

## Sample Terms and Conditions

**Acceptance and Applicability.** These Terms and Conditions for Appraisal Services and Reports (“Terms and Conditions”) shall apply to any appraisal reports, contracts or orders into which they are incorporated. In addition, with respect to any appraisal report, any use of or reliance on the appraisal by any party, regardless of whether the use or reliance is authorized or known by Appraiser, constitutes acceptance of these Terms and Conditions as well as acceptance of all other appraisal statements, limiting conditions and assumptions stated in the appraisal report. An Appraisal Services Agreement may contain different provisions than stated in this document but such different provisions shall only apply between Client and Appraiser/Firm, unless the Appraisal Services Agreement expressly states otherwise.

**Definitions.** In these Terms and Conditions:

“Appraisal Services Agreement” means any written agreement with Client for performance of the appraisal services by Appraiser, including any agreement entered into electronically or through a web portal;

“Client” means a party identified expressly as a client in an Appraisal Services Agreement and also any party identified expressly as a client by the Appraiser in an appraisal report;

“Appraiser” means the appraiser(s) performing part or all of the appraisal services and/or signing an appraisal report, and

“Firm” means any business entity employing the Appraiser or of which the Appraiser is a partner, owner, shareholder, member, officer, director or independent contractor, and includes the other employees, partners, owners, shareholders, members, officers, directors or independent contractors of any such entity.

**Intended Users.** Appraiser will identify one or more “intended users” of the appraisal in the report, either by name or type of user. The purpose of this identification is for Appraiser to determine the appropriate reporting of the appraisal in a manner that is clear and understandable to the identified intended user(s). It is not an acknowledgement by Appraiser that Appraiser knows or expects a party to use or rely on the appraisal. Neither Appraiser nor Firm is responsible to parties who are not identified as intended users or for uses not identified as intended uses.

**Appraiser Independence.** As required by law and professional standards, Appraiser’s performance of the appraisal is independent, impartial and objective. Accordingly, Appraiser cannot agree to provide a value opinion that is contingent on a predetermined amount and cannot ensure that the opinion of value will serve to facilitate any specific objective of Client or others or advance any particular cause.

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*This sample is designed to provide helpful information and to serve as a resource in the preparation of letters of agreement or engagement, which may create legally binding obligations on the parties. This sample is provided with the understanding that the Appraisal Institute is not engaged in rendering legal, accounting or other professional services. The Appraisal Institute does not assume any responsibility or liability for any services performed pursuant to use of or reliance upon this material nor does the Appraisal Institute make any representation or warranty that this material contains terms and conditions appropriate to any particular appraisal assignment. Under no circumstances shall the Appraisal Institute be liable for any direct, indirect, incidental, consequential, special or exemplary damages arising out of or in connection with use of this material. Users should seek the advice of competent local legal counsel in the preparation of letters of agreement and engagement in part to ensure that users’ interests are properly represented, that terms and conditions are appropriate for any particular appraisal assignment, are enforceable, have the desired meaning and are compliant with local laws.*

**Unauthorized Use or Publication.** No part of the appraisal report or the Appraiser's opinions or conclusions may be published or used in any advertising materials, property listings, investment offerings or prospectuses, or securities filings or statements without Appraiser's prior written authorization. Any party who publishes or uses the report or Appraiser's work product without such authorization or who provides the report or Appraiser's work product for such unauthorized use or publication agrees to indemnify and hold Appraiser and Firm harmless from and against all damages, liabilities, losses, causes of actions, expenses, claims and costs, including attorneys' fees, incurred in the investigation and/or defense of any claim arising from or in any way connected to the unauthorized use or publication.

**No Third Party Beneficiaries of the Appraisal Services Agreement.** Unless identified expressly in the agreement, there are no third party beneficiaries of any Appraisal Services Agreement pertaining to the appraisal, and no other person or entity shall have any right, benefit or interest under such agreement. The identification of a party as an intended user of the appraisal does not mean that the party is a third party beneficiary of the Appraisal Services Agreement.

**Appraiser Not Responsible for Certain Conditions.** Notwithstanding that Appraiser may comment on, analyze or assume certain conditions in the appraisal, Appraiser shall have no monetary liability or responsibility for alleged claims or damages pertaining to: (a) title defects, liens or encumbrances affecting the property; (b) the property's compliance with local, state or federal zoning, planning, building, disability access and environmental laws, regulations and standards; (c) building permits and planning approvals for improvements on the property; (d) structural or mechanical soundness or safety; (e) contamination, mold, pollution, storage tanks, animal infestations and other hazardous conditions affecting the property; and (f) other conditions and matters for which licensed real estate appraisers are not customarily deemed to have professional expertise.

**Maximum Time Period for Legal Actions.** Unless the time period is shorter under applicable law, any legal action or claim relating to the appraisal or Appraisal Services Agreement shall be filed in court (or in the applicable arbitration tribunal, if the parties to the dispute have executed an arbitration agreement) within two (2) years from the date of delivery to Client of the appraisal report to which the claims or causes of action relate or, in the case of acts or conduct after delivery of the report, two (2) years from the date of the alleged acts or conduct. The time period stated in this section shall not be extended by any delay in the discovery or accrual of the underlying claims, causes of action or damages. The time period stated in this section shall apply to all non-criminal claims or causes of action of any type.

**Limitations of Liability and Assignment of Claims.** Professional standards for the performance of real estate appraisals require that appraisers perform their services independently, impartially and objectively. Clients and other users of appraisals often have separate legal or regulatory obligations imposed on them in relation to the appraisal process. The provisions of this section are designed to assure that an appraiser can render appraisal services in compliance with professional

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standards for reasonable compensation and to assure that clients and users can comply freely with their own professional and legal obligations. If any conditions are not appropriate for a particular assignment, they may be negotiated, but the modification must be in writing and signed by the parties subject to the modification.

**a. Limitations of Liability.** To the fullest extent permitted by applicable law, the maximum monetary liability of Appraiser, Firm or Client to one another or to any third party (regardless of whether such party's claimed use or reliance on the appraisal was authorized by Appraiser) for any and all claims or causes of action relating to the appraisal or Appraisal Services Agreement shall be limited to

[*example statements:* (i) "\$25,000", (ii) "the total compensation actually received by Appraiser for the appraisal or other services that are the subject of the claim(s) or cause(s) of action", (iii) "two times (2X) the total compensation actually received by Appraiser for the appraisal or other services that are the subject of the claim(s) or cause(s) of action".]

This limitation of liability extends to all types of claims and causes of action, whether in contract or tort, but excludes: (i) claims/causes of action for intentionally fraudulent or criminal conduct, intentionally caused injury, or unauthorized use or publication of the appraisal or Appraiser's work product or (ii) claims/causes of action by Appraiser or Firm for the collection of unpaid compensation for the appraisal or other services (for which the maximum recovery shall be the total amount unpaid and owing to Appraiser, plus applicable interest and late charges).

**b. No Special or Consequential Damages.** No Appraiser, Firm nor Client shall be liable to one another or to any any third party for special or consequential damages, including, without limitation, loss of profits or damages proximately caused by loss of use of any property, regardless of whether arising from negligence or breach of the Appraisal Services Agreement or otherwise, and regardless of whether a party was advised or knew of the possibility of such damages.

**No Assignment of Claims.** Legal claims or causes of action relating to the appraisal or Appraisal Services Agreement are not assignable, except: (i) as the result of a merger, consolidation, sale or purchase of a legal entity, (ii) with regard to the collection of a bona fide existing debt for services but then only to the extent of the total compensation for the appraisal plus reasonable interest, or (iii) in the case of an appraisal performed in connection with the origination of a mortgage loan, as part of the transfer or sale of the mortgage before an event of default on the mortgage or note or its legal equivalent.

**Subpoenas and Testimony.** In the event that Appraiser or Firm is compelled by subpoena or other legal or administrative process to provide testimony or produce documents relating to the

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appraisal or Appraiser's services, whether in court, deposition, arbitration or any other proceeding, the party seeking such testimony or documents agrees to compensate Appraiser or Firm, as applicable, for the reasonable time incurred in connection with preparation for and provision of such testimony and/or documents at Appraiser's rates in effect at that time and reimburse reasonable actual expenses.

**Severability.** If any provision of these Terms and Conditions is held, in whole or part, to be unenforceable or invalid for any reason, the remainder of that provision and the remainder of the entire Terms and Conditions will be severable and remain in effect.

**Conflict with Appraisal Services Agreement.** If any of these Terms and Conditions conflict with an Appraisal Services Agreement, the terms and conditions of the Appraisal Services Agreement shall control but only as between Client and Appraiser/Firm, unless the Appraisal Services Agreement expressly states otherwise.

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