Annexure A: Authority to Conduct the Sale of Property or Land by Openn Negotiation.

Parties

The person or persons specified in Part 1 of this Property Occupations Form 6.

Seller(s): _____

The real estate agent duly authorised to act on behalf of the Seller pursuant to the *Property Occupations Act 2016* (*QLD)* and *Property Occupations Regulation 2014 (QLD)* specified in Part 2 of this Property Occupations Form 6.

Agent / Licensee: _____

1. It is agreed

1.1 The Parties note and confirm the Seller has engaged the Agent to act on the sale of the Property by means of public auction, conducted through the Openn Negotiation process (as defined herein) in accordance with the Bidders Registration, Authority to Bid and Terms of Use (Queensland) (attached schedule 1).

1.2 The Seller agrees to be bound by the Bidders Registration, Authority to Bid and Terms of Use during the Openn Negotiation Period. Neither the Seller or the Agent will accept or consider any offers to purchase the Property, in any form, that do not comply with the process to become a Qualified Bidder as detailed in the Bidders Registration, Authority to Bid and Terms of Use. The Seller instructs the Agent to only communicate those offers that comply with the Qualified Bidder process referred to in this Clause.

1.3 The Parties acknowledge where there is a conflict between any additional or special condition normally inserted by the Seller's solicitor/conveyancer into the Contract for Houses and Residential Land, or the Contract for Residential Lots in a Community Title Scheme (as the case may be), the Bidders Registration, Authority to Bid and Terms of Use (Queensland) will prevail to the extent of any inconsistency.

1.4 The Seller will be bound by the Bidders Registration, Authority to Bid and Terms of Use (Queensland) during the Openn Negotiation.

2. Definitions and Interpretation

In this document:

2.1 **Address** means the address of the Property specified in Part 3 of this Property Occupations Form 6;

2.2 **Act** means, unless the context indicates otherwise, the *Property Occupations Act 2014* (QLD).

2.3 **App** means the specialised software program designed to facilitate the Openn Negotiation and known as "Openn";

2.4 **Auctioneer** means the auctioneer appointed by the Agent to conduct the Openn Negotiation, who must be a licensed auctioneer pursuant to the Act;

2.5 **Bidders Registration, Authority to Bid and Terms of Use (Queensland)** means the Terms set out in the attached Schedule 1, which are to be read in conjunction with this Annexure A;

2.6 **Campaign Bidding Stage** means the stage of the Openn Negotiation that commences when the Property is listed on the App and ends at the commencement of the Final Bidding Stage;

2.7 **Developer** means PP Valley Pty Ltd ACN 612 338 477;

2.8 **Final Bidding Stage** means the stage of the Openn Negotiation at which Qualified Bidders make competing bids to purchase the Property through the App, with a time limit applying to the making of bids and the process concluding when the Property is sold or all bids are exhausted;

2.9 **Land** means the land specified in Part 3 of this Property Occupations Form 6;

2.10 **Openn Negotiation** means the process for selling the Property set out in the Bidders Registration, Authority to Bid and Terms of Use (Queensland);

2.11 **Owner of Openn Negotiation** means Cleverbons Pty Ltd ACN 607 908 636;

2.12 **Price** has the meaning set out in the Bidders Registration, Authority to Bid and Terms of Use (Queensland);

2.13 **Property** means the property located at the Address, being the Land together with all buildings and other fixed improvements erected upon the Land together with the Chattels;

2.14 **Qualified Bidder** has the meaning set out in the Bidders Registration, Authority to Bid and Terms of Use (Queensland);

2.15 **Reserve Price** means the reserve price specified in Section 3 of Part 4 of this Property Occupations Form 6 or such other price nominated by the Seller to the Agent in writing;

2.16 **Sale By Private Treaty Period** means the period, subject to Part 6 of this Property Occupations Form 6, commencing on the conclusion of the Final Bidding Stage;

2.17 **Seller's Bid's** means a bid or bids made by or on behalf of a Seller in accordance with the Act.

3. Agreement to sell by Openn Negotiation

3.1 Pursuant to Section 1 of Part 4 this Property Occupations Form 6 the Seller appoints the Agent to offer the Property for sale by Openn Negotiation in accordance with the Act and with the Openn Negotiation to take place at the date and time specified in Clause 10 of this Annexure A.

3.2 The Seller acknowledges that Openn Negotiation is a type of auction within the meaning of that term in the Act.

3.3 The Seller acknowledges that Seller's Bids as defined are not compatible with Openn Negotiation and agrees not to make or seek to make a Seller's Bid or instruct the Agent and/or Auctioneer to make a Seller's Bid during the Openn Negotiation.

3.4 The Seller acknowledges that in the event of the Final Bidding Stage taking place the Seller must be available to provide instructions to the Agent and Auctioneer at such time.

4. Conditions of Sale

4.1 The sale of the Property is to be conducted in accordance with the Bidders Registration, Authority to Bid and Terms of Use (Queensland) and the Seller agrees to be bound by the terms of the Openn Negotiation as described in the Bidders Registration, Authority to Bid and Terms of Use (Queensland), including, but not limited to, the Campaign Bidding Stage and the Final Bidding Stage.

4.2 The Seller acknowledges that the Openn Negotiation will be primarily conducted through the App in accordance with the Bidders Registration, Authority to Bid and Terms of Use (Queensland).

4.3 The Openn Negotiation is to be subject to the Reserve Price and the Seller must provide a Reserve Price to the Agent before the Final Bidding Stage and if, during the Final Bidding Stage, the highest bid is at or above the Reserve Price, the Seller must sell the Property to that bidder.

4.4 The Final Bidding Stage will commence on the auction date and time set out in clause 10 or at such other date and time nominated by the Seller.

5. Authority

5.1 In the event the Seller is unable to be present at the location from where the Auctioneer is conducting this sale, the Seller appoints and authorises the Auctioneer as the Seller's agent to do the following:

(a) Sign the contract for the sale of the Property on the Seller's behalf as set out in the Bidders Registration, Authority to Bid and the Terms of Use (Queensland); and

(b) make any amendments to the Contract that the Seller has authorised; and

(c) execute the Contract on the Seller's behalf; and

(d) complete the exchange of Contract so that the contracts become binding.

5.2 The appointment and authority in clause 5.1 is non-revocable.

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6. Liability

6.1 The Seller releases and holds harmless the Agent, Auctioneer, Owner of Openn Negotiations and the Developer and their officers, directors and employees from and against all actions, suits, demands, claims, losses, damages and costs whatsoever, whether at law or in equity arising out of any technical failure of the App.

6.2 The Seller releases the Agent, Auctioneer, the Owner of Openn Negotiation and the Developer against all actions, claims, demands arising from or in connection with a failure by a purchaser or registered bidder to complete a sale.

6.3 Nothing in these Annexure A terms and conditions (including this clause 6) excludes, restricts or modifies any rights or statutory guarantees that the Seller may have under applicable laws that cannot be excluded, restricted or modified, including any such rights or statutory guarantees under the Australian Consumer Law. To the extent that these terms and conditions are found to exclude, restrict or modify any such rights or statutory guarantees, those rights and/or statutory guarantees prevail to the extent of the inconsistency.

6.4 The Agent discloses and the Seller acknowledges the Developer will use reasonable efforts to maintain an uninterrupted service for the App but neither the Agent or the Developer guarantee this and, to the extent permitted by law, neither the Agent or the Developer give any promises or warranties (whether express or implied) about the availability of the App that the App will be uninterrupted or error-free. Notification functionality in the App may not occur in real time. That functionality is subject to delays beyond the control of the Agent and the Developer, including without limitation, delays or latency due to the Seller's physical location or the Seller's wireless data service provider's network.

6.5 To the extent permitted by law, and without limiting any rights that the Seller may have under the Australian Consumer Law, the Agent's and the Developer's liability to the Seller for any failure by the Agent or the Developer to comply with any statutory guarantee under the Australian Consumer Law is limited to the Agent and/or the Developer supplying the Services again or paying you the cost of having the Openn Negotiation process supplied again.

7. Warranty

7.1 The Developer and the Agent do not warrant, guarantee or make any representation that:

a. The Openn website (www.openn.com.au), the App, or the servers that make them available are free of software viruses;

b. The functions effected by the software contained on the website or the App will operate uninterrupted or are error-free; and

c. Error and defects in the website or the App or the software contained in them will be corrected in a timely manner or at all.

8. Seller's Warranty

8.1 The Seller warrants that the Seller has the authority to enter into this agreement and that no other person holds an Property Occupations Form 6 for the Property.

9. Disputes

9.1 The Seller has the right to refer any dispute that arises with the Agent to a number of different institutions. Depending upon the nature of the dispute these institutions may include The Real Estate Institute of Queensland (REIQ), a Dispute Resolution Centre, the civil and criminal legal systems, the Australian Competition and Consumer Commission and Office of Fair Trading, Queensland.

10. Time and Date of Open Negotiation

The Final Bidding Stage of the Openn Negotiation will commence at _____ am/pm on _____

or at such other date and time nominated by the Seller *initials*

11. Execution

Seller's Signature

X

Name of Seller: _____

Date: _____

Seller's Signature

X

Name of Seller: _____

Date: _____

Agent or Agent's Representative Signature

X

Name of Agent or Agent's Representative: _____

_____

Date: _____

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Schedule 1

Bidders Registration, Authority to Bid and Terms of Use (Queensland)

1. Parties and Bidder Registration

BIDDER Full Legal Name(s): _____

OR:

Company Name: _____ A.B.N. _____

Name of the Officer of the Company: _____ Position Held: _____

(if the Property sells at the Openn Negotiation auction, then the bidder named above is taken to be the successful bidder)

Is the Buyer registered for GST and acquiring the Land for a creditable purpose? (select whichever is applicable) ☐ YES ☐ NO

Address: _____ Postcode: _____

Phone: _____ Mobile: _____ Email: _____

ID PROOF OF IDENTITY. Document type: _____ Document identifier: _____ Includes the Bidders name and address ☐

A proof of identity is a card or document that is issued by the government or a statutory authority of Queensland, the Commonwealth, another State or Territory, or by an authorised deposit taking institution. It can be a Drivers Licence and or a Passport.

Bidder's Solicitor: _____ Phone: _____ Email _____

Solicitor's Address: _____ Postcode: _____

and;

SELLER Full Name(s): _____

Address: _____ Postcode: _____

Email: _____

(collectively referred to as the **Parties**)

2. Seller Agent and Auctioneer

The real estate agent duly authorised to act on behalf of the Seller in the sale of the Property.

SELLER AGENT _____

_____

AUCTIONEER _____

3. Buyer Agent (if any)

The real estate agent duly authorised to act on behalf of the Bidder to buy the Property:

BUYER AGENT _____

4. Property for Auction

4.1 The Bidder, once Registered, intends to become a Qualified Bidder and bid on the following Property by way of Openn Negotiation:

Number: _____ Street: _____

Suburb: _____ Postcode: _____

Lot: _____ On: _____ Title Reference: _____

(the Property)

4.2 The Bidder acknowledges that Openn Negotiation

4.2.1 Is a type of Auction as defined in legislation and as outlined in these Terms.

4.2.2 Pursuant to s.107 *Property, Occupations Act 2014 (QLD)* the Auction is scheduled to conclude on _____/_____/_____ (DATE), however, the Seller reserves the right to move the Final Bidding Stage and Auction from a set day to a new date on no less than twelve (12) hours notice to the Bidder in accordance with clause 6.4;

4.2.3 will be conducted through the Openn Negotiation App in accordance with these Terms.

5. Definitions and Interpretations

5.1 In these Terms the following have these meanings:

(1) **Act** means the Property, Occupations Act 2014 (QLD);

(2) **App** means the specialised software program designed to facilitate the Openn Negotiation and known as "Openn";

(3) **Auction** means an auction conducted through the App and in accordance with these Terms;

(4) **Auctioneer** means the Auctioneer appointed by the Seller or Seller Agent to conduct the Openn Negotiation, who must be licensed to conduct an Auction for the sale of property by public auction;

(5) **Campaign Bidding Stage** means the stage of the Openn Negotiation that commences when the Property is listed on the App and ends at the earlier of the Property being sold or the commencement of the Final Bidding Stage;

(6) **Contract** means the Contract formed between the Highest Bidder, or any Sole Bidder, who has made the Winning Bid, and the Seller incorporating these Offer Terms and the **attached** Appendix A;

(7) **Developer** means PP Valley Pty Ltd ACN 612 338 477;

(8) **Dummy Bidding** means false or fictitious bids made by non-genuine bidders with no intention of buying the Property and also includes any bidding practices prohibited in the State;

(9) **Fall of the Hammer** means the time in the Final Bidding Stage when the App announces the Final Bidding Stage has ended and no further bids will be accepted from Qualified Bidders;

(10) **Final Bidding Stage** means the stage of the Openn Negotiation at which Qualified Bidders make competing bids to purchase the Property through the App, with a time limit applying to the making of bids and the process concluding when the Property is sold or all bids are exhausted;

(11) **Highest Bidder** means the Qualified Bidder who makes the highest bid for the Property in the Final Bidding Stage that is accepted by the Auctioneer;

(12) **Offer Terms** means the terms the Bidder offers for the purchase of the Property that are set out in clause 7, which if accepted by the Seller and made by the Highest Bidder or Sole Bidder as the Winning Bid, will constitute part of a binding Contract entered into by the Highest Bidder or Sole Bidder with the Seller for the purchase of the Property;

(13) **Openn Negotiation** means the process set out in these Terms according to which the sale is to be conducted using the App;

(14) **Owner** means Cleverbons Pty Ltd ACN 607 908 636;

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5. Definitions and Interpretations (continued)

(15) **Pending Bid** means the opening bid made by a Bidder, through the App, that may be accepted by the Seller Agent in order to become a Qualified Bidder. The opening bid may be increased subsequently;

(16) **Price** means the price at which the Property will be sold being:
  (1) the Winning Bid on the App; or
  (2) if the Property does not sell during the Final Bidding Stage, any written price agreed to by the Bidder and Seller;

(17) **Qualified Bidder** means a bidder who has fulfilled the requirements set out in clause 6.1 and has been approved by the Seller in accordance with clause 6.1.7;

(18) **Reserve Price** is the minimum amount that the Seller will accept as the Winning Bid in the Openn Negotiation;

(19) **Seller's Bids** means bids made by or on behalf of the Seller in accordance with the Act;

(20) **Sole Bidder** means a Qualified Bidder who is the only Qualified Bidder in relation to the Property (i.e. the only bidder who has submitted to the Seller Agent Offer Terms that have been accepted by the Seller such that the bidder may take part in the Openn Negotiation);

(21) **Standard Time** means the Australian Standard Time applicable to the State in which the Property is located;

(22) **State** means the state or territory in which the Property is located;

(23) **Terms** means these Openn Negotiation Bidder Registration, Authority to Bid and Terms of Use (Queensland);

(24) **Unique Identification Number** means the unique identifying number provided by the App to each Qualified Bidder to allow them to be identified in the App;

(25) **Winning Bid** means the successful bid made in the App which will be confirmed by the Bidder or the Auctioneer on the Contract as the Price for which the Property will be sold and includes, if applicable, the successful bid made by the Highest Bidder or any bid made by the Sole Bidder that is accepted by the Seller;

5.2 If the Bidder or Seller are two or more people or entities, then they are jointly and severally bound by these Terms.

5.3 (1) If any part of these Terms are unenforceable, illegal or void then that part is severed and the remainder of these Terms remain in force.
(2) The Parties agree that the laws of the State will apply to the sale of the Property on the App (including, but not limited to, the laws that govern the sale of real property by public auction).
(3) The Parties agree to submit to the courts of the State to determine any dispute in relation to these Terms.

6. Declaration and Terms

6.1 The Openn Negotiation process

6.1.1 The Bidder must become a Qualified Bidder to participate in the Openn Negotiation process. In order to become a Qualified Bidder, the Bidder must, prior to the Final Bidding Stage and after inspecting the Property:
  (1) download the App;
  (2) access and register their details in the App;
  (3) select the Property in the App;
  (4) enter their Pending Bid in the App;
  (5) complete the Offer Terms in clause 7;
  (6) provide their contact details to the Seller Agent;
  (7) the Offer Terms must state all terms upon which the Bidder is prepared to purchase the Property other than the proposed purchase price.

6.1.2 In the Campaign Bidding Stage, other Qualified Bidders may join the negotiation process.

6.1.3 Throughout the Campaign Bidding Stage, any Qualified Bidder may increase their bid by providing further bids through the App.

6.1.4 All Qualified Bidders will be able to see all accepted bids made on the Property. The Seller has instructed the Agent to only accept bids made by Qualified Bidders in accordance with these Terms. Any bids that do not comply with this clause would not be passed to the Seller.

6.1.5 The Campaign Bidding Stage finishes at the commencement of the Final Bidding Stage.

6.1.6 The Property can only be sold to a Sole Bidder pursuant to clause 6.7.

6.1.7 Prior to the Final Bidding Stage, the Seller will determine whether the conditions in each submitted Offer Terms are such that the Seller agrees to that potential Bidder being eligible to participate in the Openn Negotiation. If so, that potential bidder becomes a Qualified Bidder and the Seller Agent will approve the Qualified Bidder on the App. If the then Qualified Bidder is the eventual buyer, the conditions set out in the Offer Terms as agreed by the Seller, will be incorporated into and be part of the Contract entered into by the Seller and any Qualified Bidder who has become the buyer.

6.2 Once the Agent approves the Qualified Bidder on the App, the App will:
(1) send a confirmation notification to the Qualified Bidder;
(2) show when the Final Bidding Stage will commence as provided for in clause 6.5; and
(3) provide them with a Unique Identification Number that will be used to identify them in the App.

6.3 Qualified Bidders are entitled to participate in the Openn Negotiation on the basis that:
(1) other than the Price and as provided for in clause 6.6, the Seller and Qualified Bidders are bound by the Offer Terms;
(2) any bid made on the App using a Qualified Bidder's Unique Identification Number will be deemed to have been made by that Qualified Bidder;
(3) during the Campaign Bidding Stage and the Final Bidding Stage the Auctioneer may determine a minimum sum by which any bid must exceed the previous bid and no bid will be accepted that does not meet that requirement;
(4) during the Final Bidding Stage, the App will set a time limit during which Qualified Bidders may consider whether or not to place a bid;
(5) the Auctioneer may withdraw bids, at their complete discretion;
(6) the Seller may not bid personally, either directly or by an agent or other representative;
(7) Dummy Bidding and/or encouraging another party to engage in Dummy Bidding constitutes a breach of these Terms and may have serious consequences;
(8) subject to clause 6.6, once commenced the Openn Negotiation cannot be terminated by the Seller or any other party until all bids are exhausted;
(9) if there are one or more bids at or exceeding the Reserve Price, the bid made by the Highest Bidder will be recorded as the Winning Bid. The Winning Bid will be written on the Contract as the Price that the Bidder will purchase the Property;
(10) the Qualified Bidder is solely responsible for the operation of the App, internet and mobile access, and coverage to allow access to the App, access to the account, and the making of each bid in the Openn Negotiation;

6.4 Commencement of the Final Bidding Stage
The Final Bidding Stage will commence at the date and time nominated by the Seller provided that:
(1) the Final Bidding Stage must commence between 8.00am and 9.00pm on the Standard Time; and
(2) if the date and time for the Final Bidding Stage has changed since the Qualified Bidder entered their Pending Bid, the Seller Agent and/or the Auctioneer will use reasonable endeavours to contact that Qualified Bidder no less than 12 hours prior to the commencement of the Final Bidding Stage to advise when the Final Bidding Stage will commence.

6.5 Conduct of Final Bidding Stage
During the Final Bidding Stage, the Openn Negotiation will be conducted as follows:
(1) during the Final Bidding Stage, the App will display the current highest bid. Qualified Bidders may choose to make a further bid exceeding what is then the highest bid by increments determined by the Auctioneer, in accordance with clause 6.3(3);
(2) the App will display the Unique Identification Number for each Qualified Bidder and show which Qualified Bidder has made the highest bid at any point in the Final Bidding Stage;
(3) during the Final Bidding Stage, the App will indicate:
  (a) the minimum sum by which any bid must exceed the previous bid is determined by the Auctioneer through the App in accordance with clause 6.3(3); and
  (b) the time period during which further bids may be made before the current bid is successful;
(4) the Final Bidding Stage will proceed, with the Qualified Bidders increasing their bids, until all bids are exhausted within the time period set by the App;
(5) the ultimate buyer of the Property will be the Qualified Bidder who bids the highest sum at or in excess of the Reserve Price that is accepted at the Fall of the Hammer;
(6) once commenced, the Final Bidding Stage cannot be terminated by the Seller or any other party until all bids have been exhausted;
(7) the Auctioneer may remove bids at their complete discretion if they think they are likely to have been made in error or bad faith;
(8) as soon as practicable after the App records that the Highest Bidder has made the Winning Bid, the Highest Bidder or Auctioneer (on behalf of the Highest Bidder) will complete the Contract to incorporate the Offer Terms and the Price and sign the Contract;
(9) if any dispute arises in relation to any bid, such dispute will be determined by the Auctioneer;
(10) the Auctioneer may also pause the time limit for making bids during the Final Bidding Stage for the purpose of taking instructions from the Seller or conferring with Qualified Bidders, and such a pause will be displayed on the App and visible to all Qualified Bidders.

6.6 Reserve Price
(1) The Property is offered for sale subject to a Reserve Price.
(2) If no bid exceeds the Reserve Price in the Final Bidding Stage, the Seller is not obliged to sell the Property.
(3) If one or more bids in the Final Bidding Stage equals or exceeds the Reserve Price, then the Seller must sell the Property to the Highest Bidder.
(4) If none of the bids made by the Qualified Bidders equal or exceed the Reserve Price, the Seller may choose to negotiate with one or more of the Qualified Bidders to sell the Property.

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6. Declaration and Terms (continued)

6.7 Purchase of the Property by a Sole Bidder
The Seller may accept Offer Terms and the price made in a bid by a Qualified Bidder during the Campaign Bidding Stage without commencing the Final Bidding Stage where there is only one Qualified Bidder who will then be the Sole Bidder and:
(1) all bids by the Sole Bidder must be made through the App;
(2) the Seller may accept any bid made by a Sole Bidder through the App without commencing the Final Bidding Stage;
(3) if the Reserve Price has not yet been met, the Auctioneer must receive in writing from the Seller confirmation they will accept a lower Reserve Price;
(4) this bid will then become the Winning Bid with acknowledgement to the Sole Bidder of the Seller's intention to accept their bid as the Winning Bid. The Sole Bidder or Auctioneer (on behalf of the Sole Bidder) will complete the Contract to incorporate the Offer Terms and the Price and sign the Contract.

6.8 Purchase of the Property otherwise than during the Campaign Bidding Stage or Final Bidding Stage
If the Property does not sell during the Final Bidding Stage, but an offer is made by a Qualified Bidder that is accepted by the Seller before noon (standard time) the following day:
(1) the sale must be on the Offer Terms (other than price); and
(2) the sale will be conducted in accordance with these Terms.

6.9 Restarting the Openn Negotiation due to technical failure
(1) The Auctioneer may allow the Openn Negotiation to time out during the Final Bidding Stage and be restarted if:
(a) they reasonably consider that a technical problem has occurred with the App such that the Openn Negotiation cannot properly proceed; or
(b) they reasonably consider that one or more Qualified Bidders are experiencing difficulties with the use of the App so that the Openn Negotiation cannot properly proceed.
(2) If the Auctioneer cancels the Openn Negotiation in accordance with clause 6.9(1), the Seller Agent will contact the Qualified Bidders to advise them of a new Openn Negotiation (and a new Final Bidding Stage) provided that upon the Openn Negotiation restarting in these circumstances, no Qualified Bidder will be bound by any prior bid and will be free to recommence bidding at any amount they wish.

7. Offer Terms

The Bidder's offer to purchase the Property is subject to the following conditions which are incorporated into the Contract should the Bidder make the Winning Bid.
In the event the Bidder does not sign the Contract, the Bidder appoints the Auctioneer as the Bidder's agent to incorporate the following information into the Contract:

7.1 Initial Deposit: $_____ payable at the time the Buyer signs the Contract

unless another time is specified as: _____

Balance Deposit: $_____ (if any) payable on _____

Default Interest Rate: _____ %

7.2 Settlement Date: _____

Settlement Location: _____

7.3 Finance Amount: _____

Financier: _____

Finance Date: _____

7.4 Excluded Fixtures: _____

_____

_____

7.5 Property Chattels including: _____

_____

_____

_____

7.6 Building and/or Pest Inspection Date: _____

7.7 Other Special Conditions: _____

_____

_____

_____

_____

_____

_____

The Contract otherwise incorporates the Contract for Houses and Residential Land, as set out in Appendix A.

8. Authority

8.1 In the event the Bidder makes the Winning Bid, the Bidder agrees to sign the Contract and do everything else necessary to transfer the Property to the Bidder.

8.2 The Bidder irrevocably appoints the Auctioneer as the Bidder's agent to incorporate the Offer Terms set out in clause 7 and the Winning Bid as the Price and to sign the Contract on the Bidder's behalf.

8.3 Further to clause 8.2, the Bidder authorises the Auctioneer to do the following things on their behalf, in respect of the Property if the Bidder makes the Winning Bid as the Highest Bidder or Sole Bidder for the purchase of the Property via the App:
(1) complete the 'particulars' page on the Contract in respect of the Property, to incorporate the Offer Terms and the Price; and
(2) sign the Contract in respect of the Property and exchange the Contract with the Seller of the Property.

The Bidder specifies that this authority begins immediately and expires automatically and without further effect on the day that is one day after the Final Bidding Stage.

8.4 The Bidder agrees to ratify and confirm anything the Auctioneer lawfully does in accordance with this clause 8.

8.5 The Auctioneer, Seller Agent and the Seller Agent's directors or licensed sales representatives (as the case may be) have the right, upon confirmation of the Winning Bid in the App, to accept the Highest Bidder or Sole Bidder's offer on behalf of the Seller on the Fall of the Hammer, and the conclusion of the Openn Negotiation process.

Signed by the Bidder X _____ **Print Name:** _____

Signed by the Bidder X _____ **Print Name:** _____

9. Disclaimers and limitation of liability

9.1 The use of the App and all information and data provided on or through the App is entirely at the Bidder's own risk. The Bidder is responsible for all Bidder activity in connection with accessing and using the App.

9.2 Neither the Seller, Seller Agent, Auctioneer, Owner or Developer warrant, guarantee or make any representation that:
(1) the App, or the server that makes the App available on the World Wide Web are completely secure, free of software viruses, disabling code or other harmful components;
(2) the functions contained in any software or applications contained on or integrated with the App will operate uninterrupted or are error-free;
(3) any errors and defects in the App will be corrected; and
(4) unless expressly stated, the information provided on or through the App is suitable, reliable, accurate, current, complete or fit for any particular purpose.

9.3 Unless expressly stated, the information on the App is provided for information purposes, general interest and enquiry only. Before relying on the information on the App, the Bidder should verify the accuracy of the information and consult with an appropriate professional for specific advice tailored to the Bidder's situation.

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9. Disclaimers and limitation of liability (continued)

9.4 To the extent permitted by law, the Seller, Seller Agent, Auctioneer, Owner and Developer exclude all liability for any loss or damage (including indirect and consequential loss) arising from or in connection with:
(1) the Bidder's use of the App;
(2) the Bidder's reliance on any information provided on or through the App;
(3) any delay or inability to use any part of the App; and/or
(4) any failure to provide services or any information through the App.

9.5 Owner's Service
9.5.1 The Owner does not conduct the Openn Negotiation process and the Owner:
(1) is not an auctioneer or real estate agent and does not claim to be;
(2) does not own or offer for sale the real estate listed on the App; and
(3) its role is limited to providing the App for the sale of the Property.
9.5.2 The Owner is therefore not responsible or liable:
(1) in the event that the Seller or Bidder fails to complete a transaction;
(2) for the completion of the sale;
(3) for the state and condition of any Property listed on the App or for verifying the Property listed on the App.

9.6 Liability and Indemnity
9.6.1 The Developer, Owner, Seller Agent, Auctioneer and their officers, directors and employees will not be held liable, in any circumstances, for any loss or damages which arise out of:
(1) any use, attempted use and/or any technical failure of the App;
(2) acting, or failing to act, on any information contained on or referred to on the App; and
(3) any errors or defects in the App.
9.6.2 The Bidder and the Seller release and hold harmless the Seller Agent, Auctioneer, Owner and Developer and their officers, directors and employees from and against all actions, suits, demands, claims, losses, damages and costs whatsoever, whether at law or in equity arising out of:
(1) any use, attempted use and/or any technical failure of the App;
(2) acting, or failing to act, on any information contained on or referred to on the App; and
(3) any errors or defects in the App.

9.7 The Bidder indemnifies and will keep indemnified the Seller's Agent, Auctioneer, Owner and the Developer and their officers, directors and employees from and against all actions, suits, demands, claims, losses (including indirect or consequential loss), damages and costs whatsoever, whether at law or in equity arising out of any breach of the App or these Terms.

9.8 The Seller, Seller Agent, Auctioneer, Owner and Developer accept no responsibility for any liability suffered by the Bidder as a result of not electing to have the Contract and these Terms reviewed by their lawyer.

10. Intellectual property

10.1 Unless otherwise indicated, the Parties acknowledge that:
(1) the Owner owns or is licensed to use all intellectual property (including copyright, trademarks and designs) subsisting in the content (including any graphics, images, logos, text, material, software) on the App; and
(2) the content on the App must not be modified, copied, reproduced, republished, framed, uploaded to a third party, posted, transmitted or distributed in any way except as expressly provided for on the App, or as expressly authorised in writing by the Owner.

11. Privacy

The Privacy Policy (available at https://www.openn.com.au/privacy-policy) forms part of these Terms.
By using the App, the Bidder and Seller consent to the collecting, handling and using personal information in accordance with the Privacy Policy.

12. Termination of access

The Seller, Seller Agent, Auctioneer, Owner, Developer may terminate access to the App at any time without giving any explanation or justification for the termination of access. None of them are liable to the Bidder for any costs, losses or damages of any kind arising as a consequence of terminating access to the App.

Bidders Declaration

The Bidder:
(1) confirms that if the Bidder is the purchaser of the Property, they confirm their agreement for the sale and settlement of the Contract for the Property as defined in the Act;
(2) confirms they understand and agree that the Contract will be subject only to the Offer Terms set out in clause 7 (that may be transferred into the Contract by the Auctioneer or the App);
(3) there is no cooling off period;
(4) confirms that they have received, prior to signing this document, a copy of the form of the Contract and the Contract for Houses and Residential Land incorporated into the Contract for the Property; and
(5) warrants that they have had an opportunity to obtain independent legal advice in relation to this document and the Contract

Bidder's Signature X _____ **Dated:** _____

Bidder's Signature X _____ **Dated:** _____

Seller/s Declaration & Authority

The Seller:
(1) confirms that they are the Seller of the Property and confirm their agreement for the sale and settlement of the Contract for the Property;
(2) confirm their instructions to nominate, authorise and direct the Auctioneer and/or Seller Agent or its directors or licensed sales representatives to complete the details of the Contract to incorporate the Offer Terms made by the Highest Bidder or any Sole Bidder who has made the Winning Bid, including the Price;
(3) confirm their instructions to nominate, authorise and appoint the Auctioneer as their agent to execute the Contract on the Seller's behalf; and
(4) warrant they will not make a Seller bid and will not engage in Dummy Bidding.

Seller/s Signature X _____ **Dated:** _____

Seller/s Signature X _____ **Dated:** _____

APPENDIX A

Insert a copy of the Contract for Houses and Residential Land

SELLER COPY ONLY

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