Authority to Conduct the Sale of Land or Strata Title by Online Auction (Openn Negotiation)

Western Australia

Parties

(Seller) Full Name(s): _____

Address: _____

Suburb: _____ Postcode: _____

Mobile: _____ Email: _____

Mobile: _____ Email: _____

and; The real estate agent duly authorised to act on behalf of the Seller pursuant to the **Real Estate and Business Agents Act 1978 (WA)**
(Agent) _____

1. Agreement to sell by Openn Negotiation

1.1 The Seller appoints the Agent to offer for sale by Openn Negotiation in accordance with the *Real Estate and Business Agents Act 1978 (WA)* and the *Auction Sales Act 1973 (WA)* the property located at:

(Address) Number _____ Street _____ Suburb _____

Whole/ Part Lot: _____ Survey/Strata/Deposited/Plan/Diagram No: _____

Whole/ Part Cert. Of Title Vol: _____ Folio: _____

Along with fixtures and fittings and plant and equipment on the Land including the following chattels:
(Chattels)

_____

(Property)

1.2 The Final Bidding Stage of the Openn Negotiation referred to in clause 1.1 above is to take place at _____ am/pm on _____ or at such other date and time nominated by the Seller.

initials

1.3 The Seller acknowledges that Openn Negotiation is a type of auction within the meaning of that term in the *Auction Sales Act 1973 (WA)*.

1.4 If the Property is not sold at the Openn Negotiation referred to in this clause, the Seller authorises the Agent to offer the Property for sale by private treaty in accordance with the *Real Estate and Business Agents Act 1978 (WA)* for the balance of the Exclusive Authority Period referred to in clause 4.

2. Sale by Openn Negotiation

2.1 Subject to clause 1.4, the sale of the Property is to be conducted in accordance with the Openn Negotiation Bidding Rules and Offer Terms of Use (Western Australia) and the Seller agrees to be bound by the terms of the Openn Negotiation Bidding Rules and Offer Terms of Use (Western Australia) including, but not limited to, the Campaign Bidding Stage and the Final Bidding Stage. The Seller agrees to be bound by the Openn Negotiation Bidding Rules and Offer Terms of Use during the Openn Negotiation Period. Neither the Seller nor the Seller 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 Seller Agent to only communicate those offers that comply with the Qualified Bidder process referred to in this clause.

2.2 The Seller acknowledges and agrees that:

(1) the Seller will be required to sign and will sign an Openn Negotiation Bidding Rules and Offer Terms of Use (Western Australia) document for each Qualified Bidder; and

(2) that the Contract will be:

(a) the form of the Contract for sale of land or strata title by offer and acceptance attached to this agreement as Appendix A;

(b) the General Conditions referred to in the form referred to in Appendix A;

(c) the Offer Terms set out by a Qualified Bidder that is the Winning Bid; and

(d) the Price.

2.3 The Openn Negotiation is to be subject to a reserve price, being $_____ or such other price nominated by the Seller to the Agent or Auctioneer in writing (**Reserve Price**).

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3. Authorities Granted to Agent

3.1 The Seller authorises:

(1) the Agent or a sales representative or real estate agent employed by the Agent; and

(2) the Auctioneer, to sign the contract for the sale of the Property on the Seller's behalf as set out in the Openn Negotiation Bidding Rules and Offer Terms of Use (Western Australia).

initials

3.2 If the Property is a strata property, the Seller authorises:

(1) the Agent or a sales representative or real estate agent employed by the Agent; or

(2) the Auctioneer,

to sign the certificate which gives compulsory disclosure material for and on behalf of the Seller.

3.3 The Seller authorises the Agent to accept any deposit paid by a buyer and to hold it as a stakeholder, or in the case of strata titled property being sold before registration of the strata plan, as trustee for the buyer in accordance with section 163 of the *Strata Titles Act 1985 (WA)*.

3.4 If the Property is sold, the Seller authorises the Agent to give appropriate instructions to aid settlement to the nominated conveyancer of both the Seller and the buyer.

3.5 The Agent is authorised at or prior to settlement to remit the balance of the deposit to the Seller or their conveyancer to complete the sale after deducting the Expenses and Agent's Fee, which will be held in trust pending settlement but is then irrevocably authorised to be paid to the Agent from trust.

3.6 If the Property is sold and there is no deposit, or the deposit held by the stakeholder is insufficient to pay the Agent's Fee and outstanding Expenses, the Seller must pay on demand any shortfall and the Seller authorises the Agent to obtain payment of the shortfall out of purchase monies held or to be received by the Seller's conveyancer.

3.7 The Seller authorises the Agent to sign any compulsory disclosure material required to be given to a buyer on behalf of the Seller.

4. Exclusive Agency

4.1 The Seller:

(1) grants the Agent an exclusive right to act as agent to sell the property until _____ (DD/MM/YYYY) concluding at 12.00am (**Exclusive Authority Period**)

initials

5. Agent's Fee

NOTICE: Fees charged by real estate agents are not fixed by law and are to be agreed between the Seller and Agent. If the Seller disputes the fee payable to the Agent on the grounds that the Seller considers it to be unfair or unjust, the Seller may refer the dispute to the Commissioner for Consumer Protection.

5.1 The following agent's fee has been agreed **(delete or complete as appropriate wherever an asterisk (*) appears)**:

***(1)** $_____ (including GST); OR

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***(2)** _____**%** of the price for which the Property is sold (including GST)
(For example, if the actual selling price is $_____, then the Agent's Fee inclusive of GST will be $_____)

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***(3)** as per the attached schedule

initials

(Exclusive Authority Period)

5.2 The Seller must pay the Agent's Fee to the Agent if:

(1) the Property is sold or transferred during the Exclusive Authority Period;

(2) at any time during the Exclusive Authority Period a buyer who has been Introduced to the Seller of the Property contracts to purchase the Property, causes another person to contract to purchase the Property or otherwise becomes a legal or beneficial owner of the Property; or

(3) the Seller accepts an offer by a buyer in any of the circumstances described in this clause 5.2 and the sale is not completed due to the fault of the Seller.

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Sale Takes Place After the Exclusive Authority Period

5.3 Subject to clause 5.4 below, the Seller **agrees/does not agree (cross out whichever does not apply)** to pay the Agent's Fee to the Agent in circumstances where the sale of the Property to a buyer Introduced to the Property by the Agent during the Exclusive Authority Period does not take place until after the expiration of that period, provided that the sale takes place within _____ days following the expiration of that period. Should the Seller elect in this clause not to be liable to pay the Agent's Fee to the Agent if the sale of the Property to a buyer does not take place after the expiration of the Exclusive Authority Period, then the Agent will not be entitled to the Agent's Fee if the Property is not sold in the Exclusive Authority Period and will only be entitled to the Expenses in the manner referred to in this agreement.

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5.4 Notwithstanding clause 5.3, if, after the end of the Exclusive Authority Period, the Seller enters into a selling agency agreement to sell the Property through another lawfully authorised real estate agent, then the Agent will not be entitled to the Agent's Fee when the new listing agent is entitled to a selling fee in accordance with the new agency agreement, even if the Agent Introduced the buyer to the Property.

Seller Introduces Buyer

5.5 Regardless of anything contained in this agreement, the Seller and Agent agree that if, during the Exclusive Authority Period, the Seller Introduces the ultimate buyer of the Property to the Property the Seller **will/will not (cross out whichever does not apply)** be liable to pay the Agent's Fee to the Agent.

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6. When fees are payable

6.1 The Agent's Fee is payable to the Agent:

(1) on settlement of the transaction pursuant to which the Agent is entitled to be paid that fee in accordance with clause 5; or

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(2) immediately if the transaction does not settle due to the fault of the Seller in accordance with clauses 5.2(3).

6.2 In this clause, "settlement" is held to have occurred:

(1) where a transaction is to be completed by way of a single payment over and above the deposit, when the purchase price is paid in full; or

(2) where the buyer is obliged to make two or more payments to the Seller over and above any deposit paid within 28 days of the execution of the contract before the buyer is entitled to a transfer of the Property, the sooner of:

(a) the buyer being entitled to possession, occupation or control of the Property; or

(b) the time at which the buyer has paid at least 10% of the purchase price of the Property.

7. Expenses

7.1 The Seller ***agrees/does not agree (*cross out whichever does not apply)** to pay the Agent the Expenses set out in clause 7.2 below in accordance with this clause.

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7.2 The Agent may incur:

(1) the following expenses in respect of the advertising of the Property (such as sign boards, printed materials and promotions):

***(a)** as the Agent in their discretion deems appropriate, with those costs not to exceed $_____ without the written authority of the Seller

initials

OR

***(b)** as per the attached schedule

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(*cross out whichever does not apply)

AND

(2) the following additional expenses not included in clause 7.2(1) in respect of the sale of the Property (including but not limited to, searches at Landgate):

***(a)** as the Agent in their discretion deems appropriate, with those costs not to exceed $_____ without the written authority of the Seller

initials

OR

***(b)** as per the attached schedule

initials

(*cross out whichever does not apply)

(Expenses)

7.3 The Agent will provide the Seller with an itemised list of all Expenses at the conclusion of this agreement, or within 7 days of a written request from the Seller.

7.4 The Seller agrees to pay $_____ (**Pre-Paid Expenses Sum**) to the Agent upon execution of this authority, which is to be held in the Agent's trust account and used to pay the Expenses as they arise from time-to-time and become due in accordance with clauses 7.6 and/or 10.1.

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7.5 If the Property is sold any balance of the Pre-Paid Expenses Sum retained in the Agent's trust account (after deducting all outstanding agreed Expenses) will be refunded in full to the Seller at settlement (with settlement being held to have occurred in accordance with clause 6.2).

7.6 The Seller agrees to reimburse the Agent for all Expenses within 7 days of the issuing of an invoice by the Agent or, alternatively, at or prior to settlement (with settlement being held to have occurred in accordance with clause 6.2).

7.7 The Agent is entitled to charge interest on any Expenses that have not been paid by the Seller more than 30 days after an invoice has been provided to the Seller for those sums. The interest rate will be the Prescribed Rate as defined in the most recently approved Joint Form of General Conditions for the Sale of Land produced by the Real Estate Institute of Western Australia.

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7.8 The Agent **agrees/does not agree (cross out whichever does not apply)** to waive the right to reimbursement for the Expenses if the Property is sold during the Exclusive Authority Period and the Agent receives the Agent's Fee.

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8. Reporting Compliance Costs

8.1 The Seller agrees to pay $_____ (inclusive of GST) towards costs associated with the Agent's compliance with statutory reporting obligations, including but not limited to obligations under anti-money laundering and counter-terrorism financing legislation (**Reporting Compliance Costs**).

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9. Cost of identification of Agents in Advertisements

9.1 Pursuant to clause 8 of the REIWA Members' Code of Practice, REIWA members who are agents are required in all advertisements to clearly show the agent's full trading name, together with the telephone number of the agent's principal licensed office or relevant branch office.

9.2 The Seller **agrees/does not agree (cross out whichever does not apply)** to pay for the advertising and promotional expenses otherwise payable under this agreement associated with the Agent complying with the requirements of clause 8 of the REIWA Members' Codes of Practice.

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10. Withdrawal of the Property from sale

10.1 If no sale takes place, the Seller withdraws the Property from sale and/or the Seller terminates this authority prior to the end of the Exclusive Authority Period, the Seller must immediately:

(1) pay a sum sufficient to reimburse the Agent for the Expenses up to that point.

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11. Chattels

11.1 The Seller warrants that they own the Chattels, which are sold as inspected and free from any lien, charge or Encumbrance other than as stated in these conditions.

12. Vacant Possession

12.1 The Property is sold:

*****(1) with vacant possession; or

*****(2) subject to the leases and encumbrances set out below:

_____

(Leases and Encumbrances)
(*cross out whichever does not apply)

13. Liability

13.1 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 (Western Australia).

13.2 The Seller releases and holds harmless the Agent, Auctioneer, Owner of Openn Negotiation 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 or the use of the App.

14. Seller's Warranty

14.1 The Seller warrants that the Seller has the authority to enter into this agreement and that no other person holds an agency agreement for the Property.

15. Disputes

15.1 The Seller has the right to refer any dispute that arises with the Agent to a number of different institutions. Depending upon the nature of the dispute these institutions may include The Real Estate Institute of Western Australia (Inc.), the Commissioner for Consumer Protection, the civil and criminal legal systems, the Western Australian Department of Mines, Industry Regulation and Safety, and the Australian Competition and Consumer Commission.

16. Competition in Marketing Charges and the Benefits of the Exclusive Agency System

16.1 The Real Estate Institute of Western Australia (Inc.) is of the view that the exclusive agency system provides the best professional incentive for agents to sell properties vigorously. Further, agents compete with each other with respect to the amounts charged for marketing and advertising charges and it should be noted that agents may agree not to require payment of separate marketing charges and expenses such as the one contained in this form.

17. Information Collection Notice - Privacy Act 1988 (Cth) and Australian Privacy Principles

17.1 The Agent (whose contact details appear on this form) collects the personal information provided in this form in compliance with the provisions of the *Privacy Act 1988 (Cth)* and the Australian Privacy Principles. The Agent collects this information to enable it to provide the services and benefits the subject of this form and to enable it to conduct its business. This includes the uploading of information to third party websites which may themselves disclose that information to data collection agencies.

17.2 Further details regarding the purposes for which the information is collected, the disclosures that are usually made of personal information collected by the Agent, the situations where the Agent is required to collect information by law, and any disclosure of information that may be made by the Agent overseas, can be obtained from the Agent's detailed privacy collection notice available on the Agent's website.

17.3 If the information collected in this form is not provided, the Agent may not be able to provide its services as effectively. Individuals who wish to access or correct information held about them, or who wish to make any complaint regarding privacy, should contact the Agent's privacy officer.

18. Agent's Reporting Obligations

18.1 The Seller acknowledges and agrees that:

(a) the Agent is subject to statutory obligations, including reporting obligations to both State and Federal government agencies, that may include obligations to report confidential information or information which is otherwise protected under those statutes and/or the *Privacy Act 1988 (Cth)*, including obligations under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)*;

(b) the Agent is required to obtain information from the Seller and prospective buyers for the purpose of fulfilling its legal obligations, including customer due diligence and identity verification requirements;

(c) the Seller will provide in a timely manner such information as is reasonably requested by the Agent;

(d) the Agent may terminate this Agreement or otherwise delay or refuse to provide services where:

(i) the Seller fails to provide within a reasonable time any information reasonably requested by the Agent; and/or

(ii) continuing to act for the Seller or negotiating with a particular buyer would require the Agent to breach their ethical or legal duties or professional responsibilities; and

(e) the law may prohibit the Agent from providing reasons to the Seller for terminating this Agreement or delaying or refusing to provide services under this Agreement.

19. Special Conditions

19.1 Any conditions set out below form part of this agreement.

_____

(Special Conditions)

19.2 If there is any inconsistency between a provision of the Special Conditions and a provision of this agreement the provision of the Special Conditions prevails to the extent of the inconsistency.

20. Definitions and interpretation

20.1 In this document:

(1) **Act** means the *Auction Sales Act 1973 (WA)*;

(2) **Address** means the address of the Property specified in clause 1.1;

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

(22) Reference to:

(a) one gender includes the others;

(b) the singular includes the plural and the plural includes the singular;

(c) a person includes a body corporate;

(4) **Agent's Fee** means the fee specified in clause 5.1;
(5) **Auctioneer** means the auctioneer, who must be licensed to conduct an Auction for the sale of property by public auction pursuant to the Act, appointed by the Agent to conduct the Openn Negotiation;
(6) **Chattels** means fixtures and fittings and plant and equipment on the Land including the chattels specified in clause 1.1;
(7) **Exclusive Authority Period** has the meaning specified in clause 4.1;
(8) **Expenses** has the meaning specified in clause 7.2;
(9) **GST** means the Goods and Services Tax introduced pursuant to *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;
(10) **Introduce and/or Introduced** means, whether in the context of an introduction by the Agent or the Seller, that the person who claims to have introduced the buyer concerned has been an effective cause of the relevant sale;
(11) **Land** means the land specified in clause 1.1;
(12) **Leases and Encumbrances** means the leases and encumbrances specified in clause 12.1;
(13) **Openn Negotiation** means the sale of the Property using the process set out in the Openn Negotiation Bidding Rules and Offer Terms of Use (Western Australia);
(14) **Openn Negotiation Bidding Rules and Offer Terms of Use (Western Australia)** means the document as specified in clause 2.1;
(15) **Operator** means Openn Pty Ltd ACN 612 338 477;
(16) **Owner of Openn Negotiation** means Openn Tech Pty Ltd ACN 607 908 636;
(17) **Pre-Paid Expenses Sum** means the sum specified in clause 7.4;
(18) **Property** means the property located at the Address, being the Land together with all buildings and other fixed improvements erected upon the Land together with the Chattels, as specified in clause 1.1;
(19) **Reporting Compliance Costs** means the costs specified in clause 8.1;
(20) **Reserve Price** has the meaning specified in clause 2.3;
(21) **Special Conditions** means the Special Conditions (if any) specified in clause 19;

(d) a party includes the party's executors, administrators, successors and permitted assigns;
(e) a statute, regulation or provision of a statute or regulation (Statutory Provision) includes:
  (i) the Statutory Provision as amended or re-enacted from time to time; and
  (ii) a statute, regulation or provision enacted in replacement of that Statutory Provision;
(f) money is to Australian dollars, unless otherwise stated;
(g) clauses, subclauses, subclauses and schedules by number are references to clauses, subclauses, subclauses and schedules respectively so numbered in this agreement;
(h) 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
(i) writing includes typewriting and lithography and other methods of producing words in a visible form;

(23) Including and similar expressions are not words of limitation.
(24) 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.
(25) Headings are for convenience only and do not form part of this agreement or affect its interpretation.
(26) A provision of this agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the agreement or the inclusion of the provision in the agreement.
(27) 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.
(28) Words defined in the Openn Negotiation Bidding Rules and Offer Terms of Use (Western Australia) apply to this document as if set out here in full.

Notice: If the property is new residential or potential residential premises then the GST withholding provisions of the Tax Administration Act and GST legislation may apply to the contract for sale.

Signature of Seller	*X*	**Date:**	
Signature of Seller	*X*	**Date:**	
Signature of Agent or Agent's Representative	*X*	**Date:**	

A TRUE COPY OF THIS DOCUMENT HAS BEEN RECEIVED BY

The Seller confirms they have also received blank copies of:

- Openn Negotiation Bidding Rules and Offer Terms of Use (Western Australia);
- Contract for Sale of Land or Strata Title by Offer and Acceptance; together with,
- The General Conditions incorporated into that form.

Signature of Seller	*X*	**Date:**	
Signature of Seller	*X*	**Date:**	

APPENDIX A

Insert a copy of the Contract for the Sale of Land or Strata Title by Offer and Acceptance together with the General Conditions incorporated into that template.

Schedule 1

Openn Negotiation Bidding Rules and Offer Terms of Use (Western Australia)

SELLER COPY ONLY

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;

SELLER Full Name(s): _____

Address: _____

Suburb: _____ State: _____ Postcode: _____

Phone: _____ Mobile: _____ Email: _____

Phone: _____ Mobile: _____ Email: _____

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

2. Seller Agent

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

SELLER AGENT _____

_____

AUCTIONEER _____

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 _____ Deposited/Survey/Strata/Diagram/Plan _____ whole/part Vol. _____ Folio _____ (**Property**);

4.2 Acknowledges that Openn Negotiation:

a. is a type of Auction which is either an extended Auction with a flexible Settlement Date or the purchase of the Property by a Sole Bidder in accordance with these Terms;
b. will be primarily conducted through the App in accordance with the Terms.

5. Definitions and Interpretations

5.1 In these Terms the following have these meanings:

1. **Act** means the Auction Sales Act 1973 (WA);
2. **App** means the specialised software program designed to facilitate the Openn Negotiation and known as "Openn";
3. **Auction** means an auction pursuant to the Act;
4. **Auctioneer** means the Auctioneer appointed by the Seller or Seller Agent to conduct the Openn Negotiation, who must be licensed to conduct an Auction for the sale of property by public auction;
5. **Bidder** means the bidder or bidders described in clause 1 and includes the Primary Bidder and any Other Bidders
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. **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;
9. **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;
10. **Fall of the Hammer** means the time in the Final Bidding Stage when the App announces the Final Bidding Stage has ended and no further bids will be accepted from Qualified Bidders;
11. **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;
12. **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;
13. **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 into by the Highest Bidder or Sole Bidder with the Seller for the purchase of the Property;
14. **Openn Negotiation** means the process set out in these Terms according to which the sale is to be conducted using the App;
15. **Operator** means Openn Pty Ltd ACN 612 338 477
15. **Owner** means Openn Tech Pty Ltd ACN 607 908 636;
16. **Pending Bid** means the opening bid made by a Bidder, through the App, that may be accepted by the Seller Agent in order to become a Qualified Bidder. The opening bid may be increased subsequently;
17. **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 written price agreed to by the Bidder and Seller;

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5. Definitions and Interpretations (continued)

18. **Qualified Bidder** means a bidder who has fulfilled the requirements set out in clause 6.1 and has been approved by the Seller in accordance with clause 6.1.7;
19. **Reserve Price** is the minimum amount that the Seller will accept as the Winning Bid in the Openn Negotiation;
20. **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 Agent Offer Terms that have been accepted by the Seller such that the bidder may take part in the Openn Negotiation);
21. **Standard Time** means the Australian Standard Time applicable to the State in which the Property is located;
22. **State** means the state or territory in which the Property is located;
23. **Terms** means these Openn Negotiation Bidding Rules and Offer Terms of Use;
24. **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;
25. **Winning Bid** means the successful bid made in the App which will be confirmed by the Bidder or the Auctioneer 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;

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 1. 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.
2. 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).
3. 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 The 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;
- 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 Bidders;
- e. select the Property in the App;
- f. enter their Pending Bid in the App;
- g. complete the Offer Terms in clause 7;
- h. provide their contact details to the Seller Agent;
- i. the Offer Terms must state all terms upon which the Bidder is prepared to purchase the Property other than the proposed purchase price.

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 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. If so, that potential bidder becomes a Qualified Bidder and the Seller 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 the 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 6.5; 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 and as provided for in clause 6.6, 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. the Auctioneer may withdraw bids, at their complete discretion;
- f. the Seller may not bid personally, either directly or by an agent or other representative;
- g. Dummy Bidding and/or encouraging another party to engage in Dummy Bidding constitutes a breach of these Terms and may have serious consequences;
- h. subject to clause 6.6, once commenced the Openn Negotiation cannot be terminated by the Seller or any other party until all bids are exhausted;
- i. if there are one or more bids at or exceeding the Reserve Price, the bid made by the Highest Bidder will be recorded as the Winning Bid. 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 and mobile access, and coverage to allow access to the App, access to the account, and the making of each bid in the Openn Negotiation;

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 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, in accordance with clause 6.3(c);
- 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 in accordance with clause 6.3(c); 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 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) 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.

6.6 Reserve Price
- a. The Property is offered for sale subject to a Reserve Price.
- b. If no bid exceeds the Reserve Price in the Final Bidding Stage, the Seller is not obliged to sell the Property.
- c. 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.
- d. 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.

6.7 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) 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 noon the following day:
- a. the sale must be on the Offer Terms (other than price); and
- b. the sale will be conducted in accordance with these Terms.

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6. Declaration and Terms (continued)

6.9 Restarting the Openn Negotiation due to technical failure

a. The Auctioneer may allow the Openn Negotiation to time out during the Final Bidding Stage and be restarted 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(a), the Seller 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 will 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 the Contract should the Bidder make the Winning Bid:

7.1 A deposit of $_____ of which $_____ is paid now and $_____ to be paid within _____ days of acceptance.

7.2 Settlement Date _____

7.3 Is the Contract concerning the taxable supply of new residential land as defined in the GST Act? ☐ YES ☐ NO

7.4 Property Chattels including _____

7.5 Finance – Lender: _____ Amount Required: $_____ Latest Date: _____

☐ Finance Clause is NOT applicable.

7.6 Other special conditions: _____

The Contract otherwise incorporates the REIWA Contract for the Sale of Land and the REIWA/Law Society General Conditions incorporated into that form, as set out in Appendix A.

8. Authority

8.1 The Bidder irrevocably appoints and authorises the Auctioneer 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.

8.3 The Bidder authorises the Auctioneer to do the following things on their 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. sign the Contract in respect of the Property and exchange the Contract with the Seller of the Property.

The Bidder specifies that this authority begins immediately and expires automatically and without further effect on the day that is one day after the Final Bidding Stage.

8.4 The Bidder agrees to ratify and confirm anything the Auctioneer lawfully does in accordance with this clause 8.

8.5 The Auctioneer, Seller Agent and the Seller Agent's directors or licensed sales representatives have the right, upon confirmation of the Winning Bid in the App, to accept the Highest Bidder or Sole Bidder's offer on behalf of the Seller on the Fall of the Hammer, and the conclusion of the Openn Negotiation process.

Primary Bidder's Signature X _____ **Dated:** _____

Other Bidder's Signature X _____ **Dated:** _____

9. Disclaimers and limitation of liability

9.1 The use of the App and all information and data provided on or through the App is entirely at the Bidder's own risk. The Bidder is responsible for all Bidder activity in connection with accessing and using the App.

9.2 Neither the Seller, Seller Agent, Auctioneer, Owner or Operator 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.

9.3 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 Bidder's situation.

9.4 To the extent permitted by law, the Seller, Seller Agent, Auctioneer, Owner and Operator exclude all liability for any loss or damage (including indirect and consequential loss) arising from or in connection with:

a. the Bidder's use of the App;
b. the Bidder's reliance on any information provided on or through the App;
c. any delay or inability to use any part of the App; and/or
d. any failure to provide services or any information through the App.

9.5 Owner's Service

9.5.1 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.

9.5.2 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 or for verifying the Property listed on the App.

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9. Disclaimers and limitation of liability (continued)

9.6 Liability and Indemnity

9.6.1 The Operator, Owner, Seller 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.

9.6.2 The Bidder and the Seller release and hold harmless the Seller Agent, Auctioneer, Owner and 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:

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.

9.7 The Bidder indemnifies and will keep indemnified the Seller's Agent, Auctioneer, Owner and the Operator and their officers, directors and employees from and against all actions, suits, demands, claims, losses (including indirect or consequential loss), damages and costs whatsoever, whether at law or in equity arising out of any breach of the App or these Terms.

9.8 The Seller, Seller Agent, Auctioneer, Owner and Operator accept no responsibility for any liability suffered by the Bidder as a result of not electing to have the Contract 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, Operator 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.

13. Bidders Declaration

1. 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.
2. The Bidder confirms they understand and agree that the Contract will be subject only to the Offer Terms set out in clause 7 (that may be transferred into the Contract by the Auctioneer or the App) and there is no cooling off period.
3. The Bidder confirms that they have received, prior to signing this document, a copy of the form of the Contract and the REIWA/Law Society General Conditions incorporated into the Contract for the Property.
4. The Bidder warrants that they have had an opportunity to obtain independent legal advice in relation to this document and the Contract.
5. If the Primary Bidder has not completed any details in the Other Bidder(s) section of this form or this form has not 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.
6. If the Primary Bidder is also bidding on behalf of another person then:
   a. 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
   b. 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;
   c. The Primary Bidder indemnifies 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.
7. The Other Bidder(s) authorise(s) 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 & Authority

1. The Seller/s 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. The Seller/s confirms their instructions to nominate, authorise and direct the Auctioneer and/or Seller Agent or its directors or licensed sales representatives 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. The Seller/s confirms their instructions to nominate, authorise and direct the Auctioneer and/or Seller Agent or its directors or licensed sales representatives to execute the Contract on the Seller's behalf.
4. The Seller/s 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 or Strata Title by Offer and Acceptance together with the General Conditions incorporated into that template.

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