

Buyer Authority to Bid and Terms of Use (Australian Capital Territory)

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's Agent

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

Seller's Agent _____

3. Bidder's Agent (if any)

The real estate agent duly authorised to act on behalf of the Bidder to buy the Property.

Bidder's Agent _____

4. The Bidder

4.1 Intends to become a Qualified Bidder and bid on the following property by way of Openn Negotiation:

Number _____ Street _____ Suburb/City _____

Block _____ Section _____ Division/District _____

(the **Property**)

4.2 Acknowledges that Openn Negotiation:

- Is a type of auction with a flexible bidding date / time pursuant to clause 6.4 and/or may be sold to a sole bidder pursuant to clause 6.7.
- Will be primarily conducted through the App in accordance with the Terms.

5. Definitions

5.1 In these terms the following have these meanings:

- Act** means the *Civil Law (Sale of Residential Property) Act 2003 (ACT)*, as amended from time to time;
- Agents Act** means the *Agents Act 2003 (ACT)*;
- App** means the specialised software program designed to facilitate the Openn Negotiation and known as "Openn";
- Auction** has the same meaning as the expression "public auction" in the Act;
- Auctioneer** means the Auctioneer appointed by the Seller or Seller's Agent to conduct the Openn Negotiation, who must be licensed to conduct an Auction pursuant to the Agents Act ;
- Bidder** means the bidder or bidders described in clause 1 and includes the Primary Bidder and any Other Bidders
- Bidders Record** has the meaning given by section 25 of the Act;
- 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;
- Contract** means the contract for the sale of the Property 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;
- Co-owner Bidder** means a bidder whose name is intended to appear on the certificate of title for the Property in the event of a Winning Bid, whether as joint tenants or tenants in common;
- Co-owner Bid** means a bid made by a Co-owner Bidder;
- Dummy Bidding** means a bid that contravenes section 29 of the Act;
- Fall of the Hammer** means the time in the Final Bidding Stage the Auctioneer through the App announces the Final Bidding Stage has ended and no further bids will be accepted from Qualified Bidders;
- Final Bidding Stage** means the stage of the Openn Negotiation at which Qualified Bidders make competing bids to purchase the Property through the App, with a time limit applying to the making of bids and the process concluding when the Property is sold or all bids are exhausted without the bidding reaching the Reserve Price;
- Highest Bidder** means the Qualified Bidder who makes the highest bid for the Property in the Final Bidding Stage that is accepted by the Auctioneer;
- Limited Authorisation** means the authorisation granted to the Auctioneer by the Bidder pursuant to clause 8;
- 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 by the Highest Bidder or Sole Bidder with the Seller for the purchase of the Property;
- Openn Negotiation** means the process set out in these Terms according to which the sale is to be conducted by Auction using the App;

5. Definitions (continued)

19. **Operator** means Openn Pty Ltd ACN 612 338 477
 20. **Owner of Openn Negotiation** means Openn Tech Pty Ltd ACN 607 908 636;
 21. **Pending Bid** means the opening bid made by a Bidder, through the App, that must be accepted by the Sellers Agent in order to become a Qualified Bidder. The Opening Bid may be increased subsequently;
 22. **Price** means the price at which the Property will be sold, being:
 - a. the Winning Bid on the App; or
 23. if the Property does not sell during the Final Bidding Stage, any price agreed by the Highest Bidder and Seller before midnight the day of the Final Bidding Stage; **Property** means the property described in clause 4 of this document and more particularly described in the Contract;
 24. **Qualified Bidder** means a bidder who has fulfilled the requirements set out in clause 6.1.1 and has been approved by the Seller in accordance with clause 6.1.7;
 25. **Required Documents** has the meaning given in the Act
 26. **Regulations** means the *Civil Law (Sale of Residential Property) Regulations 2004* (ACT);
 27. **Reserve Price** is the minimum amount that the Seller of the Property will accept as the Winning Bid in the Openn Negotiation;
 28. **Sole Bidder** means a Qualified Bidder who is the only Qualified Bidder in relation to the Property (i.e. the only bidder who has submitted to the Seller's Agent Offer Terms that have been accepted by the Seller such that the bidder may take part in the Openn Negotiation);
 29. **State** means the state or territory in which the Property is located;
 30. **Unique Identification Number** means the unique identifying number provided by the App to each Qualified Bidder to allow them to be identified in the App;
 31. **Winning Bid** means the successful bid made in the App which will be confirmed by the Bidder or the Auctioneer (pursuant to the Limited Authorisation) 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 a. 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.
- b. 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 Act and the Regulations).
- c. 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 A Bidder must become a Qualified Bidder to participate in the Openn Negotiation Process. In order to become a Qualified Bidder, the Bidder must, prior to the Final Bidding Stage and after inspecting the Property:
 - a. download the app or visit www.openn.com.au;
 - 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; and
 - h. provide to the Seller's Agent all details required by the Seller's Agent for the purposes of the Bidders Record, including:
 - the Bidder's name and address;
 - proof of identity for the Bidder, being a copy of an Australian driver licence or an Australian passport or any other proof of identity prescribed by the Regulation; and
 - if the Bidder is using a buyer's Agent, the licence number of the buyer's Agent; and
 - i. confirmation as to whether the Bidder is bidding for himself or herself or for someone else, and, if for someone else, the name and address of that person and a written authority from that person to bid on that person's behalf.
 - 6.1.2 The Offer Terms must state any and all terms that vary from those set out in the Contract as disclosed by the Seller upon which the Bidder is prepared to purchase the Property, other than the proposed price.
 - 6.1.3 A Bidder may waive their right to have the Contract as disclosed by the Seller, the Limited Authorisation and these Terms of Use reviewed by their solicitor/conveyancer.
 - 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 In the Campaign Bidding Stage, other Bidders may join the negotiation process.
 - 6.1.6 Throughout the Campaign Bidding Stage, any Bidder may increase their Pending Bid by providing further bids through the App.
 - 6.1.7 All Bidders will be able to see all accepted bids made on the Property.
 - 6.1.8 The Campaign Bidding Stage finishes at the commencement of the Final Bidding Stage.
 - 6.1.9 The Property can only be sold to a Sole Bidder pursuant to clause 6.7.
 - 6.1.10 Prior to the Final Bidding Stage, the Seller will determine whether:
 - a. the conditions in each submitted Offer Terms are such that the Seller agrees to that Bidder being eligible to participate in the Openn Negotiation; and
 - b. if so, that Bidder will become a Qualified Bidder and the Seller's 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 Seller's 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 6.4; and
 - c. provide the Qualified Bidder 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, 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. each Qualified Bidder will compete with other Qualified Bidders such that the successful buyer of the Property will be the Qualified Bidder who offers the highest price at or in excess of the Reserve Price;
 - f. the Auctioneer may withdraw bids, at the Auctioneer's complete discretion;
 - g. the Seller may not bid personally, either directly or by an agent or other representative;
 - h. Dummy Bidding and/or encouraging another party to engage in Dummy Bidding constitutes a breach of these Terms and may have serious consequences;
 - i. subject to clause 6.6, once commenced, the Openn Negotiation cannot be terminated by the Seller or any other party until:
 - i. all bids are exhausted; and
 - ii. if there is one or more bids at or exceeding the Reserve Price, the bid made by the Highest Bidder will be recorded as the Winning Bid and the amount 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 access, access to the account, and the making of each bid in the Openn Negotiation;
 - k. In the case of a Co-owner Bid, each Co-owner Bidder will be notified if a Co-owner makes a bid by the letter "V" appearing directly before the Unique Identification Number of the Co-owner Bidder.
- 6.4 Commencement of the Final Bidding Stage
- The Final Bidding Stage will commence at the date and time nominated by the Seller, which can be at any time, provided that:
- a. the Final Bidding Stage must commence between 8.00am and 9.00pm Canberra time;
 - b. notice of the time that the Final Bidding Stage will commence must be provided to Qualified Bidders with the App displaying the date and time that the Final Bidding Stage will commence; and
 - c. if the date and time for the Final Bidding Stage has changed since the Qualified Bidder entered their Pending Bid, the Seller's Agent and/or the Auctioneer will use reasonable endeavours to contact that Qualified Bidder no less than 12 hours prior to the commencement of the Final Bidding Stage to advise when the Final Bidding Stage will commence.
- 6.5 Conduct of Final Bidding Stage
- During the Final Bidding Stage, the Openn Negotiation will be conducted as follows:
- a. in order to participate in the Final Bidding Stage, each Qualified Bidder must log into the App and must acknowledge that:
 - i. the Qualified Bidder has read and understood the Auction conditions and acknowledges that they were displayed on the App at least 30 minutes before the Final Bidding Stage commences;
 - ii. the volume control on the Qualified Bidder's device for using the App is set to a level that will allow the Qualified Bidder to hear any announcements that are made through the App during the Final Bidding Stage;
 - b. the Final Bidding Stage will commence with certain audio announcements in accordance with the Act and the Regulations;
 - c. 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;
 - d. 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;

6. Declaration and Terms (continued)

- e. during the Final Bidding Stage, the App will indicate:
 - i. the minimum sum by which any bid must exceed the previous bid, as determined by the Auctioneer through the App; and
 - ii. the time period during which further bids may be made before the current bid is successful;
 - iii. including by way of an audible announcement, the Unique Identification Number of each Qualified Bidder who makes a bid that is higher than the previous bid;
- f. 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;
- g. the ultimate Buyer of the Property will be the Qualified Bidder who bids the highest sum at or in excess of the Reserve Price that is accepted by the Auctioneer at the Fall of the Hammer.
- h. once commenced the Final Bidding Stage cannot be terminated by the Seller or any other party until all bids have been exhausted or the time period permitted by the App has expired;
- i. the Auctioneer may remove bids at the Auctioneer's complete discretion if the Auctioneer considers that a bid is likely to have been made in error or bad faith;
- j. as soon as practicable after the App records that the Highest Bidder has made the Winning Bid, the Highest Bidder or Auctioneer (on behalf of the Highest Bidder pursuant to the Limited Authorisation) will complete the Contract to incorporate the Offer Terms and the Price and sign the Contract;
- k. if any dispute arises in relation to any bid, such dispute will be determined by the Auctioneer, which determination may include (without limitation) resubmitting the Property for sale at the last undisputed bid or restarting the bidding.
- l. 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; and
- m. no negotiation as to the Offer Terms will occur after the Bidder has been accepted as a Qualified Bidder.

6.6 Reserve Price

- The Property is offered for sale subject to a Reserve Price:
- a. if no bid exceeds the Reserve Price in the Final Bidding Stage, the Seller is not obliged to sell the Property;
 - b. if one or more bids in the Final Bidding Stage equals or exceeds the Reserve Price, then the Seller must sell the Property to the Highest Bidder;
 - c. if none of the bids made by the Qualified Bidders equal or exceed the Reserve Price, the Seller may choose to negotiate with one or more of the Qualified Bidders to sell the Property, provided that the Seller must first negotiate with the Qualified Bidder who made the highest bid during the Final Bidding Stage.

7. Offer Terms

The Bidder's offer to purchase the Property is subject to the following conditions which are incorporated into the Contract as attached at Appendix A should the Bidder make the Winning Bid.

7.1 Deposit: \$ _____ or _____ % of the Price of which
 \$ _____ paid at exchange, with the balance paid
 within _____ business days of the exchange of contract.

7.4 Other special conditions: _____

7.2 Possession and/or Settlement Date _____

7.3 Finance Lender: _____

Amount required: _____

Latest Date: _____

The contract otherwise incorporates The Contract for Sale of Land and Section 32 set out in Appendix A.

8. Limited Authorisation

- 8.1 The Bidder irrevocably authorises the Auctioneer 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.

This general non-enduring power of attorney is made under Part 2 of the **Power of Attorneys Act 2014** and has effect as a deed. and has effect as a deed.

This authorisation is made on: _____ (insert date of authorisation)

I/we, _____ (insert name of person(s) providing authorisation)

of _____ (insert address of person(s) providing authorisation)

authorise _____ (insert name of Auctioneer)

of _____ (insert address of Auctioneer)

to do the following things on my 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, I authorise the Auctioneer to:

- a. complete the 'Schedule page on the Contract in respect of the Property, to incorporate the Offer Terms and the Price; and
- b. to execute the Contract in respect of the Property on behalf of the Bidder and exchange the Contract with the Seller of the Property.

I/we specify that this irrevocable authorisation begins immediately and expires automatically and without further effect after the Final Bidding Stage pursuant to clause 6.5.

- 8.3 The Bidder agrees to ratify and confirm anything the Auctioneer lawfully does in accordance with this clause.
- 8.4 The Seller's Agent and the Sellers Agent's directors or licensed sales representatives have the right, upon confirmation of the Winning Bid in the App, to accept the Highest Bidder's offer or Sole Bidders offer on behalf of the Seller on the Fall of the Hammer and the conclusion of the Openn Negotiation.

Signed as a deed by
 (print name) _____

X

Signed as a deed by
 (print name) _____

X

9. Disclaimers and limitation of liability and indemnity

9.1 Use of the App

The use of the Openn Negotiation App and all information and data provided on or through the App is entirely at the Bidders risk. The Bidder is responsible for all Bidder activity in connection with accessing and using the App. Neither the Seller, Sellers 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. 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 Bidders situation. To the extent permitted by law, the Seller, Sellers Agent, Auctioneer, Owner and Operator exclude all liability for any loss or damage (including direct and consequential loss) arising from or in connection with:
 - i. the Bidders use of the App;
 - ii the Bidders reliance on any information provided on or through the App;
 - iii. any delay or inability to use any part of the App; and/or
 - iv. any failure to provide services or any information through the App.

9.2 Owners Service

9.2.1 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.

9.2.2 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; and/or for verifying the Property listed on the App.

9.3 Liability and Indemnity

9.3.1 The Operator, Owner, Seller's Agent, Auctioneer and their officers, directors and employees will not be held liable, in any circumstances, for any loss or damages which arise out of:

- 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.

9.3.2 The Qualified Bidder and the Seller release and hold harmless the Seller's Agent, Auctioneer, Owner and the Operator and their officers, directors and employees from and against all actions, suits, demands, claims, losses, damages and costs whatsoever, whether at law or in equity arising out of:

- 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. Users of the App will indemnify and keep indemnified the Seller's Agent, Auctioneer, the Owner and the Operator and their officers, directors and employees from and against all actions, suits, demands, claims, losses, damages and costs whatsoever, whether at law or in equity arising out of any breach of these App Terms and Conditions by You.

9.4 The Seller, Seller's 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, the Limited Authorisation, 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. Bidder's 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 and there is no cooling off period;
3. The Bidder confirms they have received, prior to signing this document, the Contract, including the Required Documents in respect of the Property; and
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 yet been signed by the Other Bidder(s) then the Primary Bidder acknowledges that the Primary Bidder is the sole bidder and will be the sole purchaser if they are the successful bidder.
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 indemnified the Operator, the Owner, the Agent and the Auctioneer from and against all actions, suits, demands, claims, losses, damages and costs whatsoever, whether at law or in equity arising out of any breach of the warranties in this clause by the Primary Bidder.
7. The Other Bidder(S) authorise the Primary Bidder to bid on their behalf to purchase the Property and acknowledges that they will be included as the purchasers if the Primary Bidder is the Successful Bidder

Primary Bidder's Signature

X

Dated: _____

Other Bidder's Signature

X

Dated: _____

14. Seller/s Declaration

In the event the Seller is unable to be present at the location from where the Seller's Agent and/or Auctioneer is conducting this sale, 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 Seller Agent 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 direct the Seller Agent to execute the Contract on the Seller's behalf; and
4. 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 and Section 32 along with any other conditions incorporated into that template.