

LEASING AGENCY AGREEMENT (Residential)

Item

Item Schedule

1. OWNER / LANDLORD

Name/s:
Business Name:
Address: ACN:
ABN:
Phone: Mobile:
Email: GST Registered: ☐ Yes ☐ No

2. AGENT **(Where the Agent trades as a corporation, include the corporation's licence number)*

Name:
Address: ACN:
ABN:
Phone: Mobile:
Email:
Licence Number/s*: GST Registered: ☐ Yes ☐ No

3. PROPERTY

Clause 1.1(13)

Address:

Included Items:

Excluded Items:

Permitted number of Occupants:

Pets Permitted: ☐ Yes ☐ No Details (if any):

Smoke alarms / installed in accordance with Part 9, Division 7A of the *Environmental Planning and Assessment Regulation 2000*.

(a) Smoke alarms last tested and cleaned: (b) Date batteries last changed:

{Owners of all houses and units dwellings in NSW must install and maintain smoke alarms in compliance with the *Environmental Planning and Assessment Regulation 2000* as amended}

An Electrical Safety Power Switch / installed for general purpose socket outlets.

4. AGREEMENT

Clauses 3 and 12

This Agreement is an / Leasing Agency Agreement, effective from and can be terminated by either party on the giving of not less than days' notice in writing.

Note: Where the agreement type is not indicated above this Agreement will be an Exclusive Leasing Agency Agreement.

5. AGENT'S AUTHORITY*Clauses 1.1(2), 1.1(8), 3, 4, 8.1 and 10.1***5.1** The Owner authorises the Agent to undertake the following services in relation to the Leasing of the Property:*[Tick authorised option/s - if an option is not ticked it is not authorised]*

- (1) ☐ Obtain and verify references from prospective tenants
- (2) ☐ Refer any suitable prospective tenants to the Owner
- (3) ☐ Choose Tenants
- (4) ☐ Enter into and sign Tenancy Agreements
- (5) ☐ Undertake an initial inspection of the Property
- (6) ☐ Collect initial rent payment
- (7) ☐ Receive, lodge, claim and disburse Rental Bond money in accordance with the provisions of the *Residential Tenancies Act 2010*
- (8) ☐ Advertise the Property for letting or re-letting in accordance with Item 6
- (9) ☐ Arrange inspections of the Property by prospective tenants under the following circumstances:
 - (a) Where the Property is not tenanted, in accordance with the Owner's instructions
 - (b) Where the Property is tenanted, in accordance with the Owner's instructions and subject to the Tenancy Agreement

5.2 Tenancy

- (1) Term of Tenancy:
- (2) Rent: (a) Proposed Rent: per / /
(b) Payment Details:
[Please specify how and when payment is to be made]
- (3) Rental Bond: or equivalent to weeks rent.

5.3 Other authorisations/limitations

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6. LEASE ADVERTISING*Clause 10.1(1)***6.1** The Property is to be advertised/promoted in the following way:

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6.2 Signage advertising the Lease of the Property is permitted to be used during the term of this Agreement: ☐ Yes ☐ No**7. FEES FOR SERVICES***Clauses 1.1(2), 1.1(8), 4.8, 4.9(2), 8 and 10.1*A fee may be expressed as either: (a) Fee + GST Amount = GST inclusive Fee OR (b) single GST inclusive figure

7.1	Description of Service/Fee	Fee (GST Inclusive)	Due and Payable
	Letting Fee (cl 1.1(8))		
	Administration Fee (cl 1.1(2))		

7.2 Explanation of Fees: *(Where the Agent has inserted non-standard fees explanatory details should be inserted)*

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8. CHARGES AND EXPENSES

Clauses 4.8, 4.9(2) and 8

The Owner shall reimburse the Agent for the following authorised Expenses incurred during the letting of the Property:

Description of Expense	Amount (GST Inclusive)	Due and Payable

9. SWIMMING POOL

Clauses 5.1, 5.5 and 6.1(1)

Swimming Pool: ☐ Yes ☐ No

If 'Yes'

Swimming Pool Registered:

☐ Yes ☐ No

Valid Certificate of Compliance/Occupation:

☐ Yes ☐ No**10. LANDLORD'S DISCLOSURE** (Note: Landlord must complete this Item)

Clauses 1.1(9), 1.1(10) and 7

Section 26(1) of the *Residential Tenancies Act 2010* provides that a Landlord or Landlord's Agent must not induce a Tenant to enter into a residential tenancy agreement by any statement, representation or promise that the Landlord or Agent knows to be false, misleading or deceptive or by knowingly concealing a material fact of a kind prescribed by the regulations. (See Item 10(2))

1. Disclosures Required under Section 26(2) of the Residential Tenancies Act 2010:

- (1) Any proposal to sell the Property: if 'yes' when: ☐ Yes ☐ No
- (2) Has a contract to sell the Property already been prepared: ☐ Yes ☐ No
- (3) Has a mortgagee taken action for possession of the Property: ☐ Yes ☐ No
- (4) Has the mortgagee commenced proceedings in a court to enforce a mortgage over the Property: ☐ Yes ☐ No

2. In accordance with section 26(1) of the Residential Tenancies Act 2010, the Residential Tenancies Regulation 2010 prescribe the following as Material Facts:

- (1) the Property has been subject to flooding or bush fire in the preceding 5 years: ☐ Yes ☐ No
- (2) the Property is subject to significant health or safety risks that are not apparent to a reasonable person on inspection of the Property: (eg. Asbestos, lead paint, presence of mould) ☐ Yes ☐ No
- (3) the Property (of which the residential premises are a part) is listed in the LFAI Register: ☐ Yes ☐ No
- (4) the Property has been the scene of a serious violent crime within the preceding 5 years: ☐ Yes ☐ No
- (5) council waste services will be provided to the Tenant on a different basis than is generally applicable to residential premises within the area of the council: ☐ Yes ☐ No
- (6) that because of the zoning of the land, or other laws applying to development on the land, the Tenant will not be able to obtain a residential parking permit (in an area where only paid parking is provided): ☐ Yes ☐ No
- (7) there exists a driveway or walkway on the Property which other persons are legally entitled to share with the Tenant: ☐ Yes ☐ No

Please provide additional information where you have answered 'yes' to any of the above statements:

10. LANDLORD'S DISCLOSURE (continued) (Note: Landlord must complete this Item)

Clauses 1.1(9), 1.1(10) and 7

3. LFAI Questionnaire

Landlords note: Properties constructed before 1980 may contain loose-fill asbestos insulation.

Prior to signing this Agreement the Landlord has completed and provided to the Agent a Residential Premises Loose-fill Asbestos Insulation Questionnaire.

☐ Yes ☐ No**4. Additional Matters not prescribed by the Residential Tenancies Regulation 2010:** (if insufficient room, attach schedule)

(1) Requirements of an Owner's Corporation (if any) in addition to By-laws:

(2) Any Requirements as to repair or servicing to property, chattels or services:

(3) Details of any telephone and/or internet services available:

11. AGENT'S DISCLOSURE

Clause 15

The Agent shall be entitled to retain Rebates, Discounts and/or Fees as disclosed below:

Source and details of Rebates, Discounts and Fees	Estimated Amount

12. ADDITIONAL INSTRUCTIONS**13. SPECIAL CONDITIONS**

Clause 16

Special Conditions to this Agreement where inserted at the direction of the Owner were prepared by the Owner or an Australian Legal Practitioner instructed by the Owner and not by the Agent. No warranty is given by the Agent with respect to such clauses. Legal advice should be sought.

14. SIGNATURES

Clause 8.4

By signing below the parties acknowledge and confirm having read and understood this Agreement.

Signature of Owner(s)

Date:

Date:

Note: Where signed by Owner's authorised representative or the Owner is a corporation evidence of authority to sign must be provided.

Signature of Agent

Date:

Terms of Agreement

1. Definitions

1.1 In this Agreement the following terms mean:

- (1) **Act:** the *Property, Stock and Business Agents Act 2002* and Regulations thereto as amended from time to time.
- (2) **Administration Fee:** monies due to the Agent as provided in Item 7 to cover standard administrative costs.
- (3) **Agreement:** this Agency Agreement, consisting of:
 - (a) the Item Schedule - Leasing Agency Agreement;
 - (b) the Terms of Agreement; and
 - (c) any additional annexure, schedules or documents that may be attached.
- (4) **Data Collection Agency:** means an agency or organisation that collects real estate data to provide information to the real estate, finance and property valuation industries to enable data analysis.
- (5) **Electronic Document:** means any electronic communication (including Notices) as defined in the *Electronic Transactions Act 2000 (NSW)* including any electronically generated document situated on an external server readily accessible via a link within an electronic communication or other electronically generated document.
- (6) **GST:** where used in this Agreement, has the meaning used in *A New Tax System (Goods and Services Tax) Act 1999* and "GST" includes any applicable rulings issued by the Commissioner of Taxation.
- (7) **Item:** an Item in the attached Item Schedule forming part of this Agreement.
- (8) **Letting Fee:** monies due to the Agent as provided in Item 7 on a Tenant entering into an initial Tenancy Agreement.
- (9) **LFAI:** means Loose-fill Asbestos Insulation.
- (10) **LFAI Register:** means the register of residential premises that contain or have contained loose-fill asbestos insulation that is required to be maintained under Division 1A of Part 8 of the *Home Building Act 1989*.
- (11) **Material Fact:** where used in this Agreement includes, but is not limited to, facts required to be disclosed under the *Property, Stock and Business Agents Act 2002*, the *Residential Tenancies Act 2010* and material facts prescribed in section 7 of the *Residential Tenancies Regulation 2010*.
Note: Refer to 'Misrepresentation Guidelines - NSW Fair Trading' for more details on what may constitute a material fact.
- (12) **Personal Information:** means personal information as defined in the *Privacy Act 1988 (CTH)*.
- (13) **Property:** the land and improvements thereon forming the residential premises the subject of this Agreement (as described in Item 3).
- (14) **Related Document:** means any written communication (including Notices) with regard to this matter between the parties, including any Electronic Documents.
- (15) **Rent:** means the amount specified as *Proposed Rent* in Item 5.2 of the Item Schedule or as may be amended from time to time in accordance with the Owner's written instructions.

1.2 Other words and phrases not defined in this Agreement take on those meanings given to them in the Act.

2. Owner's Confirmation

By signing this Agreement the Owner(s) warrants and confirms:

- (1) it is the owner of the Property;
- (2) it has authority to enter into this Agreement; and

- (3) it has disclosed to the Agent in writing all Material Facts and has not made any statement known to be false, misleading or deceptive in compliance with Section 26 of the *Residential Tenancies Act 2010*.

3. Appointment of Agent

- 3.1 In consideration of and in accordance with the terms of this Agreement, the Owner appoints the Agent (and its permitted Assigns) for the duration of this Agreement to lease the Property for the Owner and the Agent agrees.
- 3.2 Authority vested in the Agent by this Agreement shall be deemed to be vested in the Agent's authorised employees.
- 3.3 In carrying out the duties and services specified in this Agreement the Agent is authorised to utilise the services of any suitable person or company, provided however where required under the Act such duties or services must be carried out by a licensed person.
- 3.4 The Agent (licensee) in charge of the business must properly supervise, in accordance with the guidelines issued by the Commissioner for Fair Trading, all persons (employee or otherwise) engaged in the business carried on by the Agent.
- 3.5 Where the Agent is appointed as Exclusive Agent (Item 4) the Owner will refer any prospective tenants, of which the Owner becomes aware, to the Agent.

4. Agent's Obligations and Authority

- 4.1 The Agent is authorised and directed, by the Owner in compliance with the Act and the *Residential Tenancies Act 2010*, to disclose all relevant and Material Facts in relation to the Property.
- 4.2 The Agent must, in compliance with Section 52 of the Act, not make any promise that is false, misleading or deceptive or conceal any material facts.
- 4.3 The Agent will be responsible for ensuring all persons engaged by the Agent to perform functions in respect of this Agreement hold, where required, appropriate licenses and comply with relevant legislation and regulations.
- 4.4 The Agent is authorised to lease the Property, in accordance with Item 5.1 (1), (2), (3) and (4), and/or as further instructed in writing by the Owner.
- 4.5
 - (1) Where the Agent is authorised to choose a Tenant (Item 5.1(3)) the Agent will choose the successful Tenant based on criteria provided by the Owner, otherwise;
 - (2) The Agent will introduce to the Owner suitable prospective tenants based on agreed criteria so as to enable the Owner to make an informed decision as to the acceptability of the prospective tenants. Provided however, the Owner confirms it does not rely on the Agent to establish beyond the extent of the criteria, the suitability of the Tenant.
- 4.6 The Agent will, subject to the Owner's written instructions, negotiate on behalf of the Owner any Tenancy Agreement or amendments or variations thereto, including any other documents in relation to the Tenancy Agreement authorised by this Agreement, and;
 - (1) where the Agent is authorised to enter into and sign the Tenancy Agreement, execute the Tenancy Agreement on behalf of the Owner, otherwise;
 - (2) provide a Tenancy Agreement, duly signed by the Tenant/s, to the Owner for execution.
- 4.7 The Agent may not participate in the exchange or making of the Tenancy Agreement unless expressly authorised to do so by the Owner or this Agreement.
- 4.8 The Agent is authorised to deduct from monies received by the Agent on behalf of the Owner all Fees and other authorised outlays owing to or incurred by the Agent in association with this Agreement, including those Fees, Charges and payments authorised in Items 7 and 8 respectively.

- 4.9 (1) The Agent must, by providing financial statements, account to the Owner with respect to all monies collected, received, paid or used by the Agent in carrying out the Agent's obligations under this Agreement.
- (2) The Agent will issue tax invoices when necessary in respect of all monies owing by the Owner to the Agent.
- 4.10 In so far as applicable, Schedule 13 of the *Property, Stock and Business Agents Regulation 2014* applies to this Agreement.
- 5. Owner's Obligations and Authority**
- 5.1 The Owner confirms having, at the time of entering into this Agreement, disclosed correct details to the Agent of all relevant and Material Facts relating to the Property and having complied with the requirements of Section 26 of the *Residential Tenancies Act 2010* and Regulations relating thereto.
- 5.2 The Owner will at all times during the currency of this Agreement keep the Agent advised of and disclose to the Agent in writing all relevant and Material Facts and changes thereto in relation to the Property.
- 5.3 There is a positive obligation on the Owner to disclose relevant and Material Facts. Any failure to disclose information known to the Owner which may detract from the letting of the Property will be a breach of this Agreement.
- 5.4 The Owner acknowledges once a Tenancy Agreement has been entered into by the Owner and the Tenant, it shall not be the responsibility of the Agent to enforce such Tenancy Agreement and the Agent is limited to its obligations under this Agreement.
- 5.5 The Owner must meet the requirements of all relevant acts, legislation, by-laws, rules and regulations, local, state and federal.
- 5.6 Should the Agent refer a suitable prospective tenant to the Owner and the Owner rejects such tenant, the Owner takes sole responsibility for any action that may follow as a result of that decision.
- 5.7 The Owner must retain a signed copy of this Agreement.
- 6. Owner's Obligations Regarding the Property**
- 6.1 The Owner will ensure, at its own cost:
- (1) any swimming pool on the Property complies with the *Swimming Pools Act 1992 (NSW)* and in particular, in accordance with the Act and Regulations:
 - (a) is registered;
 - (b) where required, has a valid/relevant Certificate of Compliance/Occupation; and
 - (c) has a warning notice/s erected near the swimming pool,
 and will provide any Certificate of Compliance to the Agent on request;
 - (2) the Property and inclusions are reasonably clean and comply with local and state authority building and work health and safety legislation; and
 - (3) the Property is safe and fit for the Tenant/s to live in.
- 6.2 Where a product, fixture or fitting provided with the Property has a warning label or safety instructions attached the Owner is not to deface, damage or remove such label.
- 7. LFAI**
- 7.1 Where the Agent suspects the possibility of LFAI being present in the residential premises the Agent:
- (1) will notify the Landlord and request that the Landlord organises a LFAI inspection; and
 - (2) is not obligated or required to organise maintenance work that involves:
 - (a) drilling into walls or ceilings; or
 - (b) access to subfloors or ceiling spaces.
- 7.2 Where a LFAI inspection is undertaken:
- (1) the Landlord will provide the Agent with the test results;
 - (2) the Agent will inform Tenants of the test results; and
- (3) where the likelihood of exposure to airborne asbestos fibres is high, the Agent is authorised to advise their workers, clients and prospective clients and if appropriate exclude them from accessing the site.
- 8. Agent's Fees and Reimbursement**
- 8.1 Where Fees, Charges and Expenses are provided for in Items 7 and 8 or otherwise authorised in writing by the Owner, for the performance of services (more particularly outlined in Item 5), the Agent shall be entitled to:
- (1) a Letting Fee:
 - (a) where this Agreement is an Exclusive Agreement (Item 4), and the Property is leased during the term of this Agreement, irrespective of whether the Tenant is introduced by the Agent, the Owner, or any other person; or
 - (b) where this Agreement is a Non-Exclusive Agreement (Item 4), and the Property is leased during the term of this Agreement and the Tenant is introduced by the Agent; or
 - (c) should the Agent introduce a prospective tenant during the term of this Agreement and a subsequent tenancy agreement is entered into with the prospective tenant within 60 days after the expiry or termination of this Agreement; and
 - (2) other Fees, Charges and Expenses for services authorised and performed during the term of this Agreement.
- 8.2 All Fees, Charges and Expenses to which the Agent is entitled:
- (1) will be in the amounts set out in Items 7 and 8 respectively, or otherwise authorised in writing by the Owner, and include any taxes or deductions debited by financial institutions against the Agent's account and attributable to the affairs of the Owner; and
 - (2) unless otherwise specified in Items 7 and 8, will be payable upon provision by the Agent of a tax invoice or statement of account.
- 8.3 Unless otherwise stated, all monies payable or other considerations for Goods and Services to be provided under or in accordance with this Agreement are inclusive of GST.
- 8.4 In accordance with Section 55 of the Act, there will be no entitlement to commission (including fees) or expenses for services performed unless a copy of this Agreement is served on the Owner not more than 48 hours after being signed by the Owner.
- 9. Work Health and Safety**
- Insofar as either party to this Agreement is, with respect to the Property a - Person Conducting a Business or Undertaking (under the *Work Health and Safety Act 2011 (NSW)*, 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 Owner.
- 10. Indemnity**
- 10.1 The Agent having complied with its obligations under this Agreement and not having been negligent, the Owner indemnifies the Agent, its officers and employees, from and against all actions, claims, demands, losses, costs, damages and expenses arising out of this Agreement in respect of:
- (1) authorised letting advertising or signage; or
 - (2) the Owner's failure to comply with this Agreement; or
 - (3) the Owner's failure to give the Agent prompt and appropriate authority or instruction to carry out an instruction or authority; or
 - (4) the Tenant's failure to comply with his/her obligations according to the Tenancy Agreement at no fault of the Agent; or

- (5) the Tenant's failure to comply with his/her obligations under the *Residential Tenancies Act 2010* and/or other relevant acts and legislation; or
- (6) the Agent acting in the capacity of the Owner under this Agreement; or
- (7) any loss arising from injury to person or damage to property howsoever caused (except in the case of negligence on the part of the Agent); or
- (8) any claim for compensation in respect of damage or loss to the Tenant's goods; or
- (9) 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.
- 10.2 The Owner acknowledges that the Agent is acting as Leasing Agent and is not responsible for reporting any matter (including defects, latent or otherwise) other than those that are readily apparent during the course of any inspection or as are brought to their attention as Leasing Agent by the Tenant. The Agent is not otherwise qualified and it is the Owner's responsibility to obtain specific advice with respect to the Property and its soundness as to building and structural integrity, pest, health and other requirements. As such, the Owner indemnifies the Agent from and against all actions, claims, demands, losses, costs, damages and expenses, arising out of, or in respect of this Agreement, resulting from matters of cleanliness, safety, construction, building requirements or building deterioration, notwithstanding the Agent's Obligations under Clause 4.
- 11. Disputes**
Disputes may be referred to the Civil and Administrative Tribunal for determination.
- 12. Termination**
- 12.1 Either party may terminate this Agreement by giving notice in accordance with Item 4.
- 12.2 Any termination shall be without prejudice to either party's existing rights, duties or obligations under this Agreement.
- 12.3 Upon termination of this Agreement all monies owing under this Agreement must be paid or reimbursed up to and including the last day of the notice period set out in Item 4 on a pro rata basis if necessary.
- 13. Agent's Opinion**
The Agent makes no representation as to being a financial or investment advisor.
- 14. Provision of Agreement**
- 14.1 Each party has received a signed copy of and understands this Agreement or has had the opportunity to obtain professional advice with respect to the Agreement and each party acknowledges it is bound by the terms of this Agreement.
- 14.2 This Agreement cannot be varied without agreement in writing signed by the parties.
- 15. Agent's Disclosure**
The Agent is entitled to retain any rebates, discounts and/or commissions in connection with services performed by the Agent in the capacity of the Agent for or on behalf of the Owner as disclosed in Item 11.
- 16. Special Conditions**
Any Special Conditions to this Agreement shall form part of this Agreement. Should there be inconsistency between the Terms of this Agreement and a Special Condition, the Special Condition shall apply.
- 17. Privacy**
- 17.1 The Agent must comply with the provisions of the Australian Privacy Principles (*Privacy Act 1988 (CTH)*) and where required maintain a Privacy Policy.
- 17.2 The Privacy Policy outlines how the Agent collects and uses Personal Information provided by you as the Owner, or obtained by other means, to provide the services required by you or on your behalf.
- 17.3 You as Owner agree the Agent may, subject to the *Privacy Act 1988 (CTH)* (where applicable), collect, use and disclose such information to:
- (1) tenants and potential tenants, insofar as such information is relevant to the leasing of the Property; and/or
 - (2) Owner's Corporations and financial institutions; and/or
 - (3) tradespeople and similar contractors in order to facilitate the carrying out of works with respect to the Property; 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, but must do so in compliance with legislative and regulatory requirements.
- 17.4 Without provision of certain information the Agent may not be able to act effectively or at all on the Owner's behalf.
- 17.5 The Owner has the right to access such Personal Information and may require correction or amendment of any inaccurate, incomplete, out of date or irrelevant information.
- 17.6 The Agent will provide (where applicable), on request, a copy of its Privacy Policy.
- 18. Data Collection**
Upon signing this Agreement the parties agree the Agent, and the form completion service provider providing this form, may without disclosing Personal Information collect, use and disclose to Data Collection Agencies information contained in this Agreement and any subsequent tenancy agreement.
- 19. Related Documents / Notices / Electronic Communication**
- 19.1 The parties agree and confirm any documents and communications in relation to this Agreement may be forwarded electronically and where this Agreement has been forwarded electronically (either for signing or otherwise) the party receiving the Agreement confirms having consented to the delivery of the Agreement (and any other materials) by way of the electronic means of delivery before receiving the documentation.
- 19.2 A Related Document to be served on any party under this Agreement shall be in writing and may be served on that party:
- (1) by delivering it to the party personally; or
 - (2) by leaving it for the party at that party's address as stated in this Agreement; or
 - (3) 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 Agreement; or
 - (4) by email to the party at the appropriate email address as stated in this Agreement; or
 - (5) by delivery to an alternative address, provided in writing by the party, by any of the methods outlined in Clauses 19.2(1) to (4) above.
- 19.3 A 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 document would be delivered.
- 19.4 A document sent by electronic communication will be deemed to have been received in accordance with Section 13A of the *Electronic Transactions Act 2000 (NSW)*.
- 19.5 Documents given by a party's solicitor will be deemed to have been given by and with the authority of the party.
- 19.6 Documents must be served before 5pm on a business day, failing which, such 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 and consent to execution, by any party, of documents electronically using a method provided by an electronic signing service provider.