property being leased means:
- a. the introduction of a tenant to the Property who enters into an enforceable contract for lease and takes possession of the Property; and/or
 - b. an arrangement where value for occupation of the Property is provided.

Type of Agency Agreement

70. The Agency Agreement is an exclusive agency if the Agent User's bid for the job having been accepted by the Owner User, describes the proposed agency as an exclusive agency.
71. The Agency Agreement is a sole agency if the Agent User's bid for the job having been accepted by the Owner User, describes the proposed agency as a sole agency.
72. The Agency Agreement is an open agency if the Agent User's bid for the job having been accepted by the Owner User, describes the proposed agency as an open agency.
73. If the Owner User describes in their job, relating to the lease of property, that the Property is to be Fully Managed, the Agency Agreement is, in addition, for the management of the Property.

Appointment

74. Where the Agency Agreement is an exclusive agency, the Owner User appoints the Agent

User to act as exclusive agent for the:

- a. sale of the Property, where the job relates to the sale of property; and
- b. lease of the Property, where the job relates to the lease of property.

75. Where the Agency Agreement is a sole agency, the Owner User appoints the Agent User to act as sole agent for the:

- a. sale of the Property, where the job relates to the sale of property; and
- b. lease of the Property, where the job relates to the lease of property.

76. Where the Agency Agreement is an open agency, the Owner User appoints the Agent User to act as an agent for the:

- a. sale of the Property, where the job relates to the sale of property; and
- b. lease of the Property, where the job relates to the lease of property.

77. Where the Agency Agreement is for the management of the Property, the Owner User appoints the Agent User to act as agent for the management of the Property.

Owner User Obligations

78. The Owner User warrants to the Agent User that the Owner User has the authority to enter into the Agency Agreement.

79. The Owner User authorises the Agent User to procure the Related Services.

80. The Owner User will make the Property available for open inspections and inspections by appointment by:

- a. prospective buyers, where the Agency Agreement is for the sale of the Property; and
- b. prospective tenants, where the Agency Agreement is for the lease of the Property.

81. The Owner User warrants to the Agent User that the Owner User will not seek to avoid paying the Remuneration to the Agent User by rescinding any contract for the sale of the Property and subsequently entering into another contract for the sale of the Property with the same or a related purchaser.

82. The Owner User warrants to the Agent User that the Owner User will not seek to avoid paying the Remuneration to the Agent User by rescinding any contract for the lease of the Property and subsequently entering into another contract for the lease of the Property with the same or a related tenant.

Agent User Obligations

83. While the Agency Agreement remains in force, the Agent User will use its best endeavours to advertise and to promote the:

- a. sale of the Property, where the Agency Agreement is for the sale of the Property; and

- b. lease of the Property, where the Agency Agreement is for the lease of the Property and the Property has not yet been leased.

84. The Agent User will procure the Related Services on behalf of the Owner User.

85. If the Property is to be sold by way of Auction:

- a. the Agent User will submit the Property (or cause it to be submitted) for sale by public auction to be held at the Property (or another address to be agreed between the parties to the Agency Agreement) on a date to be agreed between the parties to the Agency Agreement; and
- b. if after the conclusion of the public auction the property has not been sold, or prior to the public auction if authorised by the Owner User in writing, the Agent User may negotiate for the sale of the Property by Private Treaty.

86. If the Property is to be sold by way of Private Treaty, the Agent User will list the Property at the Offering Price, or at a price otherwise agreed between the Agent User and the Owner User in writing.

87. If the Property is to be leased:

a. the Agent User will list the Property:

- i. at the rent the Agent User entered as their estimate of rent in their bid for the job, or at a rent otherwise agreed between the Agent User and the Owner User in writing;
- ii. for the term the Owner User specified in the job as the term of any lease, or for the term otherwise agreed between the Agent User and the Owner User in writing; and
- iii. in accordance with any other instructions provided by the Owner User, including concerning matters such as options to renew, rent increases, outgoings recoverable from the tenant, the sum and nature (e.g. by cash or bank guarantee) of any bond to be provided by the tenant, the requirement for guarantors of the tenant and tenant's public risk and other insurances.

b. unless otherwise instructed by the Owner User, the Owner User authorises the Agent User to and the Agent User must:

- i. arrange inspections of the property by prospective tenants;
- ii. obtain references from prospective tenants;
- iii. provide their opinion as to the most suitable tenant, but not choose one;
- iv. arrange for any bond to be received from the tenant, and, if required by law, lodged with the relevant authority;
- v. collect the initial period of the Rent; and

- vi. undertake an inspection of the Property after the tenant has taken possession of the Property.
- c. the Agent User must not enter into and/or sign any lease with a tenant in respect of the Property, unless it is with the prior consent and authority in writing of the Owner User.

88. If the Property is to be managed upon the Property having been leased:

- a. unless otherwise instructed by the Owner User, the Owner User authorises the Agent User to and the Agent User must:
 - i. collect the Rent;
 - ii. undertake inspections of the Property from time to time, including for the purposes of ensuring that the tenant is in compliance with the terms of the lease;
 - iii. identify repairs and work for the maintenance of the Property to ensure that it remains in a tenable state of repair and in so doing obtain quotes from tradespersons and before engaging any tradesperson to effect the repairs and/or work obtain the prior consent and authority of the Owner User as to the scope and cost of the repairs and/or work;
 - iv. with the prior consent and authority of the Owner User pay from the Rent the cost of any services obtained by the Agent User on behalf of the Owner User in connection with the management of the Property;
 - v. pay from the Rent the outgoings of the Property;
 - vi. account to the Owner User monthly by mail or electronic communication in respect of money received by the Agent User on behalf of the Owner User;
 - vii. review the Rent;
 - viii. identify breaches of the lease and, with the prior consent and authority of the Owner User, serve notices of breach and/or termination of lease on the tenant;
 - ix. identify potential claims against any bond provided by the tenant and, with the prior consent and authority of the Owner User, take action to recover from the bond any sum of money claimed; and
 - x. obtain and/or take vacant possession of the Property as and when required;
- b. the Owner User may engage the Agent User by separate agreement to:
 - i. recover any money owing in relation to the tenancy that is not already an obligation of the Agent User under the Agency Agreement; and
 - ii. represent the Owner User in any tribunal or court proceedings in respect of the tenancy of the property.
- c. the Owner User and Agent User may agree to lease the Property again, should it

become vacant, in which case the same terms relating to the lease of the Property in the Agency Agreement will apply.

--start jurisdictional requirements--

Jurisdictional Requirements - ACT

89. If the Property is in the Australian Capital Territory and the job relates to the sale of property:
- a. the Agent User must not start acting on behalf of the Owner User on the sale of the Property until the Agent User has conducted a preliminary physical inspection of the Property;
 - b. the Agent User must as soon as practicable conduct a preliminary physical inspection of the Property and give to the Owner User a sales inspection report for the Property;
 - c. the Owner User may rescind the Agency Agreement in the event that the Agent User fails to conduct a preliminary physical inspection of the Property and give to the Owner User a sales inspection report for the Property within 7 days of the agent User and Owner User having entered into the Agency Agreement; and
 - d. and if the Property is a residential property and if the duration of the Agency Agreement is for a fixed term that is longer than 90 days, then despite any other provision of the Agency Agreement, the Owner User may end the Agency Agreement (without penalty) by giving 30 days written notice (or such shorter period of notice as has been agreed) to the Agent User at any time after the end of the first 90 days of the term.

Jurisdictional Requirements - CA

90. If the Property is in California and the job relates to the sale of property:
- a. and if the Agency Agreement is an exclusive agency or a sole agency the Agency Agreement remains in force until terminated by either the Owner User or the Agent User and otherwise terminates upon the effluxion of 90 days from its commencement whereupon:
 - i. the Owner User may at the Owner User's option re-appoint the Agent User on the same terms as the Agency Agreement ("CA Further Agency Agreement") subject to:
 - A. the parties to the CA Further Agency Agreement agreeing that, despite anything to the contrary, the CA Further Agency Agreement remains in force until terminated by either the Owner User or the Agent User and otherwise terminates upon the effluxion of 90 days from its commencement; and
 - B. the parties to the CA Further Agency Agreement, despite anything to the contrary, being able to end the CA Further Agency Agreement for any reason and without penalty effective upon written notice having been

given to the other party; and

- ii. the Owner User will have been deemed to have exercised the above option without the requirement for any notice to the Agent User unless the Owner User notifies the Agent User in writing that it will not exercise the option;
- b. the Owner User acknowledges that it has been provided with a copy of the "Disclosure Regarding Real Estate Agency Relationship" required by Civil Code § 2079.16 on or before the date the Owner User accepted the Agent User's bid and by accepting the Agent User's bid the Owner User acknowledges it has executed the "Disclosure Regarding Real Estate Agency Relationship";
- c. provided the Owner User has approved of their contents, the Owner User must execute and return disclosure documents delivered to the Owner User by the Agent User; and
- d. the provisions of the Agency Agreement prevail in the event of any inconsistency between the Agency Agreement and any disclosure document executed by the Owner User.

Jurisdictional Requirements - NSW

91. If the Property is in New South Wales and the job relates to the sale of property:
- a. the Owner User's email address in their profile is their address for electronic service;
 - b. the Agent User must not start acting on behalf of the Owner User on the sale of the Property until the Agent User has conducted a preliminary physical inspection of the Property;
 - c. the Agent User must as soon as practicable conduct a preliminary physical inspection of the Property and give to the Owner User a sales inspection report for the Property;
 - d. the Owner User may rescind the Agency Agreement in the event that the Agent User fails to conduct a preliminary physical inspection of the Property and give to the Owner User a sales inspection report for the Property within 7 days of the agent User and Owner User having entered into the Agency Agreement;
 - e. and if the Property is a residential property and if the duration of the Agency Agreement is for a fixed term that is longer than 90 days, then despite any other provision of the Agency Agreement, the Owner User may end the Agency Agreement (without penalty) by giving 30 days written notice (or such shorter period of notice as has been agreed) to the Agent User at any time after the end of the first 90 days of the term;
 - f. the Owner User acknowledges that it has been provided with a copy of the approved guide entitled Agency Agreements for the Sale of Residential Property on or before the date the Owner User accepted the Agent User's bid; and
 - g. and if the Property is a residential or rural property, the cooling-off statement applies, but does not otherwise apply.

Jurisdictional Requirements - NT

(none)

Jurisdictional Requirements - QLD

92. If the Property is in Queensland and the job relates to the sale of property:

a. and if Part 4 of the Property Occupations Act 2014 applies to the Agent User, then the provisions of Form 6 of the Property Occupations Act 2014 are incorporated in the Agency Agreement with the following modifications:

- i. Part 1 is deemed to contain the Owner User's Profile;
- ii. Part 2 is deemed to contain the Agent User's Profile;
- iii. Part 3 is deemed to contain the information about the Property;
- iv. For Part 4 Section 1 the "Sale" checkbox is deemed to be ticked and if the Property is to be sold by Auction, the "Auction" checkbox is deemed to be ticked in addition and the Auction date is deemed to be the first Saturday following 4 weeks from the date of the Agency Agreement;
- v. For Part 4 Section 2:
 - A. if the Agency Agreement is an exclusive agency or a sole agency, the "Single appointment for a particular service or services" checkbox is deemed to be ticked and the end date is deemed to be the date being 90 days from the start date (where the start date is the first day of the 90 days);
 - B. if the Agency Agreement is not an exclusive agency or sole agency, the "Continuing appointment for a service or a number of services over a period" checkbox is deemed to be ticked;
 - C. the start date is the date on which the Owner User accepts the Agent User's bid for the Owner User's job; and
 - D. for the avoidance of doubt, the Agency Agreement remains in force until it is terminated either upon the expiration of the end date or earlier by notice in accordance with these Agency Agreement Rules;
- vi. Part 4 Section 3 is deleted;
- vii. Part 4 Section 4 is deemed to contain these Agency Agreement Rules;
- viii. Part 5 is deleted;
- ix. For Part 6:
 - A. if the Agency Agreement is an open agency, the "Open listing" checkbox is deemed to be ticked;

- B. if the Agency Agreement is a sole agency, the "Sole" checkbox is deemed to be ticked; or
- C. if the Agency Agreement is an exclusive agency, the "Exclusive" checkbox is deemed to be ticked;
- D. the "Do Not Agree" checkbox is deemed to be ticked;
- x. Part 7 is deleted and for the avoidance of doubt commission is payable in accordance with these Agency Agreement Rules;
- xi. Part 8 is deemed to contain the Related Services and the Reimbursement; and
- b. If the Property is to be sold by way of Auction the Owner User and the Agent User may agree in writing on another date for the Auction to occur.

Jurisdictional Requirements - SA

93. If the Property is in South Australia and the job relates to the sale of property:
- a. for the purposes of Section 20(1)(a) of the Land and Business (Sale and Conveyancing) Act 1994 the Agent User's genuine estimate of the selling price is deemed to be the Agent User's upper price estimate for the Property;
 - b. for the purposes of Section 20(1)(b) of the Land and Business (Sale and Conveyancing) Act 1994 the Owner User's sought after or acceptable selling price is the Agent User's upper price estimate of the Property;
 - c. the Agency Agreement remains in force until terminated by either the Owner User or the Agent User and, unless Regulation 19(5) of the Land and Business (Sale and Conveyancing) Regulations 2010 applies, otherwise terminates upon the effluxion of 90 days from its commencement in accordance with Section 20(1)(c)(ii) of the Land and Business (Sale and Conveyancing) Act 1994 and Regulation 19(1) of the Land and Business (Sale and Conveyancing) Regulations 2010;
 - d. the chattels that are included are the Property's fixed floor coverings, light fittings, and window treatments excluding all other chattels, unless the Owner User otherwise notifies the Agent User in writing;
 - e. the agent has no authority to accept an offer for the Property on behalf of the Owner User, unless the Owner User subsequently authorises the Agent User in writing; and
 - f. The Agent User warrants to the Owner User that the Agent User will:
 - i. comply with the Agent User's obligations under the Land and Business (Sale and Conveyancing) Act 1994 and the regulations made under it; and
 - ii. act in the Owner User's best interests.

Jurisdictional Requirements - TAS

94. If the Property is in Tasmania and the job relates to the sale of property:

- a. the Agent User and the Owner User acknowledge the effect of Section 18(8) of the Property Agents and Land Transactions Act 2005 and agree that, upon the expiration of the 90 days referred to in that section and so long as the Agency Agreement has not otherwise ended:
 - i. the Owner User may at the Owner User's option re-appoint the Agent User on the same terms as the Agency Agreement ("TAS Further Agency Agreement") subject to:
 - A. the parties to the TAS Further Agency Agreement agreeing that, despite anything to the contrary, the TAS Further Agency Agreement remains in force until terminated or the expiration of the 90 days referred to in Section 18(8) of the Property Agents and Land Transactions Act 2005; and
 - B. the parties to the TAS Further Agency Agreement, despite anything to the contrary, being able to end the TAS Further Agency Agreement for any reason and without penalty effective upon written notice having been given to the other party; and
 - ii. the Owner User will have been deemed to have exercised the above option without the requirement for any notice to the Agent User unless the Owner User notifies the Agent User in writing that it will not exercise the option;
- b. and if the Property is a residential property, the cooling-off statement applies, but does not otherwise apply.

Jurisdictional Requirements - UK

95. If the Property is in the United Kingdom and the job relates to the sale of property:
- a. the Agent User:
 - i. represents and warrants to the Owner User that it is not the subject of an order under Section 3 of the Estate Agents Act 1979; and
 - ii. represents and warrants to the Owner User that it is not barred from performing its obligations under the Agency Agreement by virtue of Section 23 of the Estate Agents Act 1979;
 - b. the Owner User expressly requests the Agent User to commence performing its obligations under the Agency Agreement despite there being imposed any cancellation period provided for in regulation 30(1) of The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013;
 - c. the Owner User and Agent User acknowledge and agree that the provisions of regulations 36(4)-(5) of The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013:
 - i. do not entitle the Agent User to the Remuneration or any proportion of it unless the terms of the Agency Agreement operate to entitle the Agent User to the Remuneration; and

- ii. may apply with respect to the Reimbursement.

Jurisdictional Requirements - VIC

96. If the Property is in Victoria and the job relates to the sale of property:

- a. the Owner User acknowledges that before it entered into the Agency Agreement it was informed by the Agent User that the Remuneration to be paid to the Agent User and the Reimbursement were subject to negotiation;
- b. the Owner User acknowledges that the Agent User has advised the Owner User that the Agent User has procedures for resolving complaints and disputes; and
- c. the Owner User and the Agent User acknowledge that Section 54(1) of the Estate Agents Act 1980 states "If an agreement stating that an estate agent is to act as the sole agent for the sale of any real estate or business does not state when the sole agency is to end, the sole agency ends – (a) in the case of a sale by auction, 30 days after the date of the auction; (b) in any other case, 60 days after the date of the agreement is signed by, or on behalf of, the seller of the real estate or business."

Jurisdictional Requirements - WA

97. If the Property is in Western Australia and the job relates to the sale of property:

- a. the Owner User and the Agent User acknowledge that the Remuneration is not pursuant to a scale fixed by law but has been agreed upon between the Owner User and the Agent User; and
- b. the Owner User acknowledges that the Owner User may seek assistance from the Commissioner responsible for the Real Estate and Business Agents Act 1978 in relation to disputes as to the commission, reward or other valuable consideration to be received by the Agent User.

Jurisdictional Requirements - NZ

98. If the Property is in New Zealand and the job relates to the sale of property:

- a. The Owner User, having accepted the Agent User's bid by clicking the "Accept Bid" (or similarly worded) button, acknowledges having been given the approved guide under Section 127 of the Real Estate Agents Act 2008;
- b. Unless the Agent User provides a different statement to the Owner User, the Owner User acknowledges having received the following statement from the Agent User:

Form 1

Agent's statement relating to rebates, discounts, and commissions

Section 128, Real Estate Agents Act 2008

Note: This form must be included in every agency agreement.

I, the agent, confirm that, in relation to any expenses for or in connection with any real estate agency work carried out by me for the client(s) in connection with the transaction covered by this agency agreement,—

(a) I will not receive, and am not entitled to receive, any rebates, discounts or commissions.

~~(b) I will receive, or am permitted to receive, the rebates, discounts and commissions specified below.~~

Date: the day the Agent User made its last bid on the Owner User's job

Signature: effectively signed by the Agent User by clicking the "Submit" (or similarly worded) button in relation to the Agent User's last bid on the Owner User's job

(agent)

Note

Expenses means any sum or reimbursement for expenses or charges incurred in connection with services provided by an agent in the capacity of agent.

- c. In relation to the Agency Agreement, the Owner User acknowledges that it has had a reasonable opportunity to obtain:
 - i. legal advice; and
 - ii. technical or other advice and information;
- d. the Owner User acknowledges that before it entered into the Agency Agreement it was not obliged to agree to the Reimbursement;
- e. the Owner User acknowledges that before it entered into the Agency Agreement it was aware that further information on agency agreements and contractual documents is available from the Real Estate Authority accessible from <http://www.rea.govt.nz>.

--end jurisdictional requirements--

Duration

- 99. Unless the Agent User and the Owner User otherwise agree that the Agency Agreement ends on a specified date or after a duration of days, the Agency Agreement remains in force until terminated.
- 100. Unless the parties to the Agency Agreement otherwise agree that a period of notice is required, either the Owner User or the Agent User may end the Agency Agreement for any reason and without penalty effective upon giving written notice to the other party.

Reimbursement

- 101. The Owner User must pay to the Agent User upon demand or the termination of the Agency Agreement the Reimbursement for the Related Services, provided that the Agent User has

reasonably accounted to the Owner User for the expenses or charges incurred by the Agent User in relation to the Related Services.

102. The Related Services and the Reimbursement can be varied only with the agreement in writing of the Owner User.

Remuneration

103. The Agent User is entitled to the Remuneration (whichever kind is applicable) if:

a. where the Agency Agreement is an exclusive agency for the sale of the Property:

- i. the Property is sold while the Agency Agreement remains in force by the Agent User, by any other agent, or by any person (including the Owner User); or if
- ii. after the Agency Agreement has ended, the Property is sold to a buyer introduced to the Owner User or the Property while the Agency Agreement remained in force by the Agent User, by any other estate agent, or by any person (including the Owner User). Despite any other provision of the Agency Agreement the parties to the Agency Agreement agree that this provision is not extinguished and will remain in force;

b. where the Agency Agreement is an exclusive agency for the lease of the Property:

- i. the Property is leased while the Agency Agreement remains in force by the Agent User, by any other agent, or by any person (including the Owner User); or if
- ii. after the Agency Agreement has ended, the Property is leased to a tenant introduced to the Owner User or the Property while the Agency Agreement remained in force by the Agent User, by any other estate agent, or by any person (including the Owner User). Despite any other provision of the Agency Agreement the parties to the Agency Agreement agree that this provision is not extinguished and will remain in force;

c. where the Agency Agreement is a sole agency for the sale of the Property:

- i. the Property is sold while the Agency Agreement remains in force by the Agent User, by any other agent, or by any person (excluding the Owner User); or if
- ii. after the Agency Agreement has ended, the Property is sold to a buyer introduced to the Owner User or the Property while the Agency Agreement remained in force by the Agent User, by any other estate agent, or by any person (excluding the Owner User). Despite any other provision of the Agency Agreement the parties to the Agency Agreement agree that this provision is not extinguished and will remain in force; and
- iii. for the avoidance of doubt, the Agent User is not entitled to the Fixed Commission or the % Commission if the Property is sold by the Owner User;

d. where the Agency Agreement is a sole agency for the lease of the Property:

- i. the Property is leased while the Agency Agreement remains in force by the Agent User, by any other agent, or by any person (excluding the Owner User); or if
 - ii. after the Agency Agreement has ended, the Property is leased to a tenant introduced to the Owner User or the Property while the Agency Agreement remained in force by the Agent User, by any other estate agent, or by any person (excluding the Owner User). Despite any other provision of the Agency Agreement the parties to the Agency Agreement agree that this provision is not extinguished and will remain in force; and
 - iii. for the avoidance of doubt, the Agent User is not entitled to the Letting Fee if the Property is sold by the Owner User;
- e. where the Agency Agreement is an open agency for the sale of the Property:
 - i. the Property is sold while the Agency Agreement remains in force by the Agent User; or if
 - ii. after the Agency Agreement has ended, the Property is sold to a buyer introduced to the Owner User or the Property while the Agency Agreement remained in force by the Agent User. Despite any other provision of the Agency Agreement the parties to the Agency Agreement agree that this provision is not extinguished and will remain in force; and
 - iii. for the avoidance of doubt, the Agent User is not entitled to the Fixed Commission or the % Commission if the Property is sold by any other person (including the Owner User).
- f. where the Agency Agreement is an open agency for the lease of the Property:
 - i. the Property is leased while the Agency Agreement remains in force by the Agent User; or if
 - ii. after the Agency Agreement has ended, the Property is leased to a tenant introduced to the Owner User or the Property while the Agency Agreement remained in force by the Agent User. Despite any other provision of the Agency Agreement the parties to the Agency Agreement agree that this provision is not extinguished and will remain in force; and
 - iii. for the avoidance of doubt, the Agent User is not entitled to the Letting Fee if the Property is sold by any other person (including the Owner User).
- g. where the Agency Agreement is for the management of the Property:
 - i. the Agent User has collected the Rent; and
 - ii. in relation to any periodic fixed sum to which the Agent User may be entitled, the Agent User has collected the Rent within such period.

104. For the avoidance of doubt, where the Agency Agreement is for the sale of the Property, the Agent User is not entitled to the Remuneration where the sale of the Property is not

completed.

105. If the Agent User becomes entitled to the Remuneration, the Owner User must pay the Remuneration at the Agent User's direction.
106. The Remuneration includes any and all consumption taxes (e.g. GST or VAT).
107. The Agent User and the Owner User acknowledge and agree that the Offering Price is an estimate and that any representation of indicative commission based on the Offering Price will not necessarily be the Remuneration.

Conjunction

108. The Agent User may allow other agents to act in conjunction with the Agent User and to share the Remuneration with other agents. For the avoidance of doubt, this clause does not act as consent from the Owner User to the Agent User, their associate, employer or related corporation acting as agent for any actual or prospective:
 - i. buyer of the Property, where the Agency Agreement is for the sale of the Property; or
 - ii. tenant of the Property, where the Agency Agreement is for the lease of the Property.

Dual Agency

109. The Agent User must obtain the consent of the Owner User before the Agent User, their associate, employer or related corporation may act for any actual or prospective:
 - i. buyer of the Property, where the Agency Agreement is for the sale of the Property; or
 - ii. tenant of the Property, where the Agency Agreement is for the lease of the Property.

Assignment

110. The Agent User is not permitted to assign the Agency Agreement.

Applicable Law

111. The Agency Agreement will be governed by and construed and interpreted in accordance with the laws of the jurisdiction in which the Property is located, or otherwise at the election of the parties by mutual consent.

Jurisdiction

112. The parties to the Agency Agreement irrevocably submit to the exclusive jurisdiction of the courts of the jurisdiction in which the Property is located, or otherwise at the election of the parties by mutual consent.