

The Investors Agency Pty Ltd ABN 58 633 337 854 (“TIA”)
Contract Terms – Managed Purchase via DIYBA

NSW Corporate Real Estate Agent Licence No. 10088638

Principals: Babak Haeri Joabi & Darren Clayton Venter (NSW Licence No. 20244365, Qld Licence No. 4425687)

It is agreed:

1. Engagement and Term

- 1.1 By instructing TIA to provide the Services after receipt of the Details, signing or confirming acceptance of this agreement or paying any part of the Fee, the Client hereby engages TIA to provide the Services in accordance with this agreement for the Term.
- 1.2 This agreement comprises the Details and these Terms & Conditions together with any relevant DIYBA T&Cs applicable to a ‘Managed Purchase’ (**agreement**) and applies where the Client has initiated a ‘Managed Purchase’ via the DIYBA App in accordance with the DIYBA T&Cs. For the avoidance of doubt, if the Client request TIA to provide its Services in respect of a property (or properties) that are not subject to the Managed Purchase, then TIA reserves the right to charge additional Fees and require the Client to sign a separate agency agreement on TIA’s usual form. Despite the Client initiating the Managed Purchase via DIYBA, TIA will be acting as the agent in respect of the Managed Purchase and the DIYBA T&Cs will apply to the extent they are not inconsistent with this agreement.
- 1.3 This agreement may be terminated by either party giving not less than 14 days’ notice, but such termination is without prejudice to any accrued rights of the parties (including TIA’s right to the Fee and to recover any Additional Costs, whether due for payment or not at the time of termination), save that if TIA terminates this agreement before the expiry of the term stated in the Details in circumstances where the Client is not in breach of this agreement then any part of the Fee that is not yet due at the time of termination is not payable and TIA will refund any Fees already paid.
- 1.4 The Client appoints TIA as its exclusive buyer’s agent (with the result that the Client undertakes not to engage anyone other than TIA to provide buyer’s agency or any services similar to the Services) with authority to act as the Client’s agent within the scope of the Authorisations specified in the Details (and any other matters authorised by the Client in writing from time to time).

2. Scope of Services and Authority

- 2.1 As consideration for the Client’s covenants under this agreement (including paying all Fees and amounts to TIA when due), TIA agrees to use reasonable endeavours to provide the Services as and when agreed from time to time. TIA’s engagement will be limited to acting as the Client’s buyer’s agent in respect of the particular property the subject of the Managed Purchase, and TIA will not be required to locate other a suitable property or properties. TIA will exercise due care and skill when negotiating terms of purchase and placing bids at auction on the Client’s behalf within the limits of the Client’s express instructions.
- 2.2 If TIA is authorised to bid at auction on the Client’s behalf, if TIA’s bid is successful and within the scope of TIA’s authority then the Client will be bound to execute a binding contract for the sale and purchase of the Property in accordance with the bid and indemnifies TIA for any loss, damage, cost, claim or expense in connection with the Client’s obligations under any such contract or any failure to sign or complete such contract.

3. Client obligations

- 3.1 The Client undertakes to:
 - (a) notify TIA in writing of any amendments to the any of the Details or Authorisations or any other relevant matters in connection with TIA’s engagement or delivery of the Services and sign any further agreement (including any prescribed form or terms of engagement mandated by law) requested by TIA from time to time to give effect to this agreement or the transactions contemplated by it;
 - (b) cooperate with TIA at all times (including without limitation by providing instructions in a timely manner and making itself available for Property inspections) and not appoint any other agent or person to act on its behalf in breach of any exclusive appointment of TIA;
 - (c) obtain independent legal, financial, investment, tax and other advice prior to signing this agreement and in relation to the purchase of any properties; and
 - (d) not purchase any property the subject of the Managed Purchase or which was presented or introduced by TIA to the Client pursuant to this agreement (whether verbally or in writing or any other means) at any time during the Term other than through TIA and promptly notify TIA if the Client purchases a Property within 12 months after the Term.
- 3.2 The Client acknowledges, agrees and warrants at all times (as applicable) that:
 - (a) the Client is not subject to any earlier or concurrent agency agreement which would conflict with its obligations under this agreement or any exclusive appointment of TIA, and it has full power and authority (and obtained all consents and authorisations required) to enter into and give effect to this agreement and purchase any Property;
 - (b) any data, information or advice provided by TIA (or DIYBA) to the Client in connection with this agreement and any properties (**Market Data**) is of a general nature only, that TIA does not have a financial services licence (and is not authorised to provide financial services or advice to the Client), and the provision of any such Market Data does not constitute financial or investment advice nor should it be relied upon as such;
 - (c) the Market Data is provided solely for the benefit of the Client, must not be disclosed to third parties and may only be relied upon by the Client for the limited purposes prescribed by this agreement, and to the extent such Market Data or advice incorporates information or data from any third parties TIA makes no warranties in relation to such information or data and expressly disclaims all liability in relation to such (including in relation to its accuracy, completeness, suitability and reliability);

- (d) TIA may recommend third parties to the Client (including conveyancers, solicitors, mortgage brokers, building and/or pest inspection companies, strata searching companies, valuers and surveyors) in relation to a potential purchase of a property (each a **Third Party**), but the Client must engage each Third Party directly (but if TIA engages any Third Party then the Client must pay all fees, costs and charges imposed by the Third Party) and TIA accepts no responsibility or liability in respect of any engagement by the Client or any acts, omissions or services provided or not provided by any Third Party; and
- (e) the Client is ultimately responsible for deciding to purchase any property (and TIA makes no guarantees or warranties of any kind in relation to any property or that TIA will source an appropriate Property for purchase), the Client accepts full responsibility for satisfying itself in relation to all aspects of any properties introduced by TIA (including the building integrity, planning regulations which apply to the Property, the neighbourhood of the Property, any other information of importance to the Client and the financial consequences of purchasing the Property).

4. Fees

- 4.1 The Client undertakes to pay the Fee in accordance with the Details, the DIYBA T&Cs and this agreement and the Additional Costs (which are in addition to the Fee and are payable on demand) without set-off, deduction or counterclaim in the manner directed by TIA from time to time. Any monies unpaid to TIA when due will attract interest at a rate of 5% per annum, calculated on daily balances and payable on demand.
- 4.2 The Details will specify the Fee and whether the Fee is a once off payment or payable in two parts. For the avoidance of doubt, the Client will be responsible for any fees and disbursements in connection with the engagement of the lawyers/conveyancers (including search fees, reports, valuations and the like), stamp/transfer duty, taxes or government fees/charges in connection with the acquisition of a Property, any insurance, finance broking fees or other amounts in connection with the purchase of any property.
- 4.3 The full Fee is payable on demand unless the Details specify that the Fee is payable in Two parts, in which case the first payment or initial fee (**Retainer**) is payable on demand and the Balance of the Fee is payable no later than 7 days from the date of settlement of the Property. The full Fee is also payable if the Client (or anyone on its behalf) acquires an interest in a Property within 12 months of the expiry of the Term, where the Property was introduced to the Client by TIA, and upon that occurring the Client must pay the full Fee, including in circumstances where TIA has terminated this Agreement in accordance with clause 1.3.
- 4.4 Further, because this is an exclusive buyer's agency agreement, the Client will be liable to pay the full Fee (including where the Fee is payable in Two parts) where the Client purchases the Property the subject of the Managed Purchase during the Term or within 12 months after this agreement is terminated (whether TIA introduced the Property to the Client or not during the Term, whether the Client purchased the Property themselves and whether or not the Client engaged another buyer's agent).
- 4.5 Subject to TIA's rights to the full Fee pursuant to the proceeding clauses, if the Client does not acquire an interest in a Property within the Term and the Client has paid the full Fee under the Once off payment option, then the Client will be entitled to a refund equal to the 'Second payment'/'Balance' specified in the Details (and TIA will be entitled to retain the sum equal to the Retainer).
- 4.6 Pursuant to the DIYBA T&Cs, if the Client is not successful in purchasing the Property the subject of the Managed Purchase, TIA will keep the Retainer but if the Client initiates another Managed Purchase in accordance with the DIYBA T&Cs within 6 months of the date the Client paid the Retainer, then TIA will not charge the Retainer again for that subsequent Managed Purchase.
- 4.7 The Client must pay TIA any GST for which TIA is liable in respect of any supply made by TIA in connection with this agreement, with such payment to be made at the same time as the consideration for the supply or such later time that TIA provides a tax invoice for the supply (if required). If the Fee is stated as being GST inclusive in the Details, then the Client will not be required to pay an additional amount in respect of GST on the relevant Fee.
- 4.8 If TIA is entitled to receive a referral fee, commission, discount or rebate from a third party (including any Third Party) in connection with this agreement, TIA will fully and frankly disclose same to Client in accordance with all applicable laws and standards before TIA recommends the third party to the Client or TIA accepts payment of same. To the extent the law permits, the Client agrees that TIA is entitled to retain all such referral fees, commissions, discounts and rebates.

5. General

- 5.1 (**Limit of liability**): To the extent the law permits, neither TIA nor DIYBA will be liable for any loss, damage, costs or compensation arising out of, or in connection with, the Client's decision to purchase the Property or any recommendations made by TIA in respect of any properties, nor will TIA be liable for any claim for any indirect, exemplary, special or consequential damages or for any loss of business, goodwill, data or profits (including any damages for loss of business or any other economic loss), even if TIA has been notified of the possibility of same.
- 5.2 (**Australian Consumer Law**): The Australian Consumer Law may give the Client certain guarantees. Where such guarantees apply to TIA's products and services and liability for breach of any such guarantee can be limited, TIA's liability (if any) arising from any breach of those guarantees is limited with respect to the supply of goods, to the replacement or repair of the goods or the costs of resupply or replacement of the goods or with respect to the supply of services again or cost of re-supplying the services again.
- 5.3 (**Breach**): To the extent the law permits, each entity comprising the Client will be jointly and severally liable for the Client's obligations in connection with this agreement, and the Client indemnifies, holds harmless and defends (at TIA's option) TIA and its officers, employees, contractors and agents from and against any and all claims, liabilities, losses, costs, charges or expenses (including legal fees on an indemnity basis) that may be incurred or otherwise arise in connection with the Client's breach of this Agreement (including any warranties), the Client's breach of any agreement with an Approved Partner (or other person the

Client engages in respect of the acquisition of a property), any applicable laws or any acts, omissions or negligence of the Client in connection with this agreement.

- 5.4 **(Notices)**: Any notice, demand, termination procedure or other communication relating to this agreement may be sent to the Client via the DIYBA App or may be either sent by facsimile, email, ordinary post or personally served or left at the relevant party's address for service as specified in the Details.
- 5.5 **(Severance)**: If any provision of this agreement in favour of TIA exceeds what is permitted by law (**Void Term**), then the Void Term shall be read down only to the extent required to ensure it is enforceable; and (if the Void Term remains unenforceable due to it imposing liability on the Client) then the Client shall only be liable to the extent that the Client caused or contributed to the liability; and (if the Void Term remains unenforceable due to it releasing TIA from an obligation) then TIA will still be liable to perform that obligation to the extent TIA either caused or contributed to the event giving rise to the obligation or breached this agreement or the terms implied by law that cannot legally be excluded; and (if the foregoing does not cure the invalidity or unenforceability) then this agreement will not include the Void Term and the remainder of this agreement shall continue in full force.
- 5.6 **(Governing Law)**: This agreement is governed by the laws of New South Wales and each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales.
- 5.7 **(Entire agreement)**: This agreement together with the DIYBA T&Cs represents the whole agreement between the parties and supersedes all oral and written communications by or on behalf of any of the parties, to the exclusion of any implied terms that can be excluded by law. The rights of TIA and DIYBA under this agreement are without prejudice to their respective rights at law.
- 5.8 **(Variation)**: Any variation of or to this agreement will not have any effect whatsoever unless such variation is reduced to writing and signed by both parties. Any failure by TIA to exercise any or all of its rights or powers under this agreement at any time and for any period of time shall not constitute a waiver of any of TIA's rights or powers arising pursuant to this agreement.
- 5.9 **(IP)**: The Client acknowledges and agrees that any trade secret, secret process, know how, computer software, intellectual property rights or confidential, scientific, technical or product information arising in connection with this agreement, or that is held by TIA or its related entities independently of its dealings with the Client, will vest immediately upon their creation in TIA and the Client will keep confidential all such information and will not disclose same without TIA's prior written consent.
- 5.10 **(Definitions)**: Unless the context otherwise requires, terms defined in the Details and the DIYBA T&Cs have the same meaning when used in this agreement (subject to any variation in the below table) and the following definitions apply:

Term	Meaning
Additional Costs	any fees or charges for additional services (including in respect of any exclusions specified in this agreement or any matters that are not included in Option 1 where it applies) provided at the Client's request or reasonably required as a result of the Client's conduct or breach of this agreement and any costs or expenses incurred with the Client's authority and any fees or disbursements charged by any Third Party.
Client	the person or entity specified as such in the Details, and includes a reference to any related entity that is used to acquire the Property and their respective officers, employees and agents (other than TIA).
Details	the schedule of matters and details for the Client (which will generally be 'Service Agreement Details'), including (among other things) the Client Details, the Fee and Authorisations.
DIYBA	DIYBA Aus Pty Ltd ACN 650 136 771 as trustee for the DIYBA Unit Trust, and where the context permits includes its officers, employees and agents.
DIYBA T&Cs	DIYBA's terms and conditions in effect from time to time, which are available at https://www.diyba.com.au/terms-conditions or otherwise on request.
Fee	the fee payable by the Client to TIA pursuant to this agreement, as specified in the Details and such other fees that the parties agree in writing from time to time (if any).
Property	any property (including any share in a company title or other right substantially equivalent to ownership of real property) in which the Client or anyone on its behalf acquires an interest.
Property Specifications	the general particulars or features of a property or properties notified to TIA (or DIYBA) by the Client in writing (or as otherwise agreed by the parties) that TIA is authorised to provide the Services in respect of from time to time, which may initially be included in the Client survey, based on the information the Client has provided to DIYBA via the App and as otherwise updated from time to time.
Services	the services required to be provided by TIA under this agreement of the nature set out in the Details that are within the scope of the Authorisations and as agreed by the parties from time to time, but excluding any matters that are excluded per the Details or this agreement.
Term	the period from the time TIA is engaged until the End Date (or the number of months expire) as specified in the Details (or such shorter period as required by law for an exclusive appointment) and any further period agreed in writing by TIA (subject to the Client paying any further fees required by TIA to extend the term), or such earlier date that this agreement is terminated.

- 5.11 **(Interpretation)**: In this agreement, headings are for convenience only and do not affect interpretation, the provisions of this agreement must not be construed to the disadvantage of a party merely because that party or its advisers were responsible for

proposing or preparing this agreement or the provision, the word 'including' (or a similar expression) is not to be construed as words of limitation and unless the context otherwise requires:

- (a) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning, the singular includes the plural and vice versa and words importing a gender include every other gender;
- (b) a reference to a person includes a corporation, trust, partnership, unincorporated body, government agency, or other entity whether or not it comprises a separate legal entity and includes a reference to their executors, successors and permitted substitutes/assigns; and
- (c) a reference to a document includes any agreement or other legally enforceable arrangement created by it (whether the document is in the form of an agreement, deed or otherwise) and includes a reference to any variation, replacement or novation of it.