

## **Payment of rebates to residential real estate agents**

### **1. Introduction**

It is illegal under the Victorian Estate Agents Act 1980 for a residential real estate agent to retain any rebate or benefit received from any other person or party in respect of:

1. Any outgoings;
2. Any prepayments made by the client for any intended expenditure by the agent on the client's behalf; or
3. Any payments made by the client to another person in respect of the work.

This includes advertising rebates, cash payments and incentives. Where a benefit is received, the agent is required under the Act to pay the amount to the vendor immediately (see Appendix 1).

### **2. Background**

The internet has had an increasingly deleterious impact on newspaper real estate advertising at a state and community level. For a number of years, the industry has turned a blind eye to the inducements offered by newspapers to retain real estate advertising, with the practice becoming more widespread as traditional revenue streams have come under pressure from the internet.

This impact was exacerbated by the entry at a local level of a new local media publisher, Metro Media Publishing, in April, 2010.

MMP's unique business model, allowing agents to become equity holders in its publications, was enthusiastically embraced by vendors and agents.

In response to these developments, Leader Newspapers moved aggressively to try and lock residential agents into advertising in their publications. Unfortunately – and in contravention of the legislation – this response included the payment of cash rebates to agents in return for guaranteeing, to the best of their ability, continued advertising in Leader publications.

A complaint against Mason White McDougall - which has offices in Hurstbridge, Diamond Creek, Kinglake and Whittlesea – alleging receipt of quarterly cash rebates from Leader Newspapers by the company's directors has been lodged with Consumer Affairs Victoria.

The owner of Leader Newspapers is News Limited, which is a 61 per cent owner of REA Group, owner and operator of realestate.com.au.

During the first six months of this year, REA Group was in the market offering agents considerable corporate benefits in return for purchasing its higher-value on-line advertising packages (see Appendix II).

### **3. And now it gets really interesting**

On July 11, 2012, MMP merged with Fairfax Community Network Victoria to become the largest local multi-media company in Melbourne with 35 titles and 1.5 million magazines and newspapers being delivered to more than 1.3 million homes across the metropolitan area, and a new online offering that launched with 400,000 national property listings.

This presents a serious threat to Leader Newspapers and REA Group, the 61 per cent News Limited-owned operator of realestate.com.au. The response has been quick and not-so-subtle.

In the first week of August, REA were in the market introducing the "Ultimate Online Advertising Package..." with rewards for purchasing the Premiere Package to agents who signed up for two years (copy attached at Appendix III).

In return:

"REA will be running it's first Annual Incentive trip for Melbourne Residential Agents! Full details to be shared by 1<sup>st</sup> September 2012

- Qualification will be based on Premiere purchases
- Qualification will start from date of signing the offer
- Location TBC!!!"

At the same time, Leader is also trying to sign agents to long-term contracts, with significant industry gossip about cash, free advertising and other inducements being offered in return.

Attached at Appendix IV is a copy of one of these contracts. Apart from the cash and other inducements being offered, the contract contains some unusual requirements, including 1A.2" "If, as a result of the requirement of any individual vendor/client of the Advertisers that advertising be placed otherwise than with the Newspaper the Advertisers do not comply with their obligations under clause 1A.1, then they shall not be guilty of a breach of the provisions of clause 1A.1. Leader shall be at liberty to request the Advertisers to provide reasonable evidence of any such requirement of the client and, if not satisfied, Leader shall be entitled to make direct contact with the particular client, the identity of such client to be provided by the Advertisers to Leader."

In other words, Leader and the agent agree that Leader shall be able to contact any vendor who requests that his or her property be advertised in a competitor publication, which seems a clear breach of the agent-vendor relationship unless this is disclosed at all times.

## **Appendix I: From Consumer Affairs Victoria website**

Authorities, rebates and commission – estate agents

<http://www.consumer.vic.gov.au/businesses/licensed-businesses/estate-agents/authorities-commissions-and-contracts/authorities-rebates-and-commission>

### Rebates

An estate agent or agent's representative must complete the rebate statement in an authority, to indicate whether or not they will receive any rebates or discounts. These might be received for advertising, maintenance or other expenses paid on behalf of or by a client.

Consumer Affairs Victoria provides two approved rebate statements. Choose the statement that suits your agency's practices, based on whether you receive rebates or not.

It is illegal for an agent to keep a rebate, either monetary or non-monetary. It must immediately be paid to the client except if in anticipation you have already paid the amount or reduced the expenses charged.

If an agent receives a non-monetary rebate, the equivalent dollar amount must be paid to the client.

When calculating a client's expenses, any rebates the agent receives or expects to receive should be factored in. If the exact expense is not known, it should be estimated. If the actual expense is less than the estimate, the difference must immediately be paid to the client.

A client may recover any rebate they are entitled to but have not received.

An agent who illegally keeps a rebate is liable for a fine of up to 60 penalty units. If this occurs on three separate occasions over 12 months, the fine is up to 240 penalty units.

## **Appendix II: REA Group letter of 2012**

[REDACTED] 2012

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Dear [REDACTED]

Confidential Letter of Agreement – [REDACTED] and realestate.com.au Pty Ltd

This letter confirms the agreement between [REDACTED] and realestate.com.au Pty Ltd ("REA") in relation to REA establishing a cooperative fund for training and marketing activities for [REDACTED] offices.

1. This agreement will commence on the date both parties sign it and will expire on [REDACTED] 2014 (2 years), unless terminated prior in accordance with this letter.
2. REA will establish a cooperative fund of value \$ [REDACTED] per annum, payable in quarterly instalments. [REDACTED] may use the cooperative fund for the following purposes:
  - (a) education and training for [REDACTED] agents, from either REA or third party providers;
  - (b) co-branded realestate.com.au/ [REDACTED] marketing collateral, including but not limited to brochures, boards and window displays (use of realestate.com.au branding to be pre-approved by the REA marketing manager); and
  - (c) other collaborative initiatives as agreed.

The precise cooperative fund activities will be agreed between REA and [REDACTED] from time to time.

3. In return, [REDACTED] will use all practical steps to ensure that all [REDACTED] Offices:
  - (a) sign up to Highlight All 30, 45 or 60 contracts and Premiere Elect 5 contract (with reasonable assistance from REA's sales force) and renewing these contracts at the new rate annually for the life of this agreement;
  - (b) sale and rental listings (new and existing), are uploaded and remain uploaded to realestate.com.au, until sold or leased;
  - (c) current depth products such as Ebrochure All, EAS and banners are renewed annually; and
  - (d) move onto the Diamond Subscription,

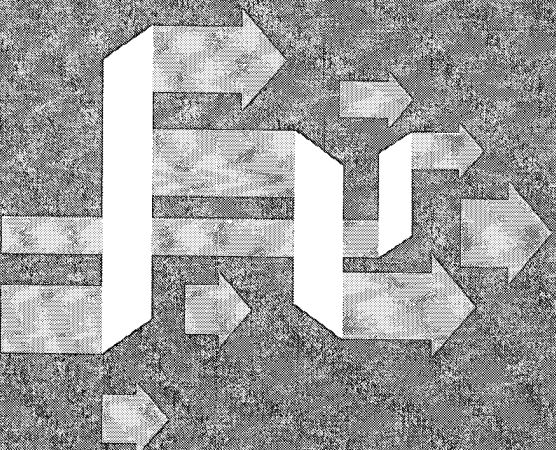
as soon as practicable after commencement of this agreement.

Appendix III: REA Ultimate Online Advertising Package ...

# Presenting you the Ultimate Online Advertising Package.....

Presented by: Danny Jackson

Date: 2<sup>nd</sup> August 2012



x

# It's a challenging market

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Commercial in Confidence

## Your feedback:

- More support in a challenging and uncertain market
- Better Premiere rates with no minimum volume requirements
- More support and training for Agents
- Reward & Recognition

As a result of your feedback we are rolling out an offer that is designed to address your specific needs...



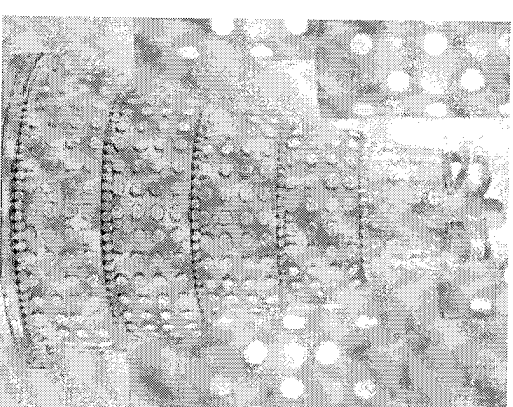
**realestate.com.au**<sup>™</sup>  
Australia's No.1 property site<sup>™</sup>



**We have designed a multi-tiered solution designed to address your feedback and meet your specific needs.**

**The Key Components are:**

1. Product Offer
2. Agent Education Events
3. Co-branded Vendor Rewards
4. Agent Incentive Trip



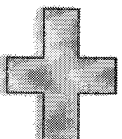
# The Ultimate Online Advertising Package...

Commercial in Confidence

Exclusive to VIC Metro customers who list 10+ sale listings per month

**2 year fixed price at today's rates:**

**Highlight All**  
+  
**Diamond subscription\***  
(No SPA)



**eBrochure All: \$77 with Highlight All 45+**  
(\$99 with Highlight All 30)

OR

**Feature All Rent: \$55**

OR

**eBrochure All & Feature All Rent: \$55 each**  
(bundle saving of up to \$44)

**And GAIN ACCESS to:**  
**45 day Premiere: \$1350**  
(saving of \$1145 or 45% off rack)  
**for the first 12 months**  
**Year 2:**  
**Premiere 45 day: \$1650**  
(saving of \$845 or 33% off rack)



**realestate.com.au**  
Australia's No.1 property site™

\*All prices are inclusive of GST  
\*Agent must commit to display all listings on realestate.com.au for 2 years, no break clause

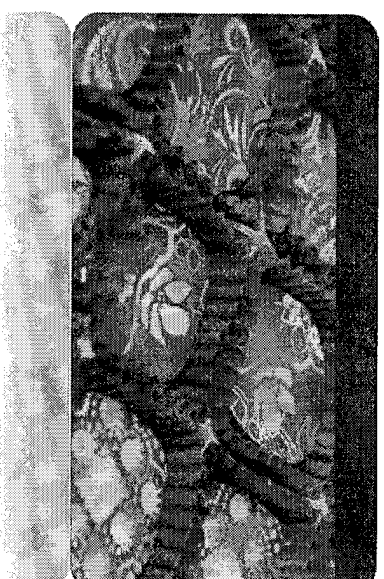
\*All contracts terms are 2 years  
\*Must demonstrate an average of 10+ / month over a 12 month period

## Support Tool # 1: Co-branded Vendor Rewards

Commercial in Confidence

**realestate.com.au in conjunction with the Agent would like to wish the Vendor well for a successful campaign**

- ◆ *Every vendor who purchases a Premiere will be rewarded*
- ◆ *Shortly after the purchase, a gift will be sent to the Vendor to thank them for using Premiere*
- ◆ *The gift will be co-branded from REA and the Agent*

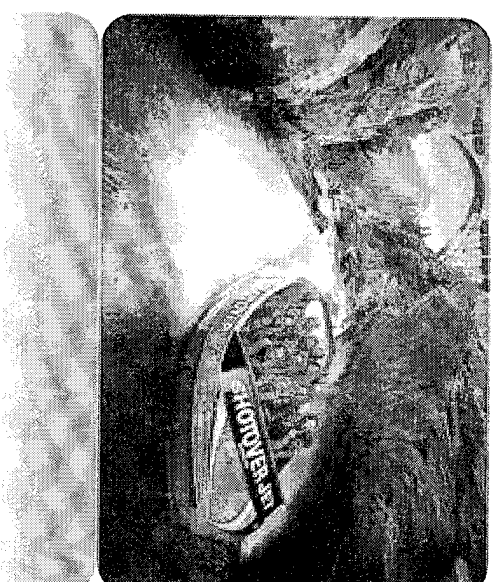
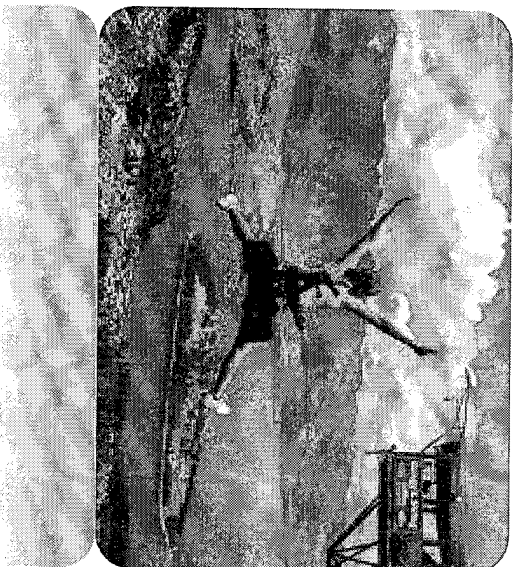


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Australia's No.1 property site™

### **New! REA will be running it's first Annual Incentive trip for Melbourne Residential Agents!**

Full details to be shared by 1<sup>st</sup> September 2012

- ◆ Qualification will be based on Premiere purchases
- ◆ Qualification will start from date of signing the offer.
- ◆ Location TBC!!!



**realstate.com.au**  
Australia's No.1 property site™

## 1. Agent Innovation Series

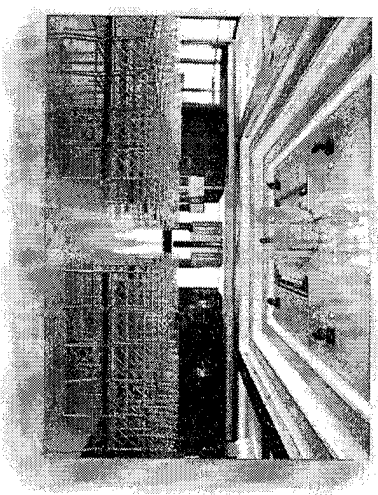
Events held in Melbourne for Residential Customers.

Featuring leading industry speaker demonstrating how to master the **power of genuine communication and influence.**

The series aims to:

- **Educate your agents on the Digital World & the Power of Online**
- **Reward & motivate your agents**
- **Help you win more listings**

*We are planning 2 events in East Melbourne and 2 in West Melbourne*



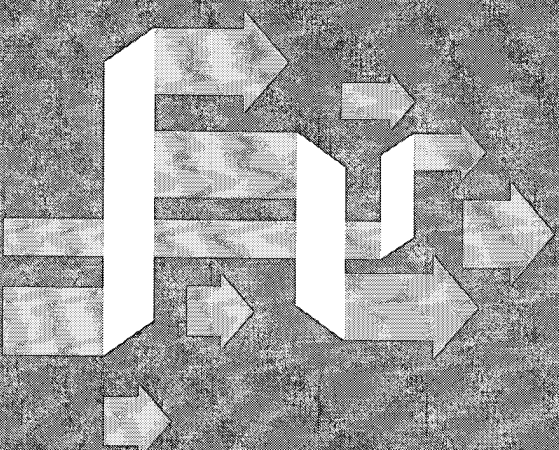
## 2. Catered Sales Team Training

Hosted by Account Managers at your office to discuss new online trends



**realestate.com.au**  
Australia's No.1 property site™

# Thank you



# Highlight – Pick the option that works best for you

## Option 1 – Pay as you go

\$700 Inc. GST per 30-days

## Option 2 – Highlight Elect (3, 6 or 12 month contract)

3 per month min. - \$595 Inc. GST per 30-days

5 per month min. - \$560 Inc. GST per 30-days

10 per month min. - \$455 Inc. GST per 30-days

## Option 3 – Highlight All (12 month contract)

30 Days - \$390 Inc. GST

45 Days - \$449 Inc. GST

60 Days - \$312 Inc. GST per 30 day block (total \$624)

90 Days - \$273 Inc. GST per 30 day block (total \$819)



**realestate.com.au**

\*All prices are in AUD and are inclusive of GST (VIC ratecard - January 2012)  
\*Only available for Residential Homes for Sale

## Appendix IV: Leader Property contract



[REDACTED]  
DANDENONG AGENTS.  
SOME HAVE BEEN BULLIED INTO  
SIGNING THIS. THEY HAVE  
ALSO BEEN OFFERED  
LEADER PROPERTY

ALSO OFFERS

CASH & PAGES.

THIS WOULD PUT THEM  
IN BREACH OF REAGENTS  
ACT

1. LEADER ASSOCIATED NEWSPAPERS  
PTY LTD (ACN 004 337 446),  
1-7 CHAPEL STREET,  
BLACKBURN, VIC, 3130

2. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

3. [REDACTED]

4. [REDACTED]

THIS DEED IS MADE ON 1 ST AUGUST 2012

**PARTIES**

1. LEADER ASSOCIATED NEWSPAPERS PTY LTD (ACN 004 337 446) of 1 Chapel Street Blackburn 3130 (Leader);
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]

(each of the parties numbered 3 and 4 above are jointly and severally referred to as DIRECTORS)

**WHEREAS**

- A. Leader publishes the Dandenong Leader Property Newspaper (the Newspaper).
- B. The Company holds a licence under the Estate Agents Act 1980 (Vic) and carries on business under the name [REDACTED]
- C. The Directors are the Directors of the Company.

**NOW THIS DEED WITNESSES:**

**1A. ADVERTISING PLACEMENT**

- 1A.1 In consideration of the offering by Leader of the advertising rates and charges set forth in paragraph 2 below, the Company and the Directors (individually and collectively referred to as the **Advertisers**) agrees to place or cause to be placed in the form of real estate display advertising with the Newspaper, each quarter ending during the term of this Deed, 50% of the total real estate display advertising, measured in advertising pages (or part thereof), placed in respect of properties located in the Dandenong Leader footprint (as outlined in the maps comprising Schedule A) during that quarter by the **Advertisers** themselves, by any entity established by or associated with the **Advertisers** or by any persons engaged or recommended by the **Advertisers** to place

their or their vendor/clients' advertising. For the purpose of this agreement a quarter is defined as the periods 1<sup>st</sup> August 2012 to 31<sup>st</sup> October 2012, 1<sup>st</sup> November 2012 to 31<sup>st</sup> January 2013, 1<sup>st</sup> February 2013 to 30<sup>th</sup> April 2013 and 1<sup>st</sup> May 2013 to 31<sup>st</sup> July 2013.

**1A.2** If, as a result of the requirement of any individual vendor/client of the Advertisers that advertising be placed otherwise than with the Newspaper the Advertisers do not comply with their obligations under clause 1A.1, then they shall not be guilty of a breach of the provisions of clause 1A.1. Leader shall be at liberty to request the Advertisers to provide reasonable evidence of any such requirement of the client and, if not satisfied, Leader shall be entitled to make direct contact with the particular client, the identity of such client to be provided by the Advertisers to Leader.

**1B.** The Advertisers warrant and agree that during the term of this Deed they will not solely or jointly with any other person, whether as principal, agent, director, executive officer, executive, shareholder, partner, joint venture member, advisor, consultant, employee or otherwise howsoever, directly or indirectly:

(a) place real estate display advertising referred to in paragraph 1A.1 of this Deed with any other newspaper and/or magazine circulating within areas including the Dandenong Leader footprint; and

(b) engage or cause or permit to be engaged any other company, entity, person or vehicle to place real estate display advertising referred to in paragraph 1A.1 of this Deed with any other newspaper and/or magazine circulating within areas including the Dandenong Leader footprint.

other than in accordance with clause 1A.1 of this Deed unless Leader provides written consent to them to do so.

**1C.1** Each party must and agrees to at all times in performing their respective obligations under clause 1A and IB to act in the utmost good faith and must not and agrees not to seek to circumvent or permit circumvention of the operation of this clause 1A and IB. No party may seek to impair the value of any right granted under this clause 1A and IB to another party. This clause is not intended to exclude any term implied by law or fact.

**1C.2** Without limiting the generality of clause 1C.1, the Advertisers covenant that:

- (a) they will not recommend to or induce any vendor/client to place any real estate display advertising referred to in clause 1A.1 in any newspaper other than the Newspaper; and
- (b) they will not engage or attempt to engage or introduce any vendor/client of the Advertisers to, any third party for the purpose of marketing or advertising the vendor/client's property without the prior written consent of Leader,

if as a consequence, the Advertisers would be likely to breach any of the obligations contained in clause 1A.1.

**2. ADVERTISING RATES**

2.1 The Parties agree that the cost to the Advertisers of real estate advertising in the Newspaper will be as follows from 1<sup>st</sup> August 2012:

Size	Cost (Exclusive of GST)
Full page or part thereof (maximum of 8 properties to a page )	\$965

**3. RATE INCREASE**

3.1 The Parties agree that all rates and charges referred to in clause 2 will remain in place until the expiry of this contract.

**4. TRADING TERMS**

4.1 The Advertisers agree to comply with the standard terms for payment of Leader. The Advertisers acknowledge that the standard terms for payment of Leader requires payment of the total amount due on the monthly tax invoice/statement on or before the payment due date indicated thereon, and that payment be by cash or cheque, electronic funds transfer or by approved credit card, the acceptability of which shall be determined at the sole discretion of Leader. In the event that the Advertisers do not comply with the standard terms for payment of Leader, the parties agree that Leader (at its option) will be

entitled to charge interest and the Advertisers will pay interest at 1% per month of any amount due by the Advertisers from the date that the payment should have been paid to Leader until payment.

- 4.2 Leader may suspend or withdraw credit facilities on overdue accounts on 7 days written notice to the Advertisers.
- 4.3 If the Advertisers fail to pay to Leader any monies which are due to them for a period in excess of three months from the date upon which such payments were due in accordance with this clause, then Leader may terminate this Deed by giving the Advertisers seven days notice. The parties acknowledge and agree that such termination does not affect any accrued rights or remedies that Leader may have.

## 5 GENERAL

- 5.1. In the event that there is any change in the directors or the shareholding of the Company, the Advertisers must provide written notice of that change to Leader within thirty (30) days. The provision of that notice does not alter the Parties obligations under this deed.
- 5.2. This deed shall bind the parties hereto and any executor, administrator, transferee, assignee, liquidator or trustee in bankruptcy appointed in respect thereof.
- 5.3. The construction, validity and performance of this Deed shall be governed in all respects by the laws of Victoria.
- 5.4. If any provision of this Deed is held to be invalid or unenforceable for any reason, it shall be severable and shall not affect the remaining provisions of this Deed.
- 5.5. This Deed constitutes the entire agreement of the parties and supersedes all prior understandings, negotiations, agreements, written or oral, expressed or implied in relation thereto.
- 5.6. The Advertisers agree that any GST or similar tax which will be imposed by the Federal or State Governments on advertising may be passed onto the Advertisers by Leader for payment by the Advertisers and will be in addition to the rates payable under this Deed and in addition to any rate increase which occurs by virtue of clause 3 of this Deed.

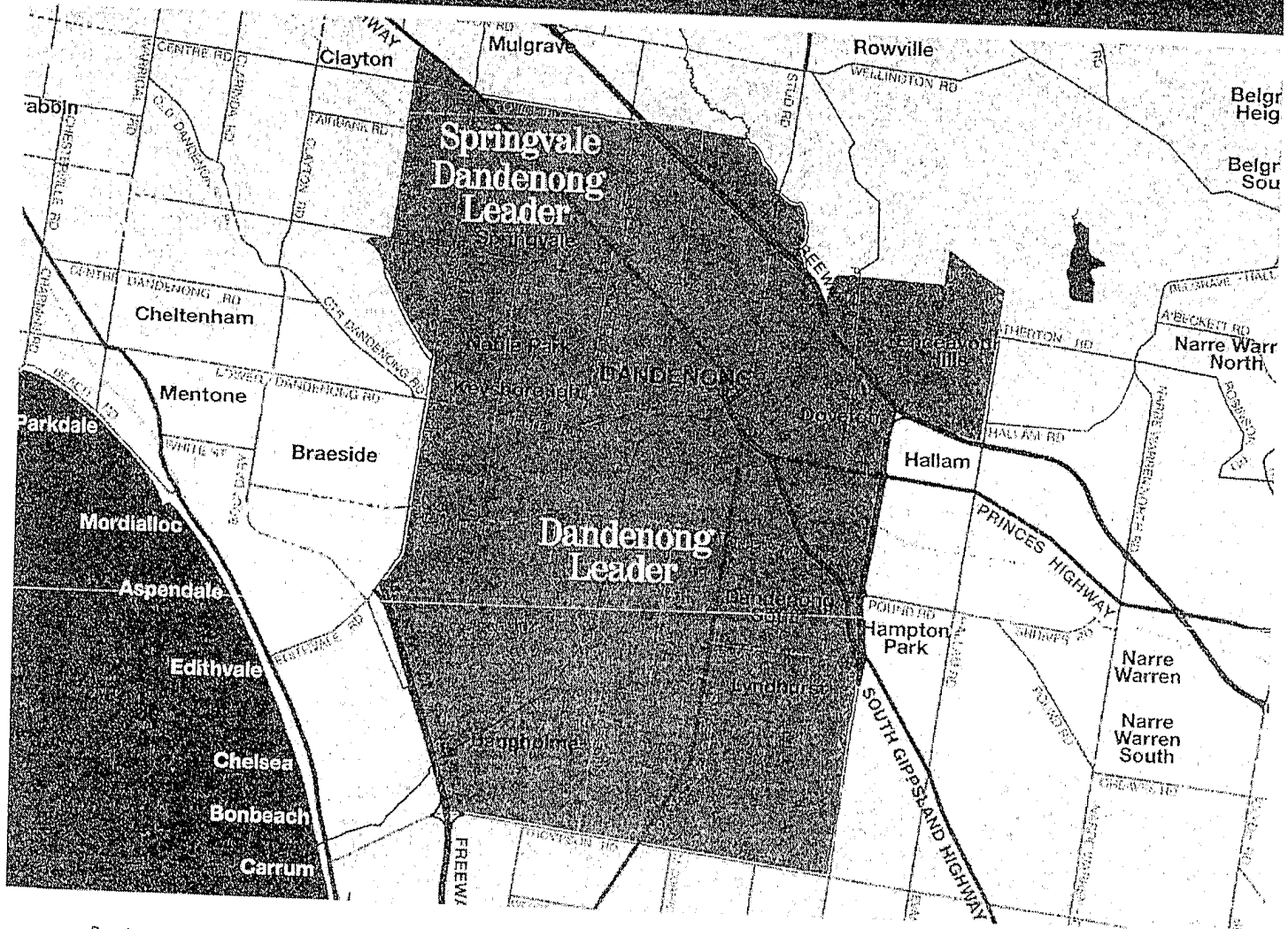
5.7 The parties agree that the term of this Deed shall commence on 1<sup>st</sup> August 2012 and expires on 31<sup>st</sup> July 2013.

#### **CONFIDENTIALITY**

6.1 Leader and the Company agree that the terms of this agreement are confidential and will not be disclosed to third parties without the other party's prior written consent unless the disclosure is:

- a) required by law,
- b) made on a confidential basis to a party's professional advisers, or
- c) made to a party's officers or employees who need to know the information for the purpose of performing or enforcing that party's obligations or rights under this agreement and those officers or employees agree to be bound by the confidentiality provisions contained in this clause 6.

# Dandenong/Springvale Dandenong Leader Real Estate distribution footprint



Dandenong/Springvale Dandenong Leader Real Estate

Circulation (including bulkdrops)	
Distribution	63,905 *
Dandenong	3175
Dandenong North	3175
Dandenong South	3175
Doveton	3177
Endeavour Hills	3802
Eumemerring	3177
Keysborough	3173
Noble Park	3174
Noble Park North	3174
Springvale	3171
Springvale South	3172

\* Publisher's estimate. Includes bulk drops and household delivery. Not all households in shaded areas will receive a letterbox delivery.



EXECUTED as a deed.  
EXECUTED BY LEADER  
ASSOCIATED NEWSPAPERS PTY LTD  
(ACN: 004 337 446) in accordance with  
Section 127 of the Corporations Act:

.....  
Secretary/Director

.....  
Director

EXECUTED BY [REDACTED]  
in accordance with Section 127 of the  
Corporations Act:

.....  
Secretary/Director

.....  
Director

SIGNED SEALED AND DELIVERED BY  
[REDACTED] the said in the presence of:

.....  
Signature of Witness

.....  
Signature of Director

.....  
Name of Witness (print)

.....  
Name of Director (print)

SIGNED SEALED AND DELIVERED BY  
[REDACTED] the said in the presence of:

.....  
Signature of Witness

.....  
Signature of Director

.....  
Name of Witness (print)

.....  
Name of Director (print)