



1	Appointment And Authority	1
2	Commission and Expenses	1
3	Client Warranties and Indemnities	2
4	Disclosure of Information, Privacy and Confidentiality	2
5	Acknowledgements and Consents	2
6	General	3
7	Client Acknowledgements - PLEASE READ CAREFULLY and check the boxes to confirm acknowledgements	3
	Business Details Sheet	4
	Market Price Appraisal	5
	Marketing Plan	5
	Attachments List	5

1	Appointment And Authority
1.1	EXCLUSIVE AGENCY

\_\_\_\_\_ (“**The Client**”) appoints aAgents.Biz (Acquisition Agents Limited) (“**The Agent**”), a licensed real estate agent under the Real Estate Agents Act 2008, as the Client’s general agent for the sale of the business trading as **Z-tech** (“**the Business**”), located at \_\_\_\_\_, as further described in the **attached** Business Details, commencing on \_\_\_\_\_ / \_\_\_\_\_ /2020 and continuing until midnight on \_\_\_\_\_ / \_\_\_\_\_ /2020.

This sole agency may be terminated by the Client, by written notice to the Agent, by 5 pm on the first working day after the day on which a fully signed copy of this agreement is given to the Client. Pursuant to this appointment, the Agent is authorised to market the Business, conduct negotiations and to prepare any agreements using the current edition of the standard REINZ/ADLS Agreement for Sale and Purchase of a Business (“**the Agreement for Sale and Purchase**”), and do all other things as may be necessary or required to give effect to a sale of the Business. Such work may be conducted by the Agent or through a Branch Manager or Salesperson of the Agent, and those persons conducting such work are referred to as Licensees in this Agreement.

1.2 The Client acknowledges that they understand that if they appoint another agent to sell the Business, then they could be liable for more than one commission if a transaction is concluded.

1.3 Deposit. The Client agrees:

1.3.1 the Agent is entitled to receive a deposit on the Client’s behalf. The New Zealand Real Estate Trust, an independent trust account service provided by SafeKiwi (New Zealand) Limited will be used for payment. Deposit funds will be paid directly to Public Trust as the custodian for the deposit who will receive, hold and disburse monies on behalf of vendors and purchasers. The client will be bound by the Terms of Use located on website <https://www.realestatetrust.co.nz/termsfuse>;

1.3.2 the Agent is entitled to deduct their fees (commission and expenses) plus GST from the deposit held by SafeKiwi Public Trust as soon as such deposit may be released under the New Zealand Real Estate Trust Terms of Use. This agreement constitutes a charge against the business to herein agreed to be sold for the amount of the fees payable;

1.3.3 if the deposit is not received by the Agent, or the deposit received is not sufficient to cover the Agent’s commission and expenses, then the Client will pay the Agent such commission and expenses immediately on receipt of an invoice.

1.4 Effect of Agency Agreement Termination or Expiration

The termination or expiration of this agreement is without prejudice to any rights, powers, or remedies of the parties including the Agent’s right to commission and reimbursement of any agreed marketing costs and/or expenses.

## 2 Commission and Expenses

### 2.1 Amount of Commission Payable

The commission payable shall the greater of either the minimum fee of **\$10,000** plus GST, or the total amount (plus GST) calculated based on the following schedule: 8. % of the first \$1,000,000 of the Selling Price; plus 5% on the balance of the Selling Price. For example, based upon the **attached** appraised value, a sale price of \$\_\_\_\_\_ would mean a commission of \$\_\_\_\_\_ plus GST. In this agreement, “Selling Price” means the total sale (purchase) price (excluding GST) for the Business (or, where applicable, the company shares), as recorded on the Agreement for Sale and Purchase. Where negotiations culminate in the merger, formation of a joint venture company without consideration being paid by one party to the other, “Selling Price” means the appraised value written above.

### 2.2 Payment of Commission:

2.2.1 The Client must pay the Agent the commission on the terms set out in this agreement, if the Client enters into an agreement to sell or exchange the Business (or part of it) at any time during the term of the agency and the agreement is, or becomes, unconditional (whether during or after the term of the agency);

(a) The Client enters into an agreement to sell or exchange the Business (or part of it) within a period of 12 months following the date of expiry, cancellation or termination of the agency, through the instrumentality of the Agent or to a purchaser introduced by the Agent, and the agreement is or becomes unconditional (whether during or after the 12 months period). The purchaser shall be deemed to have been “introduced” to the business where the business has been brought to their attention as being for sale whether by advertisement, signage, verbally, directly or indirectly, during the term of the agency appointment.

2.2.2 Unless otherwise stated, the commission is payable upon the agreement for the sale of the Business becoming unconditional.

### 2.3 Marketing and Advertising Expenses

In addition to the commission, the Client agrees to pay the Agent the sum of \$\_\_\_\_\_ plus GST upon signing of this agreement, for advertising and marketing the Business, as agreed in the **attached** Marketing Plan.

#### 2.3.1 Rebates, Discounts and Other Commissions

The Agent confirms that, in relation to any expenses for, or in connection with, any real estate agency work performed by them for the Client, they will not and are not eligible to receive any rebates, discounts or commissions in respect of those expenses.

## 3 Client Warranties and Indemnities

3.1 The person signing this agreement as or on behalf of the Client warrants that they are properly authorised to do so.

3.1.1 They accept personal liability for fees and commission by signing this agreement;



3.1.2 Where the business is owned by more than one owner, including trustees of a trust, each owner or trustee warrants that they are authorised to enter into this agency agreement and agree that their personal liability for the fees and commission is joint and several.

3.2 The Client warrants that, having made proper enquiries, to the best of their knowledge and belief:

3.2.1 the information provided in this agreement (including but not limited to the **attached** Business Details is correct;

3.2.2 the Business is not subject to any defects or hazards, requisitions or notices from any party other than those identified in this agreement, if any;

3.2.3 the Client has not omitted or withheld any material information affecting the Business from the Agent.

3.3 The Client warrants that they will notify the Agent as soon as practicable if any material changes affecting the Business occur during the term of the agency.

3.4 Indemnity

3.4.1 The Client (and if more than one, jointly and severally) indemnifies the Agent, the Licensees and any of their respective employees, agents or contractors against losses, damages, claims or other liability arising from any inaccurate information provided by the Client or any material omissions or withholding of information by the Client in this agreement.

3.4.2 The client accepts personal liability for fees and commission by signing this agreement;

3.4.3 Where the property is owned by more than one owner, including trustees of a trust, each owner or trustee warrants that they are authorised to enter into this agency agreement and agree that their personal liability for the fees is joint and several.

3.4.4 The information on the attached business details sheet is true and correct and the client agrees to indemnify and hold indemnified aAgents.Biz against all costs, damages, claims, expenses, liabilities or proceedings whatsoever, which may arise from the use of any information set out in the attached business details sheet or any other property information that they advise or provide to aAgents.Biz.

#### 4 Disclosure of Information, Privacy and Confidentiality

4.1 The Client acknowledges that the Agent is required under [the Real Estate Agents Act \(Professional Conduct and Client Care\) Rules 2012](#) ("the Rules") to disclose information that should by law or in fairness be provided to purchasers or potential purchasers.

4.2 The Agent confirms that it will obtain the Client's written consent before disclosing any information that it considers should be disclosed under the Rules.

4.3 If at any time during the course of this agency, the Client withholds their consent under clause 4.1, then the Agent must to avoid a breach of the Agent's duties under the Rules, terminate this agreement by written notice.

4.4 The Agent may provide statistical data relating to the sale to the Real Estate Institute of New Zealand and Bizstats upon the agreement becoming unconditional.

4.5 In addition to clause 4.4, the Client authorises the Agent to use sale details, including the sale price of the Business, in the Agent's promotional or advertising material upon the agreement becoming unconditional.

4.6 Except as otherwise provided in this agreement or as agreed between the parties, neither party may disclose any information contained in this agreement to a third party other than:

4.6.1 as required by law;

4.6.2 in good faith and in proper furtherance of the objects of this agreement;

4.6.3 to those of its employees, contractors, officers, professional or financial advisers and bankers as reasonably necessary but only on a strictly confidential basis;

4.6.4 to enforce a party's rights or to defend any claim or action under this agreement; or

4.6.5 where the information is already in the public domain.

4.7 To the extent provided in this agreement, the Client hereby exempts the Agent from the provisions of [the Privacy Act 1993](#) and authorises the Agent to disseminate information provided by the Client concerning the Business on a 'need to know' basis and in a responsible manner to genuine inquirers.

#### 5 Acknowledgements and Consents

5.1 The Client acknowledges that the Agent has obligations under the Health and Safety at Work Act 2015 to ensure the health and safety of workers (including its employees and contractors) and the general public while undertaking real estate agency work under this agreement.

5.2 The Client shall give the Agent all reasonable assistance and information to ensure that no hazards or risks at, or arising from, the Business or its premises affect the health and safety of any person while the Agent is performing its role under this agreement, including by:

5.2.1 promptly providing to the Agent information about any hazards or risks at the Business premises which are known to the Client; and

5.2.2 complying with the Agent's reasonable instructions about actions required to address any identified hazards or risks at the Business premises.

5.3 Electronic Messages. The Client consents to the Agent sending electronic communications of a marketing or promotional nature to the Client's email address as specified under this Agreement, until such time as the Client unsubscribes from such communications.

5.4 Consent to Contact Client's Professional Advisors

The Client **does not authorise** the Agent to contact the Client's professional advisors, on the Client's behalf, to request or verify relevant information that is required for the sale.

5.4.1 "Professional advisors" under this clause includes the Client's lawyer, accountant, valuer, and any other advisors as the parties may specify in writing. (*Note: Whilst authorising direct contact is likely to expediate the sale process, the Client should consider that their professional advisors may charge for correspondence from the Agent.*)

5.5 NOTICES: Any notices given under or relating to this agreement may be served or given by hand, mail, fax or email. If there is more than one set of contact details for the Client, then a copy of this agreement and any notices may be sent to any one of them and notice to any person that is listed as a Client will be notice to all of them. Notices to the Client may also be sent to the Client's lawyer unless otherwise instructed.

5.6 This agreement and notices under it will be deemed to have been received:



- 5.6.1 when delivered in person, at the time of delivery
- 5.6.2 if sent by mail, 3 working days after being mailed;
- 5.6.3 if sent by fax, when the sender receives a transmission report showing the transmission has been satisfactorily completed;
- 5.6.4 if sent by email, when the email enters the recipient's information system.

### 6 General

6.1 Any reference to "working day" in this agreement will have the meaning ascribed to it under the Interpretation Act 1999.

### 7 Client Acknowledgements - PLEASE READ CAREFULLY and check the boxes to confirm acknowledgements

7.1 The Client, before signing this agreement, acknowledges that they have been:

7.1.1  recommended to seek legal advice and the Agent has provided a reasonable opportunity for them to obtain legal advice;

7.1.2  recommended that they can, and may need to, seek technical or other advice and information and a reasonable opportunity to do so was provided by the Agent;

7.1.3  made aware of [the Agent's in-house complaints and dispute resolution procedures](#) and that a copy of this has been made available;

7.1.4  made aware that they may access [the Real Estate Authority's complaints process](#) without first using the Agent's in-house procedures and that any use of the in-house procedures does not preclude the making of a complaint to the Real Estate Authority;

7.1.5  advised and received an explanation of the circumstances in which they could be liable to pay full commission to more than one Agent in the event a transaction is concluded as set out in clause 1.2.2;

7.1.6  advised when this agreement comes to an end as set out in clause 1.1;

7.1.7  made aware of the Agent's disclosure obligations as set out in clause 4;

7.1.8  given an appraisal for the Business in writing;

7.1.9  made aware of the various possible methods of sale and how the chosen method could impact on the individual benefits that the Licensees may receive as set out in clause 2.3.1;

7.1.10  made aware that further information on agency agreements and contractual documents is available from the Real Estate Authority and [how to access that information](#).

7.1.11  made aware that the Agent is required to work under [the Real Estate Agents Act \(Professional Code of Conduct and Client Care Rules\)](#).

7.2 Further Sole Agency Client Acknowledgements

The Client acknowledges and agrees that:

12:00:00 AM

7.2.2  they have not appointed (without having notified cancellation of) any other real estate agent to sell the business prior to the execution of this agreement;

7.2.3  they will refer all enquiry or negotiations from other agents directly to aAgents.Biz;

7.2.4  at the time of signing this agency agreement they have provided a Business details sheet (which is the Business referred to in this Agreement) to aAgents.Biz.

Signed on \_\_\_\_ / \_\_\_\_ /2020 by the Client or authorised signatory:

Signed on \_\_\_\_ / \_\_\_\_ /2020 by the Agent or authorised signatory:

SIGNATURE

SIGNATURE

NAME \_\_\_\_\_

\_\_\_\_\_



**Business Details Sheet**

**Business Description**

Entity Type **Company**

GST Number  
Owner/Director  
Postal Address  
ID Number  
Phone Mobile

Owned Since  
Email

Reason for Sale  
ID Copy provided?  
Work

Proof of address provided?

Solicitor  
Address

Acting

Email

Phone

Accountant  
Address

Acting

Email

Phone

Premises Leased From  
Annual Rent  
Used for Accommodation?

To  
(PLUS GST) Outgoings  
Review Dates  
(PLUS GST)

Landlord  
Email

Phone

Address

Lawyer  
Email

Phone

Hours	Mon	Tue	Wed	Thu	Fri	Sat	Sun
Start							
Finish							

Full-Time Staff	
Part-Time Staff	1
Working Owners	1

GST EXC	Weekly	Monthly	Annual
Sales			
Cost of Sales			
GROSS PROFIT			
Expenses			
Net Profit			
Depreciation			
Owner Wages			
Other			
DISCRETIONARY			
Owner Surplus			

Business Assets	Price
Tangible	
Intangible	
Stock	
Land & Buildings	
Other	

Asking	Price Range
Minimum	
Medium	
Maximum	

Comments

Sale Method **Negotiation**



### Market Price Appraisal

The sale price appraisal (plus stock where relevant) is \$ \_\_\_\_\_ ranging from a low of around \$ \_\_\_\_\_ to a high of around \$ \_\_\_\_\_.

The reason(s) for selection of the appraised price(s) are, Based on twelve months Feb 2019 to Jan 2020 and:

- \$ \_\_\_\_\_ per year Owner's cash surplus
- A BUSINESS CATERGORY OF \_\_\_\_\_ BIZSTATS average annual EBPI TD (surplus) multiple to business sales price of X.XX, with multiples ranging from around X.XX to X.XX for A BUSINESS CATERGORY OF \_\_\_\_\_ businesses with annual sales between \$ \_\_\_\_\_ and \$ \_\_\_\_\_ .

Under the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012, a written sale price appraisal must be provided by the agent (and any licensee employed or engaged by the agent) when entering into, or having entered into an agency agreement for the disposal of land or business & where possible be based on comparable sales.

### Marketing Plan

The Agent will directly approach prospective purchasers.

The Agent will promote the business for sale in the following online places.

Placement	
<a href="https://www.nzbizbuysell.co.nz/sell-your-business">https://www.nzbizbuysell.co.nz/sell-your-business</a>	<input type="checkbox"/> Basic <input type="checkbox"/> Featured <input type="checkbox"/> Premium
<a href="https://www.trademe.co.nz/business-farming-industry/businesses-for-sale">https://www.trademe.co.nz/business-farming-industry/businesses-for-sale</a>	<input type="checkbox"/> Basic <input type="checkbox"/> Featured
Email and Social media promotion	<input type="checkbox"/>
	<input type="checkbox"/>
	<input type="checkbox"/>
	<input type="checkbox"/>

The Agent will prepare a Business Profile and Advertising Content (to be approved by the Client) of the business assets and operations to provide to prospective purchasers:

PROMOTION BLURB ONE

PROMOTION BLURB TWO

PROMOTION BLURB THREE

### Attachments

Number of pages attached \_\_\_\_\_

- Financial Statements
- 
- 
-