

# Annexure A: Agreement to use Openn Negotiation (SA)



## 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'.

**Campaign Bidding Stage** has the meaning given to it in the Openn Negotiation Buyer Authority and Terms of Use.

**Final Bidding Stage** has the meaning given to it in the Openn Negotiation Buyer Authority and Terms of Use.

**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 Buyer Authority and Terms of Use, according to which the sale of the Property is to be conducted.

**Openn Negotiation Buyer Authority and Terms of Use** means the terms and conditions set out in Schedule 1 of this Agreement.

**Operator** means Openn Pty Ltd ACN 612 338 477.

**Property** means the property listed above under 'Property Address'.

**Reserve Price** has the meaning given to it in the Openn Negotiation Buyer Authority and Terms of Use.

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

### 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 Buyer Authority and Terms of Use;
- b. by signing this agreement to use the Openn App, the Seller will be taken to have accepted the Openn Negotiation Buyer Authority and Terms of Use and will be bound by such terms.; 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.
- d. The Seller agrees to be bound by the Buyer Authority to Bid and Terms of Use during the Openn Negotiation period. Neither the Seller or the Seller's 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 Buyer Authority to Bid and Terms of Use. The Seller instructs the agent to only communicate those offers that comply with the qualified bidder process referred to in this Clause.

### 3. Acknowledgments by Seller

In addition to accepting each of the Openn Negotiation Buyer Authority and Terms of Use, the Seller acknowledges and agrees that:

- a. the Openn App does not allow for vendor bids, and neither the Agent nor the auctioneer therefore can make a vendor bid on the Seller's behalf;
- 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.

Signature of Agent:

X

Signature of Seller(s)

X

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

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

# Schedule 1

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



### 1. Parties

**BIDDER**    **Primary Bidder**    **Other Bidder(s) (if applicable)**  
 Full Legal Name(s): \_\_\_\_\_ Full Legal Name(s): \_\_\_\_\_  
 Address: \_\_\_\_\_ Address(es): \_\_\_\_\_

**OR:**

Company Name: \_\_\_\_\_ A.B.N.: \_\_\_\_\_

Name of the Authorised Officer of the Company: \_\_\_\_\_ Position Held: \_\_\_\_\_

Company Address: \_\_\_\_\_  
 (if the Property sells at the Openn Negotiation auction, then the Bidder named above is taken to be the successful bidder)

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

Bidder's Solicitor: \_\_\_\_\_ Phone: \_\_\_\_\_ Email: \_\_\_\_\_

### BIDDER ID Proof of Identity

Primary Bidder/Authorised Officer: Document Type: \_\_\_\_\_ Document identifier: \_\_\_\_\_

Other Bidder (if applicable): Document Type: \_\_\_\_\_ Document identifier: \_\_\_\_\_

*ID must include the Bidders name and current address (e.g. driver's licence).*

and;

The real estate agent or other person duly authorised to act on behalf of the Bidder/Seller in a transaction (as defined in the legislation) :

### AGENT

Photo ID (proxy bidder): \_\_\_\_\_

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

### 2. The Bidder

2.1 Intends to become a qualified bidder and bid on the following property by way of Openn Negotiation:

The whole/part of the land in Certificate of Title, Volume: \_\_\_\_\_ Folio: \_\_\_\_\_

being unimproved/improved land located at: Street: \_\_\_\_\_

Suburb: \_\_\_\_\_ State: \_\_\_\_\_ Postcode: \_\_\_\_\_

Allotment/Section/Unit/Lot: \_\_\_\_\_ on Strata/Primary/Community/Deposited/Filed Plan No.: \_\_\_\_\_

in the area named: \_\_\_\_\_ in the Hundred of: \_\_\_\_\_

in the Council area of: \_\_\_\_\_

Other description of Property: \_\_\_\_\_

#### (the Property)

2.2 Acknowledges that Openn Negotiation:

- Is a type of auction as defined in the relevant legislation; Openn Negotiation is an extended auction with a flexible completion date pursuant to clause 4.4 and/or in relation to the purchase of the property by a sole bidder pursuant to clause 4.7.
- Will be primarily conducted through the Openn Negotiation App in accordance with the Terms set out below.

### 3. Definitions

In these terms the following have these meanings:

- Act** means Land and Business (Sale and Conveyancing) Act 1994 SA as amended from time to time
- Attorney** means the attorney appointed pursuant to the Limited Power of Attorney (where applicable) granted by the Bidder pursuant to clause 6 herein;
- Auction** has the same meaning provided to it in the relevant legislation in each jurisdiction;
- App** means the specialised software program designed to facilitate the Openn Negotiation and known as "Openn";
- Auctioneer** means the Auctioneer appointed by the Seller's Agent to conduct the Openn Negotiation who must be licensed to an auction pursuant to the laws of the State that govern the sale of property by Public Auction;
- Bidder** means the bidder or bidders described in clause 1 and includes the Primary Bidder and any Other Bidders
- Bidders Guide** means an information guide produced by Form 4R – Land and Business (sale & conveyancing) Regulation or its statutory equivalent, as amended from time to time, and which must be provided to each bidder, Qualified Bidder or otherwise, at the commencement of the Openn Negotiation;
- Bidders Record** means a record kept and maintained by the Agent which, pursuant to the Act and the Regulations must be made of the persons who will be entitled to bid, and there must be entered in the Bidders Record in respect of each of those persons:
  - the relevant details of the person, and
  - the identifying number allocated to the person for the purposes of identifying the person at the auction; and
  - such other information as the Regulations may require;
- 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
- 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 by the relevant legislation in each jurisdiction;
- 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 Openn Tech 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 Buyer pursuant to clause 6;
- Offer Terms** means the terms the Bidder offers for the purchase of the property that are recorded in clause 5, which if accepted by the auctioneer and made by the Highest Bidder as the Winning Bid, will constitute the terms of a binding agreement for sale and purchase that will be entered by the Highest Bidder with the Seller for the purchase of the property;
- Openn Negotiation** means the specialised software program designed to facilitate the Openn Negotiation and known as "Openn";
- Operator** means Openn Pty Ltd ACN 612 338 477.
- Price Confirmation** means:
  - The written confirmation of the Winning Bid on the agreement for sale and purchase in the appropriate form, completed by the Auctioneer (pursuant to the Limited Power of Attorney granted by the Buyer pursuant to clause 6) or Bidder (including any Highest Bidder or Sole Bidder); or
  - if the Property does not sell during the Final Bidding Stage, any price agreed by the Buyer and Seller until midnight the same day;

### 3. Definitions (continued)

22. **Qualified Bidder** means a bidder who has fulfilled the requirements set out in clause 4.1.1 and has been approved by the Seller in accordance with clause 4.1.7;
23. **Regulation** or Regulations means unless the context indicates otherwise the relevant legislation in each jurisdiction;
24. **Reserve Price** is the minimum amount that the Seller of the property will accept as the Winning Bid in the Openn Negotiation.
25. **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 an Offer Terms that has been accepted by the Seller such that the bidder may take part in the Openn Negotiation);
26. **Seller** means the seller of the property or his/her representative;
27. **Seller's Agent** means the real estate agent duly authorised to act on behalf of the Seller;
28. **State** means the state or territory in which the property is located
29. **Pending Bid** means the opening bid made by a Bidder, through the app, that must be accepted by the agent in order to become a Qualified Bidder. This bid may be increased subsequently.
30. **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;
31. **Winning Bid** means the successful bid made in the App which will be confirmed by the Purchaser or the Auctioneer (pursuant to the Limited Power of Attorney granted by the buyer set out in clause 6) via the Price Confirmation as the price for which the Property will be sold and includes, if applicable, the successful bid made by the Highest Bidder and/or any bid made by the Sole Bidder that is accepted by the Seller
32. **Property** means the Property described in 2.1 of this document.

### 4. Declaration and Terms of Use

#### 4.1 The Openn Negotiation Process

- 4.1.1 A prospective 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. Provide to the Seller's Agent this form, being fully completed and signed including the proof of identity;
  - d. if the Primary Bidder is bidding on behalf of another person(s), provide this form to the Seller's Agent fully completed with the Other Bidder(s) details, signed by the Other Bidder(s) and including the proof of identity for the Other Bidder(s);
  - e. select the property in the App
  - f. enter their Pending Bid in the App;
  - g. complete the Offer Terms in clause 5;
  - h. provide their contact details to the Agent.
  - i. provide satisfactory evidence of their identity that permits the person being noted on the Bidder's Record, namely, certified copies of either an Australian motor vehicle driver's license displaying a photograph of the person and/or an Australian Passport or any form of identification that is acceptable as a means of identification pursuant to the Regulations;
  - j. be confirmed as a Qualified Bidder on the Bidder Record as defined where applicable in relevant jurisdiction;
  - k. The Offer Terms (set out in clause 5) 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.
  - l. 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.
  - m. 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 4.1.7.

Openn Negotiation accepts no responsibility for any liability suffered by the prospective bidder for as a result of not electing to have the Contract for Sale of Land, Limited Power of Attorney and these Terms of Use reviewed by their solicitor/conveyancer.

- 4.1.2 In the Campaign Bidding Stage, other Qualified Bidders may join the negotiation process.
- 4.1.3 Throughout the Campaign Bidding Stage, any Qualified Bidder may increase their bid by providing further bids through the App.
- 4.1.4 All Qualified Bidders will be able to see all accepted bids made on the Property
- 4.1.5 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.
- 4.1.6 The Campaign Bidding Stage finishes at the commencement of the Final Bidding Stage
- 4.1.7 The Property can only be sold to a Sole Bidder pursuant to clause 4.7
- 4.1.8 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. the Seller will agree to any specific changes and amendments to the terms and conditions of the Contract for Sale and Purchase of Land requested by that potential bidder. If so, that potential bidder will become a Qualified Bidder and the Agent will approve the Qualified Bidder on the App and if the now Qualified Bidder is the eventual purchaser the conditions set out in the Offer Terms (clause 5) as agreed to by the Seller, will be incorporated into the Contract for Sale and Purchase of Land entered into by the Seller and the Qualified Bidder who has become the purchaser (or the Auctioneer acting as attorney for the Qualified Bidder pursuant to any Power of Attorney granted by the Qualified Bidder in clause 6 of this document)
- 4.2 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 4.4; and
  - c. provide them with a Unique Identification Number that will be used to identify them in the App.
- 4.3 Qualified Bidders are entitled to participate in the Openn Negotiation on the basis that:
  - a. they will be solely responsible (at their risk) for ensuring that they have adequate mobile and/or internet coverage to allow access to the App;

- b. other than the price, the Seller and Qualified Bidders are bound by the terms of The Offer contained in clause 5;
  - c. 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;
  - d. 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;
  - e. 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;
  - f. 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;
  - g. the Auctioneer may withdraw bids, at his or her complete discretion;
  - h. the Seller may not bid personally, either directly or by an agent or other representative;
  - i. Dummy Bidding and/or encouraging another party to engage in Dummy Bidding constitutes a breach of these conditions and may also constitute fraud and/or misleading or deceptive conduct and may attract serious consequences.
  - j. subject to clauses 4.7 and 4.9, 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 Bidder or their Attorney has provided the Price Confirmation by recording the Winning Bid in the in the area on the Contract for Sale of Land as the price for which the Bidder will purchase the Property;
  - k. 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 auction;.
  - l. 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.
- 4.4 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; 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.
  - 4.5 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 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:
      - i. all bids have been exhausted; or
      - ii. if there are one or more bids at or exceeding the reserve price
    - g. the Auctioneer may remove bids at his or her complete discretion if he or she thinks 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 Price Confirmation;
    - 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.

**4. Declaration and Terms of Use**

**4.6 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 equals or exceeds the Reserve Price, the Seller may choose to negotiate with one or more of the Qualified Bidders to sell the Property.

**4.7 Purchase of the Property by a Sole Bidder**

The Seller may accept an offer made by a Qualified Bidder during the Campaign Bidding Stage without commencing the Final Bidding Stage where there is only one Qualified Bidder (they will then be the Sole Bidder), as follows:

- 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 upon acknowledgement from 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 in clause 6) will complete the Price Confirmation and authorise the completion, execution and exchange of Contract for Sale of

Land of the property.

**4.8 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 by midnight the same day:

- b. The sale must be on the terms and conditions (other than price) set out in clause 5; and
- c. The sale will be conducted in accordance with these conditions such that the Buyer and the Seller must record in writing the price agreed by the Parties.

**4.9 Suspension or withdrawal of Openn Negotiation**

- a. The Auctioneer may Suspend or withdraw the Openn Negotiation at any time during the Openn Negotiation, if:
  - i. He or she reasonably considers that a technical problem has occurred with the App such that the Openn Negotiation cannot properly proceed; or
  - ii. He or she reasonably considers that one or more Qualified Bidders are experiencing difficulties with the use of the App such that the Openn Negotiation cannot properly proceed.
- b. If the Auctioneer cancels the Openn Negotiation in accordance with clause 4.9a 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 bidder shall be bound by any prior bid and shall be free to recommence bidding at any amount the bidder wishes.

**5. Offer Terms**

The Bidder's offer to purchase the Property is subject to the following conditions to be incorporated into any agreement for sale and purchase should the Bidder make the Winning Bid:

5.1 Deposit: \_\_\_\_\_

5.2 Possession and/or settlement date \_\_\_\_\_

5.3 Finance Lender: \_\_\_\_\_

Amount required: \_\_\_\_\_ Finance Date: \_\_\_\_\_

5.4 Other special conditions:

**6. Limited Power of Attorney**

- 6.1 The Qualified Bidder irrevocably appoints the Auctioneer to be the Buyer's Attorney solely to exercise the powers described below.
- 6.2 The Auctioneer has the right, upon completion of the Price Confirmation, to accept the Highest Bidder's Offer Terms on behalf of the Seller in the case of the Property being sold via normal process, Sole Bidder, and conclusion of the Openn Negotiation process, where the property is sold in accordance with auction law.
- 6.3 In the event that the Bidder makes the Winning Bid, the Attorney is authorised to complete and sign an agreement for sale and purchase in the appropriate form, on behalf of the Highest Bidder recording the Offer Terms set out in clause 5 and the Winning Bid as the purchase price.

**GENERAL NON-ENDURING POWER OF ATTORNEY**

This general non-enduring power of attorney has effect as a deed.

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

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

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

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

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

I/we authorise my attorney to do the following things on my/our behalf, in respect of the property located at \_\_\_\_\_

\_\_\_\_\_ ('the Property') if I am the highest bidder for the sale of the Property via the Openn Negotiation App:

- a. complete the 'particulars' page on the Contract of Sale of Real Estate in respect of the Property, in accordance with any Offer Terms that I have previously provided in writing to the attorney; and
- b. execute the Contract of Sale of Real Estate in respect of the Property and exchange such contract with the Seller of the Property.

I/we specify that this power of attorney begins immediately and expires automatically and without further effect after the Final Bidding Stage pursuant to clause 4.8.

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

X

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

X

**7. Modification of these Terms**

In this disclaimer and terms and conditions (Terms), "we", "us", "our" and "Openn Negotiation" refers to Openn Pty Ltd (ACN 612 338 477) and any related body corporates. The Openn Negotiation App is available for you to access conditional on your acceptance of these Terms. By continuing to access the Openn Negotiation App you are agreeing to these Terms. If you do not agree to these terms, you must not access the Openn Negotiation App

We reserve the right to modify these Terms from time to time. Your use of the Openn Negotiation App following any change constitutes your agreement to the Terms as changed.

## 8. Disclaimers and limitation of liability and indemnity

### 8.1 Use of the Openn Negotiation App

The use of the Openn Negotiation App and all information and data provided on or through the Openn Negotiation App is entirely at your own risk. You are responsible for all of your activity in connection with accessing and using the Openn Negotiation App. We do not warrant, guarantee or make any representation that:

- the Openn Negotiation App, or the server that makes the Openn Negotiation 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 Openn Negotiation App will be corrected; and
- unless expressly stated, the information provided on or through the Openn Negotiation App is suitable, reliable, accurate, current, complete or fit for any particular purpose. Unless expressly stated, the information on the Openn Negotiation App is provided for information purposes, general interest and enquiry only. Before relying on the information on the Openn Negotiation App, you should verify the accuracy of the information and consult with an appropriate professional for specific advice tailored to your situation. To the extent permitted by law, we exclude all liability for any loss or damage (including direct and consequential loss) arising from or in connection with:
  - your use of the Openn Negotiation App;
  - your reliance on any information provided on or through the Openn Negotiation App;
  - any delay or inability to use any part of the Openn Negotiation App; and/or
  - any failure to provide services or any information through the Openn Negotiation App.

### 8.2 Owners Service

- 8.2.1 The Owner does not conduct the Openn Negotiation process, 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
- role is limited to providing the App for the sale of the Property.

### 8.2.2 The Owner is therefore not responsible or liable:

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

### 8.3 Liability and Indemnity

#### 8.3.1 The Operator, the 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.

#### 8.3.2 The Qualified Bidders and the Sellers release and hold harmless the Seller's Agent, Auctioneer, the Owner 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 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 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 breach of these App Terms and Conditions by You.

## 9. Intellectual property

Unless otherwise indicated, we own or are licensed to use all intellectual property (including copyright, trademarks and designs) subsisting in the content (including any graphics, images, logos, text, materials, contracts, software) on the Openn Negotiation App.

Content on the Openn Negotiation 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 Openn Negotiation App, or as expressly authorised in writing by us.

## 10. Privacy

Our Privacy Policy (available at <https://www.openn.com.au/privacy-policy>) forms part of these Terms.

By using the Openn Negotiation App, you consent to us collecting, handling and using your personal information in accordance with our Privacy Policy.

## 11. Termination of access

We may terminate access to the Openn Negotiation App at any time without giving any explanation or justification for the termination of access. We are not liable to you for any costs, losses or damages of any kind arising as a consequence of terminating access to the Openn Negotiation App.

## 12. General

If any of these Terms are held to be invalid, unenforceable or illegal for any reason, the remaining Terms will continue to apply. That the laws of the State will apply to the sale of the Property on the App.

These Terms are governed by the laws of the State. You agree to the jurisdiction of the relevant courts of State of the Property on the app to determine any dispute arising out of these Terms. All rights which are not expressly granted in these Terms are expressly reserved.

## 13. Buyer / Sole Bidder / Purchaser Declaration

- I/we confirm that if I am/we are the purchasers of the above-mentioned property I/we confirm my/our agreement for the sale, execution and exchange of the Contract for Sale of Land of the property.
- I/we confirm we understand and agree that the Contract for Sale of Land shall be subject only to the Offer Terms set out in clause 5 as agreed to by the Bidder and the Seller and there is no cooling off period.
- I/we warrant that I/we have had an opportunity to obtain independent legal advice in relation to this document.
- IF the Primary Bidder has not completed any details in the Other Bidder(s) section of this form or this form has not yet been signed by the Other Bidder(s) then the Primary Bidder acknowledges that the Primary Bidder is the sole bidder and will be the sole purchaser if they are the successful bidder.
- If the Primary Bidder is also bidding on behalf of another person then:
  - The Primary Bidder acknowledges that they are bidding for themselves and on behalf of the Other Bidder(S) and the Primary Bidder and the Other Bidder(s) will be the purchaser if they are the Successful Bidder; and
  - the Primary Bidder warrants that they have authority to bid on behalf of the Other Bidder(S) and if any authority to do so is withdrawn then the Primary Bidder must not thereafter bid on behalf of the other Bidder;
  - the Primary Bidder indemnified the Operator, the Owner, the Agent and the Auctioneer 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 the warranties in this clause by the Primary Bidder.
- The Other Bidder(S) authorise the Primary Bidder to bid on their behalf to purchase the Property and acknowledges that they will be included as the purchasers if the Primary Bidder is the Successful Bidder

Primary Bidder's Signature

X

Dated: \_\_\_\_\_

Other Bidder's Signature

X

Dated: \_\_\_\_\_

## 14. Seller/s Declaration

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

- I/we confirm that I am/we are the seller/s of the above-mentioned property and confirm my/our agreement for the sale, and execution and exchange of Contract for the sale and purchase of land of the property.
- I/we confirm my/our instructions to nominate, authorise and direct the Seller's Agent / Auctioneer:
  - complete the details of the Contract for the sale and purchase of land;
  - distribute fully signed and dated copies to the parties.
- I/we confirm my/our instructions to nominate, authorise and direct the Auctioneer to:
  - Complete the purchase Price Confirmation;
  - to execute the Contract for the Sale and Purchase of Land on my/our behalf.
- I/we warrant not to engage in Dummy Bidding as set out in clause 4.3(i)
- I/we warrant that I/we have had an opportunity to obtain independent legal advice in relation to this document.

Seller/s Signature

X

Dated: \_\_\_\_\_

Seller/s Signature

X

Dated: \_\_\_\_\_