



Panel Valuer Agreement

for the supply of property valuation
services to Valuation Exchange Pty Ltd

Panel Valuer Agreement

Details	4
1. Defined terms & interpretation	4
2. RPData Panel	7
3. Access to the RPData System	8
4. Valuations	10
5. Service level	11
6. Assignment & subcontracting	14
7. Support Services	15
8. Fees & Allowances	15
9. Goods & Services Tax	16
10. Intellectual property rights	17
11. Confidential Information	18
12. Privacy	18
13. Conflict of interest	21
14. Records	21
15. Audit & access	22
16. Indemnity	23
17. Liability	24
18. Insurance	25
19. Dispute resolution	27
20. Termination	27
21. Relationship of Parties	29
22. Notice	29

23. Miscellaneous	30
Signing page	31
Schedule 1 – Panel Valuer	32
Schedule 2 Service Levels	33
Schedule 3 Policies & Procedures	34

Details

Date

Parties

Name	Valuation Exchange Pty Ltd (ABN 84 106 319 975)
Short form name	RPData
Notice details	GPO Box 2603 ADELAIDE SA 5001
	Facsimile: 1300 550 167 Attention: Mr Michael Hooper

Name	the Party specified in Schedule 1 to this Agreement
Short Form Name	Panel Valuer

Background

- A. RPData wishes to appoint the Panel Valuer to the RPData Panel, and in so doing engage the Panel Valuer to carry out Valuations for RPData and/or the Client, on the terms and conditions set out in this Agreement.
- B. The Panel Valuer accepts the appointment to the RPData Panel and agrees to provide Valuations on the terms and conditions set out in this Agreement.

1. Defined terms & interpretation

1.1 Defined terms

In this agreement:

API Scheme means the Australian Property Institute Valuers Limited Limitation of Liability Scheme established pursuant to the *Professional Standards Act 1994* (NSW).

API Supporting Memorandum means the PropertyPRO Residential Valuation and Security Assessment Pro-Forma Supporting Memorandum issued by the Australian Property Institute and as amended from time to time.

Business Day means a day that is not a Saturday, Sunday, bank holiday or public holiday in the State or Territory in which the Panel Valuer or Valuer is located.

Capping Legislation means any legislation, regulation, ordinance or scheme pursuant to which a Panel Valuer or Valuer is entitled to assert that its liability is limited.

Claim means any claim, notice, demand, action, proceeding, litigation, investigation or judgment whether based in contract, tort, statute or otherwise.

Client means RPData's client or clients (including a Client's Mortgage Insurance Provider) for whom the Panel Valuer has been engaged to provide a Valuation.

Confidential Information means information that:

- (a) is by its nature confidential;
- (b) is designated by RPData as confidential; or
- (c) a Party knows or ought reasonably to know is confidential,

but does not include information that is or becomes public knowledge other than by breach of this Agreement or a Contract, or has been independently developed or acquired by the Panel Valuer.

Contract means the contract formed by the acceptance of a Valuation Request by a Panel Valuer, and includes this Agreement, the Valuation Request and RPData 'sPolicies & Procedures.

Date of this Agreement means the date on which the last Party signs this Agreement.

Electronic Communication has the meaning in the *Electronic Transactions Act 1999* (Cth).

Fees means the Service Fees (payable by the Panel Valuer) and the Valuation Fee (payable by RPData).

Intellectual Property means all intellectual property rights, including patents, copyright, registered designs, trade marks, know how, trade secrets and any right to have confidential information kept confidential (and any application or right to apply for registration of any of these rights).

Invoice means a tax invoice in the form approved by RPData and which the Panel Valuer is required to complete and submit to RPData using the RPData System.

Mortgage Insurance Provider means any insurer who provides insurance to the Client in respect of any loss or damage arising when the net proceeds on the sale of a mortgaged property the subject of a Valuation or Valuation Report do not cover the full balance outstanding on the secured loan.

Panel Valuer means the Party specified in **Schedule 1**.

Panel Valuer Data means the comparative market sales information used as a basis for the formulation of a Valuation and included in a Valuation Report provided on the RPData System.

Party or Parties means a party or the parties to this Agreement.

Personal Information means all information about a person that is personal information as defined in the *Privacy Act*, collected or held by the Panel Valuer in connection with this Agreement or a Contract.

Policies & Procedures means RPData's policies and procedures, from time to time, for the conduct of Valuations and the appointment of Panel Valuers to the RPData Panel which as at the date of the Agreement is in the form annexed as Schedule 2.

Privacy Act means the Commonwealth *Privacy Act 1988* (Cth).

Privacy Law means:

- (i) the *Privacy Act* (including the National Privacy Principles) or any approved privacy code as defined in the *Privacy Act* applying to RPData and/or the Panel Valuer; or
- (ii) any other statute, regulation or law in Australia or elsewhere which relates to the protection of Personal Information and which RPData or the Panel Valuer must observe.

Proportionate Liability Legislation means the following legislation:

- (i) Civil Law (Wrongs) Act 2002 (ACT);
- (ii) Civil Liability Act 2002 (NSW);

- (iii) Proportionate Liability Act 2005 (NT);
- (iv) Civil Liability Act 2003 (QLD);
- (v) Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001 (SA);
- (vi) Civil Liability Act 2002 (TAS);
- (vii) Wrongs Act 1958 (VIC);
- (viii) Civil Liability Act 2002 (WA);
- (ix) Corporations Act 2001 (Cth);
- (x) Competition and Consumer Act 2010 (Cth);
- (xi) Trade Practices Act 1974 (Cth) and state based Fair Trading legislation to the extent that such legislation would apply to any matter arising out of this Agreement or a Contract.

Records in relation to a Contract means all books, records, information and material created or produced in providing a Valuation (and includes the Valuation Report).

Safety Legislation means all applicable occupational health and safety, environment protection, dangerous goods and electricity safety legislation and the regulations made thereunder, together with any directions on safety or notices issued by any relevant authority or any code of practice or compliance appropriate or relevant to the supply of any services pursuant to this Agreement and any associated goods.

Safety Requirements means any and all directions, instructions, requests or requirements relevant to or associated with or necessary for compliance by the Panel Valuer or RPData with Safety Legislation including any such matters of which the Panel Valuer has been informed by RPData orally or in writing.

Service Fee means the fee payable by the Panel Valuer to RPData for Support Services requested by it, calculated in accordance with RPData's fee schedule as notified to the Panel Valuer from time to time.

Service Levels means the requirements of Schedule 2 to this Agreement.

Support Services means administrative and any other support services provided by RPData at the request of a Panel Valuer or Valuers, in connection with Valuations.

Term means the period of the Valuer's appointment to the RPData Panel under this Agreement, determined in accordance with **Clause 2.2**.

Third Party Material means material owned by a third party that is included, embodied in or attached to a Contract.

RPData Data means data entered on to the RPData System by RPData .

RPData Panel means, together, that group of Panel Valuers from time to time and at any time used by RPData to provide Valuations (and includes the Panel Valuer when conducting a Valuation pursuant to a Valuation Request).

RPData Sales Database means the database of pooled comparable sales data provided by RPData and/or participating Panel Valuers for use by participating Panel Valuers in carrying out Valuations or specific Valuation Requests.

RPData System means the valuation management system owned by RPData comprising business methods, systems (including any software, Internet-based websites, platforms, applications or

functions) and including all future updates, new releases and other improvements made to it by RPDData .

Valuation or **Valuation Report** means a residential property valuation or other professional property valuation services to be performed by the Panel Valuer pursuant to a Valuation Request.

Valuation Fee means the fee payable by RPDData to the Panel Valuer for a Valuation in accordance with RPDData 's fee schedule, as notified to the Panel Valuer from time to time.

Valuation Request means a request for a Valuation, placed by RPDData .

Valuer means any individual valuer who is employed or sub-contracted by a Panel Valuer to conduct a Valuation or who is, as a valuer, otherwise involved in the preparation or provision of a Valuation or Valuation Report.

1.2 Interpretation

In this Agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, a gender includes other genders, and another grammatical form of a defined word has a corresponding meaning;
- (b) a reference to a clause, paragraph or schedule is to a clause or paragraph of, or schedule to, this Agreement, and a reference to this Agreement includes any schedule;
- (c) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (d) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (e) a reference to time is to Adelaide, South Australia time;
- (f) a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes, and a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (g) a word or expression defined in the *Corporations Act 2001* (Cth) has the meaning given to it in the *Corporations Act 2001* (Cth);
- (h) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (i) a rule of construction does not apply to the disadvantage of a Party because the Party was responsible for the preparation of this Agreement or any part of it; and
- (j) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

1.3 Headings

Headings are for ease of reference only and do not affect interpretation.

2. RPDData Panel

2.1 Appointment

RPDData appoints the Panel Valuer to the RPDData Panel for the Term, and the Panel Valuer accepts that appointment, on the terms and conditions of this Agreement (**Appointment**). Appointment to the RPDData Panel enables the Panel Valuer to conduct Valuations and to request the provision of Support Services.

The Panel Valuer expressly acknowledges that RPData :

- (a) does not guarantee or make any assurance that any particular volume of Valuations will be ordered under this Agreement;
- (b) may obtain Valuations from any source it chooses (including parties other than the Panel Valuer); and
- (c) does not guarantee or represent that any Valuations will be ordered from the Panel Valuer at all under this Agreement.

2.2 Term

The Appointment commences on the date of this Agreement, and continues until terminated by either Party. The Appointment, and this Agreement may be terminated in any of the ways described in **Clause 20**.

2.3 Role of RPData

The Panel Valuer acknowledges and agrees that in respect of the Appointment, it is the responsibility of the Panel Valuer to fully discharge all its legal duties and responsibilities in relation to the provision of a Valuation and that, subject to the terms and conditions of this Agreement, RPData has no involvement in, or responsibility for, the preparation or the contents of the Valuation Report.

3. Access to the RPData System

3.1 Access

During the Term, RPData will give the Panel Valuer access to the RPData System for the purpose of the Panel Valuer receiving a Valuation Request, sending Valuations prepared in response to such request and otherwise accessing the RPData System for any purpose directly related to the provision of the Valuations.

3.2 No rights

The Panel Valuer agrees that nothing in this Agreement transfers or creates any rights or interest in favour of the Panel Valuer in the RPData System.

3.3 Restrictions

The Panel Valuer must:

- (a) access and use the RPData System only in accordance with the Policies & Procedures and comply with any directions reasonably given by RPData in that respect;
- (b) not grant any form of licence (without the prior consent of RPData which it may in its discretion withhold) or purport to sell, rent, lease or otherwise transfer any rights in the RPData System for any purpose;
- (c) access and use the RPData System only for the purpose of receiving a Valuation Request and sending Valuations and otherwise communicating with RPData or accessing the RPData System for any purpose directly related to the provision of the Valuations; and
- (d) not alter the RPData System or any software used in connection with it.

3.4 Support

- (a) RPData will provide reasonable assistance in accessing the RPData System, but makes no representations about the compatibility of the RPData System with the Panel Valuer's software, procedures or practices, and takes no responsibility for the same.

- (b) Upon request, RPData will provide reasonable telephone technical support during business hours regarding use of the RPData System, but is otherwise under no other obligation to provide any training or on-site technical support.
- (c) RPData will supply at its own cost a user manual and telephone training (as requested by the Panel Valuer) to a reasonable level of competency to allow efficient use of the RPData System. Additional assistance or training may be charged on a time and materials basis.

3.5 RPData System Access

- (a) RPData will provide all necessary user accounts (including a password and login ID) in order for the Panel Valuer to access the RPData System.
- (b) The Panel Valuer must keep (and must ensure that any authorised sub-licensee keeps) all user accounts, user names and passwords secure at all times.
- (c) The Panel Valuer must not disclose account, user name or password information about the RPData System to any other person, and must immediately inform RPData upon becoming aware of any actual or suspected unauthorised use of the RPData System.

3.6 Acknowledgement

The Panel Valuer acknowledges that:

- (a) the RPData System is provided on an 'as-is' basis and without limitation, RPData makes no representations about the compatibility of the RPData System with the Panel Valuer's software, procedures or practices, and takes no responsibility for the same;
- (b) RPData is not responsible for providing hardware or Internet connectivity necessary to access the RPData System. Further, RPData is not responsible for providing hardware necessary to access the RPData System or send or receive communications to or from the RPData System, except as otherwise specifically provided for in this Agreement;
- (c) RPData cannot and does not guarantee that access to the RPData System will be uninterrupted or that it will operate error-free;
- (d) RPData will implement reasonable security measures (including industry-standard security systems), but is not responsible for, takes no responsibility for and to the maximum extent permissible by law excludes all liability for:
 - (i) loss or damage sustained by the Panel Valuer (and any other person) as a result of unauthorised access to the RPData System; or
 - (ii) any disclosure, loss or corruption of data contained on the RPData System.

3.7 RPData System Content

- (a) The Panel Valuer expressly acknowledges that RPData does not control the content of information posted by RPData System users. The Panel Valuer agrees that RPData may reject any communication from the Panel Valuer or information posted on the RPData System by it and require the Panel Valuer to remove such information, and in its absolute discretion, edit or amend any information posted on the RPData System.
- (b) The Panel Valuer:
 - (i) must ensure all information posted by it on the RPData System is accurate and complete;
 - (ii) is responsible for the correct use of, and the content of all information, it posts on the RPData System; and

- (iii) is responsible for obtaining all necessary permissions, authorisations, licences and consents in relation to its use of any third party materials on the RPDData System.
- (c) No information accessed through or received from the RPDData System may be used, reproduced, distributed, transmitted, published, copied, transferred or commercially exploited by the Panel Valuer in any way that would constitute an infringement of any copyright, patent, trade mark, design or other intellectual property right.

4. Valuations

4.1 Formation of Contract

- (a) The Panel Valuer agrees to carry out all Valuations, and to supply all Valuation Reports to RPDData, in accordance with this Agreement, the Valuation Request and the Policies & Procedures, which together comprise the terms and conditions of each **Contract**.
- (b) A Contract is formed between RPDData and the Panel Valuer when the Panel Valuer accepts a Valuation Request in the RPDData System.
- (c) A separate Contract is formed each time the Panel Valuer accepts a Valuation Request.
- (d) Each Contract commences on the date of acceptance of the Valuation Request, and ends when the Valuation to be provided under the Contract is completed, or the Contract or this Agreement is terminated (whichever occurs first).
- (e) The Panel Valuer has the right to reject any Valuation Request.
- (f) The Panel Valuer may, at any time, issue a notice in writing to RPDData terminating a Contract. In the event that a Panel Valuer terminates a Contract pursuant to this clause:
 - (i) the Contract is terminated at the time the notice is taken to be received pursuant to **Clause 22.2** of this Agreement; and
 - (ii) RPDData is not required to pay the Valuation Fee.

4.2 Precedence

To the extent of any inconsistency between this Agreement, a Valuation Request and the Policies & Procedures this Agreement will prevail to the extent of that inconsistency.

4.3 Valuation Requests

- (a) RPDData must issue a Valuation Request specifying details of the Valuation, including sufficient detail to enable the Panel Valuer to conduct the Valuation in accordance with the RPDData System. A Valuation Request must include:
 - (i) a description of the property or properties the subject of the Valuation;
 - (ii) the time frame for completion of the Valuation and delivery of the Valuation Report;
 - (iii) the names of parties who may rely upon the Valuation, as instructed by the Client; and
 - (iv) any other reasonable requirements of RPDData.
- (b) Without derogating from the Panel Valuer's rights pursuant to **Clause 4.1(f)**, RPDData may, by written notice to the Panel Valuer, vary or reduce the scope of a Valuation Request or a Contract at any time.

5. Service level

5.1 Panel Valuer's Obligations

- (a) The Panel Valuer must perform all Valuations in accordance with:
 - (i) relevant best industry practice, including any standards, policies or guidelines issued by the Australian Property Institute;
 - (ii) the RPData System;
 - (iii) the Policies & Procedures, current as at the date of each Valuation and as notified to the Panel Valuer from time to time;
 - (iv) all legislation, regulations, ordinances and codes affecting the Valuation;
 - (v) any other reasonable direction issued by RPData or the Client in relation to a Valuation, as may be notified from time to time, unless such direction would affect the methodology adopted by the Panel Valuer or a Valuer in performing a Valuation in which case the Panel Valuer is entitled to exercise its rights pursuant to **Clause 4.1(e) or (f)**;
 - (vi) where relevant any specific instructions promulgated by RPData on behalf of any Client or Mortgage Insurance Provider relating to the provision of Valuations including:
 - (A) in the case of Genworth Financial Mortgage Insurance Pty Ltd, the provisions of the document known as “Valuation Minimum Standards”, save for clauses 9.3.2 and 9.3.5 of the “Valuation Minimum Standards” dated January 2011 which do not apply to the extent that those clauses vary from the API Supporting Memorandum, and instead the Panel Valuer must perform all Valuations in accordance with the API Supporting Memorandum and the Client Standing Instructions. To the extent of any inconsistency between the “Valuation Minimum Standards” and the API Supporting Memorandum and the Client Standing Instructions in relation to valuation methodology, the API Supporting Memorandum and the Client Standing Instructions shall prevail;
 - (B) in the case of QBE Lenders’ Mortgage Insurance Limited the provisions of the document known as “Minimum Valuation Requirements” and to the extent of any inconsistency between such provisions and this Agreement, those provisions prevail but only in relation to such inconsistency;
 - (vii) the Service Levels; and
 - (viii) the terms of the relevant Contract.
- (b) The obligations of the Panel Valuer pursuant to **Clause 5.1(a)** relate to any such requirements as may be in force at the commencement of the Term and as varied during the Term.
- (c) The Panel Valuer must liaise with (and comply with any reasonable request made by) RPData's representatives.
- (d) The Panel Valuer will not be relieved of any of its obligations under this Agreement or a Contract because of any:
 - (i) role of RPData in the procurement of a Valuation or the provision of a Valuation Report to a Client by RPData (except to the extent that RPData has breached its obligations to the Panel Valuer pursuant to this Agreement);
 - (ii) payment made to the Panel Valuer on account of a Valuation;

- (iii) subcontracting of a Valuation by the Panel Valuer to a Valuer; or
- (iv) acceptance by RPData of replacement personnel.
- (e) The Panel Valuer agrees to ensure that each Valuation Report is addressed to the Client and to such other parties as requested by the Client (acting reasonably) and as advised by RPData in the Valuation Request, and that each Valuation Report may be disclosed by an addressee of the Valuation Report to its officers, employees, legal and other advisers and auditors, provided that RPData will not require the Panel Valuer to address or disclose a Valuation Report to any second (or later) mortgagee or other person claiming an interest in the property the subject of the Valuation.

5.2 Panel Valuer's Acknowledgment

The Panel Valuer expressly acknowledges and agrees that:

- (a) any Valuation provided by the Panel Valuer is carried out for RPData at the request of the Client and for the benefit of the relevant Client and the relevant Client's Mortgage Insurance Provider (if any) and will be relied upon by each of them;
- (b) each Valuation will be current at the date of the Valuation and may be relied upon for a period of 90 days from the date of the Valuation, unless the party who seeks to rely on the Valuation is aware of any information which could reasonably be expected to alter the conclusions in the Valuation;
- (c) both RPData and the relevant Client, or the relevant Client's Mortgage Insurance Provider may suffer loss if the Panel Valuer breaches any of its obligations under this Agreement or a Contract;
- (d) subject only to the operation of:
 - (i) Proportionate Liability Legislation (to the extent that such legislation applies to a Panel Valuer); and
 - (ii) in respect of Valuations performed on or after 1 September 2010, Capping Legislation (to the extent that such legislation applies to a Panel Valuer) by way of the API Scheme or any other scheme of a similar nature which RPData has acknowledged to the Panel Valuer in writing will apply in respect of this Agreement;

the Panel Valuer is liable for such loss or damage which is incurred or suffered by a Client or the Client's Mortgage Insurance Provider as a result of any fraud, negligence or breach of this Agreement or a Contract by the Panel Valuer in respect of a Valuation; and

- (e) the rights of a Client in respect of a Valuation may be subrogated to the Client's Mortgage Insurance Provider.

5.3 Panel Valuer's Warranty and Guarantee

- (a) The Panel Valuer warrants to RPData that:
 - (i) it has the necessary qualifications, expertise, experience, capacity and facilities required to perform its obligations under this Agreement and each Contract;
 - (ii) it has all licences necessary to perform the Valuations and each Contract;
 - (iii) in performing the Valuations, the Panel Valuer will not breach an obligation owed to another person, or infringe any Intellectual Property of another person; and
 - (iv) it will perform the Valuations in accordance with each Contract received.

- (b) The Panel Valuer guarantees that the Valuations will be rendered with due care and skill and that the Valuations will be fit for the purpose for which they are supplied, being to assess the market value of a particular residential property.

5.4 Occupational Health, Welfare & Safety

- (a) The Panel Valuer separately warrants that it is familiar with, and has the capability and resources to comply with all relevant Safety Legislation and Safety Requirements.
- (b) The Panel Valuer must comply with, and ensure that any and all subcontractors or other persons engaged in the provision of any services under this Agreement, comply with, all such Safety Legislation and Safety Requirements. The Panel Valuer shall, upon reasonable request by or on behalf of RPData, demonstrate compliance with such requirements including, but not limited to, providing evidence of measures taken to achieve such compliance.
- (c) To the extent that it is relevant to the discharge by the Panel Valuer of its obligations under this Agreement, the Panel Valuer shall:
 - (i) co-operate with any other suppliers or contractors or other persons engaged in or associated with the business of RPData in order to maintain uniform safety and industrial practices; and
 - (ii) co-operate with RPData to enable it to comply with its obligations under all relevant Safety Legislation; and
 - (iii) immediately advise RPData in writing of any act, fact or circumstances associated with the activities of the Panel Valuer or any other person relevant to the ability of the Panel Valuer to discharge its obligations pursuant to this Agreement in a manner that is safe and without risks to health; and
 - (iv) supply all equipment necessary to ensure the provision of any service under this Agreement in a manner that is safe and without risks to health. The Panel Valuer must ensure that all equipment supplied by it is and is maintained in a condition that is safe and without risk to any person.
- (d) The Panel Valuer shall, prior to the provision of any services under this Agreement, undertake an assessment of the risks associated with provision of any such services and identify and implement appropriate measures to control all such risks. Details of the risk assessment and evidence of the implementation of adequate risk control measures shall be provided to RPData upon and in accordance with any reasonable request made by or on behalf of RPData.
- (e) The Panel Valuer shall perform all relevant functions and fulfil all relevant duties under all relevant Safety Legislation of an employer or otherwise applicable to the role of the Panel Valuer under this Agreement including notification of incidents that may be required under the Safety Legislation.
- (f) The Panel Valuer shall promptly notify RPData of any accident, injury, property or environmental damage which occurs during the carrying out of, and associated with, the provision of any services under this Agreement. The Panel Valuer shall within two days of any such incident, provide a written report to RPData giving complete details of the incident including the results of investigations into its cause and the recommendations or strategies for prevention of a recurrence.
- (g) Any breach by the Panel Valuer of any part of this clause shall be considered a material breach by the Panel Valuer of its obligations under this Agreement and shall entitle RPData (in addition to any other rights available to RPData) at its option to:

- (i) suspend any right of the Panel Valuer to receive any instructions or Valuation Request under this Agreement and any cost incurred by RPData by reason of the suspension (including the cost of the replacement of any service provided or to be provided by the Panel Valuer) shall be borne by the Panel Valuer; and/or
- (ii) terminate this Agreement in accordance with **Clause 20**.

6. Assignment & Sub-contracting

6.1 Assignment

Appointment to the RPData Panel is personal to the Panel Valuer, and may not be assigned without RPData's prior written consent (which may be refused, delayed or withheld in RPData's absolute discretion).

6.2 Sub-contracting

- (a) The Panel Valuer is not permitted to sub-contract Valuations to Valuers without RPData's prior written consent, which may not be unreasonably withheld or delayed. In determining whether or not to provide that consent, RPData may first require (and before it is required to consider the giving of its consent), without limitation, that the Panel Valuer:
 - (i) is not in breach of this Agreement or the relevant Contract;
 - (ii) ensures that the Valuer has read and confirmed their understanding of this Agreement and has agreed in writing to be bound by all of the Panel Valuer's obligations under this Agreement and the relevant Contract;
 - (iii) ensures that the Valuer agrees to strictly comply with all the terms and conditions of this Agreement and each Contract;
 - (iv) provides written evidence (to RPData's satisfaction) that the insurance policies required to be maintained under **Clause 18.1** and **18.2** cover the acts and omissions of the Panel Valuer and all Valuers involved in the preparation or provision of Valuations under this Agreement;
 - (v) must, if directed to do so, remove and/or promptly replace the Valuer with a person or entity acceptable to RPData at no additional cost to RPData; and
- (b) The Panel Valuer acknowledges that it is not permitted to sub-contract Valuation Requests for properties with an estimated value exceeding \$3,000,000 (and no Valuer may accept a Valuation Request in such circumstances) unless the Valuer has additional insurance cover to the level specified in the Policies & Procedures, from time to time.
- (c) The Panel Valuer further acknowledges and agrees that, subject to **Clause 17.5(a)**, where it sub-contracts a Valuation to a Valuer, the Panel Valuer remains bound by this Agreement and each Contract, and is responsible for all the acts or omissions of the Valuer, as if they were the Panel Valuer's acts or omissions.
- (d) The Panel Valuer expressly acknowledges that it is a Client requirement that RPData obtain prior approval for the appointment of all Panel Valuers and Valuers to provide Valuations in respect of Client-related Valuation Requests.
- (e) In the event that the Panel Valuer does not comply with its obligations, or is in breach of the warranty provided by it, pursuant to **Clause 18.1** or **18.2**, or for whatever reason the insurance policies required to be maintained under **Clause 18.1** and **18.2** cease to cover the acts and omissions of the Panel Valuer and all Valuers involved in the preparation or provision of any Valuation, the Panel Valuer acknowledges and agrees that it:

- (i) will immediately notify RPDData of that fact;
- (ii) consents to RPDData disclosing the same to its Client; and
- (iii) will immediately terminate any sub-contract for the provision of a Valuation by such a Valuer.

7. Support Services

7.1 Request for Support Services

Appointment to the RPDData Panel enables the Panel Valuer to request RPDData to provide it with Support Services from time to time. A contract for the provision of Support Services is formed when RPDData agrees to provide the Support Services requested by the Panel Valuer. RPDData is under no obligation to provide any Support Services, but where it agrees to do so, those Support Services will be provided in accordance with this Agreement and the Policies & Procedures.

7.2 Service Fees

The Panel Valuer where agreed will pay a Service Fee for any Support Services requested by it. The Panel Valuer must, within 30 days of receipt of a tax invoice from RPDData for the Service Fees in respect of Support Services, pay to RPDData the amount set out in the invoice without deduction.

7.3 Acknowledgment

The Panel Valuer acknowledges that if it sub-contracts a Valuation (in accordance with the Agreement) to a Valuer, then:

- (a) RPDData may, upon request from that Valuer, provide Support Services to that Valuer;
- (b) the Panel Valuer is responsible for payment of the Services Fees in accordance with this Agreement, in respect of any Support Services provided, as if the Panel Valuer had itself requested those Support Services; and
- (c) RPDData is not responsible for managing or enforcing any Agreement or understanding between the Panel Valuer and a subcontracted Valuer in respect of the Support Services.

8. Fees & Allowances

8.1 Payment of Fees

RPDData agrees to pay the Panel Valuer the Valuation Fees and any other allowances set out in each Valuation Request, and the Panel Valuer agrees to pay to RPDData any applicable Service Fees for Support Services, subject to this **Clause 8**.

8.2 Entitlement to Fees

The Valuation Fees will only be payable to the Panel Valuer if the Panel Valuer has performed its obligations under this Agreement and the relevant Contract.

Any Service Fees incurred by the Panel Valuer in respect of a Valuation are payable regardless of whether the Panel Valuer has performed its obligations under this Agreement or the relevant Contract.

8.3 Provision of invoices

At the end of each calendar month, the Panel Valuer must provide RPDData with an Invoice, completed and issued to RPDData using the RPDData System. If due to RPDData's failure, or the failure of the RPDData System, the Panel Valuer is unable to issue RPDData with an Invoice, the Panel Valuer may issue RPDData with an alternative invoice (which must be in the form of a tax invoice).

8.4 Payment of Fees

Within 30 days of receiving an Invoice (or alternative invoice), RPDData must:

- (a) provide the Panel Valuer with an invoice for any Service Fees rendered in the calendar month to which the Invoice relates;
- (b) provide the Panel Valuer with a statement (**RPData Statement**) setting out:
 - (i) the Valuation Fees payable by RPDData ;
 - (ii) the Service Fees payable by the Panel Valuer; and
 - (iii) the balance payable by RPDData or the Panel Valuer,
 in respect of the calendar month to which the Invoice relates; and
- (c) pay the amount set out in the RPDData Statement,

but RPDData is not required to take any action under this **Clause 8.4** unless and until it receives an Invoice (or alternative invoice) submitted by the Panel Valuer under **Clause 8.3**.

8.5 Netting off

- (a) RPDData may, in its discretion, deduct from the Valuation Fees payable to the Panel Valuer, the Service Fees and any other amounts whatsoever owing to RPDData , such deduction being in satisfaction of the amounts owing to RPDData to the extent accounted for.
- (b) A deduction by RPDData does not release the Panel Valuer from its obligation to provide an Invoice (or alternative invoice) in respect of the Valuation Fees, or RPDData from its obligation to provide an invoice in respect of the Service Fees.

8.6 Disputes

Subject to the provisions of **Clause 19** of this Agreement, RPDData may withhold payment of the Fees if, in its reasonable opinion:

- (a) a tax invoice submitted by the Valuer is incorrect;
 - (b) the Valuer is in breach of this Agreement or a Contract; or
 - (c) the Valuer has not satisfactorily completed a Valuation,
- until such time as the error, breach, or failure is corrected or remedied to RPDData 's satisfaction.

9. Goods & Services Tax

9.1 Interpretation

Words or expressions used in this **Clause 9** which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this **Clause 9**.

9.2 GST inclusive amounts

Where the expression **GST inclusive** is used in relation to an amount payable or other consideration to be provided for a supply under this Agreement or a Contract, the amount or consideration will not be increased on account of any GST payable on that supply.

9.3 Consideration is GST exclusive

Any consideration to be paid or provided for a supply made under or in connection with this Agreement or a Contract, unless specifically described as **GST inclusive**, does not include an amount on account of GST.

9.4 Gross up for consideration

Despite any other provision in this Agreement or a Contract, if a party (**Supplier**) makes a supply under or in connection with this Agreement or a Contract on which GST is imposed (not being a supply under consideration for which is specifically described as **GST inclusive**):

- (a) the consideration payable or to be provided for that supply under this Agreement or a Contract but for the application of this **Clause 9.4(a) (GST exclusive consideration)** is increased by, and the recipient of the supply (**Recipient**) must also pay to the Supplier, an amount equal to the GST payable by the Supplier on that supply; and
- (b) the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

9.5 Reimbursements (net down)

If a payment to a Party under this Agreement or a Contract is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that Party, then:

- (a) the payment will be reduced by the amount of any input tax credit to which that Party is entitled for that loss, cost or expense; and
- (b) that Party is assumed to be entitled to a full input tax credit unless it proves, before the date on which the payment must be made, that its entitlement is otherwise.

9.6 Tax invoice

- (a) The Recipient need not make a payment for a taxable supply made under or in connection with this Agreement or a Contract in respect of a taxable supply until the Supplier has given the Recipient a tax invoice for the supply to which the payment relates.
- (b) The Supplier must give the Recipient an adjustment note for an adjustment arising from an adjustment event relating to a taxable supply made under or in connection with this Agreement or a Contract within 7 days after the date the Supplier becomes aware of the adjustment event.

10. Intellectual property rights

10.1 RPData System

The Panel Valuer acknowledges that:

- (a) RPData owns the RPData System, and that all Intellectual Property Rights in the RPData System (whether current or future) are vested in RPData ;
- (b) RPData owns the RPData Data, and that all Intellectual Property rights in RPData Data (whether current or future) vest in RPData upon its creation; and
- (c) the Panel Valuer must not use, reproduce, create derivative works, copy or commercially exploit any part, aspect or functionality of the RPData System or any RPData Data without RPData 's prior written consent.

10.2 Valuation Reports

Subject to **Clause 10.3**, Intellectual Property in each Contract vests in RPData immediately upon its creation. The Panel Valuer expressly acknowledges and agrees that:

- (a) RPData may, without notifying the Panel Valuer, make minor corrections to the content of Valuation Reports where:
 - (i) the correction is urgently required to correct an error;

provided however that:

- (ii) RPData will first seek to consult the Panel Valuer to request that the Panel Valuer make the minor corrections and may only make such minor corrections if the Panel Valuer cannot be contacted within a reasonable period of RPData seeking to do so;
 - (iii) RPData will provide a copy of the amended report to the Panel Valuer at the same time as the amended report is provided to the Client;
 - (iv) no correction will be made that affects the Valuation or its methodology or its opinions and conclusions as reported in a Valuation Report, without the Panel Valuer's consent;
 - (v) the Panel Valuer shall not be liable for any loss caused, whether directly or indirectly, by any correction made by RPData without the consent of the Panel Valuer; and
 - (vi) the original Valuation Report submitted by the Panel Valuer will be retained in the Job History in the RPData System as a permanent record for the benefit of the Panel Valuer.
- (b) each Valuation may only be used in relation to a Client's Valuation Request in accordance with the provisions of **Clause 5.2(b)** of this Agreement.
 - (c) RPData must seek the Panel Valuer's consent if it proposes to use a Valuation:
 - (i) other than in respect of a Client's Valuation Request; or
 - (ii) for any reason contrary to the provisions of **Clause 5.2(b)** of this Agreement.

10.3 Panel Valuer Data

The Panel Valuer owns the Panel Valuer Data, provided however that;

- (a) RPData is permitted to use the Panel Valuer Data in accordance with the RPData System specifications;
- (b) RPData is permitted to reproduce and create derivative works of or in relation to any Panel Valuer Data for purposes which include (without limitation) disclosing it to Clients in connection with the Valuation Requests, and will seek the Panel Valuer's consent if it proposes to disclose Panel Valuer Data to any other panel valuer; and
- (c) the Panel Valuer may agree to licence certain Panel Valuer Data for inclusion and use in the RPData Sales Database, on the terms and conditions specified in the Policies & Procedures (and RPData and other parties are permitted to access and use that information subject to those licence terms and conditions);
- (d) all Panel Valuer Data licensed for inclusion in the RPData Sales Database is, for that purpose, provided by the Panel Valuer on the condition that before it is included in the RPData Sales Database, the Panel Valuer has taken all reasonable steps available to it to confirm the accuracy and completeness of the Panel Valuer Data; and
- (e) the Panel Valuer must obtain all necessary copyright and other Intellectual Property permissions before including any Third Party Material in a Valuation Report or using Third Party Material as part of a Valuation.

11. Confidential Information

- (a) Subject to **Clause 11(d)**, a Party must not, without the prior written consent of the other Party, use, disclose, copy or permit or assist anyone else in any way to use or disclose or

copy any Confidential Information of the other Party to a third party, save for disclosure in accordance with **Clause 11(d)**. In giving written consent to the disclosure of Confidential Information, a Party may impose such conditions as it thinks fit, and the other Party agrees to comply with those conditions.

- (b) A Party may at any time require the other Party to arrange for its advisers or any other third party, other than a RPData employee, to whom information may be disclosed pursuant to **Clause 11(d)(i)** to give a written undertaking relating to the use and non-disclosure of the first Party's Confidential Information.
- (c) If the other Party receives a request under **Clause 11(b)** it must promptly arrange for all such undertakings to be given.
- (d) The obligations on each Party under **Clause 11(a)** will not be taken to have been breached to the extent that Confidential Information of the other Party:
 - (i) is disclosed by a Party to its advisers or employees solely in order to comply with obligations, or to exercise rights, under this Agreement;
 - (ii) is disclosed to a Party's internal management personnel, solely to enable effective management or auditing of activities related to this Agreement or a Contract;
 - (iii) is authorised or required by law, to be disclosed;
 - (iv) is in the public domain otherwise than due to a breach of this Agreement or a Contract; or
 - (v) is or embodies or incorporates information or data that RPData is obliged, or reasonably wishes, to provide to third parties in furtherance of the provision of Services, or for the purpose of, or in connection or associated with, the reporting of financial, operating or other results or performance of Panel Valuers (or other entities), or the other reporting obligations of RPData, to any Client.
- (e) Where a Party discloses Confidential Information of the other Party to another person pursuant to **Clauses 11(d)(i) or (ii)**, the disclosing Party must:
 - (i) notify the receiving person that the information is Confidential Information; and
 - (ii) not provide the information unless the receiving person agrees to keep the information confidential.
- (f) The obligations under this **Clause 11** continue until the disclosing party provides notice in writing that the information is no longer confidential, and each Party must, on request at any time by the other Party, return or destroy Confidential Information of the other Party in their possession or control, or in the possession or control of any of its respective employees, agents, subcontractors or suppliers.
- (g) Nothing in this Agreement or a Contract derogates from any obligation which either Party may have under the *Privacy Act*, in relation to the protection of Personal Information.

12. Privacy

12.1 Panel Valuer's privacy obligation

The Panel Valuer must:

- (a) only use Personal Information for the purpose of a Contract and not for any unrelated purpose whatsoever;
- (b) promptly follow any reasonable direction of RPData in relation to Personal Information;

- (c) observe the Privacy Law and any RPDData privacy policy or protocol provided to the Panel Valuer in respect of all Personal Information;
- (d) implement access controls and reasonable technological measures to ensure that only the Panel Valuer's properly authorised personnel have access to Personal Information and who require such access for the purposes of performing their duties, and that all such personnel are properly trained to meet the requirements of this **Clause 12**;
- (e) maintain complete and accurate records of the Panel Valuer's use, copying and disclosure of Personal Information and immediately produce these records (and the Personal Information) on request to RPDData or its nominee;
- (f) establish procedures which enable the Panel Valuer to observe the requirements of this **Clause 12** and, if requested, permit RPDData or its nominee to review these procedures;
- (g) provide reasonable assistance to RPDData to enable it to resolve any inquiry or complaint relating to Personal Information, and immediately notify RPDData if it:
 - (i) knows of or suspects unauthorised use, copying or disclosure of Personal Information;
 - (ii) becomes aware that a disclosure of Personal Information may be required by law; or
 - (iii) is or may be prevented by any law from performing its obligations under this Clause 12.

12.2 Indemnity

The Panel Valuer indemnifies RPDData in respect of any loss, cost, expense, damage or liability (on a full indemnity basis) that RPDData may sustain or incur as a result, whether directly or indirectly, arising out of the Panel Valuer's breach of this **Clause 12**, including but not limited to any loss, cost, expense, damage or liability that RPDData may sustain or incur as a result of indemnifying the Client in respect of a breach of this Clause 12 by the Panel Valuer.

12A. Personal Information

12A.1 Definition

For the purposes of this clause, Personal Information means information or an opinion (however recorded whether true or not) about any natural person whose identity is apparent or can reasonably be ascertained from the information or opinion.

12A.2 Obligations of the Panel Valuer in respect of Personal Information

Without limitation to the obligations of the Panel Valuer pursuant to **Clause 12** of this Agreement, the Panel Valuer must:

- (a) comply with all applicable Privacy Legislation and the privacy policies of any Client of RPDData as notified by RPDData to the Panel Valuer from time to time;
- (b) only use Personal Information to which this clause applies to the extent necessary to discharge its obligations pursuant to this Agreement;
- (c) not disclose Personal Information to any other person without the express prior written authority of RPDData (or subject to paragraph (g) below), as expressly required by law;
- (d) establish, maintain and enforce appropriate policies and procedures and associated access controls and other technological measures, to ensure that Personal Information is only

accessible to those of its personnel who require such access for the purpose of assisting the Panel Valuer in discharging its obligations pursuant to this Agreement;

- (e) without limitation to sub paragraph (d), ensure that none of its personnel who have access to any Personal Information use, disclose, transfer or retain such Personal Information except to the extent necessary to perform their duties of engagement;
- (f) co-operate with any reasonable requests or directions of RPDData concerning the storage, security, use and disclosure of Personal Information, or the rights of individuals to access and correct such Personal Information;
- (g) notify RPDData as soon as reasonably practicable after it becomes aware that a disclosure of Personal Information may be required by law (including under the applicable Privacy Legislation), and, if requested by RPDData, assist RPDData or the Client to prevent or limit such disclosure.

13. Conflict of interest

- (a) The Panel Valuer warrants that to the best of its knowledge, information and belief, no conflict of interest concerning the Panel Valuer, its agents or subcontracts (“**Conflict**”) exists or is likely to arise in the performance of its obligations under this Agreement.
- (b) The Panel Valuer must not, during the term of this Agreement, engage in any activity likely to compromise the ability of the Panel Valuer to perform its obligations under this Agreement fairly and independently. Without limiting the generality of the foregoing, the Panel Valuer warrants in favour of RPDData that it will not have an interest in, or an association with any person or entity for whom a Valuation is being obtained or the property to be valued, either directly or indirectly.
- (c) The Panel Valuer will use its best endeavours to avoid and resolve as soon as possible any Conflict which may arise during the term of this Agreement.
- (d) If, during the performance of a Contract, a conflict of interest arises or appears likely to arise then the Panel Valuer must:
 - (i) promptly notify RPDData in writing;
 - (ii) make full disclosure of all relevant information relating to the Conflict;
 - (iii) take such steps as RPDData reasonably requires to resolve or otherwise deal with the Conflict.

14. Records

- (a) The Panel Valuer must keep (and must require any Valuers to keep) adequate Records about each Valuation in sufficient detail to enable RPDData to carry out an examination, inspection or an audit under this Agreement.
- (b) At the completion of a Contract, the Panel Valuer must (at RPDData's election) do one of the following:
 - (i) provide to RPDData a complete copy of the Valuation Report and all Records relating to the Valuation in such form, as is reasonably requested by RPDData, in which case the Panel Valuer will have no further obligation under this **Clause 14.1(b)**; or
 - (ii) retain for a period of 7 years after termination or expiration of each Contract, all Records relating to the relevant Valuation.

- (c) RPData may, at reasonable times, audit, examine and copy material in the Panel valuer's possession which is relevant to the Valuations (including the Panel Valuer's Records).
- (d) The Panel Valuer must give full and accurate answers to any questions RPData may have concerning Records relating to a Contract, and provide all assistance reasonably requested by RPData .
- (e) RPData acknowledges and agrees that:
 - (i) nothing in this **Clause 14** precludes a Panel Valuer from relying upon any rights of client legal privilege, whether at common law or pursuant to statute;
 - (ii) nothing in this **Clause 14** is, or should be construed to be, a waiver of any rights of the Panel Valuer to rely upon client legal privilege, whether at common law or pursuant to statute;
 - (iii) failure by the Panel Valuer to comply with the requirements of this **Clause 14** does not amount to a breach of any of the Panel Valuers obligations pursuant to this clause, to the extent that the failure to comply is a direct result of a Panel Valuer duly relying upon client legal privilege, whether at common law or pursuant to statute.
- (f) This **Clause 14** applies for the term of each Contract and a period of 7 years from the termination or expiry of a Contract.

15. Audit & access

15.1 Types of audits

Under this Agreement or a Contract, RPData may conduct audits of the following matters, to the extent that they relate to the Panel Valuer's performance under this Agreement or a Contract:

- (a) the Panel Valuer's practices and procedures;
- (b) the manner in which the Panel Valuer performs its obligations;
- (c) the Panel Valuer's compliance with invoices and reporting obligations;
- (d) the Panel Valuer's compliance with its obligations (including confidentiality, privacy and security obligations);

and any other matters reasonably determined by RPData to be relevant to the performance of the Panel Valuer's obligations under this Agreement or a Contract.

15.2 Audits

- (a) The Panel Valuer must participate promptly and cooperatively in audits of work performed under Contracts, and at the frequency and in relation to the matters specified by RPData . RPData may appoint an independent person to assist in the audits. RPData must use reasonable endeavours to ensure that audits do not materially or unreasonably delay or disrupt the Panel Valuer's performance of its obligations under this Agreement or a Contract.
- (b) Except for when notice is not practicable or appropriate, RPData must give the Panel Valuer reasonable notice of an audit and, where reasonably practicable, an indication of which documents and materials the auditor may require.
- (c) Unless specified otherwise, each Party must bear its own costs of any audits.
- (d) The requirement for, and participation in, audits does not in any way reduce the Panel Valuer's responsibility to perform its obligations under this Agreement or a Contract, and

the Panel Valuer must promptly take, at no additional cost to RPDData, corrective action to rectify any error, non-compliance or inaccuracy identified in any audit in respect of its obligations under this Agreement.

15.3 Access to Premises & Records

- (a) For the purposes of any audit pursuant to this **Clause 15**, or for the purpose of RPDData otherwise verifying that the Panel Valuer has complied with its obligations pursuant to this Agreement, the Panel Valuer must (and must ensure that any Valuers) grant RPDData access, as reasonably required, to
 - (i) the Panel Valuer or Valuer's premises, data, accounts and financial and other material relevant to the performance of this Agreement or a Contract (including Records), however and wherever stored or located, in the Panel Valuer's or any Valuers' custody, possession or control for inspection and/or copying; and
 - (ii) such reasonable facilities of the Panel Valuer or the Valuer, at no cost to RPDData, as may be necessary to enable a legible reproduction to be created of any records stored otherwise than in writing.
- (b) RPDData acknowledges and agrees that:
 - (i) nothing in this **Clause 15.3** precludes a Panel Valuer from relying upon any rights of client legal privilege, whether at common law or pursuant to statute;
 - (ii) nothing in this **Clause 15.3** is, or should be construed to be, a waiver of any rights of the Panel Valuer to rely upon client legal privilege, whether at common law or pursuant to statute;
 - (iii) failure by the Panel Valuer to comply with the requirements of this **Clause 15.3** does not amount to a breach of any of the Panel Valuers obligations pursuant to this clause, to the extent that the failure to comply is a direct result of a Panel Valuer duly relying upon client legal privilege, whether at common law or pursuant to statute.
- (c) This **Clause 15** applies for the term of each Contract and for a period of 7 years from the date of its expiration or termination.

16. Indemnity

16.1 Indemnity

The Panel Valuer indemnifies RPDData and the Client in respect of such loss or damage that RPDData or the Client may sustain or incur as a result of:

- (a) any breach of this Agreement or a Contract by the Panel Valuer, including but not limited to any breach of the Panel Valuer's obligations pursuant to **Clause 18.1**;
- (b) any Claim arising out of the Panel Valuer's provision of the Valuations, whether through a negligent act or omission or wilful misconduct of the Panel Valuer, its sub-contractors, its employees (including any Valuers) except to the extent that RPDData breached its obligations to the Panel Valuer pursuant to **Clauses 3.4, 3.5(a), 3.6(d), 4.3(a), 7.1, 11** and such breach contributed to the circumstances giving rise to the Claim; or
- (c) any infringement by the Panel Valuer of Intellectual Property rights of a Third Party.

16.2 Defence of claims & insurance

If a Claim arises for which the Panel Valuer would be required to indemnify RPDData or the Client under **Clause 16.1**, the Panel Valuer must:

- (a) at its own cost, obtain legal advice regarding the Claim (and defending the Claim);
- (b) use its best endeavours to defend any Claim;
- (c) notify RPDData or the Client and its insurers of the Claim and co-operate with them fully, and keep them informed in respect of, the defence or negotiation of the Claim; and
- (d) take reasonable steps under **Clause 16** to enforce any insurance policy relevant to the Claim.

17. Liability

17.1 Exclusion of RPDData 's liability

The Panel Valuer expressly acknowledges and agrees that, to the full extent permissible by law, RPDData will not be liable to the Panel Valuer (directly or indirectly, whether that liability arises in contract, tort (including but not limited to negligence), equity, under statute or otherwise) for any Loss caused by, arising out of or in any way connected with:

- (a) any breach of this Agreement or a Contract by RPDData ; or
- (b) the use of the RPDData System by the Panel Valuer under this Agreement,

and the Panel Valuer releases, discharges and will hold harmless RPDData from all liability and responsibility in respect of the same, except to the extent that any negligent act or omission of RPDData contributed to the relevant liability.

17.2 No consequential losses

RPDData will not be liable to the Panel Valuer or any other party, in any way related to this Agreement or any Contract, whether that liability arises in contract, tort (including but not limited to negligence), equity, under statute or otherwise, for Loss or damage (whether direct or indirect) of profits, revenues or for any indirect, special or consequential loss or damage whatsoever, except to the extent that any negligent act or omission of RPDData contributed to such loss.

17.3 Exclusion of warranties

To the maximum extent permissible by law, RPDData excludes all warranties and representations (direct, indirect or implied) in relation to the RPDData System and this Agreement.

17.4 Limitation of Liability

Where it is not possible at law to exclude liability, RPDData 's liability to the Panel Valuer (or a Valuer) in respect of the provision of the Support Services pursuant to **Clause 7.1** of this Agreement is limited to:

- (a) in the case of a liability relating to goods:
 - (i) the replacement of those goods, or the supply of equivalent goods;
 - (ii) the repair of the goods supplied;
 - (iii) the cost of replacing the goods or acquiring equivalent goods;
- (b) in the case of a liability relating to the Support Services:
 - (i) the re-supply of those services;
 - (ii) the cost of having those services supplied again.

17.5 Panel Valuer's Liability

- (a) RPDData expressly acknowledges and agrees that, notwithstanding any other provision of this Agreement, the liability of the Panel Valuer may be limited at law by the operation of:

- (i) in respect of all Valuations, whether performed before or after the date of this Agreement, Proportionate Liability Legislation (to the extent that such legislation applies to a Panel Valuer); and
- (ii) in respect of Valuations performed on or after 1 September 2010, Capping Legislation (to the extent that such legislation applies to a Panel Valuer) by way of the API Scheme or any other scheme of a similar nature which RPDData has acknowledged to the Panel Valuer in writing will apply in respect of this Agreement;

and that RPDData does not require the Panel Valuer to take any step to avoid or mitigate the operation of such legislation.

- (b) The Panel Valuer will notify RPDData within 5 Business Days in the event that the Panel Valuer's liability under, or in connection with, this Agreement becomes limited under or by virtue of any scheme that applies pursuant to Capping Legislation other than the API Scheme, and the Panel Valuer acknowledges that such notification will be advised to RPDData's Clients, which may direct RPDData to remove the Panel Valuer from the RPDData Panel.

18. Insurance

18.1 Professional indemnity insurance

Unless otherwise agreed by RPDData in writing, the Panel Valuer will, and warrants in favour of RPDData that it has and will:

- (a) maintain a valid and enforceable professional indemnity insurance policy in connection with the performance of this Agreement, with an insurer acceptable to RPDData as required pursuant to the Policies and Procedures during the Term;
- (b) ensure that either:
 - (i) the insurance policy required to be maintained under **Clause 18.1(a)** also covers the acts and omissions of all Valuers involved in the preparation or provision of Valuations under this Agreement pursuant to the terms of that insurance policy; or
 - (ii) that all Valuers involved in the preparation or provision of Valuations under this Agreement maintain at all times a valid and enforceable insurance policy, with an insurer acceptable to RPDData as required pursuant to the Policies and Procedures during the Term, as required pursuant to **Clause 18.1**;
- (c) provide RPDData, upon request, a certificate of currency and a copy of the professional indemnity insurance policies;
- (d) within seven Business Days of the renewal date of the Panel Valuer's or any Valuer's professional indemnity insurance, provide RPDData with written evidence that the Panel Valuer or the relevant Valuer has paid and renewed the policy and obtain a certificate of its currency, and consent to RPDData providing such information to the Client;
- (e) immediately notify RPDData of the variation or cancellation of any professional indemnity insurance policy held by the Panel Valuer or any Valuer;
- (f) agree to have and maintain professional indemnity insurance in accordance with this **Clause 18.1** for at least 7 years after the last date on which the Panel Valuer provided a Valuation under this Agreement;
- (g) procure that Valuers who maintain their own professional indemnity insurance pursuant to **Clause 18.1(b)(ii)**, have and maintain professional indemnity insurance in accordance with

Clause 18.1(b)(ii) for at least 7 years after the last date on which the Valuer provided a Valuation under this Agreement; and

- (h) not act in a manner that will void or reduce the indemnity extended to them under their professional indemnity insurance policy (e.g. failure of the valuer to report circumstances that may give rise to a claim).

18.2 Other insurances

- (a) Unless otherwise agreed by RPData in writing, in connection with the performance of this Agreement or a Contract, the Panel Valuer must have and maintain valid and enforceable insurance policies with an insurer acceptable to RPData for:
 - (i) public liability, which must provide coverage in respect of each occurrence, for at least \$10m;
 - (ii) workers' compensation, as required by law; and
 - (iii) any other insurance relevant to the Valuations, providing insurance cover for an amount not less than is generally accepted within the Australian property valuation profession.
- (b) In respect of the insurance policies required pursuant to **Clause 18.2(a)**, the Panel Valuer must:
 - (i) maintain each of the insurance policies throughout the Term of this Agreement;
 - (ii) so far as is reasonably practicable:
 - (A) ensure that the insurance policies required to be maintained under **Clause 18.2(a)** also covers the acts and omissions of all Valuers or other sub-contractors involved in the preparation of Valuations under this Agreement pursuant to the terms of those insurance policies; or, alternatively
 - (B) ensure that Valuers maintain their own insurance policies on the same terms and conditions;
 - (iii) provide RPData, upon request, with copies of certificates of currency;
 - (iv) within seven Business Days of the renewal date of each of the insurance policies, provide RPData with written evidence that the Panel Valuer has paid and renewed the policy and obtain a certificate of its currency, and consent to RPData providing such information to the Client;
 - (v) immediately notify RPData of the variation or cancellation of any of the policies and will consent to RPData disclosing the same to its Client;
 - (vi) not act in a manner that will void or reduce the indemnity extended to the Panel Valuer pursuant to each of the policies.

18.3 Prosecution of claims against Panel Valuers

In addition to **Clause 5.2**, the Panel Valuer expressly acknowledges and agrees that if a Client suffers Loss arising out of or related to any Valuation provided by the Panel Valuer, the Client:

- (a) may, if it wishes to make a claim in respect of that Loss, issue a claim against the Panel Valuer; and
- (b) to the extent reasonably possible, may recover the Loss from the Panel Valuer under the insurance policies maintained by the Panel Valuer and referred to in **Clause 18.1** and **18.2**

without joining RPData as a party to any proceedings issued to recover the Loss from the Panel Valuer.

19. Dispute resolution

19.1 No arbitration or court proceedings

If a dispute arises under this Agreement or a Contract (**Dispute**), a Party must comply with this **Clause 19** before starting arbitration or court proceedings (except proceedings for declaratory or interlocutory relief).

19.2 Notification

A Party claiming a Dispute has arisen must give the other Party to the Dispute notice setting out details of the Dispute (**Notice**).

19.3 Parties to resolve Dispute

During the 14 days after a Notice is given (or longer period if the Parties agree), each Party must use reasonable efforts to resolve the Dispute. If it cannot be resolved within that period, the Parties must refer the Dispute to a mediator if one of them requests.

19.4 Appointment of mediator

If the Parties cannot agree on a mediator within 7 days after a request under **Clause 19.3**, the president of the Australian Property Institute (South Australian Division) or the president's nominee will appoint a mediator.

19.5 Role of mediator

The role of a mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a Party to the Dispute except if the Party agrees in writing.

19.6 Confidentiality

Any information or documents disclosed by a Party under this clause must be kept confidential and may only be used to attempt to resolve the Dispute.

19.7 Costs

Each Party must pay its own costs of complying with this **Clause 19**. The Parties must equally pay the costs of any mediator.

19.8 Termination of process

A Party to a Dispute may terminate the Dispute resolution process by giving notice to each other after it has complied with **Clauses 19.1 to 19.3**. In addition, **Clauses 19.6 and 19.7** survive termination of the Dispute resolution process.

19.9 Breach of this clause

If a Party to a Dispute breaches **Clauses 19.1 to 19.8**, the other Parties to the Dispute do not have to comply with those clauses in relation to the Dispute.

20. Termination

20.1 Termination without cause

- (a) Either Party may terminate this Agreement at any time, without cause, by giving the other Party 30 days written notice.
- (b) Termination under this **Clause 20** will have the effect of terminating this Agreement, the Appointment, and as a result the Panel Valuer will no longer be appointed to the RPData Panel.

- (c) As an alternative to termination of this Agreement, RPDData may, instead, elect to:
 - (i) vary or reduce the scope of a Contract; or
 - (ii) cease providing, or refuse to provide, the Support Services or any part of them, by written notice to the Panel Valuer.

20.2 Termination with cause

RPDData may also terminate this Agreement with immediate effect by giving notice to the Panel Valuer if:

- (a) the Panel Valuer breaches any provision of this Agreement or a Contract and fails to remedy the breach within 14 days after receiving notice requiring it to do so;
- (b) RPDData receives a direction from a Client to remove the Panel Valuer from the RPDData Panel;
- (c) the Panel Valuer breaches a material provision of this Agreement or a Contract where (in RPDData's reasonable opinion) that breach is not capable of remedy. The Panel Valuer agrees that any breach of its obligations pursuant to **Clause 18.1** and **18.2** is a breach of a material provision of this Agreement which is not capable of remedy;
- (d) in RPDData's reasonable opinion, the Panel Valuer's continued access to the RPDData System threatens the integrity of the system, or the rights of other users of the RPDData System; or
- (e) any event referred to in **Clause 20.3** happens to the Panel Valuer.

20.3 Notification of events

The Panel Valuer must notify RPDData immediately if any of the following events occurs to it:

- (a) there is any change in the direct or indirect beneficial ownership or control of it;
- (b) it disposes of the whole or part of its assets, operations or business other than in the ordinary course of business;
- (c) it ceases to carry on business;
- (d) it ceases to be able to pay its debts as they become due or is otherwise deemed to be insolvent under the Corporations Act or the Bankruptcy Act as the case may be;
- (e) it takes any step to enter into any arrangement between it and its creditors;
- (f) (if a company) it enters into liquidation or any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, an administrator or other like person of the whole or part of its assets, operations or business;
- (g) (if a natural person) he or she is declared bankrupt or assigns his or her estate for the benefit of creditors;
- (h) where it is a partnership, any step is taken to dissolve that partnership.

20.4 Upon termination

- (a) Upon receipt of a notice of termination, the Panel Valuer must:
 - (i) stop work as specified in the notice;
 - (ii) take all available steps to minimise loss resulting from that termination and to protect all Records; and
 - (iii) (or if the scope of a Valuation has been varied or reduced) continue work on any part of a Valuation not affected by the notice.

- (b) If this Agreement is terminated, RPData is liable only for payments under **Clause 8.1** for Services, and the Panel Valuer remains liable for payments under **Clause 7.2** for Support Services, in each case rendered before the effective date of termination.
- (c) If the scope of a Valuation is varied or reduced, RPData's liability to pay the Fee and any allowances and costs abates in accordance with the reduction in the Valuation.
- (d) The Panel Valuer is not entitled to compensation for loss of prospective profits.

20.5 Survival

Clause 10 (in relation to intellectual property), **Clause 11** (in relation to Confidential Information), **Clause 14** (in relation to Records), **Clauses 16 and 17** (in relation to indemnity and insurance) and **Clauses 18.2(a) and 18.3** (in relation to insurance and claims against Panel Valuers) survive the termination of a this Agreement or a Contract

20.6 Accrued rights & remedies

Termination of this Agreement does not affect any accrued rights or remedies of either Party.

21. Relationship of Parties

The Panel Valuer must not represent itself, and must ensure that its officers, employees, agents and any Valuers do not represent themselves, as being an officer, employee, partner or agent of RPData, or as otherwise able to bind or represent RPData. This Agreement or a Contract does not create a relationship of employment, agency or partnership between the Parties.

22. Notice

22.1 Giving of notices

A Party giving notice or notifying under this Agreement or a Contract must do so in writing or by Electronic Communication:

- (a) directed to the other Party's Representative at the other Party's address, as varied by any notice; and
- (b) hand delivered or sent by pre-paid post, facsimile or Electronic Communication to that address,

provided however, that a notice under **Clause 17.2** (in respect of Claims made against the Panel Valuer), **Clause 19** (in respect of a Dispute) and **Clause 20** (in respect of termination of this Agreement) cannot be given by Electronic Communication.

22.2 Receipt of notice

A notice given in accordance with **Clause 22.1** is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by pre-paid post, 3 days after the date of posting;
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice (unless, within one Business Day after that transmission, the recipient informs the sender that it has not received the entire notice); or
- (d) if sent by Electronic Communication, at the time that would be the time of receipt under the *Electronic Transactions Act 1999* (Cth).

23. Miscellaneous

- (a) This Agreement or a Contract may be altered only in writing signed by each Party.
- (b) Except where this Agreement or a Contract states otherwise, a Party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this Agreement or a Contract.
- (c) Each Party must pay its own costs of negotiating, preparing and executing this Agreement or a Contract.
- (d) Any indemnity or any obligation of confidence under these this Agreement or a Contract is independent and survives termination of this Agreement or a Contract. Any other term by its nature intended to survive termination will survive termination of this Agreement or a Contract.
- (e) The rights and obligations of the Parties under this Agreement or a Contract do not merge on completion of any transaction contemplated by this Agreement or a Contract.
- (f) A clause or provision of this Agreement or a Contract that is illegal or unenforceable may be severed from this Agreement or a Contract and the remaining parts of this Agreement or a Contract continue in force.
- (g) Subject to the principles of estoppel, a Party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the Party giving the waiver.
- (h) This Agreement and each Contract is governed by the law of the State of South Australia and each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the State of South Australia.
- (i) Subject only to **Clause 23(j)** this Agreement represents the entire agreement between the Parties with respect to its subject matter and supersedes all prior arrangements and understandings between the parties in connection with it, and applies to Valuations performed on or after the date of this Agreement.
- (j) The parties expressly acknowledge and agree that, notwithstanding any other provision of this Agreement or any earlier agreement, the liability of the Panel Valuer for Claims in respect of Valuations performed prior to the date of this agreement may be limited in accordance with **Clause 17.5(a)** of this Agreement, and that any earlier agreement is hereby amended to that effect.

Signing page

EXECUTED as an agreement.

Executed by Valuation Exchange Pty Ltd

Signature of Authorised Representative ←

Signature of Authorised Representative ←

Name of Authorised Representative (print)

Name of Authorised Representative (print)

[*Use where the Panel Valuer is an incorporated entity]

***Executed by Panel Valuer**

Signature of director ←

Signature of director/company secretary
(Please delete as applicable) ←

Name of director (print)

Name of director/company secretary (print)

[*Use where the Panel Valuer is not an incorporated entity]

***Signed by Panel Valuer** in the presence of

Signature of witness ←

Panel Valuer ←

Name of witness (print)

Schedule 1 – Panel Valuer

Name	
ABN	
Representative	
Phone	
Fax	
Email	
Address	

Schedule 2 Service Levels

Service Levels

The agreed service level for the provision of Valuations by a Panel Valuer is that no less than 90% of the Valuations in a month are completed within the target timetables set out below or such other timing as may be agreed during the Term.

Location	Target	SLA Commitment
Metro	48 hours	By 6pm two full business days after the request is received
Major Regional	72 hours	By 6pm three full business days after the request is received
Rural	Variable	Variable

Schedule 3 Policies & Procedures
