

PSRA/S43 Form B3-2012 was specified on 10th September 2012 and agents should check on the PRSA website www.psr.ie that it has not been superseded before using it

PROPERTY SERVICES AGREEMENT FOR THE SALE OF LAND BY AUCTION SOLE AGENCY

GENERAL OBLIGATIONS OF LICENSEES UNDER PART 4 OF THE ACT RELATING TO LETTERS OF ENGAGEMENT

1. A licensee shall, not later than 7 working days after the day on which the licensee starts to provide a property service to a person, or has reached an agreement with the person to provide a property service to him or her, whichever is the earlier, provide to that person, in respect of such property service, a letter of engagement (including a copy thereof) in the specified form containing such information as is required to be contained in it and signed by the licensee.
2. Where a licensee has provided a letter of engagement and copy in compliance with requirements and does not receive a signed copy within 7 working days from the date of provision, the licensee shall cease to provide or shall not start to provide the property service as specified in the letter and the letter shall cease to have any force or effect.
3. Where an agreed amendment by both licensee and the other party is made subsequent to the signing of the original agreement, a new agreement, signed by the licensee, must be provided within 7 working days of the agreed amendment. The signed agreement must be returned by the other party within 7 working days.
4. A new letter of engagement is required where a) an amendment to the original letter is agreed; b) on renewal of a property services agreement or c) the licensee is re-engaged following the expiration or other termination of a property services agreement.
5. A licensee who is a property service employer or independent contractor and provides a property service (including the provision of such service by a principal officer or employee) shall retain a record of such service, as outlined on Form B3-2012, of the provision of such service for a period of not less than 6 years after the completion of the transactions, acts or operations to which the record relates.
6. A licensee who is an independent contractor or both a property services employer and an individual shall not provide a property service unless there is in force a policy of professional indemnity insurance which adequately covers the licensee in the provision of such service
7. A property services employer shall not permit a principal officer or employee to provide a property service unless there is in force a policy of professional indemnity insurance which adequately covers the principal officer or the employee.

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EXAMPLE OF COMPLETION OF FORM

NOTE:

THIS FORM WAS SPECIFIED ON 10TH SEPTEMBER 2012
PLEASE ENSURE THE MOST RECENT VERSION IS DOWNLOADED
FROM THE PSRA WEBSITE

PSRA/S43 FORM B3-2012

Property Services Agreement
For
The Sale of Land by Auction

SOLE AGENCY

1. Parties to the Agreement

This Agreement is between:

Agent's Name: Insert as appropriate _____

Business Name: Insert as appropriate _____

Business Address: _____

PSRA Registration No: _____

Telephone No: _____

AND

Client Name(s): Insert as appropriate _____

Address: _____

2. Licence

The Agent confirms that it is the holder of a current property service provider's licence, issued by the Property Services Regulatory Authority under the Property Services (Regulation) Act 2011, for the purchase or sale, by whatever means, of land.

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3. Appointment of Agent

The Client appoints the Agent as its sole and exclusive agent for the duration of the Agreement to undertake the services specified in clause 4.

4. Property Service to be Provided

The Agent is contracted to sell by auction, on behalf of the Client, the property described in Schedule I attached. In the event that the property does not sell at auction the Agent may proceed to sell the property by private treaty.

5. Duration of Agreement

This Agreement shall commence on (**DATE 1¹**) and have effect until (**DATE 2²**) or until the contracts for the sale of a property described in Schedule I are signed, whichever is the sooner.

Explanatory Note:

¹ Insert date of commencement i.e. date on which the Letter of Engagement signed by the client is received by the agent.

² Insert date agreed between client and agent.

6 Termination of the Agreement

6.1 The Agreement may be terminated (without penalty) at any time with the mutual consent of the parties.

6.2 This Agreement may be terminated by either party by giving (**NUMBER¹**) days written notice.

Explanatory Note:

¹ As agreed between client and agent eg. 7 days

6.3 This Agreement may be terminated by the Client where the Agent:

- (a) is in material breach of the Agreement and fails to remedy such breach within (**NUMBER¹**) days of having been notified, in writing, by the Client; or
- (b) is an individual who is declared bankrupt; or
- (c) is a body corporate which is wound up or liquidated; or
- (d) is a partnership and any one of the partners is declared bankrupt; or
- (e) has had his/her licence suspended, not renewed or revoked; or
- (f) has a conflict of interest in relation to this Agreement and the Client does not consent, in writing, to the Agent continuing to act for the Client.

Explanatory Note:

¹ As agreed between client and agent eg. 7 days

6.4 This Agreement may be terminated by the Agent where:

- (a) the Client
 - (i) fails to pay any amount owing to the Agent under this Agreement, or
 - (ii) acts or fails to act so as to prevent the Agent from properly carrying out his/her obligations under this Agreement,
- and
- (b) having being notified in writing by the Agent of any matter referred to in paragraph (a) fails to address such matter within 21 days of such notification.

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7. Effect of Termination of Agreement

Whether the Agreement is terminated by virtue of clause 5 or 6 the client must:-

- (a) pay for all agreed promotion expenses and other charges incurred by the Agent up to the date of termination, and
- (b) pay the fees referred to in clause 10 where the purchaser is a person:
 - (i) introduced by the Agent; or
 - (ii) with whom the Agent had negotiations about the property prior to the termination of the Agreement;
 or
 - (iii) introduced by a person, other than the Client, prior to the termination of the Agreement.

Notwithstanding the provisions of paragraph (b) the Agent shall not be entitled to any fee referred to in clause 10 where contracts for the sale of the property are exchanged with a purchaser more than (**SPECIFY PERIOD¹**) after the termination of this Agreement.

Explanatory Note:

¹ As agreed between client and agent. Example to be provided?

8. Nature of Agency Agreement

The nature of the agency agreement is that of **sole agency**. As sole agent (**NAME OF AGENT - Insert as appropriate**) is the only agent with the right to source a property described in Schedule I for the duration of this agreement.

The client shall:

- not source a property described in Schedule I through any other agent for the duration of this agreement and
- be liable to pay the agent the agreed fees set out in clause 9, in addition to any other agreed costs or charges set out in clause 10 if, within (**SPECIFY PERIOD¹**) of the termination of this agreement, contracts for the purchase of a property described in Schedule I are exchanged with a vendor:
 - o introduced by the agent, or
 - o with whom the agent had negotiations about the property, or
 - o introduced by any other agent,
 during the period of this agreement.

9. Advised Market Value

The advised market value of the property is estimated ([at €(AMV)] or [to fall between €(LOW AMV) and €(HIGH AMV)])*. Any change in the advised market value of the property will be agreed in advance with the Client and confirmed in writing by the Agent.

Explanatory Note:

*Insert agreed AMV and delete other option as appropriate

(See information on Statement of Advised Market Value)

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10. Agent's fee

10.1. The Agent's fee, should the property sell at auction, shall be

(a) (((PERCENTAGE)% of sale price] or [for the agreed fixed price of €(FEE)] or [OTHER FEE STRUCTURE])*.

OR

(a) If the property sells for the advised market value the level of fee payable shall be ((€(FEE) (where the advised value is a specified amount)] or [between €(LOW FEE) and €(HIGH FEE) (where the advised value is a specified as a range)])*.

(b) The fee shall become payable on (((THE DATE THE CONTRACT FOR THE SALE OF THE PROPERTY IS CONCLUDED)) or [(SPECIFY OTHER CONDITION)])*.

10.2. The Agent's fee, should the property sell after auction, shall be

(a) (((PERCENTAGE)% of sale price] or [for the agreed fixed price of €(FEE)] or [OTHER FEE STRUCTURE])*.

OR

(a) If the property sells for the advised market value the level of fee payable shall be ((€(FEE) (where the advised value is a specified amount)] or [between €(LOW FEE) and €(HIGH FEE) (where the advised value is a specified as a range)])*.

(c) The fee shall become payable on (((THE DATE THE CONTRACT FOR THE SALE OF THE PROPERTY IS CONCLUDED)) or [(SPECIFY OTHER CONDITION)])*.

Explanatory Note:

* Insert agreed fee structure and delete other options as appropriate

(See Note No. 6 on Notes on the Form below)

10.3 The fee shall be subject to VAT at (VAT RATE – insert current rate)%.

11. Outlays

In addition to the fees referred to in clause 10 the Client shall be liable for all agreed outlays. The outlays (i.e. disbursements made or to be made or expenses incurred or to be incurred by the Agent for and on behalf of the Client in respect of the sale of the property) which have been agreed amount to €[OUTLAY VALUE – insert outlay amount eg €500] (inclusive of VAT). Any additional outlays will be agreed in advance with the Client and confirmed in writing by the Agent. The agreed outlays will become payable on ([THE DATE OF THE COMMENCEMENT OF THIS AGREEMENT] or [THE DATE THE OUTLAYS ARE INCURRED] or [THE DATE THE CONTRACT FOR THE SALE OF THE PROPERTY IS CONCLUDED] or [SPECIFY OTHER CONDITION])*.

Explanatory Note:

* Delete whichever options are not appropriate.

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12. Deposit

Any moneys paid by a purchaser on deposit to secure the property will be held in the Agent's "client account". When the contract for the sale of the property is signed by both parties and the sale complete, the fees set out in clause 10 and any outstanding outlays referred to in clause 11 will be deducted from the deposit held. The balance of the deposit along with any interest so credited, as provided for in the Property Services (Regulation) Act 2011 (Client Moneys) Regulations 2012, will be paid to ([the Client] or [the Client's solicitor]).*

Explanatory Note:

* Delete as appropriate

(See Note No. 4 on Notes on the Form below)

13. Money Laundering and Terrorist Financing

Under sections 42 and 43 of the **Criminal Justice (Money Laundering and Terrorist Offences) Act 2010** the Agent is required to notify the Garda Síochána and the Revenue Commissioners of knowledge or suspicion of a person engaged in money laundering or terrorist financing or the carrying on of any service or transaction that is connected with a place designated under section 32 of that Act.

14. Indemnity

- 14.1. The Agent has no liability for any loss arising from any inherent disrepair, defect or danger (hidden or otherwise) in the property or for any disrepair, defect or danger (hidden or otherwise) in the property and accordingly the Client indemnifies the Agent against all claims, demands, losses or proceedings relating to or arising from any such inherent disrepair, defect or danger (hidden or otherwise).
- 14.2. The Client indemnifies the Agent against all claims, demands, losses or proceedings relating to or arising from the performance (or non performance) by the Agent of its obligations under this Agreement except to the extent that such claims, demands, losses or proceedings relate to or arise from the Agent's willful act or neglect.
- 14.3. The Agent is not liable to the Client if the Agent fails to do any act it is obliged to do, if such failure arises from the Client's failure to properly instruct and/or make the appropriate decision in relation to such act.

15. Professional Indemnity Insurance

In accordance with **section 45** of the **Property Services (Regulation) Act 2011** there is in force a policy of professional indemnity insurance which covers the Agent in the provision of this property service. The insurance company which holds the cover is:

Name: **Complete as appropriate** _____

Address: _____

Policy number: _____

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16. Records

The Agent will keep a record of the services provided on foot of this Agreement. Such records shall include:

- The signed copy of this Agreement;
- The statement of fees and outlays including any interim statement;
- A copy of all promotional material associated with the property service provision
- A copy of all communications, both written and electronic, between the Agent and the Client;
- Any notes of any conversations about the property with the Client
- A copy of all communications, both written and electronic, between the Agent and a customer in relation to this property;
- Any notes of any conversations with a customer in relation to this property;
- Building energy rating certificate (where a BER certificate is required);
- Statement(s) of advised market value;
- (The records relating to financial services created pursuant to section 60 of the Property Services (Regulation) Act 2011;)** and
- Client account details as prescribed by the Property Services (Regulation) Act 2011 (Client Moneys) Regulations 2012.

17. Bank Account

The Agent's "client account" in respect of this Agreement is (**NAME ON ACCOUNT– insert as appropriate**) and is held at:

Name of bank:

Complete as appropriate _____

Address:

18. Complaints

Any complaint which the Client may have arising under or in connection with this Agreement may be dealt with by:

- (a) (**NAME AND CONTACT DETAILS OF A PERSON WHO THE AGENT HAS PUT IN PLACE UNDER THE REDRESS AND COMPLAINTS PROCEDURE PUT IN PLACE BY THE AGENT¹**), and
- (b) if dissatisfied with the response to the complaint made under (a), the Client may make a complaint to:

Property Services Regulatory Authority,

Abbey Buildings,
 Abbey Road,
 Navan,
 Co. Meath.

Explanatory Note:

¹ Insert the name of the person (should be a senior person) nominated by the agent under the internal complaint handling procedure within the agents business.)

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19. Financial Services

You should note that it is (not)** our intention to offer financial services to prospective purchasers. (Financial services may be provided through a subsidiary or associated body.)** - **(see Note No. 5 on Notes on the Form below)**

20. Conflict of Interest

20.1. The Agent affirms that no conflict of interest exists that would prevent the Agent from acting for the Client.

20.2. Where the Agent identifies the existence of, or the potential for, a conflict of interest he/she will, as soon as practicable, inform the Client, in writing, of the circumstances.

20.3 The Agent will immediately inform the Client in writing where the Agent is offered any form of inducement in relation to the matters covered by this Agreement.

20.4 The Agent will not benefit, financially or otherwise, from a situation where there is a conflict or potential conflict of interest on the part of the Agent without the written permission from the Client.

21. No Partnership/Employee/Employer Relationship

Nothing in this Agreement shall create, or be deemed to create, a partnership or the relationship of employer and employee between the Parties.

22. Entire Agreement

This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof, supersedes all previous agreements and understandings between the Parties and shall not be modified except in writing signed by the duly authorised representatives of each of the Parties.

23. No Representation

The Parties acknowledge that in entering into this Agreement, they do not do so on the basis of, and do not rely on, any representations, warranties or other provisions except as expressly provided in this Agreement and all conditions, warranties and other terms implied by statute or common law are hereby excluded to the fullest extent, permitted by law.

24. Severance

If any provision of this Agreement is held by any Court or other competent authority to be void or unenforceable in whole or in part, this Agreement shall continue to be valid as to the other provisions thereof and the remainder of the effected provision.

25. Waiver

Any waiver by either party of a breach of any provision of this Agreement shall not be considered a waiver of any subsequent breach of the same or any other provisions thereof.

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26. Governing Law and Jurisdiction

This Agreement shall be governed by and construed in all respects in accordance with the laws of Ireland and the Parties irrevocably submit to the jurisdiction of the Courts of Ireland.

Signed: _____
By/ On behalf of the **Agent**

Signed: _____
By/ On behalf of the **Client**

Signed: _____
By/ On behalf of the **Agent**

Signed: _____
By/ On behalf of the **Client**

Date: _____

Date: _____

Signing of Letters of Engagement

The Letters of Engagement, as set out, provide for the signatures of two Directors where a Company is involved and two partners where a Partnership is concerned. The Authority would prefer two signatures for such entities as this gives greater protection to the Company or Partnership. However, it recognises that this may not always be practicable. In such circumstances one signature would suffice. The most important thing is for the Company or Partnership to be satisfied that the person signing the contract is properly authorised to sign on the company's or partnership's behalf. At the very least the person signing the contract should be a Principal Officer. A Principal Officer of a company or partnership, within the Act, means.

- (a) a director, partner, manager, secretary or other similar officer of the company or partnership or
- (b) a person purporting to act in any such capacity.

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SCHEDULE 1 SHOULD BE COMPLETED WITH THE APPROPRIATE INFORMATION

Property Services Agreement for the Sale of Land

Schedule I

Particulars of Property for Sale

Address of Property:

(to include folio numbers/maps/
drawings as appropriate where
the address is insufficient to
fully identify the property)

Freehold

Leasehold

DESCRIPTION OF PROPERTY

Residential Property

Detached

Semi-detached

Duplex

Terraced

Apartment

No. Bedrooms: _____ No. Living Rooms: _____ Total Floor area: _____

Other Particulars (including details of car parking, garden, etc.):-

Multi-Unit Development:

Service charge in current year: € _____

Sinking fund contribution in current year: € _____

Value of sinking fund^: € _____

(^in the most recent statement under section 17(2)(c)(i) of the Multi-Unit Developments Act 2011)

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Commercial/Industrial/Agricultural

Description:- _____

(a brief description, (e.g. commercial/ industrial/office/retail) and current/last use of property)

Total Floor area (for commercial/industrial/office/retail): _____

Area of land (where appropriate) Hectares/acres: _____

Notes on the form

1. Where the space provided in respect of any of the Agreement, or of the Schedule to the Agreement, is inadequate, any additional information, explanations and elaborations may be set out on the headed notepaper of the licensee and appended to the Agreement. Where this occurs, reference should be made to the existence of the appended document in the Agreement or the appendix.
2. Blank copies of this Agreement may be obtained from the Property Services Regulatory Authority (PSRA) website (www.psr.ie). The format of the Agreement may be reproduced on the licensee's headed notepaper. Where so reproduced, it must be reproduced without abbreviation in the format set out.
3. Items in UPPERCASE within brackets should be replaced with the appropriate text e.g. "within (NUMBER) days" could be changed to "within 21 days"
4. A number of items separated by OR and within brackets marked with an asterisk "()*" are mutually exclusive options and any option which is inappropriate should be struck out or removed e.g. "((the Client) or (the Client's solicitor))*" could be changed to "the Client".
5. An items marked "***" may not be applicable and if not applicable should be struck out or removed e.g. "it is (not)** our intention" will be replaced by either "it is our intention" or "it is not our intention".
6. There are two versions of clauses 10.1(a) and 10.2(a) and only one of each of them must be used. Delete the clauses that are not used.
7. **PSRA/S43 Form B3-2012 was specified on 10 September 2012 and licensees should check that it has not been superseded before using it.**