

These Ten-X Marketing Agreement Standard Terms (these "**Standard Terms**") form a material part of the Ten-X Marketing Agreement (the "**Agreement**") which references these Standard Terms. All capitalized terms not defined in these Standard Terms have the meanings set forth in the Agreement. In the event of a conflict between the terms of the Agreement and these Standard Terms, the terms of the Agreement control.

1. **SALE DURING MARKETING PERIOD.** If Seller enters into an agreement to sell a Property during the Marketing Period and the transaction closes, Ten-X shall be paid the Transaction Fee from the sale proceeds due Seller upon closing, regardless of when closing occurs. For any sale facilitated by Ten-X, the Transaction Fee will be added to the buyer's offer price to establish the total purchase price payable by the buyer.
2. **SALE DURING TAIL PERIOD.** If Seller enters into an agreement to sell a Property during the Tail Period with a buyer who, during the Marketing Period, registered for an Event for the Property, accessed the Due Diligence Materials for the Property on Ten-X's website, or submitted an offer or letter of intent for the Property, and such transaction closes, Ten-X shall be paid the Transaction Fee from the sale proceeds due Seller upon closing, regardless of when closing occurs.
3. **WITHDRAWAL.**
 - (a) If Seller withdraws a Property from the Agreement during the Marketing Period (other than due to a material adverse change to the Property outside of Seller's control that renders it unmarketable), Seller shall immediately pay Ten-X (i) 50% of the Withdrawal Fee if such withdrawal occurs more than 14 days before the start of the first scheduled auction date (for Live Bid and Managed Bid Events) or call-for-offers date (for Offer Select Events), or (ii) 100% of the Withdrawal Fee if such withdrawal occurs anytime thereafter.
 - (b) *For Live Bid and Managed Bid Events only* (i.e. does not apply to Offer Select Events), if the highest offer for the Property is at or above the Minimum Price and Seller rejects it, Seller shall immediately pay Ten-X the Transaction Fee based on that offer.
 - (c) If Seller terminates a fully-executed purchase agreement for a Property entered into during the Marketing Period (unless the termination is due to a buyer default or failure of a closing condition not resulting from Seller's default), Seller shall immediately pay Ten-X the Transaction Fee based on that purchase agreement.
4. **COSTS AND EXPENSES.** Ten-X is solely responsible for advertising, marketing and promotion costs Ten-X incurs in performance of the Agreement.
5. **BUYER BROKER COMMISSION.** The Buyer Broker Commission set forth in the Agreement is the fee that must be paid upon closing of the transaction to the real estate broker who referred the buyer to Ten-X or represented the buyer in the transaction. Such fee may be paid at closing by the responsible party or may be collected by Ten-X from the responsible party and paid at closing or outside of closing.
6. **LISTING BROKER COMMISSION AND COOPERATION.** Except as otherwise set forth in the Agreement, Seller is solely responsible for any compensation owed to the listing broker and any cooperating broker in connection with the Property. Seller agrees to instruct the listing broker to reasonably cooperate with Ten-X and direct all potential buyers to Ten-X's website during the Marketing Period.
7. **DUE DILIGENCE MATERIALS.** Within 5 days after the start of the Marketing Period for a Property, Seller must provide to Ten-X (a) the third-party due diligence materials listed in the Agreement, (b) all existing agreements affecting the Property, and (c) all other materials reasonably requested by Ten-X or otherwise reasonably necessary to market and sell the Property (collectively, "**Due Diligence Materials**"). Ten-X may delay or suspend marketing the Property until all Due Diligence Materials have been received. The Due Diligence Materials will be made available to prospective buyers and lenders who agree to keep them confidential. Seller must promptly notify Ten-X if Seller learns that any of the Due Diligence Materials are or become inaccurate or incomplete in any material respect.
8. **TERMINATION.**
 - (a) Either party may terminate the Agreement for convenience without penalty by giving the other party prior written notice of its intent to terminate, in which case the Agreement will terminate upon the date provided in the notice (except if any Property is in the Marketing Period, the termination date will be extended until the expiration of the Marketing Period).
 - (b) Any liability incurred, or compensation earned, during the Marketing Period or the Tail Period (including compensation for sale transactions entered into before, but that close after, the expiration or termination of the Marketing Period or Tail Period, as applicable) shall survive the expiration or termination of the Agreement. Sections 8 – 28 of these Standard Terms shall survive the expiration or termination of the Agreement.

9. **REMOVAL OF PROPERTY.** Ten-X may remove a Property from the Agreement (a) if there is a material adverse change to the Property that renders the Property unmarketable, (b) if Seller fails to timely deliver to Ten-X the Due Diligence Materials or purchase agreement materials required by the Agreement, (c) within 14 days after Ten-X receives the Due Diligence Materials (including any updates) and purchase agreement materials required by the Agreement, (d) at any time if Ten-X discovers that the Due Diligence Materials for the Property are inaccurate in any material respect, or (e) within 14 days after the commencement of the Marketing Period if Ten-X determines, upon receipt of a broker opinion of value or internal evaluation of the Property, that the Minimum Price exceeds the estimated market value of the Property.
10. **SCHEDULED EVENT DATE AND FORMAT.** Ten-X and Seller agree to reasonably cooperate with each other if a change in any Event date or format is necessary. If Seller and Ten-X mutually agree to include a Property in an Event after the Marketing Period, the Marketing Period for that Property will automatically extend through the end of such Event.
11. **ESCROW INSTRUCTIONS.** Ten-X may submit the Agreement to the escrow/closing agent who shall treat the same as an irrevocable instruction to pay, at closing, the compensation due Ten-X under the Agreement from Seller's funds and proceeds in escrow. Ten-X may cooperate with and share any portion of the Transaction Fee or Withdrawal Fee with other duly licensed real estate brokers.
12. **MINIMUM PRICE.** Seller may reduce the Minimum Price at any time in Seller's sole discretion.
13. **OFFER RESTRICTIONS.** Neither Seller nor any of its affiliates, nor any of their respective directors, members, managers, officers, partners, employees, representatives or agents, shall enter any offer or bid for a Property on behalf of Seller. For auction Events only (including Live Bid and Managed Bid Events), Seller authorizes Ten-X to enter bids on behalf of Seller up to the Minimum Price, unless otherwise prohibited by law.
14. **INDEMNITIES.** Each party (as applicable, the "**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other party, each person or entity deemed to control or to be controlled by such other party, and their respective affiliates, partners, members, shareholders, managers, directors, officers, employees, agents and representatives, against and from any and all losses, liabilities, and damages (including without limitation reasonable attorneys' fees) arising in connection with any action, claim, controversy, proceeding, or investigation relating to this engagement, to the extent imposed or incurred by reason of the gross negligence or willful misconduct of the Indemnifying Party.

Seller agrees to defend, indemnify, and hold harmless Ten-X, each person or entity deemed to control or be controlled by Ten-X, and their respective partners, members, shareholders, managers, directors, officers, employees, agents and representatives, against and from any and all losses, liabilities, and damages (including without limitation reasonable attorneys' fees) arising in connection with any action, claim, proceeding, or investigation related to (a) any agreement between Seller and a third party listing broker, or such listing broker's acts or omissions in connection with the listing and sale of a Property, (b) any showings of a Property (except to the extent caused by the gross negligence or willful misconduct of Ten-X), (c) the content of any Due Diligence Materials or photographs provided by Seller and (d) any withdrawal of a Property by Seller or breach by Seller of any purchase agreement.
15. **NOTICES.** Any notice given under the Agreement must be in writing and be delivered to the applicable address listed in the Agreement by (a) personal delivery, (b) certified United States mail, return receipt requested, (c) a nationally recognized overnight courier service, or (d) electronic mail. All notices are deemed given upon receipt or upon the date receipt is refused by the recipient, except that notices delivered by electronic mail are not deemed given until acknowledged by the recipient.
16. **CONFIDENTIALITY.** Each party to the Agreement (as applicable, the "**Receiving Party**"), for itself and its employees and agents, agrees not to disclose to others any confidential or proprietary information of the other party (as applicable, the "**Disclosing Party**") which may become known to the Receiving Party under the Agreement, except to the extent the Disclosing Party specifically authorizes the disclosure, or the disclosure of Seller confidential information reasonably results from Ten-X's performance of the Agreement. For purposes of this paragraph, information is not deemed confidential if (a) it is otherwise within the public domain, or (b) the Receiving Party obtained the information from a source (other than the Disclosing Party or its employees or agents) which, to the Receiving Party's knowledge, does not have a duty of confidentiality to any person or entity. Despite the foregoing, the Receiving Party may disclose confidential information to the extent reasonably necessary to defend itself from any threatened or potential claim, or in response to legal process (and the Receiving Party will provide the Disclosing Party notice of such threatened or potential claim or legal process if legally permitted to do so).
17. **AUTHORITY; NO CONFLICTS.** Each party represents and warrants that it is duly authorized to enter into the Agreement and perform its obligations under the Agreement. Each natural person signing the Agreement on behalf of an entity represents and warrants that he/she has the requisite authority to so bind the entity. Except as disclosed in the Agreement, Seller represents and warrants that there are no purchase options or rights of first refusal affecting the Property, or other agreements that could reasonably be expected to conflict with Seller's ability to perform under the Agreement. Seller represents and warrants that publication of the Due Diligence Materials and photographs provided by Seller in connection with Ten-X's marketing of each Property will not infringe any third party rights, and Seller grants Ten-X a non-exclusive, worldwide, perpetual, royalty-free license to use and modify such photographs for any purpose, including for purposes of marketing Ten-X.
18. **INDEPENDENT CONTRACTORS.** The Agreement is intended to create an independent contractor relationship between Ten-X and Seller, and does not create an employer/employee, agency, or partnership relationship between the parties.

19. **COMPLETE AGREEMENT; AMENDMENTS.** The Agreement is the complete and exclusive agreement between the parties with respect to the subject matter in the Agreement, superseding and replacing any and all prior or contemporaneous communications regarding that subject matter. No modifications to the Agreement will be effective unless made in writing and signed by all parties to the Agreement.
20. **LIMITED LIABILITY.** In no event shall any partner, member, shareholder, manager, director, officer, agent, employee, representative or affiliate of any party have any personal liability in connection with the Agreement. Despite anything to the contrary in the Agreement or these Standard Terms, under no circumstances shall any party hereto be liable to the other for, and each party waives any and all rights to claim against the other for, any special, indirect, incidental, consequential, punitive or exemplary damages in connection with the Agreement or any services performed under the Agreement, including, but not limited to, lost profits, even if such party has knowledge of the possibility of such damages. The maximum aggregate liability of Ten-X and the maximum aggregate amount which may be awarded to and collected by Seller (including, without limitation, for breach of any representation, warranty or covenant by Ten-X) in connection with the Agreement shall, under no circumstances whatsoever, exceed 300% of the compensation paid or payable to Ten-X under the Agreement. Ten-X makes no representation or warranty relating to, and shall have no liability relating to, the performance or non-performance of any buyer, or the legal sufficiency or tax consequences of any transaction documents used in the sale of any Property.
21. **WAIVER OF RIGHT FOR JURY TRIAL.** TO THE EXTENT PERMITTED BY LAW, EACH PARTY HERETO, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF ITS, HIS OR HER CHOICE, KNOWINGLY AND VOLUNTARILY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THE AGREEMENT.
22. **GOVERNING LAW.** The Agreement shall be governed, construed, and enforced by the law of the State of California, without regard to its conflicts of law principles. Except as otherwise set forth in the Agreement, to the extent permitted by law, any legal action or proceeding arising under the Agreement must be brought exclusively in the federal or state courts located in Orange County, California and the parties irrevocably consent to the personal jurisdiction and venue therein.
23. **FURTHER ASSURANCES.** The parties agree to execute such other documents and to take such other actions as may reasonably be necessary to further the purposes of the Agreement.
24. **SEVERABILITY.** If any portion of the Agreement is judicially determined to be invalid or unenforceable, that portion shall be deemed severable from the Agreement and the remainder of the Agreement shall remain in full force and effect and shall be construed to fulfill the intention of the parties.
25. **ATTORNEYS' FEES.** If any party must institute legal action to enforce the Agreement, or for breach of the Agreement, the prevailing party as determined by the court in such action shall be entitled to receive actual reasonable attorneys' fees and costs. The prevailing party is the party entitled to recover its costs of suit, regardless of whether such suit proceeds to final judgment.
26. **NO GENERAL WAIVER.** The failure of any party to enforce any provision or resort to any remedy under the Agreement shall in no way affect the right of that party to later enforce any provision or resort to any remedy under the Agreement. Waiver by any party of a breach shall not be deemed to be a waiver of any subsequent breach.
27. **MISCELLANEOUS.** Ten-X's Privacy Statement located at <https://www.ten-x.com/company/legal/privacy/> shall apply to any information supplied by the parties in connection with the Agreement.
28. **COUNTERPARTS; ELECTRONIC SIGNATURES.** The Agreement may be executed in multiple counterparts, and all counterparts shall constitute one agreement binding upon all parties, whether or not all parties are signatories to the original or the same counterpart. Signatures scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of the Agreement, and shall have the same legal effect as original signatures.

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