

Annexure A: Agreement to use Openn Negotiation App (New Zealand)



Agent Details

Agent: _____ Attention: _____

Address: _____

Phone: _____ Mobile: _____ Email: _____

Seller(s) Details

Seller(s): _____ ACN: _____

Address: _____

Phone: _____ Mobile: _____ Email: _____

Property and Auction Details

Property Address: _____

Auction Date: _____ Auction Time: _____

Price

Reserve Price: _____

General Conditions

1. Definitions

For the purposes of this agreement:

Auction means the auction for the sale of the Property.

Agent means the agent listed above under 'Agent Details'.

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

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;

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;

Openn App means the specialised software program designed to facilitate the Openn Negotiation and known as "Openn".

Openn Negotiation means the auction process set out in the Openn Negotiation Bidding Rules and Offer Terms of Use, according to which the sale of the Property is to be conducted.

Openn Negotiation Bidding Rules and Offer Terms of Use means the terms and conditions set out in Schedule 1 of this document.

Operator means Openn Pty Ltd ACN 612 338 477

Owner of Openn Negotiation means Openn Tech Pty Ltd ACN 607 908 636;

Property means the property listed above under 'Property address'.

Qualified Bidder has the meaning set out in the Openn Negotiation Bidding Rules and Offer Terms of Use;

Reserve Price means the minimum price nominated by the Seller to the Agent in writing that the Seller will sell the Property;

Seller means the person or persons listed above under Seller(s) Details'.

Vendor Bid means a bid made by or on behalf of the Seller in accordance with the Act and Auction conditions of Sale;

2. Agreement to use Openn Negotiation platform

The parties acknowledge and agree that:

- (a) the Agent will conduct the Auction for the sale of the Property on the Openn App and in accordance with the Openn Negotiation Bidding Rules and Offer Terms of Use;
- (b) by signing this agreement to use the Openn App, the Seller will be taken to have accepted the Openn Negotiation Bidding Rules and Offer Terms of Use and will be bound by such terms. 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 Openn Negotiation Bidding Rules and Offer 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; and
- (c) the Final Bidding Stage will take place at the Auction Time and the Seller must be available to provide instructions to the Agent at such time.

3. Acknowledgments by Seller

- In addition to accepting each of the Openn Negotiation Bidding Rules and Offer Terms of Use, the Seller acknowledges and agrees that:
- (a) 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.
 - (b) 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.
 - (c) 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.

Signature of Agent:

X

Signature of Seller(s)

X

Date: _____

Date: _____

4. Conditions of Sale

- 4.1 The sale of the Property is to be conducted in accordance with the Openn Negotiation Bidding Rules and Offer Terms of Use and the Seller agrees to be bound by the terms of the Openn Negotiation as described in those Openn Negotiation Bidding Rules and Offer Terms of Use, including, but not limited to, the Campaign Bidding Stage and the Final Bidding Stage (as those terms are defined in the Openn Negotiation Bidding Rules and Offer Terms of Use).
- 4.2 The Seller acknowledges that the Openn Negotiation will be primarily conducted through the App in accordance with the Openn Negotiation Bidding Rules and Offer Terms of Use.
- 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.
- 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

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:
 - (a) expressly authorises the Auctioneer to sign the Sale and Purchase Agreement for the Property on the Seller's behalf as set out in the Openn Negotiation Bidding Rules and Offer Terms of Use;
 - (b) complete the 'Particulars of Sale' section of the Sale and Purchase Agreement
 - (c) make any amendments to the Sale and Purchase Agreement that the Seller has authorised;
 - (d) execute the Sale and Purchase Agreement 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;

Signature of Seller(s)

X

Signed by _____ (print name)

Date: _____

6. Liability

- 6.1 The Seller releases and holds harmless the Agent, Auctioneer, the Owner of Openn Negotiations and the Operator 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 Operator 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 New Zealand Consumer Guarantees. 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 Operator will use reasonable efforts to maintain an uninterrupted service for the App but neither the Agent or the Operator guarantee this and, to the extent permitted by law, neither the Agent or the Operator 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 Operator, 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 New Zealand Consumer Guarantees, the Agent's and the Operator's liability to the Vendor for any failure by the Agent or the Operator to comply with any statutory guarantee under the New Zealand Consumer Guarantees is limited to the Agent and/or the Operator supplying the Services again or paying you the cost of having the Openn Negotiation process supplied again.

7. Warranty

- 7.1 The Operator 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.