

Standard Terms and Conditions – Expert Services

1. This Agreement

This Agreement sets out the terms on which we will provide the Services to you. This Agreement comprises these terms, the Letter and if applicable our quote. You accept that these terms apply to our engagement if you continue to instruct us after you receive them.

2. Our Services

- 2.1 We will provide the Services to you with the degree of skill, care and diligence reasonably expected of a professional providing services of the same kind.
- 2.2 We will use all reasonable efforts to complete the Services within any agreed time frame.
- 2.3 At our election, the Services may be provided by a Franchisee. We will be responsible for all acts and omissions of the Franchisees as if they were our acts or omissions. You agree that you will not bring any claim or proceeding in connection with the Services or this Agreement directly against any Franchisee or Valuer.
- 2.4 Unless otherwise agreed, we will be the sole point of contact for any issues in relation to this Agreement.

3. Your Obligations

- 3.1 You must ensure that we are given all instructions, data, Information and access as is reasonably necessary for us to perform the Services.
- 3.2 You acknowledge and agree that:
- 3.2.1 we are entitled to and will rely on Information provided by you or your representatives and any instructions and approvals given by you or your representatives (and that we are relieved of liability to the extent of any inaccuracy, inconsistency or omission in same); and
- 3.2.2 the Services may include advice, but all decisions in connection with the implementation of that advice will be your responsibility and are made by you based on your own judgement and knowledge of your circumstances.

4. Our Valuations

- 4.1 Any Valuation or Deliverable is prepared solely for you to use for the Permitted Purpose. You are not authorised to use the Valuation or Deliverable for any purpose other than the Permitted Purpose without our prior written consent. We do not accept a duty of care to any other person who may read or use the Valuation or Deliverable and you agree that we specifically disclaim legal responsibility to any other person that might read them.
- 4.2 If you wish to provide a copy of the Valuation or any Deliverable to any third party (other than for use in the dispute or court proceedings in respect of which we have been engaged), you must first obtain our consent in writing (which we may withhold at our discretion).
- 4.3 You indemnify us for and in respect of any Loss we may suffer or incur in respect of any claim or action by a third party that arises as a result of any use or distribution of, or reliance on, a Valuation or Deliverable to a third party (even if we consented to the provision of the Valuation or Deliverable to that party). Furthermore, if we incur liability

to any third party as a result of any use or distribution of, or reliance on, a Valuation or Deliverable by any third party:

4.3.1 you will ensure that we can enforce the protections afforded to us under this Agreement (including, in particular clause 11) directly against that third party, or if that is not possible or does not occur for any reason, you will do everything necessary to place us in a position as if the protections had been directly enforceable or enforced against that third party also; and

4.3.2 without limiting the foregoing, you acknowledge and agree, and will do all things necessary to place us in a position so that clause 11.2 applies so as to limit our liability to you and/or to that third party, severally and/or jointly, on an aggregate basis.

4.4 Our Valuations and Deliverables will contain certain assumptions, qualifications, limitations and disclaimers (**Notices**). These Notices form part of this Agreement. It is your responsibility to be aware of these Notices and ensure that the Valuations and Deliverables are only used in the context of, and subject to, such Notices.

4.5 Our Services, including the Valuations and Deliverables cannot be considered advice as to taxation, investment or financial strategy nor can they be viewed as legal or accounting advice.

4.6 When our Services (including any Valuation or Deliverable) are required in connection with a legal matter, a dispute (including threatened or commenced litigation) or a court action, you agree to the following:

4.6.1 in addition to payment of the Fees, you will pay for our time spent consulting with you in respect of the matter or in preparing for, and attending at, any hearing or court appearance (or any preparatory conference or other meeting in anticipation of a hearing or court appearance), at an agreed hourly rate (or failing agreement, at the rate specified by us) plus GST;

4.6.2 we act impartially at all times in providing such services;

4.6.3 you release and hold us harmless from any liability for any claim which you or anyone else may bring for any Loss arising out of or in any way connected with our Services provided as an expert or for the purpose of, the legal matter, dispute or court proceedings;

4.6.4 when we act as an expert witness, we do not act as your advocate. We will comply with the requirements of all relevant court rules or procedures and our paramount duty, which overrides any duty to you or any party to the proceedings or other person retaining us, is to assist the court impartially on matters relevant to the area of our expertise; and

4.6.5 if we are instructed jointly to provide an expert opinion or assessment, each instructing party (separately and jointly) indemnifies us against all claims by either instructing party or anyone claiming under or through either instructing party, arising out of or in any way connected with the Services or any Valuation or Deliverable provided by us under this Agreement, except to the extent that we are fraudulent.

5. Our Fees

- 5.1 You agree to pay us the Fees for the Services.
- 5.2 Other than in respect of a change to Fees in accordance with clause 5.3, we will give you at least 30 days' notice of any proposed changes to the Fees.
- 5.3 If the Agreement applies to Services to be provided from time to time on an ongoing basis, on each anniversary of the Commencement Date, the Fees will be automatically indexed and increased by CPI or 2.5% whichever is higher.
- 5.4 If any request is expected to involve complexity or disproportionate resources, we may request a higher fee than previously agreed with you. Any higher fee will be agreed with you prior to us proceeding.
- 5.5 Where the nature of the Services or the property, premises or asset you would like us to value falls outside of the matters listed in any Fee Schedule, we will provide you with a quote for the Fee prior to commencing the Services. The quote will be valid for a period of 30 days from the date of issue.
- 5.6 Where we have provided you with a quote for the Fee for the Services and you instruct us to proceed or pay the Fee, you have accepted the quoted Fee.
- 5.7 Unless stated otherwise, the Fees are expressed exclusive of GST. You agree to pay any GST imposed on us, now or in the future, in relation to this Agreement. Where GST is payable on any taxable supply made under this Agreement, you agree that the Fee payable for this supply will be increased by an amount equal to the GST payable by us in respect of that supply.

6. Invoicing

- 6.1 Where we have agreed that you do not need to prepay for our Services, we will invoice you in arrears for the Fees (unless agreed otherwise) and you will pay our invoice within 14 days of receiving it. If you dispute an invoice, you will still pay the undisputed amount and we will work together to resolve the dispute. Where amounts remain due and unpaid, we may charge you interest at an annual rate of 2% over the Bank Bill Swap Rate published in the Australian Financial Review on the date payment is due.
- 6.2 Without limiting any other rights we may have, we may suspend or terminate the Services, in whole or part, or withhold any Valuation or Deliverable not yet delivered if any amount due to us is overdue.

7. Unexpected delay

- 7.1 We will not be responsible to you or anyone else (and you will not assert we are in breach or liable) for any failure in providing the Services or any Valuation or Deliverable to the extent such failure is caused by an Unexpected Delay. We will notify you if there is a delay that will affect the provision of the Services or any Valuation or Deliverable and the cause of the delay.
- 7.2 If it is necessary or we are required to perform additional services or incur additional costs because of an Unexpected Delay, where those additional services are required or costs are incurred due to your act or omission, you will pay us additional Fees for those costs and in other cases, we may charge you additional Fees as are reasonable.

8. Confidentiality

- 8.1 Each of you and we agrees to protect and keep confidential any Confidential Information that is given to us by the other.
- 8.2 Except as set out in this Agreement, or where you and we agree otherwise in writing, we will only use or disclose your Confidential Information as necessary to provide the Services to you.
- 8.3 Where relevant, we may use, disclose and transfer your Information (even if Confidential Information) to our Franchisees and Representatives who will use and disclose it only to provide the Services to you.
- 8.4 You agree that we may disclose your Information (including Personal Information) to our professional advisers, any regulating body or insurers on a confidential basis.
- 8.5 Subject to clause 8.6, either of you and we may disclose any Confidential Information to the extent that it is required to be disclosed by law, order of any court, tribunal, authority or regulatory body, rules of any stock exchange or any professional obligations or requirements.
- 8.6 A party disclosing Confidential Information under clause 8.5 must, where practical and to the extent permitted by law, notify the other of the requirement to disclose and only disclose the minimum Confidential Information required to comply with the law or requirement.
- 8.7 You agree that we may aggregate your Information and use and disclose that information in de-identified form as part of research and advice, including without limitation, benchmarking services or for valuation purposes.
- 8.8 We will return to you or destroy your Information at any time at your request, however, we are entitled to retain a copy of your Confidential Information or any Information you give to us for any lawful record keeping purposes, provided that we continue to keep this Information confidential in accordance with this Agreement.

9. Personal information and privacy

- 9.1 We will handle Personal Information obtained under this Agreement in accordance with the Privacy Legislation and our privacy policy.
- 9.2 You agree to work with us to ensure that both you and we meet any obligations that each of us may have under the Privacy Legislation including, where relevant, notifying the individual to whom the Personal Information relates of who we are and how we propose to use and disclose their information.
- 9.3 Where you provide us with any Personal Information, you confirm that you have collected the Personal Information in accordance with the Privacy Legislation, that you are entitled to provide the Personal Information to us and that we may collect, use and disclose (including outside of Australia) the Personal Information for the purpose of providing the Services to you or as otherwise permitted by this Agreement.

10. Intellectual Property

- 10.1 We own the Intellectual Property Rights in the Valuations and Our Data.
- 10.2 We grant, or will procure from any third party the right to grant, to you an irrevocable, perpetual, worldwide, non-exclusive, royalty-free licence to use and reproduce the Valuations or any Deliverable arising from the Services for the Permitted Purpose.

11. Our responsibility to you

11.1 You agree to release us and hold us harmless from all liability to you in respect of any Loss arising from or in any way connected with the Services or any Valuation or Deliverable provided under this Agreement. This release will be complete and unconditional except in the case of our fraud or wilful misconduct.

11.2 To the extent permitted by law, without limiting our protections under clauses 11.1, 4.6.3 and 4.6.5, and/or to the extent any protection under those clauses does not apply to our benefit for any reason, you agree that our liability to you for any Loss arising in connection with the Services or otherwise under this Agreement (whether arising under contract law, statute or common law) is limited as follows:

11.2.1 our aggregate liability is limited to the lesser of an amount equivalent to the Fee and \$10,000;

11.2.2 we will only be liable to you for that proportion of the total Loss caused or contributed to by us;

11.2.3 we will not be liable to you (nor will you assert any claim against us) for any Consequential Loss; and

11.2.4 we will not be liable unless you notify us of that Loss within three months of it occurring.

11.3 You indemnify us for and in respect of all Loss which we may suffer or incur arising from or in any way connected with any breach by you of this Agreement.

11.4 You acknowledge and agree that we have entered into this Agreement relying on the terms that have been agreed in clauses 4 and 11.

12. Insurance

We will maintain appropriate insurance in relation to the Services, including professional indemnity insurance with a reputable insurer during the term of this Agreement and for a period of seven years after last performing the Services for you.

13. Conflict of interest

If we identify a conflict of interest, we will evaluate the potential conflict and, depending on the circumstances, apply appropriate safeguards to manage it (having first notified you of the conflict and asked for your consent to proceed) or else decline the engagement.

14. Termination

14.1 You may terminate this Agreement by giving us at least 30 days prior written notice at any time. If the Agreement is terminated for any reason, you must pay our Fees for the Services performed and any other charges or costs payable by you, up to the time of termination.

14.2 We may terminate this Agreement:

14.2.1 by giving you notice of at least 30 days;

14.2.2 if any payment due by you under this Agreement is not paid on the due date;

14.2.3 if, by continuing to act for you, we would be required to act contrary to any legal, regulatory or professional conduct obligation or similar just cause; or

14.2.4 if there is any change in your financial or legal status.

14.3 Clauses 4, 5, 6, 8, 9, 10, 11, 12, 15 and this clause 14.3 survive the termination of this Agreement. Nothing in this clause prevents any other provision of the Agreement, as a matter of interpretation, also surviving the expiration or termination of this Agreement.

15. Dispute resolution

15.1 Each party agrees to use reasonable endeavours to resolve any dispute that arises in connection with this Agreement.

15.2 If you and we are unable to resolve a dispute within 14 days of either of us giving the other notice in writing of a dispute, either of us may refer the dispute to mediation to be conducted in Melbourne, Victoria under the Australian Disputes Centre (ADC) guidelines for commercial mediation which are operating at the time the dispute is referred to the ADC.

15.3 If the dispute is not resolved by mediation within 28 days of the appointment of a mediator, either party may commence court proceedings.

15.4 Despite the existence of a dispute, each party must continue to perform all of its obligations under this Agreement.

15.5 Nothing in this clause prevents either party from applying to a court for urgent interlocutory relief.

16. General

16.1 We are engaged as an independent contractor. Neither party is an agent or representative of or has the authority to bind the other. This Agreement is not intended and will not be taken to constitute a partnership, agency, employment, joint venture or fiduciary relationship between the parties.

16.2 This Agreement is the entire agreement between you and us for the Services. It supersedes all prior communications, negotiations, arrangements and agreements, either oral or written between us in relation to its subject matter.

16.3 If anything contained in the Letter or a Valuation conflicts with these "Standard Terms and Conditions", these terms and conditions prevail unless otherwise specified in writing by us.

16.4 We may amend these "Standard Terms and Conditions" from time to time. Our prevailing "Standard Terms and Conditions" can be viewed at all times on our website: opteonsolutions.com.

16.5 Neither of you or we may transfer, assign or novate this Agreement without the prior written consent of the other. However we may elect to subcontract the performance of the Services (in whole or part) without giving notice to you but at all times, we remain liable to you for the acts or omissions of our subcontractors.

16.6 If any of the terms of this Agreement are not legally enforceable then that term or the relevant part of it will be either amended as appropriate to make it enforceable or ignored, but in all other respects this Agreement will have full effect.

16.7 This Agreement is governed by the law applying in Victoria and the parties submit to the non-exclusive jurisdiction of the courts of Victoria.

16.8 A waiver by a party of a breach by the other of any term of this Agreement does not operate as a waiver of another

term or a continuing breach by the other of the same or any other term of this Agreement.

- 16.9 To the extent permitted by law, we disclaim all warranties, either express or implied, in relation to the Services and the Valuations other than any written warranty made in this Agreement.

17. Interpretation

In this Agreement:

- 17.1 headings and sub-headings are for ease of reference only and do not affect the interpretation of this Agreement;
- 17.2 words denoting the singular include the plural and vice versa;
- 17.3 the word 'includes' in any form is not a word of limitation;
- 17.4 where a word or phrase is defined, another part of speech or grammatical form of that word or phrase has a corresponding meaning;
- 17.5 a person includes a firm, partnership, joint venture, association, corporation or other body corporate;
- 17.6 '\$' is a reference to Australian dollars;
- 17.7 'this Agreement' is to this Agreement as amended from time to time;
- 17.8 a clause, schedule or attachment is a reference to a clause, schedule or attachment in or to this Agreement;
- 17.9 any document (such as a deed, agreement or other document) is to that document (or, if required by the context, to a part of it) as amended, novated, substituted or supplemented at any time; and
- 17.10 any legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced and includes any subordinate legislation issued under it.

18. Definitions

In this Agreement, the following words have the following meanings:

Agreement means the agreement between us and you comprising these "Standard Terms and Conditions" and the Letter.

Commencement Date means the date on which you first instruct us to provide our Services under this Agreement.

Confidential Information means any information or material which is proprietary to a party or acquired by either of us solely as a result of the Services and is designated as confidential or the recipient ought know or assume it is confidential, but excludes any information that:

- is or becomes publicly available, except by a breach of this Agreement;
- is disclosed to either of us by a third party provided that the recipient reasonably believes the third party is legally entitled to disclose such information;
- was known to either of us before we received it from the other or is developed by either of us independently;
- is disclosed with the other's consent; or
- is required to be disclosed as contemplated by clause 8.5.

Consequential Loss means any loss of actual or anticipated profit or revenue, extraordinary or unexpected financing costs, anticipated savings or business opportunity, loss or corruption of data or systems, or damage to goodwill whether arising at law as direct or indirect loss, and any indirect, consequential, special, punitive,

exemplary or incidental loss or damages, whether foreseeable or not and whether we were advised of the possibility of such damages.

CPI means the annual Consumer Price Index (All Groups), Australia (*weighted* average of eight capital cities) as published by the Australian Bureau of Statistics.

Deliverable means any deliverable prepared by us as part of the Services.

Fees means the fees for the Services set out in the Letter or any quote provided under clause 5.5 or any higher fee agreed in accordance with clauses 5 or 7.2.

Fee Schedule means our schedule of fees as supplied to you and as amended from time to time.

Franchisee means an Opteon branded company that has entered into a franchise agreement with our franchisor entity Opteon Franchising Pty Ltd.

GST has the meaning given to it under *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Information means any information, documents, material, facts, instructions or Confidential Information provided to us by you or your Representatives or anyone else at your request.

Intellectual Property Rights means all intellectual property rights throughout the world and includes rights in respect of copyright, trade marks, designs, trade secrets and know-how.

Letter means the engagement letter or any other written communication between you and us which confirms our engagement to provide the Services under this Agreement.

Loss means any loss, liability, claim, damages, cost or expenses of whatsoever kind (including Consequential Loss).

Our Data means all data, photographs, field notes, sales data, reports, systems and other materials that we produce, collect, develop or otherwise bring into existence in the provision of the Services (other than data and materials provided by you to us).

Permitted Purpose means the purpose set out in the Letter or as otherwise set out in writing and accepted by us.

Personal Information means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in writing or spoken, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

Privacy Legislation means the *Privacy Act 1988* (Cth) and any other law that applies to either of us that relates to privacy or to the collection, use, disclosure or handling of information about individuals (including a law of a State or Territory relating to privacy).

Representatives means any officer, employee, consultant, agent, adviser or contractor of either of us.

Services means property, premises or asset valuation services or such other services requested by you and agreed by us in accordance with this Agreement.

Unexpected Delay means any delay in providing the Services that is caused or contributed to by an act or event (including the non-performance of your obligations) that is beyond our control or as not reasonably foreseeable by us at the time of accepting the engagement.

Us and We means the entity within the Opteon corporate group that is providing the Services.



Valuation means a valuation report in respect of a property, premises or asset prepared by us under this Agreement.

Valuer means a current Certified Practising Valuer who is a current financial member of the API with the skills and experience to provide the Services.

You means the client engaging us to provide the Services.