

# Code 003 Exclusive Auction Authority



## Particulars of Appointment.

**Agent:** \_\_\_\_\_ **ACN:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Attention:** \_\_\_\_\_

**Phone:** \_\_\_\_\_ **Mobile:** \_\_\_\_\_ **Fax/Email:** \_\_\_\_\_

**Vendor:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Phone:** \_\_\_\_\_ **Mobile:** \_\_\_\_\_ **Email:** \_\_\_\_\_

**Property** \_\_\_\_\_

**with chattels being** \_\_\_\_\_

Exclusive authority period until \_\_\_\_\_ days after the auction date.

Continuing authority period \_\_\_\_\_ days from the end of the exclusive authority period.

Auction date: \_\_\_\_\_ / \_\_\_\_\_ / 20\_\_\_\_ Time of auction \_\_\_\_\_ am / pm

The Property is being sold ☐ with vacant possession or ☐ subject to any tenancy

and upon payment of ☐ full purchase price **OR** upon terms on payment of ☐ full deposit

and ☐ the sum of \$ \_\_\_\_\_

**Vendor's reserve price** \$ \_\_\_\_\_ payable in \_\_\_\_\_ days

### Agent's estimate of selling price

(Section 47A of the *Estate Agents Act* 1980).

Note: If a price range is specified, the difference between the upper and lower amounts cannot be more than 10% of the lower amount.

Single amount \$ \_\_\_\_\_ or between \$ \_\_\_\_\_ and \$ \_\_\_\_\_

**A fixed \*commission** (including GST) of \$ \_\_\_\_\_ **OR**

**A \*commission (including GST) being the following % of the sale price:**

Dollar amount of estimated commission:

\$ \_\_\_\_\_ including GST of \$ \_\_\_\_\_

If sold at a \*GST inclusive/\*GST exclusive / \*not subject to GST price of \$ \_\_\_\_\_

(\*delete those that do NOT apply)

(\* **Commission: Vendor please read the payment of commission terms at page 2, Item 1, before you sign this authority.**)

**Marketing Expenses** (including GST).

Advertising \$ \_\_\_\_\_ Other Expenses \$ \_\_\_\_\_ TOTAL \$ \_\_\_\_\_

**Marketing Expenses are payable on**

**\* the signing of this Authority / \* written request** (\*delete the one that does NOT apply)

**DATE:** \_\_\_\_\_ / \_\_\_\_\_ / 20\_\_\_\_

**AGENT**

**VENDOR**

### Item 1. Agent's entitlement to commission

The Vendor agrees to pay the Agent the commission on the terms of this Authority if the Property is sold:

- 1.1 during the exclusive authority period by the Agent or by any other person (including the Vendor or another agent); or
- 1.2 during the continuing authority period by the Agent; or
- 1.3 to a person introduced to the Property by the Agent before the Vendor signed this Authority and to whom, as a result of the introduction, the Property is sold; or
- 1.4 within 120 days after the expiration of the exclusive authority period to a person introduced to the Property by the Agent within the exclusive authority period and to whom, as a result of the introduction, the Property is sold.

The commission is due and payable by the Vendor on the Property being sold.

Items 1.2, 1.3 and 1.4 will not apply if the Vendor may incur a liability to pay an agent a commission under an exclusive agency agreement signed by the Vendor with another agent after the expiration of the exclusive authority period.

( See the definition of " sold", "sale" and "sell" in GC 1.14)

### Item 2. Continuing authority period

2.1 If there is a continuing authority period, it starts on the day after the day on which the exclusive authority period ends and

2.1.1 lasts for the number of days specified in the Particulars of Appointment, unless cancelled, and

2.1.2 on the day it starts, the Agent's exclusive appointment ends.

2.2 The Vendor may cancel the continuing authority period at any time by written notice to the Agent.

2.3 If the continuing authority period is cancelled, Item 1 continues to apply.

### Item 3. Making a complaint

Any complaint relating to commission or outgoings can be made to the Director, Consumer Affairs Victoria GPO Box 4567, Melbourne, Victoria, 3001 or by telephoning 1300 73 70 30. Unless there are exceptional circumstances Consumer Affairs Victoria cannot deal with any dispute concerning commission or outgoings unless it is given notice of the dispute within 28 days of the client receiving an account for, or notice that the Agent has taken the amount in dispute, whichever is later.

### Item 4. Dispute resolution

The Agent has procedures for resolving complaints and disputes arising from the operation of the Agent's estate agency practice. If a complaint or dispute arises, please ask to be informed about the procedures.

### Item 5. Warranty of REIV membership

The Agent is a member of the REIV, at the date of this Authority. The Agent will confirm membership, if requested.

If the warranty is false, this Authority is void. (This warranty cannot be deleted or modified)

## Item 6: Rebate Statement – No Rebate will be received.

### Instructions

This statement is approved by the Director of Consumer Affairs Victoria for the purposes of section 49A(4) of the *Estate Agents Act 1980*. It may only be included in an agency authority if an agent is not entitled to any rebate. It should not be used if there is a possibility that an agent may receive a rebate.

The agent will not be, or is not likely to be, entitled to any rebates. A rebate includes any discount, commission, or other benefit, and includes non-monetary benefits.

In addition to the statement approved by the Director of Consumer Affairs Victoria, the following statements are provided in compliance with sections 49A (4)(a) and (c) of the *Estate Agents Act 1980* –

The agent will not be, or is not likely to be, entitled to any rebate in respect of –

- (i) any outgoing; or
- (ii) any prepayments made by a person engaging or appointing the agent (the **client**) in respect of any intended expenditure by the agent on the client's behalf; or
- (iii) any payments made by the client to another person in respect of the work.

The agent is not entitled to retain any rebate and must not charge the client an amount for any expenses that is more than the cost of those expenses.

(\*If the agent will be, or is likely to be, entitled to a rebate then the agent must cross out this item, the amendment should be initialled by the parties to this agreement and the agent is to complete the rebate statement approved by the Director of Consumer Affairs Victoria for use where a rebate will be, or is likely to be, received. The approved rebate statement must be attached to each part of this authority at the time that it is signed. The rebate statement is available at <https://www.consumer.vic.gov.au/>).

## Item 7. Exclusive Authority Period (no time stated)

If an agreement stating that an estate agent is to act as the sole agent for the sale of any real estate or business does not state when the sole agency is to end, the sole agency ends: (a) in the case of a sale by auction, 30 days after the date of the auction (b) in any other case, 60 days after the date the agreement is signed by, or on behalf of, the seller of the real estate or business.

## Item 8. Agent's role

The Agent will advertise, market and endeavour to sell the Property, and will, unless the Property is sold beforehand, conduct a public auction.

## Item 9. Commission sharing

\* The Agent may share the commission with an employee who is an estate agent or an agent's representative, or with an estate agent who is the Agent's business partner. (\* If commission will be shared with anyone else, complete and attach the notice of commission sharing approved by the Director of Consumer Affairs Victoria, at the time of signing this Authority. The notice can be downloaded at [www.consumer.vic.gov.au](http://www.consumer.vic.gov.au))

## Item 10. Vendor acknowledgements

The Vendor acknowledges:

**10.1** being informed by the Agent the commission and Marketing Expenses are negotiable, and having read Item 1 at page 2, before signing this Authority;

**10.2** Marketing Expenses incurred during the period of this Authority must be paid, whether or not the Property is sold;

**10.3** commission is payable in accordance with this Authority, if the Property is sold;

**10.4** dummy bidding is illegal;

**10.5** it is illegal for the auctioneer to accept bids /offers after the Property has been knocked down to the successful bidder;

**10.6** and agrees that his / her personal information will be collected and may be used, as provided in this Authority;

**10.7** being informed the Agent has procedures for resolving complaints and disputes, before signing this Authority;

**10.8** receipt of a copy of this Authority, at the time of signing;

**10.9** if the Property is "residential property" as defined by the Estate Agents Act 1980, the Agent may be required by law to disclose details relating to the Property, including the sale price and date of sale, and also acknowledges this requirement cannot be altered by an agreement, arrangement or understanding between the Agent and the Vendor or between the Agent or the Vendor and any other person.

## General Conditions (GC)

**1.** In this Authority unless otherwise required by the context or subject matter:

**1.1** "Act" means the Estate Agents Act 1980.

**1.2** "Agent" means the Agent named in the Particulars of Appointment.

**1.3** "amount owing under the security" means principal, interest, costs, and expenses payable by the legal or equitable owner of the Property under the terms of the security pursuant to which the Vendor is disposing of the Property.

**1.4** "binding offer" means:

**1.4.1** an offer at the Vendor's reserve price and on the terms set out in the Particulars of Appointment which would result in an enforceable contract of sale, if signed by the Vendor and exchanged with the purchaser; or

**1.4.2** an enforceable contract of sale signed by the Vendor and the purchaser.

For the purposes of **GC 1.4.1** the offer must be in a contract of sale signed by the purchaser and "Vendor's reserve price" has the meaning in **GC 1.16**.

For the purposes of **GC 1.4.1** and **GC 1.4.2** "enforceable contract of sale" means a contract which may be enforced by an order for specific performance and/or upon the breach of which either the Vendor or the purchaser would be entitled to an award of damages.

**1.5** "deposit moneys" has the same meaning as defined in the Sale of Land Act 1962.

**1.6** "exclusive authority period" means the period commencing on the date of this Authority and continuing until the expiry of the number of days specified in the Particulars of Appointment.

**1.7** "GST" means the goods and services tax payable in accordance with the A New Tax System (Goods and Services Tax) Act 1999.

**1.8** "introduced to the Property" means the person was made aware the Property was available to purchase irrespective of the source. Without limiting the generality of the foregoing, a person will be deemed to have been introduced to the Property by the Agent if the person became aware the Property was available for purchase as a result of viewing, hearing, or reading an advertisement of whatever nature or medium or any boards, placards, or other literature referring to the availability of the Property that were connected to the Agent in any way.

**1.9** "Marketing Expenses" means the advertising and other expenses of the Agent specified in the Particulars of Appointment.

**1.10** "person" includes a natural person, a corporation and an incorporated association.

**1.11** "professional fees" means the total of the commission and Marketing Expenses as duly authorised and expended.

**1.12** "purchaser" means the person to whom the Property is sold.

**1.13** "REIV" means The Real Estate Institute of Victoria Ltd [ACN 004 210 897].

**1.14** "sold", is the result of obtaining a binding offer and "sale" and "sell" have corresponding meanings.

**1.15** "security" includes mortgage, bond, debenture, covenant, charge, or appointment under the terms of which the Vendor is disposing of the Property.

**1.16** "Vendor's reserve price" means a price equal to or greater than the Vendor's reserve price stated in the Particulars of Appointment.

**1.17** A reference to an act of Parliament includes an act amending or superseding the act referred to.

**1.18** If the Agent or the Vendor comprises more than one person, their respective obligations are joint and individual.

**2.** If the purchaser does not complete the purchase and forfeits the deposit, the Vendor will take all reasonable steps to recover any unpaid deposit from the purchaser and/or any other person who may be liable for payment of the deposit and to pay the professional fees from the sum of the deposit paid or recovered.

**3.** If the Vendor fails to pay the Agent any moneys due under this Authority within 30 days of receipt of the Agent's invoice ("the due date for payment"), then interest at the rate fixed from time to time under section 2 of the Penalty Interest Rates Act 1983 will be charged on the unpaid money (or the balance owing from time to time) calculated from the due date for payment to and including the day on which the unpaid money is paid in full. The interest will be paid, if demanded.

**4.** If the Vendor is a natural person, a corporation or an incorporated association and a person signs on behalf of the Vendor, the person signing is responsible for the due performance of the Vendor's obligations as if they were the Vendor. If the Vendor is a corporation or an incorporated association, the person signing will in addition have the directors of the corporation or the committee of the incorporated association sign a guarantee and indemnity in favour of the Agent in a form acceptable to the Agent's legal practitioner, if required by the Agent.

**5.** The Vendor may refuse a binding offer made between the date of this Authority and the date of the auction without incurring any liability to pay professional fees.

**6.** The Vendor irrevocably authorises the Agent to deduct the professional fees properly incurred and State and Federal taxes required to be deducted by law, including GST, from deposit moneys held by the Agent.

**7.** If the Property is sold and no deposit moneys are held by the Agent, the Vendor will pay the professional fees properly incurred and State and Federal taxes required to be deducted by law, including GST, on demand.

**8.** If deposit moneys are held in whole or part by the Vendor's conveyancer or legal practitioner, the Vendor appoints the Agent as the Vendor's attorney under power to direct and authorise the conveyancer or legal practitioner to pay the professional fees properly incurred and State and Federal taxes required to be deducted by law, including GST, to the Agent. The Vendor agrees to promptly ratify and confirm the power of attorney, if requested.

**9.** Unless otherwise stated in the Particulars of Appointment, the Vendor will pay the maximum amount of Marketing Expenses to the Agent on the signing of this Authority and in any event the Marketing Expenses will be payable on written request. When this Authority ends, the Agent will provide the Vendor with an itemised list of the Marketing Expenses and State or Federal taxes expended or payable. The Agent will provide the itemised list at any other time that may reasonably be required by the Vendor.



**10.** If this Authority requires the Vendor to pay or reimburse or contribute to an amount paid or payable by the Agent in respect of an acquisition from a third party to which the Agent is entitled to an input tax credit, the amount for payment or reimbursement or contribution will be the GST exclusive value of the acquisition by the Agent plus the GST payable in respect of that supply but only if the Agent's recovery from the Vendor is a GST taxable supply.

**11.** If the Vendor is disposing of the Property under the terms of a security and the auction is cancelled:

**11.1** within 14 days from the date of this Authority, the Vendor will pay the Agent the total Marketing Expenses and one-quarter of the commission payable on

**11.1.1** the Vendor's reserve price set out in the Particulars of Appointment or otherwise advised by the Vendor ; or

**11.1.2** the amount owing under the security

whichever is the higher sum; or

**11.2** after 14 days from the date of this Authority and on or before the auction date, the Vendor will pay the total of the Marketing Expenses and 3 times the commission calculated in the manner set out in **GC 11.1**.

**12.** The Vendor authorises the Agent to sign a contract of sale which contains terms of sale agreed by the Vendor and a price at, or above, the Vendor's reserve price as advised to the Agent if, when the auctioneer sells the property at auction - or the agent negotiates the sale of the property, following it being passed-in at auction, on terms and at a price agreed to by the Vendor - the Vendor is unavailable to sign the contract.

**13.** The Vendor agrees with the Agent that an agreement of the Vendor and purchaser to bring an enforceable contract of sale to an end or the ending of an enforceable contract of sale as a result of a default of the Vendor or the purchaser does not relieve the Vendor of the obligation to pay the Agent's professional fees.

**14.** The Vendor authorises the Agent to do any or all of the following –

**14.1** instruct the Vendor's Australian legal practitioner or conveyancer to prepare a Sale of Land Act section 32 statement and a contract of sale, agree the content of either document and advise and agree other amendments or additions to either document as may be desired or required at any time;

**14.2** fill-up a standard form contract or contract to record the sale of the Property as permitted by the Estate Agents Act 1980 (the contract) or under any amending or superseding legislation;

**14.3** negotiate and, with the Vendor's prior approval, agree and record – or have the Vendor's Australian Legal Practitioner or conveyancer record – the final terms and conditions of, and then obtain the signatures of the Vendor and the purchaser to, the contract;

**14.4** attend to the exchange of the contract between the Vendor and the purchaser;

**14.5** receive the purchase price, or any part of it, payable for the Property;

**14.6** to receive: a cooling-off notice given by a purchaser under the Sale of Land Act 1962 or any amending or superseding legislation, advice or a notice about a loan sought by a purchaser, advice or a notice about a pest inspection report and/or a building condition report, even if the Agent's authority has formally expired on the sale of the property.

**14.7** to make public the sale price paid for, and other details of, the Property without disclosing the name of the Vendor or the purchaser, in the interest of maintaining an informed property market. This authorisation is effective: notwithstanding a condition in the contract of sale for the Property, to which the Agent is not a party, purporting to restrict the availability of information about the sale of the Property and even though the Agent's authority formally expired on the sale of the Property.

The Vendor agrees that the auction will be conducted in accordance with the terms of Annexure A (Authority to Conduct the Sale of Land by Open Negotiation and Sellers Contract Execution and Express Exchange Authority) and Schedule 1 (Buyers Authority to Bid and Terms of Use). The Vendor agrees to comply with Annexure A and Schedule 1 and agrees to be bound by such terms.

Vendor's initials:

Agent's initials:

# Annexure A: Authority to Conduct the Sale of Land by Openn Negotiation and Sellers Contract Execution and Express Exchange Authority (Victoria)

## Parties

Seller(s): \_\_\_\_\_ ACN: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Mobile: \_\_\_\_\_ Email: \_\_\_\_\_

and;  
The real estate agent duly authorised to act on behalf of the Seller pursuant to the *Sale of Land Act 1962 (Vic)* and *Sale of Land (Public Auctions) Regulations 2014*.

AGENT/LICENSEE: \_\_\_\_\_

## Property for Sale

Property Address: \_\_\_\_\_

Title details (lot and folio details): \_\_\_\_\_

## 1. It is agreed

- |   |  |
|---|--|
| <p>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 Buyer Authority to Bid and Terms of Use (attached schedule 1).</p> | <p>1.2 The Seller agrees to be bound by the Buyer Authority to Bid and Terms of Use during the Openn Negotiation Period.</p> |
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## 2. Definitions and Interpretation

In this document:

- |   |   |
|---|---|
| <p>2.1 <b>Act</b> means the <i>Sale of Land Act 1962 (Vic)</i> and <i>Sale of Land (Public Auctions) Regulations 2014</i>;</p> <p>2.2 <b>Agency Agreement</b> means the Auction Agency Agreement entered into between the Parties;</p> <p>2.3 <b>App</b> means the specialised software program designed to facilitate the Openn Negotiation and known as "Openn";</p> <p>2.4 <b>Buyer Authority to Bid and Terms of Use</b> means the Terms set out in the attached Schedule 1, which are to be read in conjunction with this Annexure A;</p> <p>2.5 <b>Auctioneer</b> means the auctioneer appointed by the Agent to conduct the Openn Negotiation, who must be an accredited auctioneer pursuant to the Act;</p> <p>2.6 <b>Campaign Bidding Stage</b> 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;</p> <p>2.7 <b>Developer</b> means PP Valley Pty Ltd ACN 612 338 477;</p> | <p>2.8 <b>Final Bidding Stage</b> 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;</p> <p>2.9 <b>Openn Negotiation</b> means the process for selling the Property by auction as set out in the Buyer Authority to Bid and Terms of Use as has the same meaning of auction as provided by the Act;</p> <p>2.10 <b>Openn Negotiation Period</b> means the exclusive authority period set out in the Agency Agreement;</p> <p>2.11 <b>Owner of Openn Negotiation</b> means Cleverbons Pty Ltd ACN 607 908 636;</p> <p>2.12 <b>Property</b> means the property described in the Agency Agreement;</p> <p>2.13 <b>Qualified Bidder</b> has the meaning set out in the Buyer Authority to Bid and Terms of Use ;</p> <p>2.14 <b>Reserve Price</b> means the minimum price nominated by the Seller to the Agent in writing that the Seller will sell the Property;</p> <p>2.15 <b>Vendor Bid</b> means a bid made by or on behalf of the Seller in accordance with the Act and Auction conditions of Sale;</p> |
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## 3. Agreement to Auction by Openn Negotiation

- |  |   |
|--|---|
| <p>3.1 In addition to the Agency Agreement, the Seller appoints the Agent to offer the Property for Auction by Openn Negotiation during the Openn Negotiation Period in accordance with the Act, with the Openn Negotiation to take place at the date and time specified in clause 8 of this Annexure A.</p> <p>3.2 The Seller acknowledges that Openn Negotiation is an auction within the meaning of that term in the Act.</p> | <p>3.3 The Seller acknowledges that Vendor Bids as defined are not compatible with Openn Negotiation and agrees not to make or seek to make a Vendor Bid or instruct the Agent and/or Auctioneer to make a Vendor Bid during the Openn Negotiation.</p> <p>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.</p> |
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## 4. Conditions of Sale

- |   |  |
|---|--|
| <p>4.1 The sale of the Property is to be conducted in accordance with the Buyer Authority to Bid and Terms of Use and the Seller agrees to be bound by the terms of the Openn Negotiation as described in those Buyer Authority to Bid and Terms of Use, including, but not limited to, the Campaign Bidding Stage and the Final Bidding Stage (as those terms are defined in the Buyer Authority to Bid and Terms of Use).</p> <p>4.2 The Seller acknowledges that the Openn Negotiation will be primarily conducted through the App in accordance with the Buyer Authority to Bid and Terms of Use.</p> | <p>4.3 The Openn Negotiation is to be subject to the Reserve Price and the Vendor 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 Vendor must sell the Property to that bidder.</p> <p>4.4 The Final Bidding Stage will commence on the auction date and time set out in clause 8 or at such other date and time nominated by the Seller.</p> |
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## 5. Authority

- 5.1 In the event the Seller is unable to be present at the location from where the Seller's Agent and/or Auctioneer is conducting this sale, the Seller:
- expressly authorises the Auctioneer to sign the Contract for Sale of Real Estate for the Property on the Seller's behalf as set out in the Buyer Authority to Bid and Terms of Use;
  - complete the 'Particulars of Sale' section of the Contract for the Sale of Real Estate;
  - make any amendments to the Contract for the Sale of Real Estate that the Seller has authorised;
  - execute the Contract for the Sale of Real Estate on the Seller's behalf if I/we have not already provided an executed front page of the Contract for the Sale of Real Estate to the Seller's Agent and/or Auctioneer; and
  - complete the exchange of Contract for the Sale of Real Estate so that the contracts become binding.
  - We also confirm our instructions to the Seller's Agent to deliver to our solicitor/conveyancer the unconditionally exchanged and executed contract in this matter.

## 6. Liability

- 6.1 The Seller releases and holds harmless the Agent, Auctioneer, the 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 Vendor's physical location or the Vendor's wireless data service provider's network.
- 6.5 To the extent permitted by law, and without limiting any rights that the Vendor may have under the Australian Consumer Law, the Agent's and the Developer's liability to the Vendor 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:
- The Openn website (www.openn.com.au), the App, or the servers that make them available are free of software viruses;
  - The functions effected by the software contained on the Website or the App will operate uninterrupted or are error-free; and
  - 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. Time and Date of Openn Negotiation

- 8.1 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

### Seller's Signature

X

Name of Seller: \_\_\_\_\_

Date: \_\_\_\_\_

### Agent or Agent's Representative Signature

X

Name of Agent or Agent's Representative: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

### Seller's Signature

X

Name of Seller: \_\_\_\_\_

Date: \_\_\_\_\_

### Witness Signature

X

Name of Witness: \_\_\_\_\_

Address of Witness: \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

## Schedule 1

# Buyer Authority to Bid and Terms of Use (Victoria)



### 1. Parties

**BIDDER** Full Name(s): \_\_\_\_\_  
(as joint tenants in common (if so, state the shares))  
Address: \_\_\_\_\_  
Suburb: \_\_\_\_\_ State: \_\_\_\_\_ Postcode: \_\_\_\_\_  
Phone: \_\_\_\_\_ Mobile: \_\_\_\_\_ Email: \_\_\_\_\_  
Phone: \_\_\_\_\_ Mobile: \_\_\_\_\_ Email: \_\_\_\_\_  
Solicitor: \_\_\_\_\_

and;  
**SELLER** Full Name(s): \_\_\_\_\_  
Address: \_\_\_\_\_  
Suburb: \_\_\_\_\_ State: \_\_\_\_\_ Postcode: \_\_\_\_\_  
Phone: \_\_\_\_\_ Mobile: \_\_\_\_\_ Email: \_\_\_\_\_  
Phone: \_\_\_\_\_ Mobile: \_\_\_\_\_ Email: \_\_\_\_\_

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

### 2. Sellers Agent

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

Sellers Agent \_\_\_\_\_

### 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. The Bidder

4.1 Intends to become a Qualified Bidder and bid on the Property by way of Openn Negotiation:

Number \_\_\_\_\_ Street \_\_\_\_\_ Suburb/City \_\_\_\_\_  
Lot \_\_\_\_\_ DP \_\_\_\_\_ CT \_\_\_\_\_  
(the **Property**)

4.2 Acknowledges that Openn Negotiation:

- Is a type of auction with a flexible completion date pursuant to clause 6.4 and/or may be sold to a sole bidder pursuant to clause 6.7.
- Will be primarily conducted through the App in accordance with the Terms.

### 5. Definitions

5.1 In these terms the following have these meanings:

- Act** means Sale of Land Act 1962 (Vic), Sale of Land (Public Auctions) Regulations 2014 (Vic) as amended from time to time;
- Auction** means an auction pursuant to the Act;
- App** means the specialised software program designed to facilitate the Openn Negotiation and known as "Openn";
- Auctioneer** means the Auctioneer appointed by the Seller or Seller's Agent to conduct the Openn Negotiation who must be licensed to perform an auction pursuant to the laws of the State that govern the sale of property by Public Auction;
- 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;
- 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;
- Co-owner Bidder** means a bidder whose name is on the certificate of title for the property, where the certificate shows more than one registered proprietor, all the named parties whether as joint owners or tenants in common registered as proprietors;
- Co-owner Bid** a bid made by a co-owner bidder of the property either directly or on their behalf;
- Developer** means PP Valley Pty Ltd ACN 612 338 477;
- 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;
- Fall of the Hammer** means the time in the Final Bidding Stage the Auctioneer through the App announces the Final Bidding Stage has ended and no further bids will be accepted from Qualified Bidders;
- 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;
- Owner** means Cleverbons Pty Ltd ACN 607 908 636 being the owner of the App;
- 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;
- Limited Power of Attorney** means the power of attorney granted to the Auctioneer by the Bidder pursuant to clause 8;
- 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 by the Highest Bidder or Sole Bidder with the Seller for the purchase of the Property;
- Openn Negotiation** means the process set out in these Terms according to which the sale is to be conducted using the App;
- Owner** means Cleverbons Pty Ltd ACN 607 908 636;
- Pending Bid** means the opening bid made by a Bidder, through the App, that must be accepted by the Sellers Agent in order to become a Qualified Bidder. The Opening Bid may be increased subsequently;
- Price** means the price at which the Property will be sold, being:
  - the Winning Bid on the App; or
  - if the Property does not sell during the Final Bidding Stage, any price agreed by the Bidder and Seller before noon the day following the Final Bidding Stage;
- Qualified Bidder** means a bidder who has fulfilled the requirements set out in clause 6.1.1 and has been approved by the Seller in accordance with clause 6.1.7;



## 5. Definitions (continued)

- 22. **Regulation** or Regulations means unless the context indicates otherwise the relevant legislation in each jurisdiction;
- 23. **Reserve Price** is the minimum amount that the Seller of the Property will accept as the Winning Bid in the Openn Negotiation;
- 24. **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's Agent Offer Terms that have been accepted by the Seller such that the bidder may take part in the Openn Negotiation);
- 25. **State** means the state or territory in which the Property is located
- 26. **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;
- 27. **Winning Bid** means the successful bid made in the App which will be confirmed by the Bidder or the Auctioneer (pursuant to the Limited Power of Attorney) 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;
- 28. **Property** means the Property described in clause 4 of this document.
- 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
  - a. 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.
  - b. 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).
  - c. 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 A 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:
  - a. download the app or visit [www.openn.com.au](http://www.openn.com.au);
  - b. access and register their details in the App;
  - c. select the Property in the App;
  - d. enter their Pending Bid in the App;
  - e. complete the Offer Terms in clause 7;
  - f. provide their contact details to the Agent.
  - g. The Offer Terms must state any and all terms that vary from those set out in the existing Contract for Sale of Land upon which the Bidder is prepared to purchase the Property, other than the proposed price.
  - h. A prospective bidder may waive their right to have the Contract for Sale of Land, Limited Power of Attorney and these Terms of Use reviewed by their solicitor/conveyancer.
  - i. If a prospective bidder waives their right to have the Contract for Sale of Land and Limited Power of Attorney and these Terms of Use reviewed by their solicitor/conveyancer, the prospective bidder becomes a Qualified Bidder upon receipt of the documents required by the Seller's Agent and approval by the Seller in accordance with clause 6.1.7.
- 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
- 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:
  - a. 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; and
  - b. if so, that potential Bidder will become a Qualified Bidder and the Sellers 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 Buyer.
- 6.2 Once the Agent approves the Qualified Bidder on the App, the App will:
  - a. send a confirmation notification to the Qualified Bidder;
  - b. show when the Final Bidding Stage will commence as provided for in clause 6.4; and
  - c. 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:
  - a. other than the Price, the Seller and Qualified Bidders are bound by the Offer Terms;
  - b. 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;
  - c. 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;
  - d. 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;
  - e. each Qualified Bidder will compete with other Qualified Bidders such that the successful Purchaser of the Property will be the Qualified Bidder who offers the highest price at or in excess of the Reserve Price;
  - f. the Auctioneer may withdraw bids, at their complete discretion;
  - g. the Seller may not bid personally, either directly or by an agent or other representative;
  - h. Dummy Bidding and/or encouraging another party to engage in Dummy Bidding constitutes a breach of these Terms and may have serious consequences;
  - i. subject to clause 6.6, once commenced the Openn Negotiation cannot be terminated by the Seller or any other party until:
    - i. all bids are exhausted; and
    - ii. if there is one or more bids at or exceeding the Reserve Price, the bid made by the Highest Bidder will be recorded as the Winning Bid will be written on the Contract as the Price that the Bidder will purchase the Property;
  - j. the Qualified Bidder is solely responsible for the operation of the App, internet access, access to the account, and the making of each bid in the Openn Negotiation;
  - k. a co-owner of the property is also eligible to become a Co-owner Bidder and participate in the Openn Negotiation. Each Qualified bidder will be notified if a co-owner makes a bid by the letter "V" appearing directly before the Unique Identification Number of the bidder.
- 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:
  - a. the Final Bidding Stage must commence between 8.00am and 9.00pm on the standard time; and
  - b. if the date and time for the Final Bidding Stage has changed since the Qualified Bidder entered their Pending Bid, the Seller's 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:
  - a. 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;
  - b. 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;
  - c. during the Final Bidding Stage, the App will indicate:
    - i. the minimum sum by which any bid must exceed the previous bid is determined by the Auctioneer through the App; and
    - ii. the time period during which further bids may be made before the current bid is successful;
  - d. 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;
  - e. 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 by the Auctioneer at the Fall of the Hammer.
  - f. once commenced the Final Bidding Stage cannot be terminated by the Seller or any other party until all bids have been exhausted;
  - g. the Auctioneer may remove bids at their complete discretion if they think they are likely to have been made in error or bad faith
  - h. 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 pursuant to the Limited Power of Attorney) will complete the Contract to incorporate the Offer Terms and the Price and sign the Contract;
  - i. if any dispute arises in relation to any bid, such dispute will be determined by the Auctioneer.
  - j. 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
  - k. No negotiation as to the Terms of the Contract will occur after the Bidder has been accepted as a Qualified Bidder
- 6.6 Reserve Price  
The Property is offered for sale subject to a Reserve Price:
  - a. if no bid exceeds the Reserve Price in the Final Bidding Stage, the Seller is not obliged to sell the Property;
  - b. 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;
  - c. 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.

## 6. Declaration and Terms of Use (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;

- all bids by the Sole Bidder must be made through the App;
- the Seller may accept any bid made by a Sole Bidder through the App without commencing the Final Bidding Stage;
- 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;
- 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, pursuant to the Limited Power of Attorney) 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

by noon the following day:

- the sale must be on the Offer Terms (other than price) set out in clause 7; and
- the sale will be conducted in accordance with these Terms such that the Bidder and the Seller must record in writing the Price agreed by the Parties.

### 6.9 Restarting the Openn Negotiation due to technical failure:

- the Auctioneer may Suspend or withdraw the Openn Negotiation at any time during the Openn Negotiation, if:
  - they reasonably consider that a technical problem has occurred with the App such that the Openn Negotiation cannot properly proceed; or
  - 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.
- If the Auctioneer cancels the Openn Negotiation in accordance with clause 6.9 above, the Seller's 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 shall 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 any Contract should the Bidder make the Winning Bid.

7.1 Deposit: \$ \_\_\_\_\_ or \_\_\_\_\_ % of which \$ \_\_\_\_\_ paid at exchange, with the balance paid within \_\_\_\_\_ business days of the exchange of contract.

7.2 Possession and/or Settlement Date \_\_\_\_\_

7.3 Finance Lender: \_\_\_\_\_

Amount required: \_\_\_\_\_

Latest Date: \_\_\_\_\_

7.4 Other special conditions: \_\_\_\_\_

The contract otherwise incorporates The Contract for Sale of Land and Section 32 set out in Appendix A.

## 8. Limited Power of Attorney

### 8.1 The Bidder irrevocably appoints the Auctioneer to be the Bidders Attorney solely to exercise the powers described below.

### 8.2 In the event that the Bidder makes the Winning Bid, the Auctioneer is authorised to complete and sign the Contract on behalf of the Bidder including the Offer Terms set out in clause 7 and the Winning Bid as the Price.

This general non-enduring power of attorney is made under Part 2 of the **Power of Attorneys Act 2014** and has effect as a deed. and has effect as a deed.

This general non-enduring power of attorney is made on: \_\_\_\_\_ (insert date of making)

I, \_\_\_\_\_ (insert name of person making power of attorney)

of \_\_\_\_\_ (insert address of person making power of attorney)

appoint \_\_\_\_\_ (insert name of Auctioneer)

of \_\_\_\_\_ (insert address of attorney) to be my attorney

I authorise the Auctioneer to do the following things on my 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:

- complete the 'particulars' page on the Contract in respect of the Property, to incorporate the Offer Terms and the Price; and
- execute the Contract in respect of the Property and exchange the Contract with the Seller of the Property.

I specify that this power of attorney begins immediately and expires automatically and without further effect after the Final Bidding Stage pursuant to clause 6.8.

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

### 8.4 The Sellers Agent and the Sellers Agents' Directors or licensed sales representatives have the right, up confirmation of the Winning Bid in the App, to accept the Highest Bidders or Sole Bidders Offer on behalf of the Seller on the Fall of the Hammer and the conclusion of the Openn Negotiation.

Signed as a deed by  
(print name) \_\_\_\_\_

X

Signed as a deed by  
(print name) \_\_\_\_\_

X

## 9. Disclaimers and limitation of liability and indemnity

### 9.1 Use of the App

The use of the Openn Negotiation App and all information and data provided on or through the App is entirely at the Bidders risk. The Bidder is responsible for all Bidder activity in connection with accessing and using the App. Neither the Seller, Sellers Agent, Auctioneer, Owner or Developer warrant, guarantee or make any representation that:

- 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;
- the functions contained in any software or applications contained on or integrated with the App will operate uninterrupted or are error-free;
- any errors and defects in the App will be corrected; and
- unless expressly stated, the information provided on or through the App is suitable, reliable, accurate, current, complete or fit for any particular purpose. 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 Bidders situation. To the extent permitted by law, the Seller, Sellers Agent, Auctioneer, Owner and Developer exclude all liability for any loss or damage (including direct and consequential loss) arising from or in connection with:
  - the Bidders use of the App;
  - the Bidders reliance on any information provided on or through the App;
  - any delay or inability to use any part of the App; and/or
  - any failure to provide services or any information through the App.

### 9.2 Owners Service

9.2.1 The Owner does not conduct the Openn Negotiation process and the Owner:

- is not an auctioneer or real estate agent and does not claim to be;
- does not own or offer for sale the real estate listed on the App; and
- its role is limited to providing the App for the sale of the Property.

9.2.2 The Owner is therefore not responsible or liable:

- in the event that the Seller or Bidder fails to complete a transaction;
- for the completion of the sale;
- for the state and condition of any Property listed on the App; and/or for verifying the Property listed on the App.

### 9.3 Liability and Indemnity

9.3.1 The Developer, Owner, Seller's 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:

- any use, attempted use and/or any technical failure of the App;
- acting, or failing to act, on any information contained on or referred to on the App; and
- any errors or defects in the App.

9.3.2 The Qualified Bidder and the Seller release and hold harmless the Seller's Agent, Auctioneer, Owner 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 use, attempted use and/or any technical failure of the App;
- acting, or failing to act, on any information contained on or referred to on the App; and
- any errors or defects in the App. Users of the App will indemnify and keep indemnified the Seller's Agent, Auctioneer, the Owner 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 breach of these App Terms and Conditions by You.

9.4 The Seller, Sellers 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, Limited Power of Attorney, and these Terms reviewed by their lawyer.

## 10. Intellectual property

10.1 Unless otherwise indicated, the Parties acknowledge that:

- 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
- 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:

- 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;
- confirms they understand and agree that the Contract will be subject only to the Offer Terms set out in clause 7 and there is no cooling off period;
- the Bidder confirms they have received, prior to signing this document, a copy of the section 32 statement signed by the Seller in respect of the Property; and
- 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

In the event the Seller is unable to be present at the location from where the Seller's Agent and/or Auctioneer is conducting this sale, the Seller:

- confirms that they are the Seller of the Property and confirm their agreement for the sale and settlement of the Contract for the Property;
- confirm their instructions to nominate, authorise and direct the Seller Agent 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;
- confirm their instructions to nominate, authorise and direct the Seller Agent to execute the Contract on the Seller's behalf; and
- warrant they 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 the Sale of Land and Section 32 along with any other conditions incorporated into that template.