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ANNOTATED EXCLUSIVE DOMAIN NAME BROKERAGE SERVICES AGREEMENT
(SELLER SIDE)

Congratulations! You've made the decision to sell a domain name or a portfolio of domain names, and now it is time for you to consider hiring a domain name broker to assist you in getting the best price and to ensure an orderly transaction. Domain name brokers can work either independently or as part of a firm of brokers. Some domain name brokers work with a domain name "marketplace" where domains are bought and sold over the Internet. Most domain name marketplaces will have their own standard terms and conditions you should review, perhaps with the assistance of a qualified domain name lawyer.

If you decide to engage a domain name broker, it is important to interview several to determine whom you feel most comfortable with and whose practice and experience are closest in line with your expectations. You may also want to ask for references or at least Google the broker for additional, public, information. You should be able to find something about any broker or firm you decide on. Once you have settled on a broker, whether an individual broker or a larger brokerage, it is important to have a brokerage agreement in place.

Brokerage agreements may take different forms but tend to include the same basic sections outlining the rights and responsibilities of the parties, as well as their representations and warranties. To help you better understand the terms you will likely encounter, below is an analysis of some of the common terms which are often included in an Exclusive Brokerage agreement. Depending on your knowledge and comfort level, you may want to seek the advice of a qualified attorney before proceeding with any agreement. This Agreement is intended for brokers who are acting on behalf of sellers of domain name(s). A different agreement is required when representing a buyer.

The relationship between a domain name broker and its client is one of utmost good faith. The seller will often be putting its absolute faith and trust in the broker to obtain the best possible price for a domain name. Sometimes the seller will have very little information about market values and will be relying on the broker for guidance as to what is a fair price. Moreover, the broker will often contact potential buyers and conduct negotiations without its client being aware of the content of such communications, thereby making it crucial that a client trusts its broker to act only in its best interests. From the broker's perspective, often the broker will be spending its own time resources on marketing a domain name without any upfront fee, and thereby needs strong assurances that the client will cooperate and will not sell the domain name behind the broker's back and thereby try to avoid paying the broker's commission.

Moreover, brokers in the domain name industry are unregulated by a professional body leaving clients with little recourse against unprofessional conduct by a broker. Moreover, there is little guidance available for inexperienced sellers in selecting a broker. That is why a broker's industry reputation and past results are a crucial indicator of professionalism. A trustworthy and competent broker should have an unblemished personal and professional history and should enjoy a stellar reputation amongst domain name professionals. Obtaining references from experienced and qualified domain name industry professionals combined with a little online research can be very helpful in selecting a broker.

Also, being comfortable with a broker on a personal level is key. Often brokers will have different areas of specialty, different contact networks, and different styles and approaches to domain name marketing and negotiation. An excellent broker for one type of domain name, one type of transaction, or even one type of seller personality and interests, may not be optimal for a different situation. It is also important to ensure that your expectations are aligned regarding communication including how often and how. E.g. Are they willing to work over a weekend or holiday when warranted?

Not all brokerage arrangements are the same. Often a broker and a client may reach an agreement for a commission contingent upon a successful sale, but other times a broker may request an upfront fee, or even work out a commission on a scale depending on the sale amount. That is why broker agreements are not necessarily standard and care should be taken to ensure that the right agreement is put in place for the particular circumstances. Sometimes a broker will have particular terms that it wants included due to the special circumstances or the nature of the domain name(s) and sometimes a client will want additional provisions or assurances included. A professional broker will usually go over the terms of the agreement with a prospective client to ensure that the client understands them, particularly where the client is inexperienced in domain name sales. In some circumstances it may be advisable to provide a client with an opportunity to have a lawyer review the proposed broker agreement.

Having a clear, written, and professional broker agreement can go a long way in avoiding misunderstandings and disputes between a broker and its client. Even when a broker has such an agreement that it is happy with, it is good practice to regularly review and update the agreement to reflect recent experiences and issues that the broker has encountered, and to make adjustments and improvements. And don't forget, even if you have an agreement in place, it is still important to discuss or point out the terms that are most important to you to ensure they were read carefully. Believe it or not, some people still sign agreements without reading through them carefully!

This annotated Exclusive Domain Name Brokerage Services Agreement is provided only for educational purposes and to provide domain name industry professionals and clients with guidance as to some of the issues and provisions that should be addressed in a good agreement, but it is not intended to necessarily be comprehensive or be used 'as is'. Broker agreements can include provisions that favor one party over the other. This version attempts to balance the interests of both the Broker and the Client, but sometimes particular circumstances and bargaining power will have a bearing on where the balance lies. The quality of the client's domain names, the experience and abilities of the broker, the current state of the market, and other factors can all play a role in determining what terms a client and a broker will agree to.

Care should be taken when adopting this agreement or its provisions for use, and the assistance of an experienced domain name lawyer is advised for both brokers and clients, in determining the most suitable agreement for a particular situation.



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This Brokerage Services Agreement (“Agreement”) dated, _____ (the “Effective Date”), is between _____, [_____ corporation/company OR individual resident] with a [registered OR residential] at _____ (“Broker”), and _____, a [_____ corporation/company OR individual resident] with a [registered OR residential] address at _____ (“Client”). For the purposes of this Agreement, Broker and Client are referred to collectively as the “Parties”.

Do you know who you are contracting with? If it is a brokerage firm, it may be advisable to conduct a company search to confirm its existence, its exact name, address, and officials. If it is an individual Broker, a Google search at minimum, should be conducted and if you don't find enough information online, perhaps the broker can provide reputable references. This may be one of many assets you own or even your whole nest egg. Either way, you want to ensure you're working with a reputable and experienced broker who won't put your asset at risk using irresponsible methods.

From the Broker's perspective, it is often advisable for Brokers to verify the identity of their Client.

Introduction. Client is the owner of the Internet domain name(s), namely [Insert Domain Name or “See Schedule “A”](the “Domain Name(s)”) and wants to retain Broker to exclusively broker the sale of the Domain Name(s) on the terms and conditions herein. In consideration of the mutual promises expressed herein, the sufficiency of which is acknowledged, the Parties agree as follows:

If it is a single Domain Name, it can be entered here, but if it is more than one or a portfolio, it can be included in an attached schedule.

Ensure the Broker is able to confirm ownership either by making your Whois public (preferable) or by responding to an email the broker sends to the Whois privacy email(s). This is an important step and it should almost be a red flag if the Broker doesn't verify ownership in one way or another as this shows a lack of basic responsibility on the part of the Broker.

1. Engagement of Broker. Client hereby engages Broker on a sole and exclusive basis, to act as an intermediary, identify potential buyers, and otherwise assist in a Sale of Client's Domain Name(s) (the “Services”). A “Sale” is the voluntary transfer or exchange of any direct or indirect interest in the Domain Name(s), or the voluntary creation of a direct or indirect obligation to convey any interest in the Domain Names(s), collectively or individually, including but not limited to a contract for purchase, lease, or a sale of shares or interests in a company holding the Domain Name(s). In performing the Services, Broker will employ its best reasonable commercial efforts to promote the Sale of the Domain Name(s), contact potential buyers, negotiate the terms of a Sale, and advise Client regarding the Sale of the Domain Name(s) throughout the Term. Client acknowledges that Broker does not guarantee the Sale of the Domain Name(s).

This section outlines what constitutes a “Sale” so you need to be sure you are open to options other than a traditional sale, such as a lease, shares, etc. If not, this section should be amended.

The definition of a “Sale” can be important. The way it is defined here is intended to ensure that regardless of the nature of the transaction that the Broker ultimately obtains for the Client - whether an outright sale, a lease, or any other type of transfer of an interest in the domain name

– that it will be considered a “Sale” and thereby trigger entitlement to the Commission.

If there are limitations on what the Broker is prepared to offer in terms of its “Services” to the Client, these can also be included here. For example, in some circumstances, the Broker may be prohibited from contacting certain prospective Buyers or is prohibited from marketing the Domain Name via certain methods. Generally however, a professional Broker will not have such limitations included in the Agreement.

Further, this section refers to the responsibility of the Broker so you should be clear what their sales process entails and how, and how often, they will communicate progress with you.

2. Potential Dual Agency. It is understood that Broker may act as an agent for both a buyer and Client, and Client hereby consents to Broker acting as a dual agent representing both a buyer and Client, subject to being informed in advance of same, in writing by Broker. Broker reserves the right to accept payment from a buyer of the Domain Name(s) for services provided which do not conflict with this Agreement.

In domain name sales it is not uncommon for the broker to represent both the owner and the eventual buyer as they are often soliciting a sale on an outbound basis.

Sometimes a Broker will have a client that is interested in purchasing the Domain Name that the Broker is selling on behalf of its other Client. Other times the Broker will meet the buyer in the course of performing outbound marketing.

That can be helpful for the Seller but it can also create conflicts of interest since there is a ‘dual loyalty’, i.e. loyalty to each client who are on opposite ends of the transaction. Issues may arise when negotiating for both a Buyer and a Seller. Ideally from a Client's perspective, a Broker would only represent the Client alone and that is generally the best approach to avoid potential conflicts. Nevertheless, if a dual agency is a possibility, it should be disclosed to the Client in advance and the Client should be provided with clear disclosure of the dual agency role and how the Broker intends to handle its dual role.

If the Broker reserves the right to accept payment from a buyer in addition to the Sale commission, you should define what services wouldn't conflict with the Agreement and request full transparency accordingly.

3. Exclusive Broker to Client. Broker shall have the exclusive right to serve as the Client's authorized representative for the purposes of promoting, marketing, negotiating, and facilitating the Sale of the Domain Name(s). Client represents and warrants that as of the Effective Date, Client has not listed the Domain Names for Sale on any website, through any other service, nor are the Domain Name(s) possibly the subject of any other agreement for advisory and/or brokerage services, other than this Agreement.

It is generally very important for the Broker to ensure that it is the “sole and exclusive” Broker for the Domain Name(s) since the Broker will generally not want to be working to market sell a Domain Name only to find out that it has been sold by another broker hired by the Client. On other occasions however, a Client and Broker may agree that it is



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not an “exclusive” relationship and that the Client may have more than one Broker competing with each other to sell the Client’s Domain Name(s).

Not only should a Broker confirm that the Broker is engaged solely and exclusively, but a Broker may also want to ensure that the Domain Name(s) is not being marketed contemporaneously on sales platforms as that could cause confusion as to selling price, selling authority, and entitlement to commission.

A Client should proactively and immediately take steps to lawfully terminate any relationships with other brokers or platforms prior to retaining a Broker. It is not uncommon for a “tail” (or “holdover clause”) to be on a brokerage agreement so if a Seller has engaged with any other sales service previously, it is important to review that agreement should a previous buyer come back to the table.

Further, it’s important to establish how your broker would handle a co-brokerage situation. Generally, if two brokers are involved, i.e. one for the Seller and one for the Buyer, the Seller’s Commission should not increase.

4. Non-exclusivity of Broker. Client acknowledges that Broker is or may be, both during and after the Term of this Agreement, engaged as a broker and/or agent for numerous other domain name sellers and buyers in connection with numerous other domain names which may be competitive with the Domain Name(s), and therefore agrees that it is engaging Broker notwithstanding the foregoing, and therefore Client does not consider same to be a breach of this Agreement or any implied term therein.

This section just clarifies that the Broker will be working on opportunities other than yours. It is advisable to ask what other names the Broker is representing and how time is being divided, if the names are being co-marketed, etc.

Commonly, brokers will be engaged by numerous clients in respect of numerous domain names at the same time. Sometimes that may mean that a broker is engaged to market two comparable or similar domain names by two respective clients. That could potentially create a conflict if the domain names are in competition with each other and thereby raise the possibility of a broker preferring one client and domain name ahead of the other. A professional domain name broker will ensure that the client is aware of this issue and would likely disclose a significant conflict or significant potential conflict to the client. A good broker would also outline how the broker intends to deal with the situation, and thereby allow the client to decide for itself as to whether it still wants to proceed.

5. Term. Unless earlier terminated by the completion of a Sale of the Domain Name(s), this Agreement will remain in effect from the Effective Date for 6 (six) months (the “Term”). Thereafter, this Agreement will expire if not renewed by the Parties, in writing. Notwithstanding expiry of this Agreement, Broker shall continue to assist in the completion of any Sale transaction for which compensation is payable to Broker under this Agreement.

This provision is such that the term of the Agreement automatically cancels if not renewed, in writing, while some agreements state the opposite.

There are no ‘standard’ Term lengths in a Broker-Client relationship. They can vary from a shorter time to a longer time. This is a matter for negotiation and agreement between a broker and its client. From

the Broker’s perspective, it is often in its interest to have as long a Term as possible since it expands the window of opportunity to make a sale, with relatively little downside. From the Client’s perspective, the Client will often want a shorter Term so as to put some pressure on the broker to make a sale happen faster. Nevertheless, an appropriate term is one which both parties feel comfortable with. If it is too short, it could actually hinder the broker’s interest in and ability to market the Domain Name. If it is too long, it could encourage a Broker to deprioritize the sale of the Domain Name as there is no urgency.

Sometimes a broker and client may decide to have the Term automatically extend, rather than have it automatically terminate unless extended in writing. This can be a convenience for both parties, but more often is of more benefit to the Broker since generally a longer term is in the Broker’s interest and such an automatic extension generally occurs more often when there is no proactive requirement for the parties to expressly extend the Term in writing, rather than having it expire.

6. Early Termination by Broker. Broker may terminate this Agreement prior to the expiry of the Term upon one (1) weeks’ notice to Client. Client shall not be permitted to early terminate this Agreement without the written consent of Broker.

Early termination of the engagement by the Broker is relatively rare, but it can sometimes happen when the relationship has broken down. This can occur where the Broker finds the Client is being unreasonable in its expectations or service and communication demands. Including an early termination provision for the Broker’s benefit can therefore be helpful in ending the relationship in an orderly manner.

Clients can of course also become unhappy and lose trust in the Broker’s ability to represent their interests and may therefore want to terminate the Agreement early. If this happens, often the Broker will be happy to end the relationship as well, but it could be problematic if the Client wants to terminate the Agreement only so that can take advantage of the work that the Broker has already put into the marketing, or even to try to avoid paying Commission. Accordingly, a Broker may not want to include an early termination provision for the Client’s benefit, and may instead offer a shorter Term to the Client.

7. Reserve Price and Authority. Client hereby grants Broker the exclusive right and authority during the Term to market the Domain Name(s) for Sale at the asking price of \$ _____ (the “Reserve Price”), and furthermore, authorizes Broker to agree to a Sale of the Domain Name(s) at the Reserve Price, on Client’s behalf, without further express authority being required from Client. Broker shall obtain the written consent of Client prior to agreeing to any Sale price that does not meet the Reserve Price.

In this case the Reserve Price is the lowest price that the Seller is authorizing the Broker to sell the Domain Name for. Please note this price is before any Commission or fees are deducted. In some cases, Brokers refer to the “Reserve Price” as the price you are willing to accept NET of commission so be sure to clarify this with your Broker.

Client satisfaction is often the product of the Broker successfully managing expectations. A professional Broker will therefore often thoroughly research suggested pricing for a Domain Name as part of the Broker engagement process. It will of course usually be of utmost importance to the Client what the Broker expects the Domain Name to



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sell for with the Broker's assistance, and the Client will therefore want to know before engaging a Broker, what the price expectation is. Of course, there are no assurances as to what a Domain Name will ultimately sell for, and a Broker should always make that clear to the Client.

Establishing the "Reserve Price" or a "minimum price" is often a crucial aspect of the agreement both for the Broker and for the Client. For the Broker, unless a Client is prepared to commit to a certain minimum sale price from the outset, a Broker may not want to take on the engagement because "reasonable" offers may come in that the Client still will not accept, thereby wasting the Broker's time and efforts. A Client will often want to assurance of seeing in writing, what the Broker's minimum price expectations are, before hiring the Broker. Nevertheless, sometimes a Client can be uncomfortable with setting a "Reserve Price". The Client may think that setting a Reserve Price will encourage the Broker to not exceed the minimum expectations. The Client may also be concerned that it binds the Client to accept an offer that meets the Reserve Price without knowing who the purchaser is in advance or being able to ascertain that it is truly the best price available. Sometimes a Client will therefore insist upon having "final signoff" on all offers and may also demand to be able to see the communications with the purchaser and other potential purchasers.

These are difficult issues for the parties to navigate and ultimately the reputation and experience of a Broker can play a large part in enabling a Client to trust a Broker and persuading a Client that a Reserve Price should be included in the Agreement.

8. Commission. In consideration of the Services to be provided by Broker Client agrees to pay Broker a transaction fee equal to ____% (xxxx percent) of the final Sale price of the Domain Name(s) as agreed between Client and a buyer (the "Purchase Price"), regardless of the form of payment thereof, including cash, cash equivalence, equity, stock, or otherwise (the "Commission"), and without deduction on account of any other associated fees, charges, or agreements between Client and a buyer. Client shall pay Broker all costs, disbursements and expenses, including legal fees incurred by Broker in enforcing Client's obligation to pay its Commission as herein provided.

The Commission is the percentage of the Reserve Price (as indicated above) that you agree the Broker will be paid upon completion of a Sale. Commission rates vary per broker so be sure to clarify your Broker's commission rate in an initial call. There are no standard Commission rates for Brokers. It is a matter for negotiation between the parties, but the rates are often in the 10% – 15% range, with 15% being very common.

Depending on the circumstances, a Broker may request an upfront fee to be set off against the Commission once it becomes payable, in addition to a percentage Commission, however this is a rare practice in seller-side agreements.

Sometimes it is not known what form the Sale will ultimately take. What was expected to be an all cash upfront sale, could turn into a lease, or a combination of cash and stock in rarer cases. That is why it is important to be clear that the Commission is payable on whatever form the Purchase Price takes, although this can sometimes get complicated when it is a non-cash Purchase. If you choose to accept alternate forms of payment, the Commission is still due to the Broker based on the overall value of the compensation you are receiving for your domain.

If a Purchase Price is payable over time, or if the transaction is in the form of a lease, then it will have to be determined if the Commission

is payable in a lump sum from the first payment(s) calculated on the basis of the total Purchase Price, or if the Commission will be payable over time as well, with the Commission being deducted from each payment. Such considerations will be dependant on the circumstances and bargaining power of the parties.

9. Forfeited Deposits. In the event that any funds paid as a deposit and/or down payment have been forfeited by a prospective buyer in connection with a Sale transaction, an amount up to the amount of the Commission shall be split 50% to Client and 50% to Broker.

A forfeited deposit is considered any money paid by the buyer for the domain that is forfeited for any reason by the buyer.

Sometimes transactions do not close or do not complete, even after a signed purchase agreement is obtained. If the purchase agreement contained a provision for the payment of a deposit, down payment or of payments over time, and a payment was received by the Client, the Broker and Client will have to determine how Commission is paid in such circumstances.

Usually, a Commission will not be payable on the Purchase Price if the Purchase Price was not received in full, but sometimes the Broker and Client will agree to share in a forfeited payment, but the Broker will never receive more than the amount of the Commission that would have otherwise been payable. This is often a nice way of compensating the Broker for all of its work in successfully obtaining a deal, even when the deal ultimately fails due to no fault of the Broker.

10. Commission Payable Notwithstanding Circumvention. The Commission is payable to Broker in connection with any Sale of the Domain Name(s) throughout the Term of the Agreement, regardless of whether or not the Sale was made through or with the assistance of Broker.

This clause protects the Broker should the Seller choose to sell the Domain Name on their own or through another broker or service, during the Term of the Agreement. It confirms that the Commission is due to the Broker whether or not the Buyer was a direct result of the Broker's efforts.

One of the greatest risks and frustrations that a Broker faces, is when the Client sells the Domain Name behind the Broker's back during the Term of the Agreement. This is called "circumvention". In order to safeguard against an unscrupulous or inconsiderate Client, Brokers will often insist on a non-circumvention clause that entitles the Broker to Commission even if the Client sells the Domain Name itself or through another broker or platform during the Term of the Agreement. Of course, collecting on the Commission may require legal assistance by way of a 'Demand Letter' or through litigation.

Clients should never attempt to circumvent the Broker's entitlement to a Commission, as they will still be liable to pay it, even if they have already paid another broker a separate commission. Not only is it extremely disheartening for a Broker when this happens, but the Client could end up paying two commissions and could harm their own reputation.

Sometimes an agreement will set out "excluded buyers", meaning that any Sale to one of these buyers without the Broker's assistance, is permitted, even during the Term, and will result in a predetermined compensation rate to the Broker, which could be zero or more, depending on the circumstances.



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11. Client's Refusal to Close. In the event Client is unable or unwilling to comply with any reasonable condition of a prospective buyer and the transaction cannot proceed to closing, or if Client refuses to close a transaction where the Reserve Price has been met by a buyer, the Commission shall become immediately due and payable notwithstanding same.

This clause confirms that Commission is still due to the Broker if the Seller refuses to finalize a Sale if the Reserve Price was met and the Buyer isn't insisting on any unreasonable conditions. Therefore, if a Seller "changes their mind" about selling, the Commission is still due to the Broker.

Sometimes a Broker will have delivered a good offer that meets the Minimum Reserve Price and all other disclosed Client requirements and expectations, and the Client for whatever reason or lack thereof, will still refuse to sign the purchase agreement or to transfer the Domain Name and close the transaction. In the absence of any good reason for doing so, the Broker will believe that it has fully discharged its duties and obligations to the Client and is therefore entitled to its compensation regardless of the Client's unreasonable refusal to complete the transaction. The Client may have some reason that it believes that it is reasonable to refuse to complete the transaction, and in such circumstances, the Broker and Client that could end up in litigation.

Although such circumstances are relatively rare, they do happen and from the Broker's perspective, it may be advisable to at least include a provision that makes it clear that the Client will have to pay if it changes its mind about a sale after the Broker has already fulfilled its duties and obligations in good faith under the Agreement.

13. Holdover Period. If any Sale occurs within 6 (six) months after expiry of the Term of this Agreement or any extension thereof (the "Holdover Period"), to any person, corporation, or other entity which the Broker or any agent of the Broker during the Term hereof or any extension thereof, identified and offered the Domain Name(s) to, then Client shall immediately pay the Commission to Broker as if such Sale occurred during the Term hereof.

A "holdover period" can also be referred to as a "tail" on an agreement. The reason for a Holdover Period is to ensure that the Broker is compensated for any Buyer originally identified by the Broker during the Term of the Agreement. This Holdover Period can be any length of time agreed upon between Seller and Broker. It should also be established how 'identified buyers' will be determined.

Brokers often spend considerable time, effort, and resources in marketing a Domain Name, contacting potential purchasers, and negotiating terms, all without any payment up front. Clients benefit from this arrangement because they only pay a 'success fee', without any financial burden being incurred unless a successful deal is made.

But what happens when the Broker does all that leg work and lines up a purchaser who has agreed to all the Client's terms, but the transaction only closes a week after the expiry of the Term, for example?

'Holdover clauses' are common in real estate and in domain name brokerage contracts to protect Brokers against a Client purposefully or even unintentionally, taking advantage of the Broker having found a purchaser or having set up a Sale only to have it occur only once the Term has expired. Often the Broker and the Client acting in good faith will simply extend the Term so that the Broker can assist with completing the transaction and will receive its Commission. This can

also sometimes be accomplished by including a provision in the Agreement that automatically extends the Term if a transaction is pending. However, such a provision does not deal with the situation where there is no active transaction pending, but the Client decides to go to a prospective purchaser that the Broker found, and sell the Domain Name once the Term is over.

Holdover clauses are a matter for negotiation of how long the duration of a Holdover period should be. It can range from weeks to months, with the longer duration of course being in the interest of the Broker. Long Holdover periods can negatively affect a Client because the Client will be obliged to pay the Broker for the duration of the Holdover period, even when the Client is working with a new Broker or decides to sell the Domain Name directly, itself.

Holdover clauses can also be problematic as sometimes a Client will already be aware of a prospective purchaser even before hiring the Broker, and as such believes that they should be free to make a sale to the purchaser directly without paying a Commission to the Broker. Accordingly, sometimes the Client will identify all such prospective purchasers and exclude them from the Holdover clause. Sometimes a Client will be unaware of who the Broker has contacted in the course of marketing the Domain Name, and then will be surprised to learn from the Broker that the Broker believes that it is entitled to a Commission even after the expiry of the Term, since the purchaser was someone who the Broker had contacted during the Term. Accordingly, sometimes the Broker will identify to the Client, all such contacts during the Term or at its expiry.

14. Use of Escrow Agent. Client agrees that the Purchase Price in respect of any Sale shall be paid by a buyer to Client via Escrow.com or such other third-party escrow agent as Broker may reasonably select from time to time ("Escrow Agent"). Client hereby agrees and herein expressly authorizes Escrow Agent to deduct all Commission due from the Purchase Price and to remit same to Broker forthwith upon receipt of same from a buyer.

An escrow agent is an individual or company who collects payment and distributes accordingly once the Domain Name is transferred to the Buyer. There are several types of escrow agents so this is something that should be discussed and agreed upon prior to finalizing terms of a Sale including responsibility for any fees incurred for the escrow agent.

Most successful and higher value brokered domain name transactions are done using an escrow agent. This provides greater comfort to both the buyer and the seller that the Domain Name will be transferred only when the Purchase Price funds are secured. Using an Escrow Agent can also assist a Broker, as the Broker can often arrange to be paid its Commission directly from the escrow agent. If the Broker has to wait to be paid directly from the Client after the Client receives the Purchase Price, the Broker will be concerned that it won't receive its Commission immediately when payable.

It is useful to make clear to the Client at the outset, that an escrow service has to be used if a Sale occurs, since that is likely what the buyer will insist upon and doing so will avoid misunderstandings and misgivings by the Client down the road.

15. Client Warranties and Obligations. Client represents and warrants that Client has the legal right, power and authority to enter into and to perform this Agreement, Client is the lawful and exclusive registrant of the Domain Name(s), Client is able to dispose of the Domain Name(s), that no other party has any right to registration of the Domain Name(s), and that no third party has made any claim



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against or to the Domain Name(s), including that the Domain Name(s) violate(s) another party's trademark or other intellectual property rights. Should the Domain Name(s) infringe upon the rights of a third party, Client agrees to indemnify and hold harmless Broker for all damages or costs sustained or incurred by Broker.

It is extremely important to confirm ownership of the Domain Name prior to signing this Agreement. This can be done by making Whois information public, emailing the Whois email address and, lastly, performing basic, online research on the Domain Name to ensure there have been no public issues or bad press.

As part of the due diligence conducted by a professional Domain Name Broker prior to being engaged by a Client, the Broker will often investigate the ownership, provenance, and chain of title of the Domain Name, in addition to ascertaining prior sales activity and inquiries. This is a crucial step so as to avoid expending time, effort and resources on marketing a Domain Name that has an issue with title, the Client's authority to sell, or even a prior threat or lawsuit related to the Domain Name.

Sometimes an issue with authority to sell a Domain Name will occur where the Domain Name is held by an entity that has more than one owner or shareholder, or where more than one person is the designated officer or director entitled to approve engaging the Broker and selling the Domain Name.

A professional Broker will often also consider whether there are any potential trademark or cybersquatting issues which arise from a particular Domain Name. This can affect who the Broker decides to solicit and how the Domain Name can be used in the interim prior to the Sale, and even afterwards by the buyer. It is advisable to search trademark databases to try to identify if there are any similar names or brand that might impede any Sale. If so, this clause states that you are indemnifying the Broker from any damages or costs incurred due to such issues. The Seller should always convey any potential risks or issues they may be aware of regarding the Domain Name.

Despite proactive due diligence steps that a professional Domain Name Broker may take, this provision tries to make clear that ultimately, it is the Client that promises to the Broker that no such issues exist.

Client will cooperate with Broker and provide access to all information reasonably necessary for Broker's successful performance of the Services. Client agrees to refer to Broker all communications and inquiries in connection with the Domain Name(s), received in any form during the Term of this Agreement, and further agrees to furnish Broker with any leads or offers received by Client prior to or during the Term of this Agreement.

This clause ensures that the Seller and Broker are working as a team with complete transparency. It should be established beforehand that any leads / inquiries received by the Seller before or during the Term are immediately shared with the Broker.

Good communication and cooperation is key to a successful Broker-Client relationship. After all, it is often a team effort with the parties working closely with each other to market and sell the Domain Name.

A Broker's ability to successfully market and sell the Domain Name may be significantly hindered if a Client does not cooperate and/or does not refer inquiries to the Broker that the Client has received or may receive during the engagement, directly from a potential buyer.

Client will satisfactorily respond to all communications from Broker within five (5) days. All traffic statistics and analytics, financial statements, business records and other information relating to the Domain Name(s) which has been or will be provided to Broker and/or prospective buyers by Client or Client's agents are complete and accurate to the best of Client's knowledge as at the date thereof. Client has disclosed all material facts relating to the Domain Name(s) which might reasonably influence a prospective buyer's decision to enter into a Sale of the Domain Name(s).

Time is of the essence in all Sales. It is important to establish a means of communication between the Seller and the Broker (text, email, phone, etc.) and expectations regarding response time.

Although a professional Broker will often conduct its own due diligence, often a Client will provide the Broker with information that can assist in the marketing and sale of the Domain Name and the Client needs to understand that such information must be accurate so that the Broker does not unwittingly mislead a potential buyer. Also, the Client should make the Broker aware if there is anything related to the Domain Name that could be a factor in its value or affects the Broker's ability to successfully market and sell the Domain Name.

16. Confidentiality and Sale Disclosure. Both Parties are obligated to keep any and all information that they become aware of about each other's business, confidential. The Client shall not disclose any information that it learns from Broker regarding potential buyers to any third party. Broker may disclose and publicize the Domain Name(s) and their final Purchase Price unless otherwise agreed to by the Parties in writing. Notwithstanding the foregoing, Broker will not disclose Client's name or any confidential details related to the Sale. These obligations herein shall survive the expiry or termination of this Agreement.

As business information and processes may be learned during the Term of the Agreement, it is important to make it clear upfront that this information is not to be shared with any potential buyer, competitor, etc. Many brokers disclose domain name sale prices and some sellers require this information be kept confidential for various reasons therefore this needs to be established.

Publicizing domain name sales helps the domain name industry as a whole and the successful Broker in particular. However not every Client will want the Sale and the Purchase Price to be disclosed or publicized. Accordingly, the Broker and the Client should discuss this issue prior to the engagement and may decide to include a provision which only permits limited disclosure of the Sale and/or Purchase Price, or prohibits it altogether.

17. Governing Law and Jurisdiction. This Agreement shall be governed, interpreted and enforced in accordance with the laws of _____, regardless of any conflict of laws considerations. The Parties exclusively attorn to the jurisdiction of _____ for any dispute arising from this Agreement.

The governing law is that of the state, province, or country. that all parties agree to follow. The jurisdiction is the location of any court where any dispute should take place.

Generally, the applicable law and jurisdiction of the Agreement will be that of the Broker, by default, as the Broker will want to select its most convenient forum if any dispute arises. Nevertheless, sometimes a Client may insist on its own home jurisdiction, and this is a matter for negotiation between the parties.

18. Entire Agreement and Severability. This document, including any



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attachment(s), contains the entire Agreement between the Parties relating to the subject matter hereof. All prior agreements and all prior negotiations are superseded by this Agreement. This Agreement, including any attachment(s), may not be modified except by a written document signed by an authorized person on behalf of each Party. If a provision of this Agreement is determined by any court of competent jurisdiction to be unlawful and/or unenforceable, the other provisions will continue in effect. In the event a provision contained herein is held to be unlawful or unenforceable, such provision shall be severable from the remaining provisions of this Agreement, which shall remain in full force and effect.

This clause conveys that this Agreement supersedes any prior agreements and any changes require authorization of all parties. If any provision in the Agreement is proven unenforceable, its removal will not affect any remaining terms of the Agreement.

Both the Client and the Broker should understand that this Agreement must represent the entire arrangement between them. That means, for example, that any promises that a Broker or Client may make to each other that isn't recorded here, will likely not be enforceable.

19. **Counterparts; Facsimile or PDF Signatures** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any signed copy of this Agreement or copy or counterpart thereof, delivered by facsimile transmission or by e-mail in portable document format (PDF), shall for all purposes be treated as if it were delivered containing an original manual signature of the whose signature appears in the facsimile or e-mail, and shall be binding

upon such party in the same manner as though an originally signed copy had been delivered.

This clause is to indicate the formats of the Agreement that all parties agree to treat as binding and as an original signed copy.

These days most agreements of every kind are signed digitally using PDF, and such signatures are recognized by the law in most jurisdictions. Including this provision reminds parties that they can sign digitally and that such digital signatures are valid.

Sometimes each party will sign a separate document, on the signature line, for example so that one party does not need to await the other party's signature before signing. This is called signing in "counterparts" and is permissible.

20. **Notices and Communications.** All notices required or permitted to be given pursuant to this Agreement shall be delivered by hand to the party for which it is intended at the above-noted addresses, or sent by electronic email directly to such party at the following email addresses. If to Broker:_____. If to Client:_____.

It is often advisable for the Client to use an email address that is not associated with the Domain Nam being sold, as that email could cease to function for the Client upon the Sale.

IN WITNESS WHEREOF, the Parties, through their respective authorized signatories if applicable, have caused this Agreement to be duly executed.

[CLIENT]

[BROKER]

[I have the authority to bind the Corporation]

[I have the authority to bind the Corporation]

By: _____
Signature

Signature

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____