

# CPA AUSTRALIA MASTER SERVICES AGREEMENT

Effective 6 November 2023

CPA AUSTRALIA LIMITED (ABN 64 008 392 452) of Level 20, 28 Freshwater Place, Southbank, Victoria 3006 (CPA Australia);

-And-

The supplier specified in Item 1 of the statement of work (**Supplier**),  
(individually a "**Party**" and together the "**Parties**").

## Background

The terms and conditions of this master services agreement (**MSA**) will govern each statement of work (**SOW**) executed by each of the Parties relating to the Supplier's provision of the services and deliverables set out in the specific SOW ("**Services and/or Deliverables**"). This MSA and a fully executed SOW will form the "**Agreement**" between the Parties. Each individual fully executed SOW will, together with this MSA, form a standalone Agreement. If there is any conflict between this MSA and a SOW, this MSA will prevail to the extent of that conflict unless the relevant SOW expressly refers to the specific conflicting term or condition in this MSA and expressly specifies that the SOW's replacement term or condition applies instead.

CPA Australia may update the MSA at any time by posting a new version on its Website. CPA Australia will use all reasonable endeavours to give notice to the Supplier of the updated MSA. 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. For the avoidance of doubt, for pre-existing SOWs, the MSA that applied at the time the pre-existing SOW was entered into will continue to apply.

## 1. Definitions

1.1 In an Agreement, unless the context otherwise requires:

"**Acceptance Criteria**" means the acceptance criteria for the relevant Service(s) and/or any Deliverable(s) as set out in clause 3 or as specified in a SOW.

"**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.

"**CPA Australia Data**" means any data (including Personal Information) relating to CPA Australia and its Related Bodies Corporate and its business, operations, facilities, members, customers, personnel, assets and programs in whatever form that data may exist and whether stored, generated by or processed as part of the Supplier's obligations under this Agreement, including any:  
(a) database in which data or information is contained;  
(b) documentation or records related to data or information;  
(c) products resulting from the use or manipulation of data or information; and  
(d) copies of any of the above.

"**CPA Australia IP**" means any Intellectual Property owned or licensed by CPA 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.

"**Government Authority**" includes any governmental or semi-governmental or local government authority, administrative or judicial board, tribunal or court, department, commission, public authority, Minister, statutory corporation, authority or instrumentality.

"**Grievance Mechanism**" means a process for handling a complaint or grievance about Modern Slavery practices that is consistent with the criteria set out in the Guiding Principles on Business and Human Rights.

"**Gross Negligence**" means negligent conduct which the party in question undertook with both:

- (a) actual apprehension of the risks involved; and
- (b) reckless disregard for the consequences of its conduct.

"**GDPR**" means the General Data Protection Regulation (EU) 2016/678.

"**Guiding Principles on Business and Human Rights**" means the United Nations' Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework available at [https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr_en.pdf).

"**Infringement Claim**" means any actual, threatened or potential claim, demand, proceeding, suit, objection or other challenge:

- (a) affecting the Supplier's ownership of Intellectual Property rights in the Services and/or Deliverables; or
- (b) claiming that the supply or other use of the Services, Deliverables, Supplier IP or Developed IP infringes or may infringe the Intellectual Property rights of a third party.

"**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**" has the same meaning as it has in the *Modern Slavery Act 2018* (Cth).

"**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.

“**Personal Information**” means information or an opinion (including information or an opinion forming part of a database) whether true or not, and whether recorded in a material form or not, about an identified individual, or an individual who is reasonably identifiable, or any other equivalent definition under Privacy Laws.

“**Privacy Law**” means any applicable law, statute, regulation, ordinance, code, standard or requirement of any government, governmental or semi-governmental body which relates to privacy in force in any jurisdiction (to the extent that CPA Australia or the Supplier is subject to the laws of that jurisdiction in connection with this Agreement), including but not limited to the *Privacy Act 1988* (Cth), the *Spam Act 2006* (Cth) and the *Do Not Call Register Act 2006* (Cth) (as amended from time to time).

“**Related Bodies Corporate**” has the same meaning as it has in the *Corporations Act 2001* (Cth).

“**Related Person/s**” means in relation to a Party, any director, officer, employee, agent, contractor, subcontractor or professional adviser of that Party, but in the case of CPA Australia does not include the Supplier.

“**Security Incident**” means any:

- (a) breach or potential breach of the Supplier’s obligations relating to CPA Australia Data, confidentiality, privacy or cyber security under this Agreement;
- (b) actual or potential unauthorised access to or unauthorised disclosure of, or loss of, any CPA Australia Data or CPA Australia Confidential Information; or
- (c) any accidental or unlawful loss, theft, deletion, disclosure or corruption and / or actual or potential unauthorised access to, or interference with, the CPA Australia System, CPA Australia Data, CPA Australia Confidential Information or the Supplier’s IT systems.

“**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 SOW as the Supplier.

“**System**” means CPA Australia’s technology system architecture.

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

“**UK GDPR**” means the GDPR as it forms part of retained EU law (as defined in the *European Union (Withdrawal) Act 2018*).

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

## 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 mutually agreed and 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 and Acceptance Criteria

- 3.1 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 specified in a SOW.

- 3.2 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.

- 3.3 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.

- 3.4 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); (ii) with all due skill, care and diligence; (iii) using only suitably qualified personnel; (iv) to the reasonable satisfaction of CPA Australia having regard to the criteria set out in the relevant SOW; (v) in accordance with accepted professional and business practices and any guidelines and standards applicable to the provision of the Services and the delivery of the Deliverables; (vi) in such a manner which will not bring CPA Australia’s name into disrepute or be detrimental to, prejudicial to, or otherwise damage the interests of CPA Australia’s business, goodwill or reputation;
- (b) agree to explore continually through the Agreement further improvement processes on an ongoing basis and will use its best endeavours to increase efficiency in order to reduce CPA Australia’s costs in respect of the Services and Deliverables; and
- (c) ensure that the Services are fit for their intended purpose.

- 3.5 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 sub-contractor as if such acts and omissions were the acts and omissions of the Supplier.

- 3.6 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.

- 3.7 Before the end of the Acceptance Period, CPA Australia may provide the Supplier with written notice extending the Acceptance Period by a reasonable time 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.

- 3.8 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 12.2(a), title to Deliverables transfers on acceptance. If the re-delivered Deliverables and/or Services again fail to meet any Acceptance Criteria then CPA Australia may, in its sole discretion:

- (a) require the Supplier to again remedy any deficiencies identified and then resubmit the Services and / or Deliverables to CPA Australia for further acceptance testing in accordance with this clause 3;
- (b) accept the Service and/or Deliverables, subject to a reduction of Fees to be reasonably agreed between the Parties;

- (c) at the Supplier's cost, have the Services and/or Deliverables rectified or completed by a third party so it meets the Acceptance Criteria and is free of defects;
- (d) direct the Supplier that the Services and/or Deliverables is no longer required and is removed from scope, in which case, CPA Australia will have no liability to pay the Supplier any amounts in respect of work done in connection with the rejected Services and/or Deliverables and will be entitled to a refund from the Supplier for any amounts already paid for that Service and/or Deliverable; or
- (e) terminate the Agreement (in whole or in part) for cause by written notice to the Supplier, in which case, CPA Australia will have no liability to pay the Supplier any amounts in respect of work done in connection with the rejected Services and/or Deliverables and will be entitled to a refund from the Supplier for any amounts already paid for that Service and/or Deliverables.

#### **4. Payment**

- 4.1 CPA Australia will pay the Supplier the fee specified in the relevant SOW (**Fee**) plus any applicable GST within 30 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**

- 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. Human Rights and Modern Slavery**

- 8.1 The Supplier represents and warrants that it and its Related Persons comply with all applicable laws, rules and regulations relating to ethical and responsible standards of behaviour including those dealing with human rights and modern slavery (including but not limited to the Modern Slavery Legislation) and that it:
  - (a) has no knowledge of any risk of actual or suspected Modern Slavery Offences within its business, organisation or supply chain;
  - (b) conducts training with its Related Persons in relation to the Modern Slavery Legislation and the prevention of Modern Slavery Offences within its business, organisation and supply chain;
  - (c) has implemented systems, policies and procedures (including regular audits) to ensure compliance with all Modern Slavery Legislation, and to ensure that Modern Slavery Offences do not occur within its business, organisation or supply chain; and
  - (d) will take all reasonable steps to prevent the occurrence of Modern Slavery Offences within its organisation or supply chain.
- 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 risk of an actual or suspected Modern Slavery Offence, or of charges being laid in relation to such offence, within its business, operations or supply chain.
- 8.4 If at any time the Supplier becomes aware of any Modern Slavery Offences in the operations and supply chains used in the performance of the Agreement, the Supplier must as soon as reasonably practicable take all action necessary to address or remove these practices, including where relevant, by addressing any practices of other entities in its supply chains.
- 8.5 If required under a SOW, the Supplier will prepare and implement a Modern Slavery Risk Management Plan in relation to its performance of the Agreement and provide a copy of this plan to CPA Australia. The Modern Slavery Risk Management Plan is to include the relevant timeframes for the preparation and implementation of the Plan and also at a minimum, include:
- (a) the Supplier's steps to identify and assess risks of Modern Slavery Offences in the operations and supply chains used in the performance of the Agreement;
  - (b) the Supplier's processes for addressing any Modern Slavery Offences of which it becomes aware in the operations and supply chains used in the performance of the Agreement;
  - (c) the content and timing of training for Related Persons about Modern Slavery; and
  - (d) the Grievance Mechanism/s available to Related Persons, (**Modern Slavery Risk Management Plan**).
- 8.6 The Supplier will ensure that its Related Persons, who are responsible for managing the operations and supply chains used in the performance of the Agreement, have undertaken suitable training to be able to identify and report Modern Slavery Offences.
- 8.7 In performing the Agreement, the Supplier must:
- (a) not require its Related Persons to pay fees, charges, expenses or financial obligations incurred in order for the Related Persons to secure their employment or placement (Recruitment Fees), regardless of the manner, timing or location of the imposition or collection of these Recruitment Fees;
  - (b) not destroy or exclusively possess, whether permanently or otherwise, the travel or identity documents of Related Persons; and
  - (c) ensure Related Persons can access a Grievance Mechanism to safely report any instances of Modern Slavery in the operations and supply chains used by the Supplier in its performance of the Agreement.
- 8.8 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 Laws and is authorised to collect, use and disclose any Personal Information it may provide to CPA Australia. For the avoidance of doubt, the Supplier is required to comply with the *Privacy Act 1988* (Cth) as if it were an organisation regulated by the *Privacy Act 1988* (Cth);
  - (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); and

- (c) will not do anything with the Personal Information that will cause CPA Australia to breach any Privacy Law and co-operate with CPA Australia to resolve any complaint made under any Privacy Law including promptly notifying CPA Australia of any complaint the Supplier receives.
- 9.2 To the extent the provisions of the GDPR and / or UK GDPR apply to data under the Agreement, the Supplier agrees to be bound by the terms of the CPA Australia European and UK Data Processing Agreement (available at [www.cpaaustralia.com.au/otheragreements](http://www.cpaaustralia.com.au/otheragreements)) (**EUKDPA**), and to complete and deliver to CPA Australia (by no later than the Commencement Date) a Data Processing Schedule as contained in the EUKDPA and the terms of the EUKDPA are incorporated by reference into the Agreement.
- 9.3 If the provisions of the GDPR and / or UK GDPR become applicable to data under the Agreement during the Term, or upon receiving a direction from CPA Australia to do so, the Supplier must immediately complete and deliver to CPA Australia a Data Processing Schedule as contained in the EUKDPA, with the terms of the EUKDPA to be incorporated by reference into the Agreement.

## 10. Security Obligations and Security Incidents

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- 10.1 The Supplier must comply with, and must make sure that its Related Persons comply with:
- (a) any reasonable security policies or procedures required by CPA Australia from time to time in connection with the security of CPA Australia's Data and / or Systems; and
  - (b) any reasonable directions from CPA Australia with respect to the safeguarding and security of CPA Australia's Data and / or Systems.
- 10.2 CPA Australia Data remains the property of CPA Australia at all times.
- 10.3 The Supplier must proactively monitor its compliance with its obligations relating to cybersecurity, confidentiality, privacy and CPA Australia's Data and CPA Australia's System under this Agreement. If the Supplier becomes aware of any Security Incident, the Supplier must:
- (a) give immediate notice of the Security Incident to the CPA Australia Contact Person and disclose all information relevant to that Security Incident (including all relevant information about the processes, procedures, protocols, and security practices and procedures used in the performance of the Services and / or delivery of the Deliverables);
  - (b) co-operate with CPA Australia in relation to investigating whether a Security Incident has potentially or actually occurred and the circumstances surrounding that Security Incident; and
  - (c) to the extent permitted by law, not disclose to any third party the existence or circumstances surrounding any Security Incidents without the prior written approval of CPA Australia.

## 11. Licences, Approvals and Warranties

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- 11.1 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.
- 11.2 The Supplier must provide CPA Australia to the benefit of any relevant third party warranties in respect of the Services and/or Deliverables.
- 11.3 The Supplier must represent and warrant that each Service and Deliverable, and their supply or use by CPA Australia and its personnel, will not infringe any person's rights (including Intellectual Property rights).
- 11.4 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.

- 11.5 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.

## **12. Intellectual Property**

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### **12.1 CPA Australia Intellectual Property**

- (a) CPA Australia IP will remain the property of CPA Australia and nothing in the Agreement transfers or creates any proprietary right, title or interest in any CPA Australia IP 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 the CPA Australia IP 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 the CPA Australia IP.
- (c) If CPA Australia grants to the Supplier, a non-exclusive licence to use the CPA Australia IP in providing the Services and/or 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.

### **12.2 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) The Supplier hereby assigns, and must procure that its personnel assign, all Intellectual Property rights in the Developed IP to CPA Australia upon creation.
- (c) 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.

The Supplier must not do or cause to be done anything which will prejudice the subsistence of CPA Australia's right, title and interest in the Developed IP.

### **12.3 Third Party Intellectual Property**

Where the Supplier incorporates third party Intellectual Property into the Developed IP, the Supplier must 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 Developed IP.

### **12.4 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 12.4(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 12.4 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.

## **13. Insurance**

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- 13.1 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 13.1.

## **14. Liability**

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- 14.1 To the maximum extent permissible by law, the Supplier will fully indemnify CPA Australia and its Related Persons, and will keep all of them indemnified, from and against all claims, actions, losses, liability, damage or expenses incurred or sustained by CPA Australia (including based on any liability to or claims of any third party) arising from or in connection with:

- (a) a breach of the Supplier's obligations or any warranty under an Agreement;
- (b) any Gross Negligence, unlawful, wilful or fraudulent act or omission of the Supplier or its Related Persons;
- (c) any Infringement Claim, or any breach by the Supplier of the warranty in clause 11.3;
- (d) any breach of the obligations under clause 7 (Confidentiality), clause 9 (Privacy) and clause 10 (Security Obligations and Security Incidents);
- (e) any breach of the Supplier's obligations under applicable privacy or modern slavery laws (including but not limited to Modern Slavery Legislation); or
- (f) any claim by a third party against CPA Australia or its personnel to the extent caused by breach of this Agreement, or any wilful, unlawful or wrongful act or omission of the Supplier or its personnel.

- 14.2 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.

- 14.3 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.

## **15. Disputes**

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- 15.1 Unless an immediate termination right is otherwise provided in this MSA, 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.

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

## 16. Termination

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### 16.1 Termination for convenience

- (a) CPA Australia may terminate the Agreement at any time and without cause by giving the Supplier not less than 20 Business Days' written notice.
- (b) The Supplier may terminate the Agreement at any time and without cause by giving CPA Australia not less than 45 Business Days' written notice.

16.2 If a Party issues a notice under clause 16.1 (**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 other Party's ability to substantiate such expenses to the Terminating Party's reasonable satisfaction.

### 16.3 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 for reasons including, but not limited to, the Supplier's failure, inability or unwillingness to deliver the Services.
  - (b) CPA Australia rejects the Services and/or Deliverables in accordance with clauses 3.6-3.8 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: (i) is insolvent as disclosed in its accounts or otherwise, states that it is insolvent, is presumed to be insolvent under the laws (including under sections 459C(2) or 585 of the Corporations Act) or otherwise is, or states that it is, unable to pay all its debts as and when they become due and payable; (ii) has a liquidator or provisional liquidator appointed; or (iii) enters into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors, in each case other than to carry out a reconstruction or amalgamation while solvent.
- 16.4 The Supplier must mitigate all losses and expenses in connection with the termination of an Agreement. CPA Australia will pay the Supplier for Services and/or Deliverables accepted in accordance with clauses 3.6-3.8 before the effective date of termination.
- 16.5 If, under clause 15.1 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.
- 16.6 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.
- 16.7 Notwithstanding any other provision contained in an Agreement, CPA Australia may immediately terminate an Agreement by written notice to the Supplier if CPA Australia reasonably determines that the actions or inactions of the Supplier may bring the Supplier, CPA Australia or CPA Australia's members into disrepute.

## 17. Consequences of Termination

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- 17.1 If an Agreement is terminated under clause 16.3 (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.
- 17.2 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.

17.3 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.

17.4 Clauses 3.5(b), 3.3, 7, 8, 9, 10, 11, 12, 13, 14, 17, 18.1, 19.5, 19.6, and 19.7 survive termination of an Agreement.

## 18. Transition

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18.1 If an Agreement expires or is terminated under clause 16.3 (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.

## 19. General

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19.1 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.

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

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

19.4 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.

19.5 Notice under an Agreement will be in writing and sent by hand, post, 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.

19.6 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.

19.7 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.