



## Appointment and reappointment of a property agent, resident letting agent or property auctioneer

Property Occupations Act 2014

This form is effective from 1 August 2016

ABN: 13 846 673 994

### Part 1—Client details

#### Client 1

Note: The client is the person or entity appointing the agent to provide the services. This may be the owner (or authorised representative of the owner) of the land, property or business that is to be sold or may be a prospective buyer seeking to purchase land or a property.

Client name

ABN

ACN

Are you registered for GST?  Yes  No

Address .....

.....

Suburb ..... State    Postcode

Phone..... Fax..... Mobile.....

Email address .....

#### Client 2

Note: Annexures detailing additional clients may be attached if required.

Client name

ABN

ACN

Are you registered for GST?  Yes  No

Address .....

.....

Suburb ..... State    Postcode

Phone..... Fax..... Mobile.....

Email address .....

### Part 2—Licensee details

#### Licensee type

More than one box may be ticked if appropriate.

Note: Annexures detailing conjuncting agents may be attached if required.

#### Licensee name

Where a corporation licensee is to be appointed, state the corporation's name and licence number.

Where a sole trader is to be appointed, state the individual's name and licence number.

Real estate agent  Resident letting agent  Property auctioneer

Trading name **RightWay Realty** .....

Licensee name (corporation, if applicable)

**Tony Tran** .....

ABN

ACN

Licence number **3399549** ..... Expiry **26 / 08 / 2019** .....

Address **2/23 Railway Parade** .....

Suburb **Darra** ..... State    Postcode

Phone **( 07 ) 3375 7766** ..... Fax **( 07 ) 3375 6611** ..... Mobile.....

Email address **rentals@rightwayrealty.com.au** .....

## Part 3—Details of property or business that is to be sold, let, purchased, or managed

Please provide details of the property, land, or business as appropriate.

Note: Annexures detailing multiple properties may be attached if required.

Description .....

Address .....

Suburb ..... State  Postcode

Lot ..... Plan.....

Title reference .....

## Part 4—Appointment of property agent

### Section 1

#### Performance of service

Annexures detailing the performance of service may be attached if required.

The client appoints the agent to perform the following service/s:

- Sale       Purchase       Letting / collection of rent / management
- Leasing (Commercial agents)
- Auction      Auction date  /  /  (must be completed)
- Other (please specify) .....

### Section 2

#### Term of appointment

**Sole and exclusive appointments:** for sales of one or two residential properties, the term is negotiable and agent can be appointed or reappointed up to a maximum of 90 days per term. There are no limitations on the length of an appointment for anything other than a residential property sale.

- Single appointment for a particular service or services
- Start  /  /       End  /  /
- Continuing appointment for a service or a number of services over a period
- Start  /  /

### Section 3

#### Price

State the price for which the property, land or business is to be sold or let.

Note: Bait advertising is an offence under the Australian Consumer Law.

- Reserve       List       Letting
- \$.....
- For auctions: If a reserve price is unknown at the time of appointment, it can be advised *in writing* at a later date.
  - For residential property auctions and residential properties to be marketed without a price: If the client agrees to marketing via an *electronic listing provider*, the client agrees for the agent to disclose to the *electronic listing provider* a price or price range of
- \$..... to establish a search criteria.

### Section 4

#### Instructions/conditions

The client may list any condition, limitation or restriction on the performance of the service.

Note: Annexures detailing instructions/conditions may be attached if required.

## Part 5—Termination of appointment

|   |   |
|---|---|
| <b>Residential sales of 1 or 2 properties only</b>                                | <b>Open listing:</b> You may terminate in writing at any time.<br><b>Sole or exclusive:</b> The client and agent can agree in writing to end the appointment early. For appointments of 60 days or more, either party can end the appointment by giving 30 days written notice, but the appointment must run for at least 60 days unless both parties agree to an earlier end date. |
| <b>Open listing</b>   | You may terminate an open listing for either commercial or residential property sales at any time.  |
| <b>Other fixed term appointments</b><br>(excluding residential property sales)    | The parties may agree to a fixed term appointment of their choice. This term may be ended earlier by mutual agreement.  |
| <b>Continuing appointments</b><br>(for example: letting, collection of rents etc) | You may terminate in writing with 30 days notice, or less if both parties agree.  |

## Part 6—PROPERTY SALES: open listing, sole agency or exclusive agency

### To the client

You may appoint an agent to sell a property or land on the basis of an open listing, or a sole agency, or exclusive agency.

The following information explains the circumstances under which you will, and won't, have to pay a commission to the agent if the property is sold during their term of appointment.

### OPEN LISTING

- You appoint the agent to sell the property but you retain a right to appoint other agents on similar terms, without penalty or extra commission.
- No end date required.
- Appointment can be ended by either you or the agent at any time by giving written notice.

#### When you must pay the agent

- The agent is entitled to the agreed commission if the agent is the effective cause of sale.

#### When you don't have to pay the agent

- If the client sells the property privately and the agent is not the effective cause of sale i.e.: purchaser did not contact the agent, did not attend open house inspections etc.

### SOLE AGENCY

#### When you must pay the agent

- If you appoint a new agent during an existing agent's sole agreement term and the property is sold during that term, you may have to pay:
  - A commission to each agent (two commissions)
  - Damages for breach of contract arising under the existing agent's appointment

#### When you don't have to pay the agent

- If the client sells the property privately and the agent is not the effective cause of sale i.e.: purchaser did not contact the agent, did not attend open house inspections etc.

### EXCLUSIVE AGENCY

#### When you must pay the agent

- The client will pay the appointed agent whether this agent, any other agent, or person (including the client themselves) sells the property during the term of the appointment.
- If the client sells the property, after the exclusive appointment expires and if the agent was the effective cause of sale (introduced the buyer to the property) the agent may be entitled to commission.

At the end of the sole or exclusive agency, the parties  Agree  Do not agree  
that the appointment will continue as an open listing. (Please tick whichever is relevant)

**Part 6—PROPERTY SALES:** open listing, sole agency or exclusive agency continued

**Acknowledgement for sole and exclusive agency**

I/we acknowledge the appointed agent has provided me/us with information about sole and exclusive agency appointments.

Client .....

Date   /   /      
D D M M Y Y Y Y

Agent .....

Date   /   /      
D D M M Y Y Y Y

**Part 7—Commission**

**To the client**

The commission is negotiable. It must be written as a percentage or dollar amount.

Make sure you understand when commission is payable. If you choose 'Other' and the contract does not settle, the agent may still seek commission.

**To the agent**

You should ensure that commission is clearly expressed and the client fully understands the likely amount and when it is payable. Refer to section 104 and 105 of the *Property Occupations Act 2014*.

The client and the agent agree that the commission including GST payable for the service to be performed by the agent is:

**Refer Item A (Commission) of the attached Item Schedule**

**When commission is payable**

For sales, including auctions, commission is payable if a contract is entered into and settlement of the contract occurs.

Other **Refer Terms of Appointment Clause 8** .....  
(for specific other circumstances in which commission is payable see annexure).

For all other types of appointments:

This area has been intentionally left blank.

## Part 8—Authorisation to incur fees, charges and expenses

The client authorises the agent to incur the following expenses in relation to the performance of the service/s. Annexures may be attached if required.

|  |  |  |  |
|--|--|--|--|
| <p><b>Section 1</b><br/><b>Advertising/marketing</b></p> <p><b>To the client</b><br/>Your agent may either complete this section or attach annexures of marketing/advertising activities. In either case, the <i>authorised amount</i> must be written here.</p> | <p>Authorised amount \$ .....</p> <p>When payable .....</p>  |  |  |
| <p><b>Section 2</b><br/><b>Repairs and maintenance</b><br/>(if applicable)<br/><b>Property management</b></p>  | <p>The maximum value of repairs and maintenance to be paid by the agent without prior approval by the client is \$ .....</p> |  |  |
| <p><b>Section 3</b><br/><b>Other</b><br/>Description of fees and charges.<br/><br/>The agent may either complete this section or attach annexures.</p>   | <p><b>Description</b></p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>  | <p><b>Amount</b></p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> | <p><b>When payable</b></p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>     |
| <p><b>Section 4</b><br/><b>Agent's rebate, discount, commission or benefit incurred in the provision of or performance of the service</b></p>  | <p><b>Service</b></p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>  | <p><b>Source</b></p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> | <p><b>Estimated amount</b></p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> |

This area has been intentionally left blank.

## Part 9—Signatures

### WARNING: THE CLIENT IS ADVISED TO SEEK INDEPENDENT LEGAL ADVICE BEFORE SIGNING THIS FORM.

This form enables the client to appoint, or reappoint, a property agent, resident letting agent or property auctioneer (the 'agent') for the sale, letting/management, collection of rent, auction or purchase of real property, land or businesses. This form must be completed and given to the client before the agent performs any service for the client. Failure to do so may result in a penalty and loss of commission for the agent. If you are unclear about any aspect of this form, or the fees you will be charged, do not sign it. Seek legal advice. If you need more information about this form including what an agent needs to disclose, you can visit the Office of Fair Trading website at [www.qld.gov.au/fairtrading](http://www.qld.gov.au/fairtrading) or phone on **13 QGOV** (13 74 68).

|  |  |
|--|--|
| <b>Client 1</b>  | Full name<br><br>Signature ..... <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> |
| <b>Client 2</b>  | Full name<br><br>Signature ..... <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> |
| <b>Agent</b><br>A registered real estate salesperson working for an agency can sign this form on behalf of the licensed agent. | Full name<br><br>Signature ..... <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> |
| <b>Schedules and attachments</b><br>List any attachments.  | <b>Refer attached 'Item Schedule' and 'Terms of Appointment'</b>   |

## Part 10—Reappointment

|   |   |
|---|---|
| Use this section to reappoint your agent. A new appointment form is required if any of the terms or conditions are to change. Your agent can only be reappointed within 14 days before the contract ends—not before.<br><br>Limitations apply on reappointments for sole or exclusive agency appointments for residential property sales. | I/we (the client) reappoint .....<br>..... (the agent) to <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/><br><br>Client's name.....<br>.....<br>Signature ..... <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/><br><br>Client's name.....<br>.....<br>Signature ..... <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> |
|---|---|

This area has been intentionally left blank.

**This is the end of the approved form. Please note, any annexures/schedules form part of the appointment contract.**

## Item Schedule - Residential Sales

(being a schedule to and forming part of the approved Property Occupations Form 6)

### Item

#### A. COMMISSION *(Payable in accordance with Property Occupations Form 6 Part (7))*

*Clauses 4(2) and 8*

The Agent's Commission will be calculated using one of the Commission Methods set out in Item A(2):

1. Estimated Sale Price: \$ ..... **0** (Including GST if applicable)
2. Commission Method: *(tick only one)*
  - ..... % (incl. GST) of the Sale Price
  - ..... % (incl. GST) of the first \$ ..... of the Sale Price plus ..... % (incl. GST) of the balance
  - Fixed Amount of \$ ..... (incl. GST)
  - Other: .....
3. Commission Amount: \$ ..... plus GST of \$ ..... **Total Payable:** \$ ..... (incl. GST)

**Note:** Where the commission is expressed as a percentage (Item A(2)) the Commission Amount (Item A(3)) is an estimated amount calculated on the Estimated Sale Price (Item A(1)) and the actual commission for this service will be worked out only on the actual sale price.

#### B. BENEFICIAL INTEREST

*Clause 14*

The Agent has given notice of their intention to acquire Beneficial Interest.  Yes  No

#### C. CONJUNCTING / JOINT AGENT/S *(Complete if applicable)*

The Agent named in Part (2) of the attached Property Occupations Form 6 is acting **in conjunction / jointly** with the Agent/s below:

Conjuncting/Joint Agent: .....

Licence No.: ..... Licence Expiry: ..... / ..... / .....

Terms: .....

#### D. CONJUNCTIONAL SALES

*Clause 6*

*(Where Item C indicates a conjunction agreement exists Item D will authorise conjunction unless the contrary is clearly specified)*

The Agent **is / is not** authorised to conjunct with other agents for a Conjunctional Sale of the Property for the duration of this Appointment.

**Commission Apportionment as a %:** *(if not completed commission will be apportioned equally)*

**Appointment Agent:** ..... % **Conjuncting Agent:** ..... %

#### E. SALE PRICE INFORMATION

*Clause 3*

The Client confirms prior to granting this Appointment the Client **did / did not** ask the Agent for information about the likely sale price of the property.

**Note:** Where the Client has asked for information about the likely sale price of the property the Agent must, if providing such information, give to the Client;

- a) a Comparative Market Analysis; or
- b) a written explanation of Market Value.

#### F. CLIENT'S AUTHORISATION TO AGENT

The Client instructs the Auctioneer or Agent, if requested by a potential buyer, to provide a copy of any existing Comparative Market Analysis or a written explanation of market value:  Yes  No

#### G. MANAGING AGENT

*Clause 7.1*

Name: ..... ABN: .....

Address: ..... Phone: .....

Fax: .....

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

#### H. CLIENT'S SOLICITOR

Name: ..... ABN: .....

Address: ..... Phone: .....

Fax: .....

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



**I. TERMINATION PENALTY APPORTIONMENT**

Clause 15

**Termination Penalty Apportionment as a %:** (if not completed penalty will be apportioned equally)

**Appointment Agent:** \_\_\_\_\_ % **Seller:** \_\_\_\_\_ %

**J. AUCTION** (only complete if the premises is to be sold by Public Auction)

Clause 10

Date: (see Part (4.1) of the Property Occupations Form 6) Time: \_\_\_\_\_

Place: \_\_\_\_\_

Auctioneer's Fee: (**MUST** be included in Part (8.3) of the Property Occupations Form 6 as an expense)

Reserve Price: (see Part (4.3) of the Property Occupations Form 6)

Auction Conditions:

Sale is subject to cash settlement 30 days from the Contract Date.

Other: \_\_\_\_\_

**K. INSPECTIONS**

Open House:  Yes  No Inspection Times: \_\_\_\_\_

**L. EXCLUDED ITEMS**

Fixtures:

\_\_\_\_\_

**M. INCLUDED ITEMS**

Chattels: (eg. dishwashers, microwaves)

\_\_\_\_\_

**N. CLIENT'S PUBLIC LIABILITY INSURANCE**

Clause 11.1(2)

Prior to signing the Client should provide, to the Agent, proof and details of current Public Liability Insurance, as listed below.

Insurer: \_\_\_\_\_ Policy No.: \_\_\_\_\_ Expiry Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

**O. NEIGHBOURHOOD DISPUTES (DIVIDING FENCES AND TREES) ACT (CHP 3) - APPLICATIONS OR ORDERS**

Clause 11.3

Are there currently any applications or orders under Chapter 3 of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* affecting the Property:  Yes  No

Copies must be provided to the Agent, including those made during the term of this Appointment.

**P. PHOTOGRAPH CONSENT**

Clause 13

The Agent is authorised to take photographs of the Property for use in advertising the sale of the Property:  Yes  No

Please specify any specific instructions regarding the content of such photos in Part (4.4) of the Property Occupations Form 6.

**Q. PRIOR APPOINTMENT (The Client MUST complete this Item)**

1. **Statement to Client:** If you have already appointed a property agent (Previous Appointment) and the Previous Appointment has not ended in accordance with the *Property Occupations Act 2014*, by signing this appointment you may have to pay the following:

- a) a commission under each appointment.
- b) damages for breach of contract under the existing agents appointment.

2. **The Client confirms that:** (Tick one box only)

- a)  **No other Appointment** of Property Agent is current for the services outlined in this Appointment.  
OR
- b)  **Another Appointment** of Property Agent is current for the services outlined in this Appointment.

3. Where the Client has ticked option 2(b) above, by signing this appointment the Client acknowledges and confirms the content of the Prior Appointment Item Q(1).



**R. ACKNOWLEDGEMENT - SOLE OR EXCLUSIVE AGENCY**

Where this is an appointment of a property agent for a sole or exclusive agency, by signing this Appointment the Client confirms prior to signing the appointment:

- (a) having been given by the agent the prescribed Property Occupations Form 6, Parts 5 and 6 of which provide information about sole and exclusive agency appointments; and
- (b) that the agent discussed with them the following matters:
  - (i) whether the appointment is to be for a sole agency or an exclusive agency; and
  - (ii) the proposed term of the appointment; and
  - (iii) for an appointment for the sale of residential property other than commercial scale appointment, the client's entitlement to negotiate the term of the appointment up to a maximum term of 90 days; and
  - (iv) the consequences for the client if the property is sold by someone other than the agent during the term of the appointment.

**S. CAPITAL GAINS WITHHOLDING PAYMENT (To be completed by the Client, as Seller)**

**Note:** For properties with a market value of, at or more than, \$2,000,000 a Buyer must withhold 10% of the purchase price and pay such monies to the Australian Taxation Office (ATO) on or before settlement, unless the Seller has obtained a Clearance Certificate from the ATO (*Taxation Administration Act 1953 (Cth)* - Subdivision 14-D). If this Property is likely to sell for \$2,000,000 or more and the Seller is an Australian Resident it would be advisable for the Seller to obtain a Clearance Certificate from the ATO to prevent purchase monies being withheld.

Has the Client received from the ATO a:

Clearance Certificate:  Yes  Have Applied on: ..... / ..... / .....  N/A

**T. SIGNATURES**

**WARNING: By signing this Appointment the parties confirm that no legal advice as to the conditions contained herein was provided by the Agent. The parties have been advised to seek legal advice with respect to this Appointment.**

**Client A**

Name: .....

Signature: .....

Date: ..... / ..... / .....

**Client B**

Name: .....

Signature: .....

Date: ..... / ..... / .....

**Agent**

Name: .....

Signature: .....

Date: ..... / ..... / .....

**Terms of Appointment - Residential Sales**  
(being a schedule to and forming part of the approved  
Property Occupations Form 6)

**1. Definitions**

In this Schedule the following terms mean:-

- (1) **Act** means *Property Occupations Act 2014* and Regulations thereto.
- (2) **Appointment** means Property Occupations Form 6 Appointment of a Property Agent including Item Schedule, Terms of Appointment and any other annexures.
- (3) **Appointment Commencement Date:** The date as set out in Part (4.2) of the attached Property Occupations Form 6 unless otherwise specified.
- (4) **Beneficial Interest:** a licensee, other than a property developer, is taken to have a beneficial interest in property in each of the cases listed in Section 153 of the Act.
- (5) **Comparative Market Analysis:** a document comparing the offered Property with at least 3 properties sold within the previous 6 months that are of a similar standard or condition to the offered Property and are within 5km of that Property.
- (6) **Conduct Standards:** the Conduct Standards for Licensees and Real Estate Salespersons set out in the Act and Regulations.
- (7) **Conjunction Sale** means a sale conducted in association with another or other Agents.
- (8) **Electronic Document:** means any electronic communication (including Notices) as defined in the *Electronic Transactions (Queensland) Act 2001* including any electronically generated document situated on an external server readily accessible via a link within an electronic communication or other electronically generated document.
- (9) **Related Document:** means any written communication (including Notices), with regard to this matter, between the parties including any Electronic Documents.
- (10) **Relevant Contract:** a contract for the sale of residential property in Queensland, other than a contract formed on a sale by auction (Section 160 of the Act).

**2. Appointment of Agent**

- 2.1 In consideration of and in accordance with the terms of this Appointment, the Client appoints the Agent and its permitted Assigns, and the Agent agrees to sell the Property for the Client. Authority vested in the Agent by this Appointment shall be deemed to be vested in the Agent's authorised employees.
- 2.2 The start date of this Appointment will be that set out in Part (4.2) of the attached Property Occupations Form 6 or if no date is inserted the later of the dates either the Client or the Agent signed this Appointment.
- 2.3 Where details as to the term of appointment are not completed in Part (4.2) of the attached Property Occupations Form 6 this Appointment is a continuing appointment.

**3. List Price**

- 3.1 The Client instructs the Agent to list the Property at the List Price mentioned in Part (4.3) of the attached Property Occupations Form 6.
- 3.2 The Client acknowledges it has not relied on any information provided by the Agent other than those contained in the Comparative Market Analysis or written explanation of market value in arriving at the List Price.

**4. Exclusive Appointment**

If the Client by this Appointment appoints the Agent as Exclusive Agent:

- (1) the Client will for the duration of this Appointment refer any prospective buyers of which the Client becomes aware to the Agent.

- (2) If another party acts for the Client in providing the services set out in this Appointment, the Client will still be responsible for Commission and/or Fees to the Agent as outlined in this Appointment.

**5. Reappointment**

- 5.1 Subject to Clause 5.2 the Client may reappoint the Agent, in the approved form, for a further period under the same terms and conditions by completing Part 10 (Reappointment) of their copy of this Appointment and providing it to the Agent (s111 of the Act).
- 5.2 Where the Appointment is a sole or exclusive agency for the sale of residential property the Client must provide the Reappointment to the Agent not more than 14 days prior to the expiry of this Appointment (s110 of the Act).
- 5.3 Where the Client has in accordance with Clauses 5.1 and (where applicable) 5.2 Reappointed the Agent in the approved form the Parties agree that the Agent has the right to end or revoke the Reappointment by giving written notice to the Client within 7 days after receiving the Reappointment.
- 5.4 Where the Agent ends or revokes the Reappointment the appointment will end:
  - (1) where this appointment has not ended, in accordance with the terms and conditions of the Appointment.
  - (2) where this Appointment has ended and the Reappointment commenced, on service of the written notice required in accordance with Clause 5.3.
- 5.5 Where the Agent does not serve a notice in accordance with Clause 5.3 this will be confirmation of the Agent's acceptance of Reappointment.

**6. Conjunctional Sales**

- 6.1 The Agent has, prior to signing this Appointment, explained to the Client:
  - (1) general issue about a Sale conducted in conjunction with other Agents.
  - (2) the Agent's policy about Conjunctional Sales including the percentage apportionment of Commission between the Agents.
- 6.2 Before agreeing with another Real Estate Agent to conduct a Conjunction Sale, an Agent must:
  - (1) disclose to the Client the name of the other agent with whom the Agent proposes to act
  - (2) advise the other agent of the Client's instructions for the sale.
- 6.3 The percentage apportionment of Commission between the Agents, if a conjunction agreement is to take place, shall be the percentage stated in Item (D).

**7. Managing Agent**

- 7.1 The Client states the Managing Agent for the Property is the person named in Item (G) of the Item Schedule.
- 7.2 Once a Property Agent accepts an appointment to sell a tenanted residential or business property, written notice must be given by the selling Agent immediately to the Managing Agent.
- 7.3 The Managing Agent, once aware of the intention to sell the Property, must notify the tenant in writing of the Property being listed for sale and of the appointment of a Property Agent (Real Estate Agent or auctioneer) to sell the Property.

**8. Commission**

- 8.1 The Client agrees Commission will be due and payable:
  - (a) as detailed in Part (7 - When Commission is Payable) of the attached Property Occupations Form 6;
  - (b) on settlement of the sale; or
  - (c) pursuant to Clause 8.2.
- 8.2 Should an enforceable contract be entered into but not completed due to:
  - (a) any act or omission of the Client; or
  - (b) the Client, as Seller, releasing the Purchaser (by mutual agreement or otherwise) from the Purchaser's contractual obligations; or

(c) the deposit forfeited; in terms of the Sales Contract to the Seller

the Client agrees the Commission is payable to the Agent forthwith. Provided however, where Clause 8.2(c) applies, commission will remain due but monies payable shall (subject to the Seller's rights to claim damages for breach of contract) be limited to the receipted deposit monies.

8.3 The Client authorises and directs the Commission to be paid to the Agent in accordance with this Appointment by the person holding the deposit monies or other monies due under the contract for the sale of the Property, be that the stakeholder or other person as provided herein. This Appointment shall be sufficient authority and discharge for such payment.

8.4 Notwithstanding the monetary amount listed in Part (7) of the Property Occupations Form 6 the amount of Commission will be in accordance with Item (A) of the Item Schedule.

## 9. Fees, Charges and Expenses

The Client will pay all Fees, Charges, Expenses and other outlays owing to or incurred by the Agent in association with this Appointment, as detailed in Part (8) of the attached Property Occupations Form 6. When no date has been inserted payment will be within 7 days.

## 10. Auction

10.1 The Reserve price is the amount stated in Part (4.3) of the attached Property Occupations Form 6 unless otherwise instructed in writing by the Client or any other authorised person prior to the Auction taking place.

10.2 The Agent must not sell the Property if bidding does not reach the Reserve price. Should no Reserve price be given in this Appointment the Reserve price must be given in writing to the Auctioneer before the Auction commences.

10.3 The Auction shall take place on the date specified in Part (4.1) of the Property Occupations Form 6.

10.4 The time and place of the Auction may be determined by the Agent and Owner in writing unless specified in Item (J).

10.5 The Client authorises the Agent to employ a Licensed Auctioneer to carry out the Auction. The fee which the Client must pay is specified in Part (8.3) of the Property Occupations Form 6.

10.6 Should the Property be sold by Auction, the contract will be unconditional for cash with a deposit of 10% payable on the fall of the hammer and settlement within thirty (30) days of the date of the Auction.

10.7 The Terms and Conditions of a Relevant Contract shall be as agreed by the Client and the Agent prior to Auction.

## 11. Client's Obligations and Authority

11.1 The Client warrants:

- (1) it is the owner of the Property, the description in Part (3) of the Property Occupations Form 6 is correct and the Client is authorised to appoint the Agent for sale of the Property.
- (2) it has and will maintain Public Liability Insurance in a sum not less than 10 million dollars.
- (3) all information relevant to the sale of the Property disclosed by the Client to the Agent is correct.

11.2 The Agent is authorised, at the Client's cost, to make enquiries relating to the warranties given in Clause 11.1.

11.3 Where the Client has indicated 'yes' in Item (O) of the Item Schedule, the Client will provide to the Agent copies of such applications or orders at the time of entering into this Appointment. The Client will also provide copies of subsequent applications or orders made during the term of this Appointment.

11.4 The Client will, where applicable, make available to the Agent, any current Pool Safety Certificate or Form 17 (Final Inspection Certificate) issued prior to or during the term of this Appointment.

11.5 The Client will provide to the Agent such additional information as the Agent may reasonably request from time to time relevant to matters contained in Clause 11.

11.6 Where a product, fixture or fitting provided with the Property has a warning label or safety instructions attached the Client is not to deface, damage or remove such label.

11.7 The Client has complied with relevant legislative requirements with respect to the Property.

## 12. Agent's Responsibilities

12.1 In compliance with the Client's instructions and in accordance with the Property Occupations Form 6, the appointed Agent must keep the Client informed of:

- (1) any issues or other information relevant to the Property
- (2) each expression of interest either written or oral about the sale of the Property.

unless otherwise specified in writing by the Client.

12.2 Notwithstanding the provision of Clause 12.1(2) the Client by this Appointment agrees only offers in writing and expressions of interest in accordance with the Client's instructions shall be communicated to the Client.

12.3 The Agent must act in accordance with the Client's instructions unless such instructions are contrary to the Conduct Standards prescribed in the Regulations to the Act.

## 13. Photograph Consent

13.1 The Agent will take any photos in accordance with the Client's instructions (if any) set out in Part (4.4) of the Property Occupations Form 6 and will take all reasonable care to ensure the privacy of the Client and/or any Tenant of the Property and in so doing will not photograph personal chattels without authority.

13.2 Should the Property be tenanted, photos may not be taken unless and until the written consent of the Tenant is obtained. It is the responsibility of the Client or managing agent to obtain such consent.

## 14. Beneficial Interest

The Agent may not obtain a Beneficial Interest in the Property unless the Agent, before a Relevant Contract for the Property is entered into, obtains the Client's written acknowledgment in the approved form - in accordance with the provisions of Section 155 of the Act.

## 15. Termination Penalty

The Seller and the Agent agree the Agent will be entitled to a termination penalty (0.25% of the purchase price (section 159 of the Act)), apportioned between the Agent and Seller in accordance with Item (I) in relation to a Relevant Contract terminated by a Buyer (Section 168 of the Act) and the receipt by the Agent for its share (if any) of a termination penalty shall be sufficient discharge to the deposit holder with respect to its duty to account to the Client the Agent's allocated share of the penalty and distribute the penalty in accordance with Item (I).

## 16. Work Health and Safety

Insofar as either party to this Appointment is, with respect to the Premises a - Person Conducting a Business or Undertaking (under the *Work Health and Safety Act 2011*, Regulations or relevant Codes of Practice in relation thereto) such party must comply with the Act, Regulations or relevant Codes of Practice. Provided however, in carrying out such obligations the Agent acts only as Agent for the Client.

## 17. Indemnity

The Agent having complied with its obligations under this Appointment and not having been negligent, the Client indemnifies the Agent, its officers and employees, from and against all liabilities, actions, claims, demands, losses, costs (on an indemnity basis), damages and expenses arising out of or in respect of this Appointment from:

- (a) the Client's failure to comply with this Appointment; or
- (b) the Client's failure to give the Agent appropriate authority or instruction; or
- (c) the Agent acting on behalf of the Client under this Appointment; or

- (d) the Client's failure to disclose required information relevant to this Appointment; or
- (e) a warning label or safety instructions having been removed, damaged or defaced where a product or fitting has been supplied to the Property with such a label or instruction attached.

**18. Privacy Statement**

- 18.1 The Agent must comply with the provisions of the Australian Privacy Principles (*Privacy Act 1988*) and where required maintain a Privacy Policy.
- 18.2 The Privacy Policy outlines how the Agent collects and uses personal information provided by you as the Client, or obtained by other means, to provide the services required by you or on your behalf.
- 18.3 You as Client agree the Agent may, subject to the *Privacy Act 1988 (CTH)* (where applicable), collect, use and disclose such information to:
  - (1) potential buyers, to the extent required to prepare a contract for the sale of the Property; and/or
  - (2) property data collection agencies; and/or
  - (3) Body Corporates and financial institutions; and/or
  - (4) other third parties as may be required by the Agent for the purposes of marketing, sales promotion and administration relating to the use of the Agent's products and services and complying with legislative and regulatory requirements.
- 18.4 Without provision of certain information the Agent may not be able to act effectively or at all on the Client's behalf.
- 18.5 The Client has the right to access such personal information and may require correction or amendment of any inaccurate, incomplete, out of date or irrelevant information.
- 18.6 The Agent will provide (where applicable), on request, a copy of its Privacy Policy.

**19. Related Documents/Notices**

- 19.1 The parties agree and confirm documents may be forwarded electronically in accordance with this clause.
- 19.2 Any Related Document, including this Appointment, to be served on any party under this Appointment shall be in writing and may be served on that party:
  - (a) by delivering it to the party personally; or
  - (b) by leaving it for the party at that party's address as stated in this Appointment; or
  - (c) by posting it to the party by ordinary mail or security mail as a letter addressed to the party at the address as stated in this Appointment; or
  - (d) as an electronic communication by facsimile transmission, email or SMS text message to the party at the appropriate electronic address as stated in this Appointment; or
  - (e) by delivery to an alternative address provided in writing by the party, by any of the methods outlined in Clauses 19.2(a) to (d) above.
- 19.3 A Related Document posted shall be deemed to have been served, unless the contrary is shown, at the time when, by the ordinary course of post, the Related Document would be delivered.
- 19.4 A Related Document sent by electronic communication will be deemed to have been received in accordance with Section 24 of the *Electronic Transactions (Queensland) Act 2001*.
- 19.5 Related Documents given by a party's solicitor will be deemed to have been given by and with the authority of the party.
- 19.6 Related Documents must be served before 5pm on a business day, failing which, such Related Document will be deemed to have been served on the next business day.

19.7 The parties acknowledge and agree an Electronic Document readily accessible via a link within a Related Document is received when the Related Document is served and will be opened when the Related Document is opened.

19.8 The parties agree to execution, delivery and service of Related Documents electronically by a method provided by DocuSign or such other agreed electronic signature service provider.

**20. Using this Form**

Where such information is required to be entered on the approved form, information contained in the Item Schedule and the Terms of Appointment shall apply to the approved Property Occupations Form 6.

**21. Special Conditions**

- 21.1 Any Special Conditions to this Appointment shall form part of this Appointment. Should there be inconsistency between these Terms of Appointment and a Special Condition, the Special Condition will apply. All Special Conditions must be in compliance with all relevant legislation.
- 21.2 Special Conditions to this Appointment where inserted at the direction of the Client were prepared by the Client or an Australian Legal Practitioner instructed by the Client and not by the Agent. No warranty is given by the Agent with respect to such clauses. Legal advice should be sought.