

Standard Terms and Conditions – Valuation Services

1. This Agreement

Unless we have entered into a separate written services agreement with you for the provision of valuation services, this Agreement sets out the terms on which we will provide the Services to you.

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 and in accordance with this Agreement, the ABFI Standing Instructions (where relevant) and any relevant requirements or instructions issued by the API.

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 performed by a Franchisee where the property, premises or asset to be valued is located in that Franchisee's territory. We will be responsible for all acts and omissions of the Franchisees and Valuers 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 will provide us with instructions requesting a Valuation via a Valuation Request.

3.2 You must provide us with all data, Information and access as is necessary or reasonably required for us to perform the Services.

3.3 You acknowledge and agree that:

3.3.1 we are entitled to and will rely on Information provided by you or your representatives and/or agent and any instructions and approvals given by you or your representatives and/or agent (and that we are released from any liability to the extent of any inaccuracy, inconsistency or omission in same); and

3.3.2 although the Services may include advice, all decisions in connection with the implementation of that advice are solely your responsibility and are made by you based on your own judgement and knowledge of your circumstances.

4. Our Valuations

4.1 Our Valuations are prepared solely for you (and any other person expressly specified in the Letter or Valuation Request) to use for the Permitted Purpose. You are not authorised to use a Valuation for any other purpose without our prior written consent. We do not accept a duty of care to any other person and you agree to the Valuation specifically disclaiming legal responsibility to any other person that might read the Valuation. In the event that you wish to provide the Valuation to any third party, including any financier, for any reason, before that occurs, you must first obtain our consent to disclosure of the report being made, and if consent is given (which remains at our discretion and may be given with extra conditions), you must (i) provide a copy of this Agreement to the third party,

(ii) obtain a signed acknowledgement from the third party that it will not rely on the Valuation for any purpose and releases us from any liability, and (iii) provide us with the original signed acknowledgement.

4.2 You indemnify us against 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 a Valuation to that party or their reliance thereon. Furthermore, if we incur liability to any third party as a result of any use or distribution of, or reliance on, a Valuation by any third party:

4.2.1 You will ensure that we can enforce the protections afforded to us under or out of this Agreement (and 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

4.2.2 Without limiting the foregoing, you acknowledge and agree, and will do all things necessary to place us in a position so that, the limitation in clauses 11.1 and 11.2 apply so as to limit our liability to you and/or to that third party, severally and/or collectively, on an aggregate basis.

4.3 A Valuation is current at the date of the Valuation only. The value of a property, premises or asset may change significantly and unexpectedly over a relatively short period of time (including as a result of general market movements or factors specific to the particular property, premises or asset). As such, you release us from any liability for Loss arising from such subsequent changes in value, or if the Valuation is for mortgage purposes, liability for Loss where a Valuation is relied upon more than 90 days after the date of valuation, or such earlier date if you become aware of any factors that have any effect on the Valuation.

4.4 Our Valuations 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 are only used in the context of, and subject to, such Notices.

4.5 Our Valuations cannot be considered advice as to taxation, investment or financial strategy nor should the contents be viewed as legal or accounting advice.

4.6 If the Services comprise a desktop or kerbside assessment, you hereby provide your written agreement to our non-inspection and/or partial inspection of the relevant property or asset being valued and you accept the inherent risk of inaccuracy arising therefrom (including if applicable, as detailed in section 3.0 of API Residential Desktop Assessment Memorandum for First Mortgage Purposes).

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 a Valuation Request is expected to involve complexity or disproportionate resources, we may request a higher fee for

the Valuation. Any higher fee will be agreed with you prior to us proceeding with the Valuation Request.

5.5 Where the property, premises or asset you would like us to value falls outside of the types, zones or value ranges listed in our Fee Schedule, we will provide you with a quote for the Fee prior to commencing the Valuation. The quote will be valid for a period of 30 days from the date of issue unless the quote specifies otherwise.

5.6 Where we have provided you with a quote for the Fee for a Valuation and you instruct us to proceed with the Valuation or pay the Fee, you have accepted the quoted Fee for that Valuation (and these terms).

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 once we provide you with the Valuation (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 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 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 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 services or costs and in other cases, we may charge you additional Fees as are reasonable.

8. Confidentiality

8.1 Each of us agrees to protect and keep confidential any Confidential Information that is given to us by the other. Except as set out in this Agreement, or where both of us agree otherwise in writing, we will only use or disclose your Confidential Information as necessary to provide the Services to you.

8.2 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. In addition, we may disclose your Information to our professional advisers, any regulating body or insurers on a confidential basis.

8.3 Subject to clause 8.4, either of us 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.

8.4 A party disclosing Confidential Information under clause 8.3 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.

8.5 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.

8.6 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 in accordance with the Privacy Legislation and our privacy policy available at www.opteonsolutions.com/au/privacy-policy/.

9.2 You agree to work with us to ensure that both of us 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 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 for the Permitted Purpose and your internal business purposes.

11. Release, indemnity and our limitation of liability

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 Valuation or the Services. 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 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 our Fees and \$500,000;

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 Nothing in this Agreement shall restrict, modify or limit your rights under the Australian Consumer Law or any other applicable law.
- 11.5 You acknowledge and agree that we have entered into this Agreement relying on the terms that have been agreed in this clause and clause 4.
- 12. Insurance**
- We will maintain appropriate insurance in relation to the Services, including professional indemnity insurance with a reputable insurer for an amount not less than \$5 million during the term of this Agreement and for a period of seven years after last performing the Services for you.
- 13. Conflict of interest**
- We value many properties, premises and assets and have relationships with many clients. If we identify a conflict of interest in respect of a Valuation Request, 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 conduct the Valuation) or decline the Valuation Request.
- 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 incurred, 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 discharge, expiration or termination of this Agreement.
- 15. Dispute resolution**
- 15.1 Each of us agrees to use reasonable endeavours to resolve any dispute that arises in connection with this Agreement.
- 15.2 If 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 of us may commence court proceedings.
- 15.4 Despite the existence of a dispute, each of us must continue to perform all of our obligations under this Agreement.
- 15.5 Nothing in this clause prevents either of us applying to a court for urgent interlocutory relief.
- 16. General**
- 16.1 We are engaged as an independent contractor. Neither of us 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 us.
- 16.2 This Agreement is the entire agreement between 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, a Valuation Request 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 us 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 one of us 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 document, the following words have the following meanings:

ABFI Standing Instructions means the standing instructions issued by the Australian Banking and Finance Industry as amended from time to time.

Agreement means the agreement between us and you comprising these “*Standard Terms and Conditions*”, the Letter and in respect of a particular Valuation Request, that Valuation Request and the relevant Valuation.

API means the Australian Property Institute.

APIV Limited Liability Scheme means the Australian Property Institute Valuers Limited’s Limitation of Liability Scheme as amended from time to time.

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 is confidential, but excludes any information that:

- (a) is or becomes publicly available, except by a breach of this Agreement;
- (b) 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;
- (c) was known to either of us before we received it from the other or is developed by either of us independently;
- (d) is disclosed with the other’s consent; or
- (e) is required to be disclosed as contemplated by clause 8.3.

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.

Fees means the fees for the Services set out in the Letter or any quote provided under clause 5.5, as calculated in accordance with our Fee Schedule or any higher fee applicable under 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 or on your behalf.

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 us which confirms our engagement in respect of the Services.

Loss means any loss, liability, claim, damages, costs or expenses of whatsoever kind (including, where applicable, 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, a Valuation Request or otherwise as 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 or asset valuation services or other property or asset advisory or consultancy 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 not reasonably foreseeable by us at the time of accepting a Valuation Request.



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 a Valuer pursuant to a Valuation Request.

Valuation Request means the instructing document provided by you in the form agreed by us requesting Services 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.