

# CPA AUSTRALIA MASTER SERVICES AGREEMENT

Effective 1 October 2020

## 1. Background

- 1.1 CPA Australia requires the provision of certain Services and/or Deliverables.
- 1.2 The Supplier has fully informed itself on all aspects of CPA Australia's requirements and represents it is able to provide the Services and/or Deliverables as stipulated in a statement of work (**SOW**).
- 1.3 An "**Agreement**" between CPA Australia and the Supplier is comprised of this master services agreement (**MSA**) and an individual executed SOW between CPA Australia and the Supplier.
- 1.4 CPA Australia may update the MSA at any time by posting a new version on its Website. Any updated version of the MSA will become effective once posted on the Website. The version of the MSA forming an Agreement will be the version available on the Website at the time the relevant SOW forming part of the Agreement is executed.
- 1.5 If there is any conflict between the MSA and a SOW, the MSA will prevail to the extent of that conflict, unless the SOW explicitly refers to the conflicting provision in the MSA and expressly specifies that the SOW's replacement provision applies instead.

## 2. Term

- 2.1 An Agreement commences on the date specified in a SOW (**Commencement Date**) and will continue for the period specified in that SOW (**Initial Term**).
- 2.2 If a further term is specified in a SOW (**Further Term**), CPA Australia may exercise its option to extend an Agreement for that Further Term by giving the Supplier written notice
- 2.3 The terms and conditions of the Agreement as they applied to the Initial Term will apply to any Further Term(s).

## 3. Engagement of the Supplier

- 3.1 CPA Australia engages the Supplier on a non-exclusive basis to provide the Services and/or Deliverables in accordance with this MSA for the Term.
- 3.2 The Supplier will:
  - (a) provide the Services and/or Deliverables: (i) in compliance with all applicable laws, rules and regulations (including but not limited to Modern Slavery Legislation and any other laws, rules or legislation relating to human trafficking and modern slavery as applicable to the Supplier); (iii) with all due skill, care and diligence; (iv) using only suitably qualified personnel; (v) to the satisfaction of CPA Australia; (vi) in accordance with accepted professional and business practices; and
  - (b) ensure that the Services are fit for their intended purpose.
- 3.3 The Supplier will not subcontract any part of the provision of the Services and/or Deliverables unless it obtains CPA Australia's prior written consent, in which case the Supplier will:
  - (a) ensure work performed by any subcontractor is in accordance with the Agreement; and
  - (b) be liable for the acts and omissions of each subcontractor as if such acts and omissions were the acts and omissions of the Supplier.
- 3.4 CPA Australia may reject the Services and/or Deliverables within 10 Business Days after delivery or such longer period specified in a SOW (**Acceptance Period**) if the Services and/or Deliverables do not comply with CPA Australia's requirements as outlined in the Agreement.
- 3.5 Before the end of the Acceptance Period, CPA Australia may provide the Supplier with written notice extending the

Acceptance Period if: (i) there are circumstances beyond CPA Australia's reasonable control which prevent compliance with the original Acceptance Period; or (ii) the Supplier's action or inaction has impacted CPA Australia's evaluation of the Services and/or Deliverables.

- 3.6 If any Services and/or Deliverables are rejected, CPA Australia must notify the Supplier of the reason and stipulate the remedial actions required by the Supplier. No payment will be due for rejected Services and/or Deliverables until acceptance by CPA Australia. Subject to clause 11.2(a), title to Deliverables transfers on acceptance.
- 3.7 The relationship between the parties is that of a principal and an independent supplier. The Supplier is not authorised or empowered to act as agent for CPA Australia for any purpose, and may not enter into any contract, or provide any warranty or representation regarding any matter on behalf of CPA Australia.

## 4. Payment

- 4.1 CPA Australia will pay the Supplier the fee specified in the relevant SOW (**Fee**) plus any applicable GST within 20 Business Days of CPA Australia receiving a valid tax invoice from the Supplier. The Fee is expressed in Australian dollars and is exclusive of GST, unless otherwise stated.
- 4.2 Payment of any invoice is payment on account only and does not substantiate performance of an Agreement.
- 4.3 CPA Australia will reimburse the Supplier for reasonable expenses incurred in connection with the provision of the Services and/or Deliverables which are approved in writing by CPA Australia prior to the Supplier incurring the expense and on the provision of a valid tax invoice evidencing the expense incurred.
- 4.4 CPA Australia may set off against Fees, any amount (whatsoever) payable to CPA Australia by the Supplier.
- 4.5 The Supplier agrees to comply, and to ensure its subcontractors comply, with all applicable laws relating to taxation.

## 5. Payment Card Industry Data Security Standard (PCI DSS) compliance

- 5.1 Where the Supplier or any of its Related Persons has access to credit card information under this Agreement (**Cardholder Data**), and/or may be responsible for the security of Cardholder Data, the Supplier will:
    - (a) comply with all applicable PCI DSS obligations, requirements and standards;
    - (b) complete any documentation required to comply with the PCI DSS;
    - (c) maintain and be responsible for proper security of Cardholder Data that it and/or its Related Persons processes, stores, or transmits; and
    - (d) on request, provide CPA Australia with access to its policies and procedures for compliance with the PCI DSS and security of Cardholder Data.
  - 5.2 The Supplier will, at least once in every calendar year, provide a written verification of its PCI DSS compliance status to CPA Australia.
  - 5.3 CPA Australia may terminate an Agreement immediately by written notice to the Supplier if the Supplier fails to comply with any of its obligations under this clause 5.
- ## 6. Conflicts of Interest
- 6.1 The Supplier represents and warrants that it, and its Related Persons, have no vested commercial, personal or

other interests that would impact its performance of an Agreement.

- 6.2 If any conflict arises, the Supplier will promptly notify CPA Australia in writing and take steps to avoid or mitigate the conflict as CPA Australia requires.

## **7. Confidential Information**

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- 7.1 The Supplier agrees not to, and will ensure each of its Related Persons do not, disclose, copy, make available, or use otherwise than for the purposes of the provision of the Services and/or Deliverables, any Confidential Information without CPA Australia's prior written consent.
- 7.2 The Supplier will immediately on termination or expiry of the Agreement or on request by CPA Australia:
- (a) return or destroy, at the election of CPA Australia, all material containing Confidential Information in its possession, power or control, which was either received from CPA Australia or which the Supplier has generated; and
  - (b) cease to make use of the Confidential Information and notify CPA Australia when it has done so.
- 7.3 The Supplier will:
- (a) provide all reasonable assistance to CPA Australia to (i) prevent any unauthorised use or disclosure of the Confidential Information (ii) take action to prevent or prosecute the unauthorised use or disclosure of the Confidential Information; and (iii) make sure that any persons who receive the Confidential Information do so on terms no less strict than the confidentiality obligations as contained in this MSA; and
  - (b) cooperate with the reasonable requirements of CPA Australia in relation to any such unauthorised use or disclosure.
- 7.4 The confidentiality obligations outlined in this clause 7 will not be breached where the Supplier is compelled by law or a stock exchange to disclose the relevant information or where the relevant information is publicly available (other than through breach of a confidentiality or non-disclosure obligation).
- 7.5 Where the Supplier is permitted to disclose Confidential Information under clause 7.4, the Supplier must notify CPA Australia prior to disclosure and seek to minimise the amount of Confidential Information disclosed, including requesting that the Confidential Information be disclosed only on confidential terms no less strict than the terms of this MSA.

## **8. Modern Slavery**

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- 8.1 The Supplier acknowledges that CPA Australia is committed to complying with the principles in Modern Slavery Legislation, and warrants that at the date of entering into the Agreement the Supplier:
- (a) has no knowledge of any risk of Modern Slavery Offences within its organisation or supply chain; and
  - (b) otherwise takes reasonable steps to prevent the occurrence of Modern Slavery Offences within its organisation or supply chains.
- 8.2 Without limiting clause 8.1 above, the Supplier warrants that any services or goods procured for the provision of Services and/or Deliverables under an Agreement have not been supplied by a third party that is known to have engaged in, or is engaging in Modern Slavery Offences, and the Supplier has taken reasonable steps to confirm this prior to procuring any such services or goods.
- 8.3 The Supplier will notify CPA Australia as soon as practicable upon becoming aware of any Modern Slavery Offence, or of charges being laid in relation to such offence, within its organisation or supply chain.
- 8.4 The Supplier will provide to CPA Australia an annual report in relation to the risk of Modern Slavery Offences within its supply chain and organisation, and (upon written request

from CPA Australia) any further information upon which the Supplier has relied in preparing such report.

## **9. Privacy**

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- 9.1 The Supplier:
- (a) represents and warrants that it and its Related Persons will comply with all relevant privacy and anti-spam laws and regulations including the *Privacy Act 1988* (Cth) and *Spam Act 2003* (Cth) (as amended from time to time) and is authorised to collect, use and disclose any personal information it may provide to CPA Australia; and
  - (b) consents to CPA Australia collecting, using and, where necessary, disclosing the personal information provided to CPA Australia for the purpose of discharging its obligations under an Agreement (including disclosing it to any Related Person and/or related bodies corporate).
- 9.2 If the European Union General Data Protection Regulation 2016/679 (**GDPR**):
- (a) applies to data under an Agreement, the Supplier agrees to be bound by the CPA Australia European Data Processing Agreement (available at [www.cpaaustralia.com.au/otheragreements](http://www.cpaaustralia.com.au/otheragreements)) (**EDPA**), and to deliver to CPA Australia (by the Commencement Date) a completed Data Processing Schedule as contained in the EDPA (**DPS**) and the EDPA is incorporated by reference into the Agreement; and
  - (b) becomes applicable to data under an Agreement, or on receipt of a request from CPA Australia, the Supplier will immediately complete and deliver to CPA Australia a DPS, with the EDPA to be incorporated by reference into the Agreement.

## **10. Licences, Approvals and Warranties**

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- 10.1 At no cost to CPA Australia, the Supplier must obtain and maintain all Intellectual Property rights, licences or other approvals required for the lawful provision of the Services and/or Deliverables.
- 10.2 The Supplier must provide CPA Australia to the benefit of any relevant third party warranties in respect of Deliverables.
- 10.3 If the Supplier is a manufacturer, the Supplier must provide CPA Australia with all standard manufacturer's warranties in respect of Deliverables it has manufactured and supplied.
- 10.4 To the extent permitted by law and for the benefit of CPA Australia, the Supplier consents, and must use its best endeavours to procure the written consent of each author of Material, to the use by CPA Australia of the Material, even if the use may otherwise be an infringement of their Intellectual Property rights and/or Moral Rights.

## **11. Intellectual Property**

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### **11.1 CPA Australia Intellectual Property**

- (a) CPA Australia's Intellectual Property will remain the property of CPA Australia and nothing in the Agreement transfers or creates any proprietary right, title or interest in any of CPA Australia's Intellectual Property in favour of the Supplier.
- (b) CPA Australia grants to the Supplier a non-exclusive, non-transferable royalty free licence, with no right of sub-licence, to use CPA Australia's Intellectual Property solely for the purposes of providing the Services and/or Deliverables to CPA Australia unless a licence is expressly granted to the Supplier in a relevant SOW to use CPA Australia's Intellectual Property.
- (c) If CPA Australia grants to the Supplier, a non-exclusive licence to use its Intellectual Property in providing the Services and Deliverables under this Agreement, the Supplier will use the trade marks in accordance with the 'CPA Australia Brand Guidelines' as provided by CPA Australia from time to time.

### 11.2 **Developed Intellectual Property**

- (a) Any Intellectual Property developed pursuant to this Agreement (including in the course of providing the Services and delivering the Deliverables) (**Developed IP**) will exclusively vest on creation in CPA Australia including all legal and beneficial ownership rights.
- (b) CPA Australia grants to the Supplier a non-exclusive, non-transferable, royalty free licence, with no right of sub-licence, to use the Developed IP (including any modified or updated versions of the Developed IP created by the Supplier) solely for the purpose of providing the Services and/or Deliverables in accordance with the Agreement.

### 11.3 **Third Party Intellectual Property**

Where the Supplier incorporates third party Intellectual Property into a Deliverable, the Supplier will identify these in the SOW and procure a licence from the relevant third party for CPA Australia to use the third-party components incorporated in the Deliverables.

### 11.4 **Supplier Intellectual Property**

- (a) Any Intellectual Property created by the Supplier independently or unrelated to an Agreement (**Supplier IP**) will remain the property of the Supplier and nothing in this Agreement will be construed as transferring title in or ownership of any Supplier IP to CPA Australia.
- (b) The Supplier grants to CPA Australia a perpetual, irrevocable, non-exclusive, royalty free licence throughout the world to: (i) use, maintain, modify and enhance, to the extent necessary to enable CPA Australia to use, operate, maintain, modify and enhance the Services, such components of the Supplier IP as are incorporated in the Developed IP; (ii) without limiting clause 11.4(b)(i), use, reproduce and modify any Services and/or Deliverables, documentation and other information and material relating to the Services and/or Deliverables provided by the Supplier under this Agreement (to the extent they are not Developed IP).
- (c) Nothing in this clause 11.4 grants CPA Australia any right to use or exploit such Supplier IP in its stand-alone form.
- (d) The Supplier: (i) consents to CPA Australia using the Developed IP without attributing the relevant author(s); and (ii) releases and forever discharges CPA Australia from any claims, actions, proceedings or liability arising from such use; and (iii) will procure consent from any other party involved in the authorship of Developed IP on the terms outlined above at no cost to CPA Australia.

### 12. **Insurance**

- 12.1 The Supplier represents and warrants that it has and will maintain at its own expense at all times during the Term all relevant insurance policies with a reputable insurer to cover the Services and Deliverables supplied during the policies' currency regardless of when claims are made. If requested, the Supplier must give CPA Australia a certificate of currency evidencing the currency of the insurance required to be maintained by the Supplier in accordance with this clause 12.1.

### 13. **Liability**

- 13.1 The Supplier will fully indemnify CPA Australia and its Related Persons against any claim, loss or damage which CPA Australia incurs or is liable for directly arising in connection with:
  - (a) a breach of the Supplier's obligations or any warranty under an Agreement;
  - (b) any negligent, unlawful, wilful or fraudulent act or omission of the Supplier or its Related Persons;
  - (c) any claim that the provision of the Services and/or Deliverables or CPA Australia's possession or use of any Deliverables infringes the Intellectual Property rights or other rights of any third party;
  - (d) any use or disclosure by the Supplier of any Confidential Information other than in accordance with an Agreement; and

- (e) any breach of the Supplier's obligations under applicable privacy or modern slavery laws (including but not limited to Modern Slavery Legislation).

- 13.2 Subject to applicable law, the aggregate liability of a party under an Agreement (whether the claim arises under an Agreement or pursuant to any action in tort, negligence or otherwise) will not exceed the greater of:

- (a) the amount paid to the Supplier for the Services and/or Deliverables during the Term;
- (b) the maximum amount payable under any applicable insurance policy held by the Supplier with respect to its provision of the Services and/or Deliverables under an Agreement; or
- (c) the monetary amount equivalent to the Supplier's cost of supplying the Services and/or Deliverables again.

- 13.3 Despite any other provision of the Agreement and to the maximum extent permitted by law, a party will not bear any liability to the other party for loss of profits, business opportunities, goodwill, and any indirect or consequential loss.

### 14. **Disputes**

- 14.1 Failure by either party to comply with any material provision under an Agreement will entitle the other Party to give the defaulting party written notice requiring it to cure the default within 10 Business Days.

- 14.2 Despite the existence of a dispute, the Supplier will (unless instructed by CPA Australia not to do so) continue its performance under an Agreement.

### 15. **Termination**

#### 15.1 **Termination for convenience**

- (a) CPA Australia may terminate or reduce the scope of an Agreement at any time and without cause by giving the Supplier not less than 10 Business Days' written notice.
- (b) The Supplier may terminate or reduce the scope of an Agreement at any time and without cause by giving CPA Australia not less than 45 Business Days' written notice.

- 15.2 If a party issues a notice under clause 15.1 (**Terminating Party**) and the other party can demonstrate it has incurred reasonable and unavoidable expenses directly attributable to the Terminating Party's termination or reduction, then the Terminating Party shall pay such expenses contingent upon the Supplier's ability to substantiate such expenses to the Terminating Party's reasonable satisfaction.

#### 15.3 **Termination for cause**

CPA Australia may immediately terminate an Agreement if:

- (a) the Supplier does not deliver the Services and/or Deliverables as specified in an Agreement, or notifies CPA Australia it will be unable to deliver the Services and/or Deliverables as specified in an Agreement;
- (b) CPA Australia rejects the Services and/or Deliverables in accordance with clauses 3.4-3.6 and the Services and/or Deliverables have not been remedied as required;
- (c) the Supplier breaches a material term of an Agreement; or
- (d) the Supplier is: (i) unable to pay its debts when they fall due; (ii) has a liquidator appointed; or (iii) becomes bankrupt.

- 15.4 The Supplier must mitigate all losses and expenses in connection with the termination or reduction in scope of an Agreement. CPA Australia will pay the Supplier for Services and/or Deliverables accepted in accordance with clauses 3.4-3.6 before the effective date of termination or reduction.

- 15.5 If, under clause 14.1, the defaulting party has not cured the default within 10 Business Days following receipt of the written notice, the notifying party will be entitled, in addition to any other rights it may have under an Agreement or otherwise at law, to immediately terminate the Agreement.

15.6 Under no circumstances will the total of all payments to the Supplier under an Agreement exceed the Fee plus any applicable GST. The Supplier will not be entitled to loss of anticipated profit for any part of an Agreement not performed.

15.7 Notwithstanding any other provision contained in an Agreement, CPA Australia may immediately terminate an Agreement by written notice to the Supplier if CPA Australia determines that the actions or inactions of the Supplier may bring the Supplier, CPA Australia or CPA Australia's members into disrepute.

## 16. Consequences of Termination

16.1 If an Agreement is terminated under clause 15.3 (Termination for cause), then in addition to any other rights CPA Australia may have under the Agreement or at law or in equity, CPA Australia may recover from the Supplier the amount of any loss sustained as a result of termination.

16.2 If an Agreement is terminated and CPA Australia has paid the Supplier all or part of the Fee, the Supplier will refund a pro-rated amount of that amount paid less any amount directly connected with the Services and/or Deliverables accepted by CPA Australia.

16.3 On termination of an Agreement, the Supplier will return all material in its possession, power or control, which was either received from CPA Australia or which the Supplier has generated in connection with the Agreement, including any Confidential Information.

16.4 Clauses 3.3(b), 3.7, 7, 9, 11, 12, 13, 16, 17.1, 18.5, 18.6, and 18.7 survive termination of an Agreement.

## 17. Transition

17.1 If an Agreement expires or is terminated under clause 15.3 (Termination for Cause), the Supplier must comply with any reasonable directions given by CPA Australia to facilitate the smooth transition of the provision of the Services and/or Deliverables to CPA Australia or to another supplier nominated by CPA Australia.

## 18. General

18.1 The Agreement sets out the entire agreement between the parties and replaces all previous communications, representations, inducements, undertakings, agreements and arrangements between the parties, whether written or oral, relating to its subject matter.

18.2 Neither party may assign any of its rights and obligations under this Agreement without the prior written consent of the other party.

18.3 A SOW may be executed in any number of counterparts which, when taken together will constitute one instrument.

18.4 Neither party is responsible for any failure to perform its obligations under an Agreement if that failure arose for reasons beyond its reasonable control (including acts of God or any pertinent governmental authority, fires, floods, explosions or other catastrophes, epidemics and quarantine restrictions), provided that party: (i) notifies the other party as soon as it becomes aware of such circumstances; and (ii) takes reasonable steps to resume performance as soon as possible.

18.5 Notice under an Agreement will be in writing and sent by hand, post, facsimile or email to the address for service set out in the SOW or as otherwise notified by one party to the other party from time to time.

18.6 If any provision of an Agreement is held to be invalid or unenforceable for any reason, such invalidity or unenforceability will not affect or render invalid or unenforceable any other provision of that Agreement.

18.7 An Agreement is governed by the laws applicable in Victoria, Australia. Each party waives any inconvenient forum objection claim whether now or in the future.

## 19. Definitions

19.1 In an Agreement, unless the context otherwise requires:

**"Business Day"** means a day on which banks are open for general banking business in Melbourne, Australia, excluding Saturdays, Sundays or public holidays in Melbourne, Australia.

**"Confidential Information"** means any information that relates to CPA Australia, its business and its members, any information identified as such or which the Supplier knows or ought to know is confidential, including personal information and the terms of the Agreement, but excludes: (i) information generally available to the public other than by way of a breach of the Agreement; and (ii) information the Supplier receives from a third person legally entitled to possess and disclose the information.

**"CPA Australia"** means CPA Australia Ltd (ABN 64 008 392 452), of Level 20, 28 Freshwater Place, Southbank, Victoria 3006, Australia.

**"Deliverables"** means the "Deliverables" specified in a SOW and all such incidental deliverables that are reasonably required to achieve the purposes of CPA Australia as specified in a SOW.

**"Intellectual Property"** means any form of intellectual property capable of being granted protection at law including registered and unregistered trade marks, patents, copyright, designs, plant breeders' rights, circuit layouts, and trade secrets whenever created.

**"Material"** means any material brought into existence as a part of, or for the purpose of producing the Services and/or Deliverables, and includes but is not limited to documents, equipment, information or data stored by any means.

**"Modern Slavery Legislation"** means the *Modern Slavery Act 2018* (Cth) and any other law (including the law of a State or Territory of the Commonwealth of Australia) that relates to exploitative labour practices in business operations and supply chains, as applicable and as amended from time to time.

**"Modern Slavery Offence"** means conduct that is deemed to constitute modern slavery under Modern Slavery Legislation, or conduct that is otherwise a form of trafficking in persons, slavery or slavery-like practices, or child labour.

**"Moral Rights"** means the rights in *Part IX* of the *Copyright Act 1968* (Cth), including the right of attribution, the right against false attribution and the right of integrity.

**"Related Person"** means in relation to a party, any director, officer, employee, agent, subcontractor or professional advisor of that party.

**"Services"** means the services set out in the "Scope of Services" specified in a SOW and all such incidental services that are reasonably required to achieve the purposes of CPA Australia as specified in a SOW.

**"Supplier"** means the party specified in a statement of work as the Supplier.

**"Term"** means the Initial Term and any Further Term(s) which CPA Australia has extended the Agreement for in accordance with clause 2.2.

**"Website"** means CPA Australia's corporate website [www.cpaaustralia.com.au](http://www.cpaaustralia.com.au).