

Annexure A: Authority to Conduct the Sale by Openn Tender

Parties

SELLER Full Name(s): _____ A.C.N. or N.Z.B.N. (if applicable) _____
 Address: _____
 Suburb: _____ State or Region: _____ Postcode: _____
 Phone: _____ Mobile: _____ Email: _____
 Phone: _____ Mobile: _____ Email: _____

AGENT The real estate agent authorised to act on behalf of the Seller pursuant to the Agency Agreement and the Real Estate Laws.

Property

Address: _____
 Suburb: _____ State: _____ Postcode: _____
 Title Description: _____

It is agreed:

1. Definitions and interpretation

In this document:

- 1.1. **Agency Agreement** means the real estate agency agreement between the Seller and the Agent to sell the Property which includes:
 - 1.1.1. if the Jurisdiction is New South Wales, the sales inspection report;
 - 1.1.2. if the Jurisdiction is Queensland, the Property Occupations Form 6.
- 1.2. **App** means the specialised software program designed to facilitate Openn Tender and known as "Openn";
- 1.3. **Consumer Law** means:
 - 1.3.1. If the Jurisdiction is in an Australian state or territory, the *Australian Consumer Law (set out in Schedule 2 of the Competition and Consumer Act 2010)*; or
 - 1.3.2. If the Jurisdiction is in New Zealand, the *Consumer Guarantees Act 1993*.
- 1.4. **Final Submission Date** means the final date and time by which Qualified Buyers must submit offers to purchase the Property through the App;
- 1.5. **Jurisdiction** means the state, territory or jurisdiction in Australia or New Zealand where the Property is located;
- 1.6. **Openn Tender** means the process for selling the Property as set out in the Openn Tender Terms of Use.
- 1.7. **Openn Tender Period** means the exclusive authority period set out in the Agency Agreement;
- 1.8. **Openn Tender Terms of Use** means the terms available at the following url: <https://www.openn.com.au/openn-tender-terms-and-conditions>;
- 1.9. **Property** means the property described in the Agency Agreement;
- 1.10. **Qualified Buyer** has the meaning set out in the Openn Tender Terms of Use;
- 1.11. **Real Estate Laws** means:
 - 1.11.1. If the Jurisdiction is the Australian Capital Territory, then the Civil Law (Sale of Residential Property) Act 2003 (ACT), the Civil Law (Sale of Residential Property) Regulation 2004 (ACT) and the Agents Act 2003 (ACT);
 - 1.11.2. If the Jurisdiction is New South Wales, then the Property and Stock Agents Act 2002 and the Property and Stock Agents Regulation 2014;
 - 1.11.3. If the Jurisdiction is the Northern Territory, then the Agents Licensing Act (NT);
 - 1.11.4. If the Jurisdiction is Queensland, then Property Occupations Act 2014 (QLD) and the Property Occupations Regulation 2014 (QLD);
 - 1.11.5. If the Jurisdiction is South Australia, then the Land and Business (Sale and Conveyancing) Act 1994 SA and its regulations.
 - 1.11.6. If the Jurisdiction is Tasmania, then the Property Agents and Land Transactions Act 2016 (Tas) and its regulations.
 - 1.11.7. If the Jurisdiction is Victoria, then the Sale of Land Act 1962 (Vic)
 - 1.11.8. If the Jurisdiction is Western Australia, then the Real Estate and Business Agents Act 1978 (WA).
- 1.11.9. If the Jurisdiction is New Zealand, then the Real Estate Agents Act 2008.
- 1.12. **Seller** means the person authorised to sell the Property as described in the Agency Agreement (who may also be referred to as the vendor in the Agency Agreement).
- 1.13. **Tender Submission Stage** means the stage of the Openn Tender process that commences when the Property is listed on the App and ends when the Final Submission Date is reached.
- 1.14. **Website** means the Openn website (Australia: www.openn.com.au, New Zealand: www.openn.co.nz).
- 1.15. Reference to:
 - 1.15.1. one gender includes the others;
 - 1.15.2. the singular includes the plural and the plural includes the singular;
 - 1.15.3. a person includes a body corporate;
 - 1.15.4. a party includes the party's executors, administrators, successors and permitted assigns;
 - 1.15.5. a statute, regulation or provision of a statute or regulation (Statutory Provision) includes:
 - 1.15.5.1. the Statutory Provision as amended or re-enacted from time to time; and
 - 1.15.5.2. a statute, regulation or provision enacted in replacement of that Statutory Provision;
 - 1.15.6. money is in the legal currency of the relevant Jurisdiction, unless otherwise stated;
 - 1.15.7. clauses, subclauses, subclauses and schedules by number are references to clauses, subclauses, subclauses and schedules respectively so numbered in this document;
 - 1.15.8. anything (including any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually; and
 - 1.15.9. writing includes typewriting and lithography and other methods of producing words in a visible form.
- 1.16. Including and similar expressions are not words of limitation.
- 1.17. Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- 1.18. Headings are for convenience only and do not form part of this document or affect its interpretation.
- 1.19. A provision of this document must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the document or the inclusion of the provision in the document.
- 1.20. If an act must be done on a specified day which is not a business day, it must be done instead on the next business day.

2. Agreement to Sale by Openn Tender

- 2.1. The Seller appoints the Agent to offer the Property for sale through the Openn Tender during the Openn Tender Period in accordance with the Openn Tender Terms of Use and the Real Estate Laws.
- 2.2. The Seller acknowledges that Openn Tender will be primarily conducted through the App.
- 2.3. The Seller agrees to be bound by the Openn Tender Terms of Use during the Openn Tender Period.
- 2.4. The Seller agrees they will not instruct the agent to sell the Property until the Final Submission Date has been reached or the property has been withdrawn from sale on Openn.
- 2.5. The Final Submission Date will be set on the date and time as nominated by the Seller and can be changed subject to meeting the conditions laid out in Clause 6 of the Openn Tender Terms of Use.
- 2.6. The Seller authorises and consents to the Agent revealing through the App or Website that an offer has been made on the Property and where permitted by the Real Estate Laws the price that has been offered by an interested buyer. The Seller acknowledges that the Agent is under no obligation to reveal that an offer has been made on the Property or the price of the offer to other buyers, but the Agent may choose to do so (subject to Real Estate Laws).

3. Liability

- 3.1. The Seller agrees and consents to the provision and receipt of information and signatures, to the production of documents, to the recording of information and to the retention of documents by way of electronic communication or in electronic form.
- 3.2. The Seller releases and holds harmless the Agent, the Owner of Openn Tender 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.
- 3.3. The Seller releases the Agent, the Owner of Openn Tender and the Developer against all actions, claims, demands arising from or in connection with a failure by any buyer or Qualified Buyer to complete a sale or from or in connection with the Seller not completing a sale.
- 3.4. Nothing in this document (including this clause) 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 relevant 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.
- 3.5. The Agent discloses and the Seller acknowledges the Developer will use reasonable efforts to maintain an uninterrupted service for the App but neither the Agent or the Developer guarantee this and, to the extent permitted by law, neither the Agent or the Developer give any promises or warranties (whether express or implied) about the availability of the App that the App will be uninterrupted or error-free. Notification functionality in the App may not occur in real time. That functionality is subject to delays beyond the control of the Agent and the Developer, including without limitation, delays or latency due to the Seller's physical location or the Seller's wireless data service provider's network.
- 3.6. To the extent permitted by law, and without limiting any rights that the Seller may have under the relevant Consumer Law, the Agent's and the Developer's liability to the Seller for any failure by the Agent or the Developer to comply with any statutory guarantee under the relevant Consumer Law is limited to the Agent and/or the Developer supplying the Services again or paying you the cost of having the Openn Tender process supplied again.

4. Warranty

- 4.1. The Developer and the Agent do not warrant, guarantee or make any representation that:
- 4.1.1. the Website, the App, or the servers that make them available are free of software viruses;
- 4.1.2. The Functions effected by the software contained on the Website or the App will operate uninterrupted or are error-free; and
- 4.1.3. 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.

5. Electronic Communications

- 5.1 The Seller agrees and consents to the provision and receipt of information and signatures, to the production of documents, to the recording of information and to the retention of documents by way of electronic communication or in electronic form.

Seller's Signature

X

Name: _____

Date: _____

Seller's Signature

X

Name: _____

Date: _____

Agent or Agent's Representative Signature

X

Name: _____

Date: _____