

We value long-term  
relationships.

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**REFERRAL AGREEMENT**  
2018



# Referrer Agreement

## PARTIES

1. Clarendon Homes (NSW) Pty Ltd ACN 003 892 706 of 21 Solent Circuit, Baulkham Hills NSW 2153 (**Clarendon**); and
2. [insert name, address, ACN (if applicable)] (**Referrer**)

## BACKGROUND

3. Clarendon wishes to appoint a referrer; and
4. the Referrer wishes to accept the appointment.

## TERMS:

### 1 Definitions

In this Agreement:

**Building Contract** means the building contract entered into between Clarendon and the Customer;

**Claims** means all costs, expenses, charges, losses and damages (including without limitation consequential loss and damage);

**Commencement Date** means the date of this Agreement;

**Customer** means the person referred to Clarendon by the Referrer;

**Designated Product/s** means single dwellings from the Clarendon range of homes;

**Designated Contact Person** means David Bourke, any nominated Clarendon sales consultant or any other person nominated by the Clarendon from time to time;

**Designated Area** means Sydney metropolitan area, South Coast, Newcastle and the Hunter regions

**Enquiry Form** means the form attached to this Agreement;

**Fee** means five thousand dollars (\$5,000.00) inclusive of GST for each Qualifying Sale of a Designated Product;

**Fee Payment Date** means the date being 7 days from the date of payment of the slab progress payment pursuant to the Building Contract;

**Qualifying Sale** means the conditions set out in clause 7.2;

**Term** means term set out in clause 9.1.

## **2 Appointment**

- 2.1 Clarendon wishes to appoint the Referrer and the Referrer wishes to accept the appointment, strictly in accordance with the terms of this Agreement.
- 2.2 Clarendon may change the terms and conditions of this Agreement at any time by giving the Referrer notice in writing.
- 2.3 The appointment commences on the Commencement Date and continues for the Term or until this Agreement is terminated.

## **3 Responsibility and authority**

- (a) The responsibility of the Referrer is, and the Referrer is authorised, to:
- (i) promote the Designated Products to prospective Customers;
  - (ii) refer prospective Customers to Clarendon. All referrals must be made to the Designated Contact Person;
  - (iii) collect personal information from prospective Customers and obtain their consent to disclose this information to Clarendon and the use of their personal information for direct marketing purposes by asking the prospective Customer to complete a privacy declaration;
  - (iv) determine whether the prospective Customer is suitable for a particular Designated Product; and
  - (v) assist the prospective Customer with the completion of an Enquiry Form.
- (b) The Referrer acknowledges and agrees:
- i) that by performing the duties outlined in clause 3 (a), the Referrer is acting on behalf of Clarendon and not on behalf of any prospective Customers;
  - ii) that the authority to act as a referrer to Clarendon is limited to the Designated Area;
  - iii) that the price of the Designated Products are entirely at the discretion of Clarendon;
  - iv) Clarendon may at any time change its Designated Products;
  - v) it is the Referrer's responsibility to keep up to date with all Designated Products in the Clarendon range; and
  - vi) that Clarendon may decline a prospective Customer referred by the Referrer at its absolute discretion and will advise the Referrer if the referral is valid and accepted.

## **4 Contracts and fees**

- 4.1 The Referrer acknowledges and agrees that:
- 4.1.1 all Building Contracts for the supply of a Designated Product will be between Clarendon and the Customer; and
  - 4.1.2 the Referrer is not authorised to enter into a Building Contract or any other contracts on behalf of Clarendon.
- 4.2 The provisions of clause 4.1 do not affect any separate contract that the Referrer may have with a prospective Customer for the supply of other goods or services.
- 4.3 Where required by law the Referrer represents and warrants to disclose to any prospective Customer any Fee receivable from Clarendon in respect of any referral.
- 4.4 The Referrer agrees that Clarendon may disclose to a prospective Customer any details considered appropriate regarding this Agreement.

## **5 Promoting Clarendon**

- 5.1 During the Term of this Agreement the Referrer must:
- 5.1.1 at all times actively promote Clarendon, its Designated Products and services honestly and professionally;
  - 5.1.2 not say or do anything that could be misleading or deceptive about Clarendon or its Designated Products;
  - 5.1.3 not display or distribute any advertising material other than advertising material approved of in writing, or supplied, by Clarendon;
  - 5.1.4 not do anything that brings Clarendon into disrepute;
  - 5.1.5 comply with all directives given or made by Clarendon regarding the promotion of Clarendon and its Designated Products;
  - 5.1.6 promptly deliver the completed Enquiry Form to Clarendon; and
  - 5.1.7 maintain regular contact with our Designated Contact Person.

## **6 Non-exclusivity**

- 6.1 The appointment of the Referrer set out in this Agreement is not an exclusive appointment and Clarendon may at any time during the Term of this Agreement, at its sole and absolute discretion, enter into similar agreements or make similar appointments.
- 6.2 In the event that Clarendon enters into any other arrangement as contemplated by clause 6.1 Clarendon shall be under no obligation whatsoever, under any circumstance, to pay any compensation to the Referrer.

## **7 Payment of Fees**

- 7.1 Subject to clauses 7.2, 7.3, 7.4 and 7.5, if during the Term of this Agreement, the Referrer makes a Qualifying Sale, Clarendon will pay the Fee on the Fee Payment Date to the Referrer.
- 7.2 For the purposes of this Agreement, a qualifying sale means a sale whereby all of the following conditions are satisfied:

- (a) the Referrer has submitted a completed Enquiry Form to the Designated Contact Person;
- (b) the Enquiry Form must be for a Designated Product;
- (c) the Customer, in the six (6) months prior to the date on which the Enquiry Form is submitted to Clarendon, has not previously acquired information from Clarendon or discussed the Designated Product directly with Clarendon;
- (d) a valid tax invoice must be provided to Clarendon for the Fee;
- (e) the Referrer must provide all information required with the Enquiry Form or at such other time as requested by Clarendon.
- (f) unless approved by Clarendon, Clarendon will not pay the Fee or Fees for any Customers who have been introduced as a result of a bulk email or similar mass marketing campaigns;
- (g) the prospective Customer referred to Clarendon enters into a Building Contract for the acquisition of a Designated Product within six (6) months of the date of the submission of the Enquiry Form or such other period as agreed by Clarendon; and
- (h) Clarendon has not otherwise declined the referral.

7.3 Clarendon may vary the Fee at any time by giving notice in writing to the Referrer of the new fee.

7.4 No Fees are payable in respect of a period during which the Referrer is in breach of this Agreement.

7.5 If any amount is owing to Clarendon the Referrer authorises Clarendon to deduct such amount from any Fees owing.

## **8 GST**

8.1 Unless otherwise stated, all amounts are GST inclusive.

8.2 The Referrer's entitlement to payment of any Fees is conditional on it being, as at the date of this Agreement, and remaining during the Term of this Agreement registered for GST and supplying Clarendon with an ABN.

8.3 The Referrer must issue a tax invoice to Clarendon for the supply of the referral services prior to payment of any Fees.

## **9 Term, termination or suspension**

9.1 The parties agree that the term of this Agreement will be twelve (12) months from the Commencement Date.

9.2 Notwithstanding any other provision of this Agreement either party may terminate this Agreement at any time by giving the other party thirty (30) days' written notice.

9.3 Subject to clause 9.7, if Clarendon terminate this Agreement any Fees accrued up to the date of termination remain payable to the Referrer.

9.4 This Agreement will be terminated immediately if Clarendon becomes aware that the Referrer is insolvent, dies, is convicted of a criminal offence, or, if the Referrer is a company, the ownership or effective control of the Referrer changes without Clarendon's prior consent.

- 9.5 If, in the reasonable opinion of Clarendon, the Referrer does, or causes to be done, any manner of thing that exposes Clarendon, its network, its business, its customers, its trades or suppliers to any potential Claim then Clarendon may immediately terminate this Agreement by notice in writing to the Referrer.
- 9.6 If either party breaches this Agreement, the other party may serve a notice detailing the breach and require it to be remedied. If that party does not remedy the breach within seven (7) days, the party who issued the notice may serve a further notice terminating this Agreement immediately.
- 9.7 If Clarendon terminates this Agreement under clauses 9.5 or 9.6, Clarendon will be under no obligation to pay any accrued Fees and the Referrer loses all right to any Claim against Clarendon for accrued and/or unpaid Fees.
- 9.8 Upon termination of this Agreement the Referrer must immediately cease and desist from making any representations regarding any Designated Products.

## 10 Customer complaints

- 10.1 In the event that a Customer makes a complaint against the Referrer, Clarendon or any matter the subject of this Agreement the Referrer must promptly notify Clarendon in writing including all details of the background and the complaint.
- 10.2 If Clarendon are required to or determine, in its absolute discretion, to make any refund, payment or compensation to a Customer referred by the Referrer, as a result of a complaint, then Clarendon may offset against any Fees due the amount of such refund, payment or compensation or alternatively require the Referrer to reimburse Clarendon in full for any amount paid.

## 11 Agency

The Referrer acknowledges and agrees, except to the extent of the limited authority pursuant to this Agreement, that:

- a) the Referrer is not an agent or representative of Clarendon and must not allow anyone to think otherwise;
- b) the Referrer is not a partner or employee of Clarendon and must not allow anyone to think otherwise; and
- c) this Agreement does not constitute an authorisation as an authorised representative or credit representative for the purposes of Division 5, Part 7.6 of the Corporations Act 2001 or Part 2-2 of the National Consumer Credit Protection Act 2009 respectively and any action taken by the Referrer pursuant to this Agreement shall be as principal and not as an agent of Clarendon.

## 12 Confidentiality

The Referrer acknowledges that the terms of this Agreement and any information provided by Clarendon regarding its Designated Products, current Customers and prospective customers, the business or current and future operations is **Confidential Information**. The Referrer acknowledges that the Confidential Information is confidential to Clarendon and the Referrer must not without Clarendon's prior written consent:

- (a) disclose the Confidential Information to any third party;
- (b) copy the Confidential Information or any part of the Confidential Information; or

- (c) use the Confidential Information for the advantage of the Referrer, to the advantage of another or to Clarendon's disadvantage.

On the earlier of termination of this Agreement or a written request by Clarendon, the Referrer must immediately return to Clarendon or destroy (at its election) any of the Confidential Information in the possession, custody or control of the Referrer.

### **13 Other duties**

The Referrer must:

- (a) carry out its obligations under this Agreement using its own finances, resources and staff and at no cost to Clarendon other than the Fees;
- (b) keep and make available to Clarendon, on reasonable notice, true and accurate records that reflect all particulars relating to this Agreement;
- (c) report in writing to Clarendon on any matter concerning this Agreement as requested by Clarendon from time to time;
- (d) respect the privacy of all persons the Referrer deals with in the capacity as a referrer to Clarendon and observe all applicable privacy laws and requirements;
- (e) comply with all laws, regulations and government policies and obtain all licences and authorisations necessary in respect of any matter contemplated under this Agreement and ensure that the Referrers actions do not affect Clarendon's ability to comply with any laws, regulations and government policies which apply to Clarendon;
- (f) make good any harm caused to Clarendon as a result of a breach of this Agreement by the Referrer;
- (g) act honestly and in good faith in its role as a referrer to Clarendon; and
- (a) not send bulk emails or similar items in relation to any matter the subject of this Agreement without the prior written approval of Clarendon.

### **14 Indemnity**

The Referrer agrees to indemnify Clarendon against all Claims suffered or incurred by Clarendon as a result of the breach of this Agreement by the Referrer except to the extent that such loss is caused by the negligence, wrongful act or omission by Clarendon.

### **15 Warranties and acknowledgements**

The Referrer, by entering into this Agreement, warrants and acknowledges that:

- (a) it is authorised and has the requisite legal capacity to enter into this Agreement; and
- (a) Clarendon may, pursuant to the terms of this Agreement, suspend or terminate this Agreement at any time and will not be liable for any loss of income that may be incurred by the Referrer.

### **16 No assignment without consent**

The Referrer may not assign or otherwise deal with any of its rights or obligations pursuant to this Agreement without the prior written consent of Clarendon.

**17 Governing law**

This Agreement is governed by the laws in force in New South Wales. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales.



Date: [insert]

Executed by Clarendon Homes Pty Ltd by being signed

by its authorised representative:

[Redacted signature line]

Signature

[Redacted signature line]

Name

**EXECUTED** by **#[COMPANY NAME]** )  
CAN **[insert]** in accordance with the *Corporations* )  
*Act 2001 by being signed by the following officers:* )  
)  
)  
)

Signature of director

Signature of director / company secretary

Name of director (please print)

Name of director / company secretary (please print)

**OR**

Signature of sole director and sole company secretary

Name of sole director and sole company secretary (please print)

ENQUIRY FORM

DATE OF ENQUIRY	
REFERRER	
CUSTOMER NAME/S	
CUSTOMER ADDRESS	
LAND ADDRESS	
REGISTERED LAND	YES / NO      if 'No' anticipated registration date:
LAND OWNERSHIP	YES / NO      if 'No' anticipated settlement date:
149 CERTIFICATE ATTACHED	YES / NO
DEPOSITED PLAN ATTACHED	YES / NO
DESIGNATED PRODUCT	
FINANCE APPROVAL	YES / NO

**PRIVACY STATEMENT**

**Personal Information**

*Personal information is any information or an opinion in any form and whether true or not about an individual whose identity is apparent or can reasonably be ascertained from the information.*

**Information Collected**

You may have been asked to provide personal information to . Any information you provide will be used to help them and Clarendon investigate the possibility of selling to you land, a house land package, apartment or constructing a home. Clarendon may use your personal details to provide tender documents, draft plans, assist with the financing, assist with selections for building your home, deal with local government departments and the like. We may use your details at a later date to provide further information to companies that operate in connection with Clarendon’s business to keep you abreast of offers, newsletters, new estates and promotions from which you may benefit.

**Correction**

You may contact us at any time to check on the information we hold on your behalf and to correct any aspect of that information.

**Disclosure**

The information we collect will be stored securely. We will not use any of your personal information for any other purpose without your consent. We will not supply any of your personal information to a third party unless authorised by you. We do not sell, rent, loan, trade or lease any personal information. However, in the unlikely event of an investigation, a law enforcement agency or other government agency may exercise its legal authority to inspect our records.

By providing your details you are agreeing to the above documented use of personal information, if this personal information is not provided Clarendon may not be able to provide you with the products and services that are on offer to the market place.

- I consent to the use of my personal information for the purposes above.
- I do not consent to the use of my personal information for the purposes above.

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Customer Name	Customer signature	Date signed
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Customer Name	Customer signature	Date signed
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