Annexure A: Authority to Conduct the Sale of Land by Openn Negotiation and Vendors Contract Execution and Express Exchange Authority (NSW)

Parties

The person specified in the **Sales Inspection Report**

Vendor(s): _____ ACN: _____

Address: _____

Phone: _____ Mobile: _____ Email: _____

and;

The real estate agent duly authorised to act on behalf of the Vendor pursuant to the *Property and Stock Agents Act 2002* and the *Property and Stock Agents Act 2002* and the *Property and Stock Agents Regulation 2014* specified in the **Sales Inspection Report**

AGENT/LICENSEE: _____

Property for Sale

Property Address: _____

Title details (lot and folio details): _____

1. It is agreed

1.1 The Parties note and confirm the Vendor has engaged the Agent to act on the sale of the Property by means of public auction, conducted through the Openn Negotiation process (as defined herein) in accordance with the App Terms and Conditions (as defined herein).

1.2 The Vendor agrees to be bound by the Buyers Registration and Authority to Bid and Terms of Use and the App Terms and Conditions during the Openn Negotiation Period. Neither the Vendor or the Agent will accept or consider any offers to purchase the Property, in any form, that do not comply with the process to become a Qualified Bidder as detailed in the Buyers Registration and Authority to Bid and Terms of Use. The Vendor instructs the Agent to only communicate those offers that comply with the Qualified Bidder process referred to in this Clause.

2. Definitions and Interpretation

In this document:

2.1 **Act** means the *Property and Stock Agents Act 2002* and the *Property and Stock Agents Regulation 2014*;

2.2 **Address** means the address of the Property specified in the Agency Agreement;

2.3 **Agency Agreeement** means the Sales Inspection Report means the Sales Inspection Report and Auction Agency Agreement and Continuing Agency entered into between the Parties

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

2.5 **App Terms and Conditions** means the terms and conditions set out in the App Terms and Conditions, which are to be read in conjunction with this Annexure A;

2.6 **Auctioneer** means the auctioneer appointed by the Agent to conduct the Openn Negotiation, who must be an accredited auctioneer pursuant to the Act;

2.7 **Campaign Bidding Stage** means the stage of the Openn Negotiation that commences when the Property is listed on the App and ends at the commencement of the Final Bidding Stage;

2.8 **Developer** means PP Valley Pty Ltd ACN 612 338 477;

2.9 **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;

2.10 **Land** means the Property specified in the Sales Inspection Report;

2.11 **Openn Negotiation** means the process for selling the Property by auction as set out in the App Terms and Conditions and has the same meaning of auction as provided by s.3 of the *Property and Stock Agents Regulation 2014*;

2.12 **Openn Negotiation Period** means the Exclusive Agency Period set out in the Agency Agreement;

2.13 **Owner of Openn Negotiation** means Cleverbons Pty Ltd ACN 607 908 636;

2.14 **Property** means the property described in the Agency Agreement;

2.15 **Qualified Bidder** has the meaning set out in the App Terms and Conditions;

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

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

2.18 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;
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 in 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;

2.19 Including and similar expressions are not words of limitation.

2.20 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.

2.21 Headings are for convenience only and do not form part of this agreement or affect its interpretation.

2.22 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.

2.23 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.

3. Agreement to Auction by Openn Negotiation

3.1 The Seller has agreed to sell the property via Openn Negotiation and the auction will commence at the start of the Campaign Bidding Stage.

3.2 The Vendor acknowledges that Openn Negotiation is an auction within the meaning of that term in the Act.

3.3 The Vendor acknowledges that Vendor Bids as defined are not compatible with Openn Negotiation. Equally, Dummy Bidding and/or encouraging another party to engage in Dummy Bidding constitutes a breach of these Terms and Conditions and may also constitute fraud and misleading or deceptive conduct and attract serious consequences.

3.4 The Vendor acknowledges that in the event of the Final Bidding Stage taking place the Vendor must be available to provide instructions to the Agent and Auctioneer at such time.

4. Conditions of Sale

4.1 The sale of the Property is to be conducted in accordance with the App Terms and Conditions and the Vendor agrees to be bound by the terms of the Openn Negotiation as described in those App Terms and Conditions, including, but not limited to, the Campaign Bidding Stage and the Final Bidding Stage.

4.2 The Vendor acknowledges that the Openn Negotiation will be primarily conducted through the App in accordance with the App Terms and Conditions.

4.3 The Openn Negotiation is to be subject to the Reserve Price and the Vendor must provide a Reserve Price to the Agent before the commencement of the Openn Negotiation Period. If, during the Campaign Bidding Stage or the Final Bidding Stage, the highest bid is at or above the Reserve Price, the purchaser is the highest bidder upon the fall of the hammer.

5. Authorities Granted to Auctioneer

5.1 The Vendor expressly authorises the Auctioneer to sign the Contract for Sale of Land for the Property on the Vendor's behalf immediately following the sale of the Property.

6. Liability

6.1 The Vendor releases and holds harmless the Agent, Auctioneer, the Owner of Openn Negotiations 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.

6.2 The Vendor releases the Agent, Auctioneer, the Owner of Openn Negotiation and the Developer against all actions, claims, demands arising from or in connection with a failure by a purchaser or registered bidder to complete a sale.

6.3 Nothing in these Annexure A terms and conditions (including this clause 6) excludes, restricts or modifies any rights or statutory guarantees that the Vendor may have under applicable laws that cannot be excluded, restricted or modified, including any such rights or statutory guarantees under the Australian 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.

6.4 The Agent discloses and the Vendor 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 Vendor's physical location or the Vendor's wireless data service provider's network.

6.5 To the extent permitted by law, and without limiting any rights that the Vendor may have under the Australian Consumer Law, the Agent's and the Developer's liability to the Vendor for any failure by the Agent or the Developer to comply with any statutory guarantee under the Australian Consumer Law is limited to the Agent and/or the Developer supplying the Services again or paying you the cost of having the Openn Negotiation process supplied again.

7. Warranty

7.1 The Developer and the Agent do not warrant, guarantee or make any representation that:
  a. The Openn website ('the Website'), the App, or the servers that make them available are free of software viruses;

  b. The functions effected by the software contained on the Website or the App will operate uninterrupted or are error-free; and

  c. Error and defects in the Website or the App or the software contained in them will be corrected in a timely manner or at all.

Vendor's Signature

X

Name of Vendor: _____

Date: _____

Agent or Agent's Representative Signature

X

Name of Agent or Agent's Representative: _____

_____

_____

Date: _____

Vendor's Signature

X

Name of Vendor: _____

Date: _____