

# Open Negotiation

## Authority to conduct the sale of land or strata title by Open Negotiation

### Parties

<b>(Seller)</b>	
Full Name/s:	<input type="text"/>
	<input type="text"/>
Address:	<input type="text"/>
Suburb:	<input type="text"/> Postcode: <input type="text"/>
Mobile:	<input type="text"/> Email: <input type="text"/>
Mobile:	<input type="text"/> Email: <input type="text"/>

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

<b>(Agent)</b>
----------------

It is agreed

### 1. Agreement to Sell by Open Negotiation

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

<b>(Address)</b>	
Number: <input type="text"/>	Street: <input type="text"/>
Suburb: <input type="text"/>	
Whole/ Part Lot: <input type="text"/>	Survey/ Strata/ Deposited/ Plan/ Diagram No: <input type="text"/>
Whole/ Part Cert. Of Title Vol: <input type="text"/>	Folio: <input type="text"/> <b>(Land)</b>

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

<b>(Chattels)</b>
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<b>(Property)</b>
1.2 The Open Negotiation referred to in clause 1.1 above is to take place at <input type="text"/> am/pm on <input type="text"/> <span style="float: right;">initials <input type="text"/></span> Or at such other date and time nominated by the Seller.

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

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

### 2. Conditions of sale by Open Negotiation

2.1 Subject to clause 1.4, the sale of the Property is to be conducted in accordance with the conditions of the Open Negotiation set out in the template Contract for the Sale of Land or Strata Title by Open Negotiation attached and marked Annexure A **(Conditions)** and the Seller agrees to be bound by the terms of the Open Negotiation as described in those Conditions, including, but not limited to, the Campaign Bidding Stage and the Final Bidding Stage (as those terms are defined in the Conditions).

2.2 The Open Negotiation is to be subject to a reserve price, being \$ <input type="text"/> or such other price nominated by the Seller to the Agent in writing. <b>(Reserve Price)</b> <span style="float: right;">initials <input type="text"/></span>
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### 3. Authorities granted to Agent

#### 3.1 The Seller authorises:

- (1) The Agent or a sales representative or real estate agent employed by the Agent: and
- (2) The Auctioneer,

initials 

To sign the contract for the sale of the Property on the Sellers behalf in Open Negotiation.

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

- (1) The Agent or a sales representative or real estate agent employed by the Agent: and
- (2) The Auctioneer,

initials 

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

3.3 The Seller authorises the Agent to accept any deposit paid by the Buyer and to hold it as a stakeholder, or in the case of strata titled property being sold before registration of the strata plan, as trustee for the buyer in accordance with section 70 of the Strata Titles Act, 1985 (WA).

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

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

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

### 4. Exclusive Agency

#### 4.1 The Seller:

- 1) grants the Agent an exclusive right to act as agent to sell the Property for a period

of \_\_\_\_\_ concluding at 12:00am on

initials 

(Exclusive Authority Period)

### 5. Agent's Fee

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

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

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

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\* (2)  % of the price for which the Property is sold (including GST)

(For example, if the actual selling price is \$ \_\_\_\_\_, then the Agent's Fee inclusive of GST will be \$ \_\_\_\_\_) initials

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

initials 

(Agent's Fee)

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

- (1) the Property is sold or transferred during the Exclusive Authority Period;
- (2) at any time during the Exclusive Authority Period a buyer who has been Introduced to the Seller of the Property contracts to purchase the Property, causes another person to contract to purchase the Property or otherwise becomes a legal or beneficial owner of the Property; or
- (3) the Seller accepts an offer by a buyer in any of the circumstances described in this clause 5.2 and the Sale is not completed due to the fault of the Seller.

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#### Sale Takes Place After Exclusive Authority Period

5.3 The Seller **\*agrees/does not agree (\*cross out whichever does not apply)** to pay the Agent's Fee to the Agent in circumstances where the sale of the Property to a buyer Introduced to the Property by the Agent during the Exclusive Authority Period does not take place until after the expiration of that periods, provided that the sale takes place within \_\_\_\_\_ days following the expiration of that periods. Should the Seller elect in this clause not to be liable to pay a selling fee to the Agent if the sale of the Property to a buyer does not take place until after the expiration of the Exclusive Authority Period, then the Agent shall not be entitled to a selling fee except to the extent that the Agent is otherwise entitled to Expenses in the manner referred to in this Agreement if the Property is not sold.

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

#### Seller Introduces Buyer

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

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#### 6. When Fees Payable

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

- (1) on settlement of the transaction pursuant to which the Agent is entitled to be paid that fee in accordance with clause 5; or
- (2) immediately if the transaction does not settle due to the fault of the Seller in accordance with clauses 5.2(3).

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

- (1) where a transaction is to be completed by way of a single payment over and above the deposit, when the purchase price is paid in full; or
- (2) where the buyer is obliged to make two or more payments to the Seller over and above any deposit paid within 28 days of the execution of the contract before the buyer is entitled to a transfer of the Property, the sooner of:
  - (a) the buyer being entitled to possession, occupation or control of the Property; or
  - (b) the time at which the buyer has paid at least 10% of the purchase price of the Property.

#### 7. Expenses

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

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7.2 The Agent may incur:

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

**\*(a)** as the Agent in his or her discretion deems appropriate, with those costs not to exceed \$\_\_\_\_\_ without the written authority of the Seller

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**OR**

**\*(b)** as per the attached schedule \_\_\_\_\_  
(**\*cross out whichever does not apply**)

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**AND**

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

**\*(a)** as the Agent in his or her discretion deems appropriate, with those costs not to exceed \$\_\_\_\_\_ without the written authority of the Seller

initials

**OR**

**\*(b)** as per the attached schedule \_\_\_\_\_  
(**\*cross out whichever does not apply**)

initials

**(Expenses)**

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

7.4 The Seller agrees to pay \$\_\_\_\_\_ (**Pre-Paid Expenses Sum**) to the Agent upon execution of this authority, which is to be held in the Agent's trust account and used to pay the Expenses as they arise from time-to-time and become due in accordance with clauses 7.6 and/or 9.1.

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

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

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

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

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#### 8. Cost of Agents in Advertisements

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

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

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## 9. Withdrawal of the Property from Sale

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

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

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## 10. Chattels

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

## 11. Vacant Possession

11.1 The Property is sold: (**\*cross out whichever does not apply**)

- \* (1) with vacant possession; or  
\* (2) subject to the leases and encumbrances set out below:

**(Leases and Encumbrances)**

## 12. Liability

12.1 The Seller acknowledges that the Open Negotiation will be primarily conducted through the App in accordance with the Conditions.

12.2 The Seller releases and holds harmless the Agent, Auctioneer 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.

## 13. Seller's Warranty

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

## 14. Disputes

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

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

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

## 16. Special Conditions

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

**(Special Conditions)**

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

Signature of Seller

Date

Signature of Seller

Date

Signature of Agent or Agent's Representative

Date

## 17. Definitions and Interpretation

### 17.1 In this document:

- (1) **Address** means the address of the Property specified in clause 1.1;
- (2) **App** means the specialised software program designed to facilitate the Open Negotiation and known as “Openn”;
- (3) **Agent’s Fee** means the fee specified in clause 5.1;
- (4) **Auctioneer** means the auctioneer appointed by the Agent to conduct the Open Negotiation, who must be a licensed auctioneer pursuant to the Auction Sales Act 1973 (WA);
- (5) **Chattels** means fixtures and fittings and plant and equipment on the Land including the chattels specified in clause 1.1;
- (6) **Conditions** means the conditions of the Open Negotiation set out in the template Contract for the Sale of Land or Strata Title by Open Negotiation attached and marked Annexure A, as specified in clause 2.1;
- (7) **Developer** means Cleverbons Pty Ltd (ACN 607 908 636) and PP Valley Pty Ltd (ACN 612 338 447);
- (8) **Exclusive Authority Period** has the meaning specified in clause 4.1;
- (9) **Expenses** has the meaning specified in clause 7.2;
- (10) **GST** means the Goods and Services Tax introduced pursuant to A New Tax System (Goods and Services Tax) Act 1999 (Cth);
- (11) **Introduce and/or Introduced** means, whether in the context of an introduction by the Agent or the Seller, that the person who claims to have introduced the buyer concerned has been an effective cause of the relevant sale;
- (12) **Land** means the land specified in clause 1.1;
- (13) **Leases and Encumbrances** means the leases and encumbrances specified in clause 11.1;
- (14) **Open Negotiation** means the sale of the Property using the process set out in the Conditions;
- (15) **Pre-Paid Expenses Sum** means the sum specified in clause 7.4;
- (16) **Property** means the property located at the Address, being the Land together with all buildings and other fixed improvements erected upon the Land together with the Chattels, as specified in clause 1.1;
- (17) **Reserve Price** has the meaning specified in clause 2.2;
- (18) **Special Conditions** means the Special Conditions (if any) specified in clause 16;
- (19) Reference to:
  - (a) one gender includes the others;
  - (b) the singular includes the plural and the plural includes the singular;
  - (c) a person includes a body corporate;
  - (d) a party includes the party’s executors, administrators, successors and permitted assigns;
  - (e) a statute, regulation or provision of a statute or regulation (Statutory Provision) includes:
    - (i) the Statutory Provision as amended or re-enacted from time to time; and
    - (ii) a statute, regulation or provision enacted in replacement of that Statutory Provision;
  - (f) money is to Australian dollars, unless otherwise stated;
  - (g) clauses, subclauses, subclauses and schedules by number are references to clauses, subclauses, subclauses and schedules respectively so numbered in this agreement;
  - (h) anything (including any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually; and
  - (i) writing includes typewriting and lithography and other methods of producing words in a visible form;
- (20) Including and similar expressions are not words of limitation.
- (21) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (22) Headings are for convenience only and do not form part of this agreement or affect its interpretation.
- (23) A provision of this agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the agreement or the inclusion of the provision in the agreement.
- (24) If an act must be done on a specified day which is not a business day, it must be done instead on the next business day.

A TRUE COPY OF THIS DOCUMENT HAS BEEN RECEIVED BY THE SELLER

Signature of Seller

Signature of Seller

Date

ATTACHMENT: {EXAMPLE COPY OF CONTRACT OF SALE INCLUDING ANNEXURE A: OPEN NEGOTIATION CONDITIONS}

# contract for sale of land or strata title by offer and acceptance



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OF WESTERN AUSTRALIA

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THE REAL ESTATE INSTITUTE  
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**NOTICE:** Contracts must be lodged with the Office of State Revenue for duty assessment within two (2) months of the date the last person signs the Contract  
**WARNING** - If the Buyer is not an Australian Citizen or Permanent Resident or a New Zealand Citizen then FIRB approval (and a special condition to this Contract) may be required.  
**WARNING** - If the Purchase Price is \$750,000 or more, Withholding Tax **may** apply to this Contract (see 2018 General Condition 3.7).  
**WARNING** - If GST is relevant to this transaction then the relevant GST provision should be outlined in the Special Conditions or an attached GST Annexure.

TO:

As Agent for the Seller / Buyer

**THE BUYER** (FULL NAME AND ADDRESS)

EMAIL: The Buyer consents to Notices being served at:

OFFERS TO PURCHASE (as joint tenants/tenants in common specifying the undivided shares) the Land and Property Chattels set out in the Schedule ("the Property") with vacant possession unless stated otherwise in the Special Conditions at the Purchase Price on the terms set out in the Schedule, the Conditions and the Special Conditions.

## SCHEDULE

The Property at:

Lot [ ] Deposited/Survey/Strata/Diagram/Plan [ ] Whole / Part Vol [ ] Folio [ ]

A deposit of \$ [ ] of which \$ [ ] is paid now and \$ [ ] to be paid within [ ] days of acceptance to be held by [ ]

("the Deposit Holder"). The balance of the Purchase Price to be paid on the Settlement Date.

Purchase Price **See Annexure A - Open Negotiation Conditions**

Settlement Date

Property Chattels including

### FINANCE CLAUSE IS APPLICABLE

LENDER [ ]

(NB. If blank, can be any Lender)

LATEST TIME: 4pm on: [ ]

AMOUNT OF LOAN: [ ]

SIGNATURE OF BUYER [ ]

### FINANCE CLAUSE IS NOT APPLICABLE

Signature of the Buyer if Finance Clause IS NOT applicable

## SPECIAL CONDITIONS

- Annexure A - Open Negotiation Conditions form part of this contract. The sale of the property shall be conducted pursuant to the process known as Open Negotiation and shall take place in accordance with the Open Negotiation conditions (attached and marked Annexure A - Open Negotiation Conditions)

**NOTE: IF THIS DOCUMENT IS ON SEPARATE PAGES OR IS TO BE FAXED THEN ALL PARTIES SHOULD SIGN ALL PAGES.**

# contract for sale of land or strata title by offer and acceptance



**REIWA**  
REAL ESTATE INSTITUTE  
OF WESTERN AUSTRALIA

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THE REAL ESTATE INSTITUTE  
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## CONDITIONS

### 1. SUBJECT TO FINANCE

If the Buyer signs the 'Finance Clause is not Applicable' box in the Schedule, or if no information is completed in the 'Finance Clause is Applicable' box in the Schedule, then this Clause 1 does not apply to the Contract.

If any information is completed in or the Buyer signs the 'Finance Clause is Applicable' box in the Schedule then this Clause 1 applies to the Contract.

#### 1.1 Buyer's Obligation to Apply for Finance and Give Notice to the Seller

- (a) The Buyer must:
  - (1) immediately after the Contract Date make a Finance Application to the Lender using, if required by the Lender, the Property as security; and
  - (2) use all best endeavours in good faith to obtain Finance Approval.
- (b) If the Buyer does not comply with Clause 1.1(a) or 1.1(c)(i) then the Contract will not come to an end under Clause 1.2 and the Buyer may not terminate the Contract under Clause 1.3. The rights of the Seller under this Clause 1.1 will not be affected if the Buyer does not comply with Clause 1.1.
- (c) The Buyer must immediately give to the Seller or Seller Agent:
  - (1) an Approval Notice if the Buyer obtains Finance Approval; or
  - (2) a Non Approval Notice if the Finance Application is rejected;at any time while the Contract is in force and effect.

#### 1.2 No Finance Approval by the Latest Time: Non Approval Notice Given

This Contract will come to an end without further action by either Party if on or before the Latest Time:

- (a) written Finance Approval has not been obtained or the Finance Application has been rejected; and
- (b) the Buyer gives a Non Approval Notice to the Seller or Seller Agent.

#### 1.3 No Finance Approval by the Latest Time: No Notice Given

If by the Latest Time:

- (a) the Buyer has not given an Approval Notice to the Seller or Seller Agent; and
  - (b) the Buyer has not given a Non Approval Notice to the Seller or Seller Agent;
- then this Contract will be in full force and effect unless and until either the Seller gives written Notice of termination to the Buyer or the Buyer terminates this Contract by giving a Non-Approval Notice to the Seller or Seller Agent.

#### 1.4 Finance Approval: Approval Notice Given

If by the Latest Time, or if Clause 1.5 applies, before the Contract is terminated:

- (a) Finance Approval has been obtained; and
  - (b) the Buyer has given an Approval Notice to the Seller or Seller Agent;
- then this Clause 1 is satisfied and this Contract is in full force and effect.

#### 1.5 Notice Not Given by Latest Time: Seller's Right to Terminate

If by the Latest Time the Buyer has not given an Approval Notice or a Non Approval Notice to the Seller or Seller Agent then at any time until an Approval Notice or a Non Approval Notice is given, the Seller may terminate this Contract by written Notice to the Buyer.

#### 1.6 Buyer Must Keep Seller Informed: Evidence

- (a) If requested in writing by the Seller or Seller Agent the Buyer must:
  - (1) advise the Seller or Seller Agent of the progress of the Finance Application; and
  - (2) provide evidence in writing of the making of a Finance Application in accordance with Clause 1.1 (a) and of any loan offer made, or any rejection; and
  - (3) if applicable, advise the Seller or Seller Agent of the reasons for the Buyer not accepting any loan offer.
- (b) If the Buyer does not comply with the request within 2 Business Days then the Buyer authorises the Seller or Seller Agent to obtain from the Lender the information referred to in Clause 1.6(a).

2. Acceptance of this offer will be sufficiently communicated to the Buyer if verbal or written notification is given by the Seller or Seller's Agent to the Buyer that the acceptance has been signed by the Seller.
3. The 2018 General Conditions are incorporated into this Contract so far as they are not varied by or inconsistent with the Conditions or Special Conditions of this Contract.
4. The parties consent to the information in this Contract being used/disclosed by REIWA and the Seller Agent in accordance with the privacy collection notices pursuant to the Australian Privacy Principles that appear on the REIWA and Seller Agent's websites.

#### 1.7 Right To Terminate

If a Party has the right to terminate under this Clause 1, then:

- (a) termination must be effected by written Notice to the other Party;
- (b) Clauses 23 and 24 of the 2018 General Conditions do not apply to the right to terminate;
- (c) upon termination the Deposit and any other monies paid by the Buyer must be repaid to the Buyer;
- (d) upon termination neither Party will have any action or claim against the other for breach of this Contract, except for a breach of Clause 1.1 by the Buyer.

#### 1.8 Waiver

The Buyer may waive this Clause 1 by giving written Notice to the Seller or Seller Agent at any time before the Latest Time, or if Clause 1.5 applies, before the Contract is terminated. If waived this Clause is deemed satisfied.

#### 1.9 Definitions

In this Clause:

**Amount of Loan** means either the amount referred to in the Schedule or any lesser amount of finance referred to in the Finance Application. If the amount referred to in the Schedule is blank, then the amount will be an amount equivalent to the Purchase Price.

**Approval Notice** means a Notice in writing given by the Buyer or the Lender to the Seller, or Seller Agent to the effect that Finance Approval has been obtained.

**Finance Application** means an application made by or on behalf of the Buyer to the Lender to lend any monies payable under the Contract.

**Finance Approval** means:

- (a) a written approval by the Lender of the Finance Application or a written offer to lend or a written notification of an intention to offer to lend made by the Lender; and
- (b) for the Amount of Loan; and
- (c) which is unconditional or subject to terms and conditions:
  - (1) which are the Lender's usual terms and conditions for finance of a nature similar to that applied for by the Buyer; or
  - (2) which the Buyer has accepted by written communication to the Lender, but a condition which is in the sole control of the Buyer to satisfy will be treated as having been accepted for the purposes of this definition; or
  - (3) which, if the condition is other than as referred to in paragraphs (1) and (2) above includes:
    - (i) an acceptable valuation of any property;
    - (ii) attaining a particular loan to value ratio;
    - (iii) the sale of another property; or
    - (iv) the obtaining of mortgage insurance; and

**Latest Time** means:

- (a) the time and date referred to in the Schedule; or
- (b) if no date is nominated in the Schedule, then 4pm on the day falling 15 Business Days after the Contract Date.

**Lender** means:

- (a) the lender nominated in the Schedule; or
- (b) if no lender is nominated in the Schedule, any bank, building society, credit union or other institution which makes loans and in each case carries on business in Australia.

**Non Approval Notice** means a Notice in writing given by the Buyer or the Lender to the Seller, or Seller Agent to the effect that the Finance Application has been rejected or Finance Approval has not been obtained.

## BUYER [If a corporation, then the Buyer executes this Contract pursuant to the Corporations Act.]

Signature	Date	Signature	Date
Signature	Date	Signature	Date

## THE SELLER (FULL NAME AND ADDRESS) ACCEPTS the Buyer's offer

--	--

EMAIL: The Seller consents to Notices being served at:

[If a corporation, then the Seller executes this Contract pursuant to the Corporations Act.]

Signature	Date	Signature	Date
Signature	Date	Signature	Date

### RECEIPT OF DOCUMENTS

The Buyer acknowledges receipt of the following documents:

1. This offer and acceptance
2. 2018 General Conditions
3. Form 28 and its attachments (if a strata lot)
4. Other

Signature	Signature
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### RECEIPT OF DOCUMENTS

The Seller acknowledges receipt of the following documents:

1. This offer and acceptance
2. 2018 General Conditions
3. Other

Signature	Signature
-----------	-----------

## CONVEYANCER The Parties appoint their Representative below to act on their behalf and consent to Notices being served on that Representative's email address.

BUYER'S REPRESENTATIVE		SELLER'S REPRESENTATIVE	
Name			
Signature			

The copyright of this Contract by Offer and Acceptance is the property of the Real Estate Institute of Western Australia (Inc.) ("REIWA") and neither the form nor any part of it may be used or reproduced by any method whatsoever or incorporated by reference or in any manner whatsoever in any other document without the consent of the REIWA.

01/18



# Annexure A - Open Negotiation Conditions

## 1 Definitions and interpretation

### 1.1 In these Open Negotiation Conditions:

- (1) **App** means the specialised software program designed to facilitate the Open Negotiation and known as "Openn";
- (2) **Attorney** means the attorney appointed pursuant to the Limited Power of Attorney granted by the Buyer pursuant to clause 8;
- (3) **Auctioneer** means the auctioneer appointed by the Seller's Agent to conduct the Open Negotiation, who must be a licensed auctioneer pursuant to the Auction Sales Act 1973 (WA);
- (4) **AWST** means Australian Western Standard Time;
- (5) **Buy Now Bidder** means an Eligible Bidder who takes the Buy Now Option in the App and thereby confirms that the Eligible Bidder wishes to buy the Property at the "Buy Now Price" prior to the Final Bidding Stage;
- (6) **Buy Now Option** means the option that may be available during the Campaign Bidding Stage unless/until the Seller removes the Buy Now Option from the App, to buy the Property for the Buy Now Price by selecting the "Buy Now" button in the App;
- (7) **Buy Now Price** means the price for which Eligible Bidders may immediately purchase the Property without the need to negotiate further, being a price that is displayed on the App that continually decreases in a Descending Price Auction format in the period leading up to the Final Bidding Stage but will always be higher than the Reserve Price;
- (8) **Buyer** means the buyer described on this Offer and Acceptance;
- (9) **Campaign Bidding Stage** means the stage of the Open 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;
- (10) **Contact Details** means telephone, mobile phone, text and email contact details;
- (11) **Descending Price Auction** means a method of sale that may be available during the Campaign Bidding Stage in which the price of the Property is reduced by the Seller in increments determined by the Seller as identified on the App until the Seller elects to remove the option from the App or an Eligible Bidder agrees to the price, at which time the Property is taken to be sold to that Eligible Bidder;
- (12) **Developer** means Cleverbons Pty Ltd ACN 607 908 636;
- (13) **Dummy Bidding** means false or fictitious bids made by non-genuine bidders with no intention of buying the Property;
- (14) **Eligible Bidder** means a bidder who has, prior to the Final Bidding Stage, submitted to the Seller's Agent an Offer Form that has been accepted by the Seller such that the bidder is eligible to participate in the Open Negotiation;
- (15) **Final Bidding Stage** means the stage of the Open Negotiation at which Eligible 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;
- (16) **Highest Bidder** means the Eligible Bidder who makes the highest bid for the Property in the Final Bidding Stage that is accepted by the Auctioneer;
- (17) **Limited Power of Attorney** means the power of attorney granted to the Auctioneer by the Buyer pursuant to clause 8 of these Conditions;
- (18) **Offer Form** means a duly completed written offer that is capable of being accepted;
- (19) **Offer and Acceptance** means this contract for the sale of land or strata title by Open Negotiation of which these conditions form a part;
- (20) **Open Negotiation** means the process set out in these conditions according to which the sale is to be conducted;
- (21) **Password** means the unique word or combination of letters, number and other characters used to access the App;
- (22) **Price Confirmation** means the written confirmation of:
  - (a) the Winning Bid completed by the Auctioneer as the Buyer's Attorney (pursuant to the Limited Power of Attorney granted by the Buyer pursuant to clause 8) or Buyer (including any Highest Bidder, Buy Now Bidder or Sole Bidder); or
  - (b) if the Property is not sold during the Final Bidding Stage, any price agreed by the Buyer and Seller before noon on the day after the day that the Final Bidding Stage occurs in accordance with clause 9.1, and set out in the area marked Purchase Price Confirmation on page 4 of Annexure A - Open Negotiation Conditions;
- (23) **Property** means the Property described in this Offer and Acceptance;
- (24) **Reserve Price** means the reserve price specified by the Seller;
- (25) **Seller** means the seller of the Property described in this Offer and Acceptance;
- (26) **Seller's Agent** means the real estate agent duly authorised to act on behalf of the seller pursuant to the *Real Estate and Business Agents Act 1978* (WA) specified in the Offer and Acceptance;
- (27) **Sole Bidder** means an Eligible Bidder who is the only Eligible Bidder in relation to the Property (i.e. the only bidder who has submitted to the Seller's Agent an Offer Form that has been accepted by the Seller such that the bidder may take part in the Open Negotiation);
- (28) **Starting Bid** means the opening bid made by each Eligible Bidder through the App which may be increased during the Campaign Bidding Stage;
- (29) **Unique Identification Number** means the unique identifying number provided by the App to each Eligible Bidder to allow them to be identified in the App; and
- (30) **Winning Bid** means the successful bid made in the App which will be confirmed by the Buyer or the Auctioneer (on behalf of the Buyer pursuant to the Limited Power of Attorney) in the area marked Purchase Price Confirmation on page 4 of Annexure A - Open Negotiation Conditions as the price for which the Property will be sold and includes, if applicable, the successful bid made by the Highest Bidder, the Buy Now Price and/or any bid made by the Sole Bidder that is accepted by the Seller.

## 2 Eligible Bidders

- 2.1 Each prospective bidder must, prior to the Final Bidding Stage:
  - (1) submit a signed Offer Form to the Seller's Agent which incorporates these Conditions;
  - (2) provide their Contact Details to the Seller's Agent; and
  - (3) download and register their details in the App in accordance with clause 3.
- 2.2 The Offer Form must state all terms upon which the prospective bidder is prepared to purchase the Property other than the proposed purchase price.
- 2.3 Prior to the Final Bidding Stage the Seller will determine whether the terms and conditions in each Offer Form are such that the Seller agrees to that potential bidder being eligible to participate in the Open Negotiation. If so, that bidder will be an Eligible Bidder.
- 2.4 Prior to the Final Bidding Stage, the App will send notifications to Eligible Bidders and:
  - (1) advise them that they are Eligible Bidders;
  - (2) advise them when the Final Bidding Stage will commence as provided for in clause 4.2;
  - (3) provide them with a Unique Identification Number that will be used to identify them in the App; and
  - (4) instruct them to make a Starting Bid.
- 2.5 Prior to the Final Bidding Stage, the Seller's Agent will use reasonable endeavours to contact Eligible Bidders at their Contact Details and:
  - (1) advise them that they are Eligible Bidders;
  - (2) advise them when the Final Bidding Stage will commence as provided for in clause 4.2; and
  - (3) use reasonable endeavours to assist Eligible Bidders in obtaining the App.

- 2.6 Eligible Bidders are entitled to participate in the Open Negotiation on the basis that:
- (1) the Open Negotiation will be conducted through the App;
  - (2) the Eligible Bidder will be solely responsible (at his or her risk) for ensuring that he or she has adequate mobile and/or internet coverage to allow access to the App;
  - (3) the Eligible Bidder will compete with other Eligible Bidders such that the successful buyer of the Property will be the Eligible Bidder who offers the highest price at or in excess of the Reserve Price;
  - (4) other than the price that the Eligible Bidder will pay to purchase the Property, the Seller and Eligible Bidders will not negotiate as to the terms of the offers contained in the Offer Forms after a bidder has been accepted as an Eligible Bidder;
  - (5) an Eligible Bidder may not retract a bid once it has been made;
  - (6) any bid made in the App using an Eligible Bidder's Unique Identification Number will be deemed to have been made by that Eligible Bidder, and the Eligible Bidder is solely responsible for ensuring that each bid is in fact made by the Eligible Bidder;
  - (7) during 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;
  - (8) during the Final Bidding Stage the App will set a time limit during which Eligible Bidders may consider whether or not to place a bid;
  - (9) the Auctioneer may reject bids that he or she considers, at his or her discretion, are likely to have been made in error or bad faith;
  - (10) the Seller may not bid personally, either directly or by an agent or other representative;
  - (11) subject to clauses 6.4 and 10, once commenced the Open Negotiation cannot be terminated by the Seller or any other party until:
    - (a) all bids are exhausted; and
    - (b) if there is one or more bids at or exceeding the Reserve Price, the Buyer or Auctioneer (on behalf of the Buyer pursuant to the Limited Power of Attorney) has provided the Price Confirmation by recording the Winning Bid in the area marked Purchase Price Confirmation on page 4 of Annexure A - Open Negotiation Conditions as the price for which the Buyer will purchase the Property;
  - (12) the terms of the sale to the successful Eligible Bidder will, other than the price, be the same terms as set out in that Eligible Bidder's Offer Form; and
  - (13) the Eligible Bidder is solely responsible for the operation of the App, the making of each bid and the involvement of the bidder in the Open Negotiation.
- 3 Use of the App**
- 3.1 Prior to the Final Bidding Stage, each Eligible Bidder must:
- (1) download the App;
  - (2) register their Contact Details in the App;
  - (3) select a unique word or combination of letters, numbers and other characters (**Password**) to access the App;
  - (4) select the Property in the App as a bidder; and
  - (5) input their Starting Bid in the App.
- 3.2 The Eligible Bidder must not disclose their Password to any other person nor allow any other person to access the App on his or her behalf.
- 3.3 Prior to the Final Bidding Stage, any Eligible Bidder may increase their Starting Bid by providing further bids through the App.
- 4 Commencement of the Final Bidding Stage**
- 4.1 The Final Bidding Stage will commence at the date and time nominated by the Seller for the Final Bidding Stage to begin, which can be at any time the Seller has approved at least two Eligible Bidders, provided that:
- (1) the Final Bidding Stage must commence between 8.00am and 9.00pm AWST; and
  - (2) at least 12 hours' notice of the time that the Final Bidding Stage will commence must be provided to Eligible Bidders in accordance with clause 4.2.
- 4.2 Once the Seller has decided when the Final Bidding Stage will commence: the App will send notifications to the Eligible Bidders to advise them when the Final Bidding Stage will commence, with such notifications being sent a minimum of 12 hours prior to the commencement of the Final Bidding Stage; and
- (1) the Seller's Agent and/or the Auctioneer will use reasonable endeavours to contact each Eligible Bidder (at that bidder's Contact Details) no less than 12 hours prior to the commencement of the Final Bidding Stage to advise when the Final Bidding Stage will commence.
- 5 Conduct of the Final Bidding Stage**
- 5.1 During the Final Bidding Stage, the Open Negotiation will be conducted as follows:
- (1) each Eligible Bidder must log into the App using their Password such that if an Eligible Bidder has not logged in prior to the Final Bidding Stage they shall no longer be an Eligible Bidder;
  - (2) during the Final Bidding Stage the App will display the then highest bid and give each other Eligible Bidder the option of increasing his or her bid to a sum that exceeds what is at that time the highest bid;
  - (3) other Eligible Bidders may choose to make a further bid exceeding what is then the highest bid in increments determined by the Auctioneer, in accordance with clause 2.6(7) above;
  - (4) the App will display the Unique Identification Number for each Eligible Bidder and show which Eligible Bidder has made the highest bid at any point in the Final Bidding Stage;
  - (5) during the Final Bidding Stage the App will indicate:
    - (a) the minimum sum by which any bid must exceed the previous bid determined by the Auctioneer through the App in accordance with clause 2.6(7); and
    - (b) the time period during which further bids may be made before the current bid is final and successful, as set by the App in accordance with clause 2.6(8);
  - (6) the ultimate buyer of the Property will be the bidder who bids the highest sum at or in excess of the Reserve Price accepted by the Auctioneer (**Highest Bidder**);
  - (7) the Final Bidding Stage will proceed, with the Eligible Bidders increasing their bids, until each Eligible Bidder, other than the Highest Bidder, declines to make any further bid within the time period set by the App in accordance with clause 5.1(5)(b);
  - (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 pursuant to the Limited Power of Attorney) will provide the Price Confirmation;
  - (9) upon receipt of the Price Confirmation referred to in clause 5.1(8) the Seller will immediately in writing, accept the Highest Bidder's offer; and
  - (10) if any dispute arises in relation to any bid, such dispute may be determined by the Auctioneer.
- 6 Reserve Price**
- 6.1 The Property is offered for sale subject to a Reserve Price.
- 6.2 If no bid exceeds the Reserve Price in the Final Bidding Stage the Seller is not obliged to sell the Property to any Eligible Bidder.
- 6.3 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.
- 6.4 Subject to clause 9, if none of the bids made by the Eligible Bidders equals or exceeds the Reserve Price, the Seller may choose to negotiate with one or more of the Eligible Bidders to sell the Property by private treaty, but is under no obligation to do so.

## **7 Purchase of the Property during the Campaign Bidding Stage**

- 7.1 At any time prior to the earlier of:
- (1) the Final Bidding Stage; and
  - (2) the Seller electing to remove the Buy Now Option from the App,
- any Eligible Bidder may purchase the Property using the Buy Now Option, as follows:
- (3) the App will display a price for which Eligible Bidders may immediately purchase the Property without the need to negotiate further (**Buy Now Price**);
  - (4) the Buy Now Price will continually decrease in a Descending Price Auction format until the Buy Now Option is no longer available on the App;
  - (5) in order to purchase the Property at the Buy Now Price, the Eligible Bidder must be the first Eligible Bidder to select the "Buy Now" button in the App (**Buy Now Bidder**);
  - (6) as soon as practicable after the Buy Now Bidder takes the Buy Now Option, the Buy Now Bidder or Auctioneer (on behalf of the Buy Now Bidder pursuant to the Limited Power of Attorney) will provide the Price Confirmation of the Winning Bid;
  - (7) upon receipt of the Price Confirmation referred to in clause 7.1(6) the Seller will as soon as practicable, in writing, accept the Buy Now Bidder's offer.
- 7.2 The Seller may accept an offer made by an Eligible Bidder during the Campaign Bidding Stage without commencing the Final Bidding Stage where there is only one Eligible Bidder (**Sole Bidder**), as follows:
- (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) as soon as practicable after being notified that the Seller has accepted the Sole Bidder's bid in accordance with clause 7.2(2), the Sole Bidder or Auctioneer (on behalf of the Sole Bidder pursuant to the Limited Power of Attorney) will provide the Price Confirmation of the Sole Bidder's bid; and
  - (4) upon receipt of the Price Confirmation referred to in clause 7.2(3), the Seller will as soon as practicable, in writing, accept the Sole Bidder's offer.

**NOTE: THE SELLER MAY ACCEPT ANY BID MADE BY AN ELIGIBLE BIDDER AT ANY TIME WITHOUT COMMENCING THE FINAL BIDDING STAGE PROVIDED THAT THERE IS ONLY ONE ELIGIBLE BIDDER AT THE TIME THAT THE SELLER ACCEPTS THE OFFER.**

*Buyers initials*

## **8 Power of Attorney**

- 8.1 The Buyer irrevocably appoints the Auctioneer to be the Buyer's Attorney to exercise the powers described in this clause 8.
- 8.2 In the event that the Buyer makes the Winning Bid, the Attorney is authorised to complete and sign the Price Confirmation on behalf of the Buyer in accordance with clauses 2.6(11), 5.1(8), 7.1(6) and 7.2(3).
- 8.3 Other than the powers described in this clause 8, the Attorney may not do anything as attorney on behalf of the Buyer.
- 8.4 The powers granted in this clause 8 commence when the Buyer signs this Offer and Acceptance and expire at the conclusion of the Open Negotiation for the Property.
- 8.5 The Buyer ratifies and confirms anything the Attorney lawfully does in accordance with these Conditions.

*Buyers initials*

## **9 Purchase of the Property otherwise than during the Campaign Bidding Stage or Final Bidding Stage**

- 9.1 If the Property does not sell during the Final Bidding Stage, but an offer is made by an Eligible Bidder that is accepted by the Seller before noon on the day after the day that the Final Bidding Stage occurs:
  - (1) the sale must be on the terms and conditions (other than price) set out in the Eligible Bidder's Offer Form; and
  - (2) the sale will be conducted in accordance with these conditions such that the buyer and the Seller must record in writing the price agreed by the parties using the Price Confirmation or any other written form agreed by the parties.

## **10 Withdrawal of Property from Sale**

- 10.1 The Seller may withdraw the Property from sale at any point by selecting the "Cancel Registration" button on the App until the earlier of:
  - (1) the Commencement of the Final Bidding Stage; or
  - (2) a bid being made through the App by any Eligible Bidder that equals or exceeds the Reserve Price, provided that upon the first of the events referred to in subparagraphs (1) and (2) above, the Seller cannot withdraw the Property from sale unless all bids are exhausted at the Final Bidding Stage without the Reserve Price having been reached.

## **11 Suspension of Open Negotiation**

- 11.1 The Auctioneer may cancel the Open Negotiation including, but not limited to, the Final Bidding Stage, if:
  - (1) he or she reasonably considers that a technical problem has occurred with the App such that the Open Negotiation cannot properly proceed; or
  - (2) he or she reasonably considers that one or more Eligible Bidders are experiencing difficulties with the use of the App such that the Open Negotiation cannot properly proceed.
- 11.2 If the Auctioneer cancels the Open Negotiation in accordance with clause 11.1 above, the Seller's Agent will contact the Eligible Bidders at their Contact Details to advise them of a new Open Negotiation (and a new Final Bidding Stage) PROVIDED THAT UPON the Open Negotiation restarting in these circumstances, no bidder shall be bound by any prior bid and shall be free to recommence bidding at any amount the bidder wishes.
- 11.3 The Auctioneer may also pause the Final Bidding Stage for the purpose of taking instructions from the Seller or conferring with Eligible Bidders.

## **12 Liability**

- 12.1 The Eligible Bidders and the Sellers release and hold harmless the Seller's Agent, Auctioneer 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 use, attempted use and/or any technical failure of the App.

## **13 Dummy Bidding**

- 13.1 Dummy Bidding and/or encouraging another party to engage in Dummy Bidding constitutes a breach of these conditions and may also constitute fraud and/or misleading or deceptive conduct and attract serious consequences.
- 13.2 Any party who becomes aware of the occurrence of Dummy Bidding must inform the Agent and/or the Auctioneer as soon as possible.
- 13.3 The Eligible Bidders and Sellers warrant that they will not engage in Dummy Bidding nor encourage or permit any other party to engage in Dummy Bidding.

**14 Price Confirmation**

- 14.1 By entering into this Offer and Acceptance, the Buyer and Seller agree that the Purchase Price of the Property will be:
- (1) the Winning Bid, which will be confirmed in writing below by the Seller and the Buyer or Auctioneer (on behalf of the Buyer as the Buyer's Attorney pursuant to the Limited Power of Attorney) if the Buyer makes the Winning Bid in the Open Negotiation; or
  - (2) the price agreed by the Buyer and Seller before noon on the day after the Final Bidding Stage occurs in accordance with clause 9.1, which will be confirmed in writing by the Buyer and Seller using the Price Confirmation or any other written form agreed to by the parties.

Buyer	Buyer	Seller	Seller
Date	Date	Date	Date

**15 Copy of documents received**

15.1 A true copy of this document has been received by the buyer

Buyer	Buyer
Date	Date

**PURCHASE PRICE CONFIRMATION**

Property Address

Delete or complete as appropriate wherever asterisk (\*) appears below

**\*BY THE BUYER'S ATTORNEY**

Pursuant to the Limited Power of Attorney in clause 8 of these Conditions, the Buyer, by the Buyer's Attorney, hereby confirms the Purchase Price for the Property as follows:

Purchase Price

Full Name of Auctioneer:	Signature of Auctioneer	Date

**\*BY THE BUYER**

The Buyer hereby confirms the Purchase Price for the Property as follows:

Purchase Price

Full Name of Buyer	Signature of Buyer	Date
Full Name of Buyer	Signature of Buyer	Date

**SELLER CONFIRMATION**

The Seller confirms the Purchase Price for the Property as above.

Full Name of Seller	Signature of Seller	Date
Full Name of Seller	Signature of Seller	Date

**NOTE: ONLY THE WINNING BID, OR A PRICE AGREED BY THE BUYER AND SELLER BEFORE NOON ON THE DAY FOLLOWING THE DAY ON WHICH THE FINAL BIDDING STAGE OCCURS IN ACCORDANCE WITH CLAUSE 9.1, CAN BE CONFIRMED AS THE PURCHASE PRICE.**

**ONLY THE WINNING BID CAN BE CONFIRMED AS THE PURCHASE PRICE BY THE AUCTIONEER.**