

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:

- a. 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.
- b. Will be primarily conducted through the App in accordance with the Terms.

5. Definitions

5.1 In these terms the following have these meanings:

1. **Act** means Sale of Land Act 1962 (Vic), Sale of Land (Public Auctions) Regulations 2014 (Vic) as amended from time to time;
2. **Auction** means an auction pursuant to the Act;
3. **App** means the specialised software program designed to facilitate the Openn Negotiation and known as "Openn";
4. **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;
5. **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;
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 earlier of the Property being sold or the commencement of the Final Bidding Stage;
7. **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;
8. **Co-owner Bid** a bid made by a co-owner bidder of the property either directly or on their behalf;
9. **Developer** means PP Valley Pty Ltd ACN 612 338 477;
10. **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;
11. **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;
12. **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;
13. **Owner** means Cleverbons Pty Ltd ACN 607 908 636 being the owner of the App;
14. **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;
15. **Limited Power of Attorney** means the power of attorney granted to the Auctioneer by the Bidder pursuant to clause 8;
16. **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;
17. **Openn Negotiation** means the process set out in these Terms according to which the sale is to be conducted using the App;
18. **Owner** means Cleverbons Pty Ltd ACN 607 908 636;
19. **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 bid may be increased subsequently;
20. **Price** means the price at which the Property will be sold, being:
 - a. the Winning Bid on the App; or
 - b. 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;
21. **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;
 - 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. 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:
- 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 Seller's 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;
a. all bids by the Sole Bidder must be made through the App;
b. the Seller may accept any bid made by a Sole Bidder through the App without commencing the Final Bidding Stage;
c. 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;
d. 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:

- a. the sale must be on the Offer Terms (other than price) set out in clause 7; and
- b. 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:

- a. the Auctioneer may Suspend or withdraw the Openn Negotiation at any time during the Openn Negotiation, if:
 - i. they reasonably consider that a technical problem has occurred with the App such that the Openn Negotiation cannot properly proceed; or
 - ii. 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.
- b. 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.

7.4 Other special conditions: _____

7.2 Possession and/or Settlement Date _____

7.3 Finance Lender: _____

Amount required: _____

Latest Date: _____

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:

- a. complete the 'particulars' page on the Contract in respect of the Property, to incorporate the Offer Terms and the Price; and
- b. 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, on 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:

- a. 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;
- b. the functions contained in any software or applications contained on or integrated with the App will operate uninterrupted or are error-free;
- c. any errors and defects in the App will be corrected; and
- d. 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:
 - i. the Bidders use of the App;
 - ii. the Bidders reliance on any information provided on or through the App;
 - iii. any delay or inability to use any part of the App; and/or
 - iv. 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:
- a. is not an auctioneer or real estate agent and does not claim to be;
 - b. does not own or offer for sale the real estate listed on the App; and
 - c. 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:

- a. in the event that the Seller or Bidder fails to complete a transaction;
- b. for the completion of the sale;
- c. 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:
- a. any use, attempted use and/or any technical failure of the App;
 - b. acting, or failing to act, on any information contained on or referred to on the App; and
 - c. 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:
- a. any use, attempted use and/or any technical failure of the App;
 - b. acting, or failing to act, on any information contained on or referred to on the App; and
 - c. 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:

- a. 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
- b. 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 lime 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;
- 2. 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;
- 3. 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
- 4. warrants that they have had an opportunity to obtain independent legal advice in relation to this document and the Contract.

Bidder's Signature Dated: _____

Bidder's Signature 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:

- 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 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;
- 3. confirm their instructions to nominate, authorise and direct the Seller Agent to execute the Contract on the Seller's behalf; and
- 4. warrant they will not engage in Dummy Bidding.

Seller's Signature Dated: _____

Seller's Signature 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.