

Appointment and reappointment of a property agent, resident letting agent or property auctioneer

Property Occupations Act 2014

This form is effective from 1 August 2016

ABN: 13 846 673 994

Part 1—Client details

Client 1

Note: The client is the person or entity appointing the agent to provide the services. This may be the owner (or authorised representative of the owner) of the land, property or business that is to be sold or may be a prospective buyer seeking to purchase land or a property.

Client name

ABN

[illegible]

Are you registered for GST? ☐ Yes ☐ No

Address

Suburb State Postcode

Phone..... Fax..... Mobile.....

Email address.....

Client 2

Note: Annexures detailing additional clients may be attached if required.

Client name

ABN

[illegible]

Are you registered for GST? ☐ Yes ☐ No

Address

Suburb State Postcode

Phone..... Fax..... Mobile.....

Email address.....

Part 2—Licensee details

Licensee type

More than one box may be ticked if appropriate.

Note: Annexures detailing conjuncting agents may be attached if required.

Licensee name

Where a corporation licensee is to be appointed, state the corporation's name and licence number.

Where a sole trader is to be appointed, state the individual's name and licence number.

☐ Real estate agent ☐ Resident letting agent ☐ Property auctioneer

Trading name

Licensee name (corporation, if applicable).....

ABN

ACN [][][][][][][][]

[illegible]

Expiry / /
D D M M Y Y Y Y

Address

Suburb State Postcode

Phone..... Fax..... Mobile.....

Email address.....

Part 3—Details of property or business that is to be sold, let, purchased, or managed

Please provide details of the property, land, or business as appropriate.

Note: Annexures detailing multiple properties may be attached if required.

Description

Address

Suburb State Postcode

Lot Plan.....

Title reference

Part 4—Appointment of property agent

Section 1

Performance of service

Annexures detailing the performance of service may be attached if required.

The client appoints the agent to perform the following service/s:

- ☐ Sale ☐ Purchase ☐ Letting / collection of rent / management
- ☐ Leasing (Commercial agents)
- ☐ Auction Auction date / / (must be completed)
- ☐ Other (please specify) Openn Negotiation as set out in Annexure A

Section 2

Term of appointment

Sole and exclusive appointments: for sales of one or two residential properties, the term is negotiable and agent can be appointed or reappointed up to a maximum of 90 days per term. There are no limitations on the length of an appointment for anything other than a residential property sale.

- ☐ Single appointment for a particular service or services
- Start / / End / /
- ☐ Continuing appointment for a service or a number of services over a period
- Start / /

Section 3

Price

State the price for which the property, land or business is to be sold or let.

Note: Bait advertising is an offence under the Australian Consumer Law.

- ☐ Reserve ☐ List ☐ Letting
- \$.....
- For auctions: If a reserve price is unknown at the time of appointment, it can be advised *in writing* at a later date.
 - For residential property auctions and residential properties to be marketed without a price: If the client agrees to marketing via an *electronic listing provider*, the client agrees for the agent to disclose to the *electronic listing provider* a price or price range of
- \$..... to establish a search criteria.

Section 4

Instructions/conditions

The client may list any condition, limitation or restriction on the performance of the service.

Note: Annexures detailing instructions/conditions may be attached if required.

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Part 5—Termination of appointment

Residential sales of 1 or 2 properties only	Open listing: You may terminate in writing at any time. Sole or exclusive: The client and agent can agree in writing to end the appointment early. For appointments of 60 days or more, either party can end the appointment by giving 30 days written notice, but the appointment must run for at least 60 days unless both parties agree to an earlier end date.
Open listing	You may terminate an open listing for either commercial or residential property sales at any time.
Other fixed term appointments (excluding residential property sales)	The parties may agree to a fixed term appointment of their choice. This term may be ended earlier by mutual agreement.
Continuing appointments (for example: letting, collection of rents etc)	You may terminate in writing with 30 days notice, or less if both parties agree.

Part 6—PROPERTY SALES: open listing, sole agency or exclusive agency

To the client

You may appoint an agent to sell a property or land on the basis of an open listing, or a sole agency, or exclusive agency.

The following information explains the circumstances under which you will, and won't, have to pay a commission to the agent if the property is sold during their term of appointment.

☐ OPEN LISTING

- You appoint the agent to sell the property but you retain a right to appoint other agents on similar terms, without penalty or extra commission.
- No end date required.
- Appointment can be ended by either you or the agent at any time by giving written notice.

When you must pay the agent

- The agent is entitled to the agreed commission if the agent is the effective cause of sale.

When you don't have to pay the agent

- If the client sells the property privately and the agent is not the effective cause of sale i.e.: purchaser did not contact the agent, did not attend open house inspections etc.

☐ SOLE AGENCY

When you must pay the agent

- If you appoint a new agent during an existing agent's sole agreement term and the property is sold during that term, you may have to pay:
 - A commission to each agent (two commissions)
 - Damages for breach of contract arising under the existing agent's appointment

When you don't have to pay the agent

- If the client sells the property privately and the agent is not the effective cause of sale i.e.: purchaser did not contact the agent, did not attend open house inspections etc.

☐ EXCLUSIVE AGENCY

When you must pay the agent

- The client will pay the appointed agent whether this agent, any other agent, or person (including the client themselves) sells the property during the term of the appointment.
- If the client sells the property, after the exclusive appointment expires and if the agent was the effective cause of sale (introduced the buyer to the property) the agent may be entitled to commission.

At the end of the sole or exclusive agency, the parties ☐ Agree ☐ Do not agree
that the appointment will continue as an open listing. (Please tick whichever is relevant)

Part 6—PROPERTY SALES: open listing, sole agency or exclusive agency continued

Acknowledgement for sole and exclusive agency

I/we acknowledge the appointed agent has provided me/us with information about sole and exclusive agency appointments.

Client

Date / /
D D M M Y Y Y Y

Agent

Date / /
D D M M Y Y Y Y

Part 7—Commission

To the client

The commission is negotiable. It must be written as a percentage or dollar amount.

Make sure you understand when commission is payable. If you choose 'Other' and the contract does not settle, the agent may still seek commission.

To the agent

You should ensure that commission is clearly expressed and the client fully understands the likely amount and when it is payable. Refer to section 104 and 105 of the *Property Occupations Act 2014*.

The client and the agent agree that the commission including GST payable for the service to be performed by the agent is:

.....
.....
.....

When commission is payable

☐ For sales, including auctions, commission is payable if a contract is entered into and settlement of the contract occurs.

☐ Other
(for specific other circumstances in which commission is payable see annexure).

For all other types of appointments:

.....
.....

This area has been intentionally left blank.

Part 8—Authorisation to incur fees, charges and expenses

The client authorises the agent to incur the following expenses in relation to the performance of the service/s. Annexures may be attached if required.

Section 1 Advertising/marketing

To the client

Your agent may either complete this section or attach annexures of marketing/advertising activities. In either case, the *authorised amount* must be written here.

.....

.....

.....

.....

.....

Authorised amount \$

When payable / /

D D M M Y Y Y

Section 2 Repairs and maintenance (if applicable) Property management

The maximum value of repairs and maintenance to be paid by the agent without prior approval by the client is \$

Section 3 Other

Description of fees and charges.

The agent may either complete this section or attach annexures.

Description	Amount	When payable
.....
.....
.....
.....

Section 4 Agent's rebate, discount, commission or benefit incurred in the provision of or performance of the service

Service	Source	Estimated amount
.....
.....
.....
.....

This area has been intentionally left blank.

Part 9—Signatures

WARNING: THE CLIENT IS ADVISED TO SEEK INDEPENDENT LEGAL ADVICE BEFORE SIGNING THIS FORM.

This form enables the client to appoint, or reappoint, a property agent, resident letting agent or property auctioneer (the ‘agent’) for the sale, letting/management, collection of rent, auction or purchase of real property, land or businesses. This form must be completed and given to the client before the agent performs any service for the client. Failure to do so may result in a penalty and loss of commission for the agent. If you are unclear about any aspect of this form, or the fees you will be charged, do not sign it. Seek legal advice. If you need more information about this form including what an agent needs to disclose, you can visit the Office of Fair Trading website at www.qld.gov.au/fairtrading or phone on **13 QGOV** (13 74 68).

Client 1	Full name..... Signature <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
Client 2	Full name..... Signature <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
Agent A registered real estate salesperson working for an agency can sign this form on behalf of the licensed agent.	Full name..... Signature <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
Schedules and attachments List any attachments.	See: Appointment of Real Estate Agent; Essential Terms and Conditions; Annexure A - Authority to Conduct the Sale of Property or Land by Openn Negotiation Schedule 1 - Bidders Registration, Authority to Bid and Terms of Use (Queensland)

Part 10—Reappointment

Use this section to reappoint your agent. A new appointment form is required if any of the terms or conditions are to change. Your agent can only be reappointed within 14 days before the contract ends—not before. Limitations apply on reappointments for sole or exclusive agency appointments for residential property sales.	I/we (the client) reappoint
 (the agent) to <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
	Client's name.....
	Signature <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
	Client's name.....
	Signature <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>

This area has been intentionally left blank.

This is the end of the approved form. Please note, any annexures/schedules form part of the appointment contract.

Appointment of Real Estate Agent

(Residential Sales)

ITEMS SCHEDULE

A PRIOR APPOINTMENT

Pursuant to Section 21 of the *Property Occupations Regulation 2014* (Qld), prior to accepting this Appointment of Property Agent, the Agent must take reasonable steps to find out whether the Client has already appointed another property agent to perform the service(s) listed in this Appointment of Property Agent.

- ☐ The Client acknowledges that the Agent has taken reasonable steps to find out whether the Client has already appointed another property agent to perform the service(s) listed in this Appointment of Property Agent.
- ☐ The Client further warrants that another property agent has not been appointed to perform the service(s) listed in this Appointment of Property Agent.
- ☐ If the Client is not able to warrant that another property agent has **not** been appointed to perform the service(s) listed in this Appointment of Property Agent, the Client acknowledges that a statement in accordance with Section 21 (4) of the *Property Occupations Regulation 2014* (Qld) has been provided by the Agent.

Note: A copy of the statement provided to the Client must be annexed to this Appointment of Property Agent.

B ADVICE AS TO MARKET PRICE

Has the Client requested information regarding the price at which the Property is to be offered for sale?

(Select applicable Box)

☐ Yes ☐ No

- If Yes, ☐ The Client acknowledges receipt of the Comparative Market Analysis; OR
- ☐ The Client acknowledges receipt of the written explanation showing how the Agent decided the market value of the Property.

COMPARATIVE MARKET ANALYSIS

Compares the Property with at least 3 properties sold within the previous 6 months that are of a similar standard or condition to the Property and are within 5km of that Property.

- ☐ Listed below; OR
- ☐ Listed in the attached Comparative Market Analysis (attach analysis)

ADDRESS OF PROPERTY:

SALE PRICE: DISTANCE FROM
PROPERTY:

	\$	
	\$	
	\$	
	\$	
	\$	

Comments:

INITIALS

Note: Pursuant to sections 214 and 216 of the Property Occupations Act 2014 (Qld), where the Property is to be marketed without a price and/or the Property is residential property to be sold by auction, the Agent must not disclose a price guide for the Property or what he/she considers is a price likely to result in a successful or acceptable bid for the Property.

However, the Agent may give a person a Comparative Market Analysis, or the written explanation showing how the Agent decided the market value of the Property, if the Client provides written consent.

The Client:

☐ Authorises

☐ Does not authorise

the Agent to give a potential Buyer either the Comparative Market Analysis or the written explanation showing how the Agent decided the market value of the Property.

C MANAGING AGENT OF PROPERTY (If Applicable)

AGENCY:

PROPERTY MANAGER:

ADDRESS:

SUBURB: STATE: POSTCODE:

PHONE: MOBILE: FAX: EMAIL:

D SOLICITOR'S DETAILS FOR CLIENT

NAME:

REF: CONTACT:

ADDRESS:

SUBURB: STATE: POSTCODE:

PHONE: MOBILE: FAX: EMAIL:

☐ To be provided to the Agent by the Client at a later date as not known by the Client when entering into this Agreement.

E PUBLIC LIABILITY

INSURER:

AMOUNT OF COVER:

\$

POLICY NUMBER:

EXPIRY DATE:

F AUCTION

The Client instructs and authorises the Agent to sell the Property by Public Auction.
(Select applicable box)

☐ No - Clause 11 of this Agreement will not apply.

☒ Yes - Clause 11 of this Agreement will apply and the following details must be completed.

(1) Date of Auction: See Annexure A

(2) Place of Auction: Openn App

(3) Time of Auction: See Annexure A

(4) Fee for Auctioneer: \$

(5) Terms of Sale: ☐ Cash, with Settlement 30 days from the date of the Contract ← Select applicable box

☒ Other (please specify): See Contract for Houses and Residential Land

INITIALS

G PRIVACY

- ☐ The Client acknowledges that they have, where necessary, been provided with and completed, a Privacy Notice and Consent by the Agent in the form **annexed** to this Appointment of Property Agent or located on the Agent's website at:

and they fully understand that the collection and use of personal information contained in the *Property Occupations Form 6 - Appointment and reappointment of a property agent, resident letting agent or property auctioneer*, this Schedule, the Essential Terms and Conditions and any additional annexures, is in accordance with the Privacy Notice and Consent.

H REQUIREMENTS FOR SOLE OR EXCLUSIVE AGENCY

- ☐ The Client acknowledges and accepts that the following notice is provided in accordance with the Agent's obligations under Section 103 of the *Property Occupations Act 2014* (Qld):

(1) The Agent has, in accordance with the requirements of the Property Occupations Act 2014, discussed with the Client:

- (a) whether the Appointment of Agent is to be for a sole agency or and exclusive agency; and
- (b) the proposed term of the appointment; and
- (c) for an appointment for the sale of residential property other than a commercial scale appointment, the Client's entitlement to negotiate a term of the appointment up to a maximum of 90 days; and
- (d) the consequences for the Client if the Property is sold by someone other than the Agent during the term of the Appointment.

(Note: The Client should refer to Clause 5 of the Essential Terms and Conditions)

- ☐ The Client acknowledges that the above matters have been discussed before signing the Appointment of Property Agent.

I FACTS MATERIAL TO THE SALE OF THE PROPERTY

Note: Agent must take reasonable steps to find out/verify any facts material to the sale of the Property

PROPERTY DESCRIPTION DETAILS

ADDRESS: _____

SUBURB: _____ STATE: _____ POSTCODE: _____

RES

Property type

(select one)

- | | | |
|---------------------------------|--------------------------------------|--------------------------------------|
| <input type="checkbox"/> House | <input type="checkbox"/> Apartment | <input type="checkbox"/> Acreage |
| <input type="checkbox"/> Unit | <input type="checkbox"/> Mobile Home | <input type="checkbox"/> Farm |
| <input type="checkbox"/> Duplex | <input type="checkbox"/> Townhouse | <input type="checkbox"/> Vacant Land |

Room details (Total number of rooms)

Bedrooms BI
Lounge
Dining
Lounge/Dining Comb
Rumpus/Family
Media room
Bathroom
Kitchen
Dining/Kitchen Comb
Pantry
Ensuite
Separate toilets
Separate shower
Laundry
Study/Office
G/shed/Shed/Stables
Other rooms

Type

(select one)

- ☐ Highset
☐ Lowset
☐ Split-level
☐ Double storey
☐ Multilevel

Services

(select as applies)

- ☐ Town water
☐ Sewered
☐ Septic
☐ Gas in street
☐ Cable in street

Car Parking

(# of spaces)

Garage
Carport
Other

Interior Walls

(select as applies)

- ☐ Plasterboard
☐ Timber
☐ Brick
☐ Block
☐ Fibro

Appliances

(select as applies)

- ☐ Gas stove
☐ Electric stove
☐ Oven
☐ Hot Plate
☐ Rangehood
☐ Microwave
☐ Refrigerator
☐ Dishwasher
☐ Disposal Unit
☐ Washing machine
☐ Dryer
☐ Ducted vacuum

Hot water system (select as applies)

- ☐ Gas
☐ Electric
☐ Solar

Features

(select as applies)

- ☐ Cable TV
☐ Fireplace
☐ Air conditioned
☐ Ducted
☐ Split Systems
☐ Heated
☐ Veranda/Deck
☐ Entertaining area/Pergola
☐ Terrace/Paved
☐ BBQ
☐ Bar
☐ In-ground pool
☐ Above-ground pool
☐ Fenced
☐ Sides fenced
☐ Tennis court
☐ Water frontage
☐ Water access
☐ Jetty
☐ Spa
☐ Sauna
☐ Gym
☐ Ceiling fans
☐ Security system
☐ Window and Door security screens
☐ Window Locks
☐ Intercom system
☐ Rain water tank
☐ Bore
☐ Solar electricity system
Number of kilowatts

Community Facilities (close by)

Primary school m
Secondary school m
Bikeway m
Park m
Sporting facilities m

Transport

(close by)

Bus m
Train m
Ferry m

Outlook

(select one direction)

- | | |
|-------------------------------------|-------------------------------------|
| <input type="checkbox"/> North | <input type="checkbox"/> East |
| <input type="checkbox"/> South | <input type="checkbox"/> West |
| <input type="checkbox"/> North-east | <input type="checkbox"/> South-east |
| <input type="checkbox"/> South-west | <input type="checkbox"/> North-west |

Construction (select as applies)

- ☐ Brick
☐ Timber
☐ Concrete
☐ Hardiplank
☐ Fibro
☐ Rendered
☐ Cladding
☐ Brick Veneer
☐ Block

Roof (select one)

- ☐ Tiles
☐ Fibro
☐ Iron
☐ Colorbond

Style (select one)

- ☐ Colonial
☐ Contemporary
☐ Brick and tile
☐ Federation
☐ Mediterranean
☐ Pole home
☐ Queenslander
☐ Post War

INITIALS

PROPERTY DESCRIPTION DETAILS (Continued)

Age (years): _____
Land (approx. m²): _____ Land (approx. ha): _____
R.P.D. _____

Electrical safety switch: ☐ Yes ☐ No Smoke alarm: ☐ Yes ☐ No

Pool Safety Certificate: ☐ Yes ☐ No

Encumbrances: ☐ Yes ☐ No If yes please provide details:

Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 disclosures:

(select whichever is applicable)

☐ The Land is not affected by any application to, or an order made by, the Queensland Civil and Administrative Tribunal (QCAT) in relation to a tree on the Land.

☐ The Land is affected by an application to, or an order made by, QCAT in relation to a tree on the Land.

Zoning: _____

Rates: \$ _____ ☐ Quarter ☐ Half year ☐ Year

Vacant Possession: _____ days

Tenanted: ☐ Yes ☐ No

Inspection: ☐ Call listing agent ☐ 24hrs notice required ☐ Specify: _____

UNIT USE ONLY

Body Corporate Fees (Inc Sink Fund): \$ _____ Period: _____

Floor level: _____ Lift: ☐ Yes ☐ No (select one)

COMMENTS**SIGNATURE OF PARTIES**

Client 1: _____ Date: _____

Client 2: _____ Date: _____

Agent: _____ Date: _____

INITIALS

ESSENTIAL TERMS AND CONDITIONS

1. DEFINITIONS

- 1.1 "Act" means the *Property Occupations Act 2014* (Qld).
- 1.2 "Agent" means the party described in Part 2 of the **Appointment of Property Agent**.
- 1.3 "Appointment of Property Agent" means the Queensland Government Property Occupations Form 6 - Appointment and reappointment of a property agent, resident letting agent or property auctioneer. These terms and conditions and the Schedule are annexed to the Appointment of Property Agent.
- 1.4 "Client" means the party described in Part 1 of the Appointment of Property Agent.
- 1.5 "Commission" means the commission stated in Part 7 of the Appointment of Property Agent.
- 1.6 "Conjunction Sale" means a sale conducted in conjunction with other property agents.
- 1.7 "Property" means the property described in Part 3 of the Appointment of Property Agent.
- 1.8 "Property Description Details" means the particulars listed in the Property Description Details annexed to the Schedule.
- 1.9 "REIQ" means The Real Estate Institute of Queensland.
- 1.10 "Schedule" means the Residential Sales Schedule forming part of this Agreement.
- 1.11 "Term" means the term specified in Part 4, Section 2 of the Appointment of Property Agent.

2. WHAT MAKES UP THIS AGREEMENT

This Agreement comprises the following parts:

- 2.1 Appointment of Property Agent;
- 2.2 Schedule;
- 2.3 Essential Terms and Conditions;
- 2.4 Any additional annexures.

3. CLIENT APPOINTS AGENT

- 3.1 For the Commission and other fees payable by the Client, the Agent agrees to sell the Property for the Client in accordance with this Agreement.

4. PRICE

- 4.1 The Client instructs the Agent that the Price at which the Agent must offer to sell the Property will be the Price stated in Part 4, Section 3 of the Appointment of Property Agent, or any variation to the Price stated in Part 4, Section 3 of the Appointment of Property Agent as instructed in writing at a later date by the Client.

5. ENTITLEMENT TO COMMISSION

- 5.1 The Client agrees to pay the Agent Commission as specified in Part 7 of the Appointment of Property Agent if a Contract of Sale of the Property is entered into with a Buyer, whether within the Term or after the Term, where the Relevant Person is the effective cause of the sale within the Term, provided that:
 - 5.1.1 the Contract of Sale of the Property is completed; or
 - 5.1.2 the Client defaults under the Contract of Sale and that Contract is terminated by reason of or following that default; or
 - 5.1.3 the Contract of Sale is not completed and the whole or part of the deposit paid is liable to be forfeited; or
 - 5.1.4 the Contract of Sale is terminated by mutual agreement of the Client and the Buyer.

- 5.2 For the purposes of Clause 5.1 a Relevant Person is, where the Appointment of Property Agent is for:
 - 5.2.1 an Exclusive Agency, any person (including the Client); or
 - 5.2.2 a Sole Agency, any person other than the Client; or
 - 5.2.3 an Open Listing, the Agent only.

6. AUTHORITY TO PAY COMMISSION

- 6.1 The Client:
 - 6.1.1 authorises the Agent, and
 - 6.1.2 authorises and directs the deposit holder or any other person to whom any deposit is paid under a Contract of Sale, to pay to the Agent any Commission to which the Agent is entitled immediately upon:
 - (a) the entitlement to Commission arising; and
 - (b) production of the Agreement or a copy of the Agreement;
- 6.2 The Client agrees that the Agent's receipt for the payment of Commission under Clause 6.1 completely discharges the deposit holder from any duty to account to the Client for the Commission paid to the Agent.

7. COMMUNICATION OF EXPRESSIONS OF INTEREST

- 7.1 Unless otherwise agreed in writing between the Client and the Agent, the Client:
 - 7.1.1 only requires the Agent to communicate to the Client:
 - (a) all written offers about the sale; and
 - (b) only those expressions of interest which the Agent determines in its discretion are to be communicated to the Client.

8. DISCLOSURE OF RELEVANT FACTS

- 8.1 The Client states that:
 - 8.1.1 the Property is the Client's own property;
 - 8.1.2 the Agent is entitled to sell the Property on behalf of the Client; and
 - 8.1.3 the particulars about the Property contained in the Property Description Details are correct;
- 8.2 The Client authorises the Agent at the Client's cost to:
 - 8.2.1 take reasonable steps to find out or verify:
 - (a) the ownership of the Property; and
 - (b) the description of the Property;
 - 8.2.2 take such other reasonable steps to find out or verify the facts material to the sale, exchange or lease that a prudent property agent would find out or verify in order to avoid error, omission, exaggeration or misrepresentation. These steps may be taken before listing the Property and afterwards as the occasion arises;
- 8.3 The Client will produce to the Agent, at the Agent's request, such information as required by the Agent to satisfy the Agent of the matters referred to in this Clause 8;
- 8.4 This Clause 8 does not oblige the Agent to undertake searches with public authorities;
- 8.5 The Client warrants that the Property is safe and free from any defects for the purposes of a property inspection.

INITIALS

9. NOTIFICATION OF SALE TO TENANT

- 9.1 If the Property is tenanted, the Client states that the managing agent for the Property is as stated in Item C of the Schedule;
- 9.2 The Client acknowledges that where the Agent accepts an appointment to sell a property that is tenanted:
 - 9.2.1 The Agent must immediately give written notice of the appointment to any managing agent of the Property; and
 - 9.2.2 The managing agent must immediately give the tenant notice of the appointment of the Agent to sell the Property.

10. COMMUNICATION AND NOTICES

- 10.1 All written communications under this Agreement must be given to the parties' postal address, facsimile number, email address or mobile telephone number specified in Parts 1 or 2 of the Appointment of Property Agent;
- 10.2 The Client consents to the use of email and facsimile in accordance with the provisions set out in Chapter 2 of the *Electronic Transactions (Queensland) Act 2001* and the *Electronic Transactions Act 1999* (Cth);
- 10.3 The Client authorises the Agent to give on behalf of the Client any statement or other notice that may be required to be given by the Client in accordance with any law;
- 10.4 Nothing in this Clause 10 requires the Agent to give a statement or other notice on behalf of the Client. The Agent may require the Client to sign the statement or other notice on the Client's own behalf.

11. AUCTION

- 11.1 The Reserve Price shall be the amount specified in Part 4, Section 3 of the Appointment of Property Agent or as instructed by the Client in writing prior to the time of Auction;
- 11.2 The date, place and time for the Auction shall be as specified in Part 4, Section 1 of the Appointment of Property Agent and Item F of the Schedule or as otherwise agreed with the Client in writing from time to time;
- 11.3 The general conditions of sale shall be those set out in:
 - 11.3.1 the Conditions of Sale by Public Auction Real Property adopted by the REIQ; and
 - 11.3.2 the copyright form of Contract and the Terms of Contract/Standard Conditions of Sale adopted by the REIQ and approved by the Queensland Law Society as at the date of the Appointment of Property Agent;
- 11.4 The Agent may, in the Agent's sole discretion, subcontract the performance of the Agent's services in relation to holding the Public Auction by engaging a person licensed as an Auctioneer under the Act to conduct the Public Auction on behalf of the Agent. If the Agent employs an Auctioneer then the Client shall pay the amount as specified in Item F(4) of the Schedule as a fee for the Auctioneer's services.

12. AGENT'S ENTITLEMENT TO TERMINATION PENALTY

- 12.1 In this Clause 12:
 - 12.1.1 **Relevant Contract** means a relevant contract as defined in the Act; and
 - 12.1.2 **Termination Penalty** means the amount of 0.25% of the Purchase Price under the Contract of Sale as defined in the Act.

12.2 If:

- 12.2.1 the Contract of Sale is a Relevant Contract; and
 - 12.2.2 the Buyer validly terminates the contract at any time before the cooling-off period ends in accordance with the Act; and
 - 12.2.3 the Client is entitled to retain from the deposit the Termination Penalty,
- the Client agrees that the Termination Penalty will be divided equally between the Client and the Agent.

12.3 The Client:

- 12.3.1 authorises the Agent; and
- 12.3.2 authorises and directs the deposit holder or any other person to whom any deposit is paid under a Contract of Sale, to pay to the Agent, the Agent's share of the Termination Penalty to which the Agent is entitled in accordance with the Clause 12.2 immediately upon production of the Agreement or a copy of the Agreement.

- 12.4 The Client agrees that the Agent's receipt for the payment of one half of the Termination Penalty under Clause 12.2 completely discharges the deposit holder from any duty to account to the Client for the Agent's share of the Termination Penalty paid to the Agent.

13. INDEMNITY

- 13.1 The Client shall be liable for and shall indemnify and defend the Agent, its directors, officers, employees, and agents from and against any and all losses, claims, demands, actions, suits (including costs and legal fees on an indemnity basis), and damages, including, but not limited to:
 - 13.1.1 injury, bodily or otherwise, to or death of any person;
 - 13.1.2 loss, damage to or destruction of property, whether real or personal, belonging to the Client, the Agent or others; andarising from or in connection with any act or omission or negligence of the Client or any other person (other than the Agent) or arising out of or in connection with the Property or this Appointment of Property Agent.

14. CLIENT AND AGENT'S ACKNOWLEDGEMENTS

The Client and the Agent acknowledge that:

- 14.1 they have received a copy of the Property Occupations Form 6 - Appointment and reappointment of a property agent, resident letting agent or property auctioneer, the Schedule, these Essential Terms and Conditions and any additional annexures;
- 14.2 they have read and fully understood the Property Occupations Form 6 - Appointment and reappointment of a property agent, resident letting agent or property auctioneer, the Schedule, these Essential Terms and Conditions and any additional annexures, including the warranties and indemnities contained therein and agree to be fully bound by them.

15. ENTIRE AGREEMENT

- 15.1 This document constitutes the entire agreement of the parties with respect to the subject matter of this document and supersedes all prior negotiations or expressions of intent or understandings with respect to the appointment of the Agent to the Property.

Annexure A: Authority to Conduct the Sale of Property or Land by Openn Negotiation.

Parties

The person or persons specified in Part 1 of this Property Occupations Form 6.

Seller(s): _____

The real estate agent duly authorised to act on behalf of the Seller pursuant to the *Property Occupations Act 2016 (QLD)* and *Property Occupations Regulation 2014 (QLD)* specified in Part 2 of this Property Occupations Form 6.

Agent / Licensee: _____

1. It is agreed

- 1.1 The Parties note and confirm the Seller 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 Bidders Registration, Authority to Bid and Terms of Use (Queensland) (attached schedule 1).
- 1.2 The Seller agrees to be bound by the Bidders Registration, Authority to Bid and Terms of Use during the Openn Negotiation Period. Neither the Seller or the Agent will accept or consider any offers to purchase the Property, in any form, that do not comply with the process to become a Qualified Bidder as detailed in the Bidders Registration, 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.
- 1.3 The Parties acknowledge where there is a conflict between any additional or special condition normally inserted by the Seller's solicitor/conveyancer into the Contract for Houses and Residential Land, or the Contract for Residential Lots in a Community Title Scheme (as the case may be), the Bidders Registration, Authority to Bid and Terms of Use (Queensland) will prevail to the extent of any inconsistency.
- 1.4 The Seller will be bound by the Bidders Registration, Authority to Bid and Terms of Use (Queensland) during the Openn Negotiation.

2. Definitions and Interpretation

In this document:

- 2.1 **Address** means the address of the Property specified in Part 3 of this Property Occupations Form 6;
- 2.2 **Act** means, unless the context indicates otherwise, the *Property Occupations Act 2014 (QLD)*.
- 2.3 **App** means the specialised software program designed to facilitate the Openn Negotiation and known as "Openn";
- 2.4 **Auctioneer** means the auctioneer appointed by the Agent to conduct the Openn Negotiation, who must be a licensed auctioneer pursuant to the Act;
- 2.5 **Bidders Registration, Authority to Bid and Terms of Use (Queensland)** means the Terms set out in the attached Schedule 1, which are to be read in conjunction with this Annexure A;
- 2.6 **Campaign Bidding Stage** means the stage of the Openn Negotiation that commences when the Property is listed on the App and ends at the commencement of the Final Bidding Stage;
- 2.7 **Developer** means PP Valley Pty Ltd ACN 612 338 477;
- 2.8 **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;
- 2.9 **Land** means the land specified in Part 3 of this Property Occupations Form 6;
- 2.10 **Openn Negotiation** means the process for selling the Property set out in the Bidders Registration, Authority to Bid and Terms of Use (Queensland);
- 2.11 **Owner of Openn Negotiation** means Cleverbons Pty Ltd ACN 607 908 636;
- 2.12 **Price** has the meaning set out in the Bidders Registration, Authority to Bid and Terms of Use (Queensland);
- 2.13 **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;
- 2.14 **Qualified Bidder** has the meaning set out in the Bidders Registration, Authority to Bid and Terms of Use (Queensland);
- 2.15 **Reserve Price** means the reserve price specified in Section 3 of Part 4 of this Property Occupations Form 6 or such other price nominated by the Seller to the Agent in writing;
- 2.16 **Sale By Private Treaty Period** means the period, subject to Part 6 of this Property Occupations Form 6, commencing on the conclusion of the Final Bidding Stage;
- 2.17 **Seller's Bid's** means a bid or bids made by or on behalf of a Seller in accordance with the Act.

3. Agreement to sell by Openn Negotiation

- 3.1 Pursuant to Section 1 of Part 4 this Property Occupations Form 6 the Seller appoints the Agent to offer the Property for sale by Openn Negotiation in accordance with the Act and with the Openn Negotiation to take place at the date and time specified in Clause 10 of this Annexure A.
- 3.2 The Seller acknowledges that Openn Negotiation is a type of auction within the meaning of that term in the Act.
- 3.3 The Seller acknowledges that Seller's Bids as defined are not compatible with Openn Negotiation and agrees not to make or seek to make a Seller's Bid or instruct the Agent and/or Auctioneer to make a Seller's Bid during the Openn Negotiation.
- 3.4 The Seller acknowledges that in the event of the Final Bidding Stage taking place the Seller must be available to provide instructions to the Agent and Auctioneer at such time.

4. Conditions of Sale

- 4.1 The sale of the Property is to be conducted in accordance with the Bidders Registration, Authority to Bid and Terms of Use (Queensland) and the Seller agrees to be bound by the terms of the Openn Negotiation as described in the Bidders Registration, Authority to Bid and Terms of Use (Queensland), including, but not limited to, the Campaign Bidding Stage and the Final Bidding Stage.
- 4.2 The Seller acknowledges that the Openn Negotiation will be primarily conducted through the App in accordance with the Bidders Registration, Authority to Bid and Terms of Use (Queensland).
- 4.3 The Openn Negotiation is to be subject to the Reserve Price and 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.
- 4.4 The Final Bidding Stage will commence on the auction date and time set out in clause 10 or at such other date and time nominated by the Seller.

5. Authority

- 5.1 In the event the Seller is unable to be present at the location from where the Auctioneer is conducting this sale, the Seller appoints and authorises the Auctioneer as the Seller's agent to do the following:
- (a) Sign the contract for the sale of the Property on the Seller's behalf as set out in the Bidders Registration, Authority to Bid and the Terms of Use (Queensland); and
- (b) make any amendments to the Contract that the Seller has authorised; and
- (c) execute the Contract on the Seller's behalf; and
- (d) complete the exchange of Contract so that the contracts become binding.
- 5.2 The appointment and authority in clause 5.1 is non-revocable.

6. Liability

- 6.1 The Seller releases and holds harmless the Agent, Auctioneer, 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 Seller 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 Seller 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 Seller acknowledges the Developer will use reasonable efforts to maintain an uninterrupted service for the App but neither the Agent or the Developer guarantee this and, to the extent permitted by law, neither the Agent or the Developer give any promises or warranties (whether express or implied) about the availability of the App that the App will be uninterrupted or error-free. Notification functionality in the App may not occur in real time. That functionality is subject to delays beyond the control of the Agent and the Developer, including without limitation, delays or latency due to the Seller's physical location or the Seller's wireless data service provider's network.
- 6.5 To the extent permitted by law, and without limiting any rights that the Seller may have under the Australian Consumer Law, the Agent's and the Developer's liability to the Seller for any failure by the Agent or the Developer to comply with any statutory guarantee under the 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 (www.openn.com.au), the App, or the servers that make them available are free of software viruses;
 - b. The functions effected by the software contained on the website or the App will operate uninterrupted or are error-free; and
 - c. Error and defects in the website or the App or the software contained in them will be corrected in a timely manner or at all.

8. Seller's Warranty

- 8.1 The Seller warrants that the Seller has the authority to enter into this agreement and that no other person holds an Property Occupations Form 6 for the Property.

9. Disputes

- 9.1 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 Queensland (REIQ), a Dispute Resolution Centre, the civil and criminal legal systems, the Australian Competition and Consumer Commission and Office of Fair Trading, Queensland.

10. Time and Date of Open Negotiation

The Final Bidding Stage of the Openn Negotiation will commence at _____ am/pm on _____
or at such other date and time _____
nominated by the Seller initials

11. Execution

Seller's Signature

X

Name of Seller: _____

Date: _____

Seller's Signature

X

Name of Seller: _____

Date: _____

Agent or Agent's Representative Signature

X

Name of Agent or Agent's Representative: _____

Date: _____

Schedule 1

Bidders Registration, Authority to Bid and Terms of Use (Queensland)



1. Parties and Bidder Registration

BIDDER Full Legal Name(s): _____
OR:
Company Name: _____ A.B.N. _____
Name of the Officer of the Company: _____ Position Held: _____
(if the Property sells at the Openn Negotiation auction, then the bidder named above is taken to be the successful bidder)
Is the Buyer registered for GST and acquiring the Land for a creditable purpose? (select whichever is applicable) ☐ YES ☐ NO
Address: _____ Postcode: _____
Phone: _____ Mobile: _____ Email: _____

ID PROOF OF IDENTITY. Document type: _____ Document identifier: _____ Includes the Bidders name and address ☐
A proof of identity is a card or document that is issued by the government or a statutory authority of Queensland, the Commonwealth, another State or Territory, or by an authorised deposit taking institution. It can be a Drivers Licence and or a Passport.
Bidder's Solicitor: _____ Phone: _____ Email: _____
Solicitor's Address: _____ Postcode: _____

and;
SELLER Full Name(s): _____
Address: _____ Postcode: _____
Email: _____
(collectively referred to as the **Parties**)

2. Seller Agent and Auctioneer

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. Property for Auction

- 4.1 The Bidder, once Registered, intends to become a Qualified Bidder and bid on the following Property by way of Openn Negotiation:
Number: _____ Street: _____
Suburb: _____ Postcode: _____
Lot: _____ On: _____ Title Reference: _____
(the Property)
- 4.2 The Bidder acknowledges that Openn Negotiation
- 4.2.1 Is a type of Auction as defined in legislation and as outlined in these Terms.
- 4.2.2 Pursuant to s.107 Property, Occupations Act 2014 (QLD) the Auction is scheduled to conclude on ____/____/____ (DATE), however, the Seller reserves the right to move the Final Bidding Stage and Auction from a set day to a new date on no less than twelve (12) hours notice to the Bidder in accordance with clause 6.4;
- 4.2.3 will be conducted through the Openn Negotiation App in accordance with these Terms.

5. Definitions and Interpretations

- 5.1 In these Terms the following have these meanings:
- (1) **Act** means the Property, Occupations Act 2014 (QLD);
 - (2) **App** means the specialised software program designed to facilitate the Openn Negotiation and known as "Openn";
 - (3) **Auction** means an auction conducted through the App and in accordance with these Terms;
 - (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) **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;
 - (6) **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;
 - (7) **Developer** means PP Valley Pty Ltd ACN 612 338 477;
 - (8) **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;
 - (9) **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;
 - (10) **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;
 - (11) **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;
 - (12) **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;
 - (13) **Openn Negotiation** means the process set out in these Terms according to which the sale is to be conducted using the App;
 - (14) **Owner** means Cleverbons Pty Ltd ACN 607 908 636;

5. Definitions and Interpretations (continued)

- (15) **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;
- (16) **Price** means the price at which the Property will be sold being:
- (1) the Winning Bid on the App; or
 - (2) if the Property does not sell during the Final Bidding Stage, any written price agreed to by the Bidder and Seller;
- (17) **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;
- (18) **Reserve Price** is the minimum amount that the Seller will accept as the Winning Bid in the Openn Negotiation;
- (19) **Seller's Bids** means bids made by or on behalf of the Seller in accordance with the Act;
- (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 Bidder Registration, Authority to Bid and Terms of Use (Queensland);
- (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:
- (1) download the App;
 - (2) access and register their details in the App;
 - (3) select the Property in the App;
 - (4) enter their Pending Bid in the App;
 - (5) complete the Offer Terms in clause 7;
 - (6) provide their contact details to the Seller Agent;
 - (7) 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:

- (1) send a confirmation notification to the Qualified Bidder;
- (2) show when the Final Bidding Stage will commence as provided for in clause 6.5; and
- (3) 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:

- (1) other than the Price and as provided for in clause 6.6, the Seller and Qualified Bidders are bound by the Offer Terms;
- (2) 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;
- (3) 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;
- (4) 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;
- (5) the Auctioneer may withdraw bids, at their complete discretion;
- (6) the Seller may not bid personally, either directly or by an agent or other representative;
- (7) Dummy Bidding and/or encouraging another party to engage in Dummy Bidding constitutes a breach of these Terms and may have serious consequences;
- (8) 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;
- (9) 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;

- (10) 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:
- (1) the Final Bidding Stage must commence between 8.00am and 9.00pm on the Standard Time; and
 - (2) 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:
- (1) 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(3);
 - (2) 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;
 - (3) during the Final Bidding Stage, the App will indicate:
 - (a) 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(3); and
 - (b) the time period during which further bids may be made before the current bid is successful;
 - (4) 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;
 - (5) 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;
 - (6) once commenced, the Final Bidding Stage cannot be terminated by the Seller or any other party until all bids have been exhausted;
 - (7) the Auctioneer may remove bids at their complete discretion if they think they are likely to have been made in error or bad faith;
 - (8) 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;
 - (9) if any dispute arises in relation to any bid, such dispute will be determined by the Auctioneer;
 - (10) 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

- (1) The Property is offered for sale subject to a Reserve Price.
- (2) If no bid exceeds the Reserve Price in the Final Bidding Stage, the Seller is not obliged to sell the Property.
- (3) 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.
- (4) 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. Declaration and Terms (continued)

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:

- (1) all bids by the Sole Bidder must be made through the App;
- (2) the Seller may accept any bid made by a Sole Bidder through the App without commencing the Final Bidding Stage;
- (3) 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;
- (4) 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 (standard time)

the following day:

- (1) the sale must be on the Offer Terms (other than price); and
- (2) the sale will be conducted in accordance with these Terms.

6.9 Restarting the Openn Negotiation due to technical failure

- (1) The Auctioneer may allow the Openn Negotiation to time out during the Final Bidding Stage and be restarted if:
 - (a) they reasonably consider that a technical problem has occurred with the App such that the Openn Negotiation cannot properly proceed; or
 - (b) 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.
- (2) If the Auctioneer cancels the Openn Negotiation in accordance with clause 6.9(1), 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. In the event the Bidder does not sign the Contract, the Bidder appoints the Auctioneer as the Bidder's agent to incorporate the following information into the Contract:

7.1 Initial Deposit: \$ _____ payable at the time the Buyer signs the Contract

unless another time is specified as: _____

Balance Deposit: \$ _____ (if any) payable on _____

Default Interest Rate: _____ %

7.2 Settlement Date: _____

Settlement Location: _____

7.3 Finance Amount: _____

Financier: _____

Finance Date: _____

7.4 Excluded Fixtures: _____

7.5 Property Chattels including: _____

7.6 Building and/or Pest Inspection Date: _____

7.7 Other Special Conditions: _____

The Contract otherwise incorporates the Contract for Houses and Residential Land, as set out in Appendix A.

8. Authority

8.1 In the event the Bidder makes the Winning Bid, the Bidder agrees to sign the Contract and do everything else necessary to transfer the Property to the Bidder.

8.2 The Bidder irrevocably appoints the Auctioneer as the Bidder's agent to incorporate the Offer Terms set out in clause 7 and the Winning Bid as the Price and to sign the Contract on the Bidder's behalf.

8.3 Further to clause 8.2, 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:

- (1) complete the 'particulars' page on the Contract in respect of the Property, to incorporate the Offer Terms and the Price; and
- (2) 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 (as the case may be) 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.

Signed by the Bidder

X

Print Name: _____

Signed by the Bidder

X

Print Name: _____

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 Developer warrant, guarantee or make any representation that:

- (1) 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;

- (2) the functions contained in any software or applications contained on or integrated with the App will operate uninterrupted or are error-free;
- (3) any errors and defects in the App will be corrected; and
- (4) 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. Disclaimers and limitation of liability (continued)

- 9.4 To the extent permitted by law, the Seller, Seller Agent, Auctioneer, Owner and Developer exclude all liability for any loss or damage (including indirect and consequential loss) arising from or in connection with:
- (1) the Bidder's use of the App;
 - (2) the Bidder's reliance on any information provided on or through the App;
 - (3) any delay or inability to use any part of the App; and/or
 - (4) 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:
- (1) is not an auctioneer or real estate agent and does not claim to be;
 - (2) does not own or offer for sale the real estate listed on the App; and
 - (3) 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:
- (1) in the event that the Seller or Bidder fails to complete a transaction;
 - (2) for the completion of the sale;
 - (3) for the state and condition of any Property listed on the App or for verifying the Property listed on the App.
- 9.6 Liability and Indemnity
- 9.6.1 The Developer, 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:
- (1) any use, attempted use and/or any technical failure of the App;
 - (2) acting, or failing to act, on any information contained on or referred to on the App; and
 - (3) 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 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:
- (1) any use, attempted use and/or any technical failure of the App;
 - (2) acting, or failing to act, on any information contained on or referred to on the App; and
 - (3) any errors or defects in the App.
- 9.7 The Bidder indemnifies and will keep indemnified the Seller's Agent, Auctioneer, Owner and the Developer 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 Developer 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:
- (1) 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
 - (2) 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, Developer 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.

Bidders Declaration

The Bidder:

- (1) 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 as defined in the Act;
- (2) 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);
- (3) there is no cooling off period;
- (4) confirms that they have received, prior to signing this document, a copy of the form of the Contract and the Contract for Houses and Residential Land incorporated into the Contract for the Property; and
- (5) warrants that they have had an opportunity to obtain independent legal advice in relation to this document and the Contract

Bidder's Signature

X

Dated: _____

Bidder's Signature

X

Dated: _____

Seller/s Declaration & Authority

The Seller:

- (1) 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) confirm 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) confirm their instructions to nominate, authorise and appoint the Auctioneer as their agent to execute the Contract on the Seller's behalf; and
- (4) warrant they will not make a Seller bid and 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 Houses and Residential Land