TERMS OF ENGAGEMENT

# Audit of Real Estate Agent’s Trust Account Engagement

## CPA Australia has created this standard Terms of Engagement Template that you can use and tailor to suit your needs.

## The following version control information has been included to assist you monitor changes to the template to ensure you are using the latest version.

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| **Document title** | TE – Audit of Real Estate Agent’s Trust Account Template | **Version #** | 5 |
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| **Version #** | **Change Description** | **Introduced** |
| 1 | Original Document | Sep 2020 |
| 2 | Additional terms for clause 7 for Outsourced Services and Cloud Computing, updating clause 11 | Jan 2021 |
| 3 | Merged NOCLAR clause to clause 3, revised Privacy terms in clause 9, update to clause 10 Confidentiality | Aug 2021 |
| 4 | Update clause 9.4 Privacy and clause 10.2 Confidentiality | Sep 2021 |
| 5 | Additional terms on ‘Consumer Data Right’ in clause 2.4 and 3.8; update privacy clause 9.3 and confidentiality clause 10.2 |  |

<insert date>

<insert client name>

<address line 1>

<address line 2>

Dear <insert name>,

**Terms of Engagement – Audit of Real Estate Agent’s Trust Account Engagement service**

Thank you for selecting us to conduct the Audit of Real Estate Agent’s Trust Account Engagement. We look forward to working with you.

We realise how important it is to understand your needs and we have prepared the attached Terms of Engagement (**TE**) to clarify the scope of work and other important terms. It is important that you read the TE before you indicate that you agree, which you can do by letting us know that you are happy to proceed.

The scope of work may fall within the CPA Australia Ltd Professional Standards (Accountants) Scheme (**Scheme**), which facilitates improvements to industry professional standards and protects consumers. Accordingly, we need to notify you of the following:

*“Liability limited by a scheme approved under Professional Standards Legislation.”*

If you want more information on the Scheme you can go to:

* [CPA Australia’s Professional Standards Scheme](https://www.cpaaustralia.com.au/public-practice/your-public-practice-firm/professional-standards-scheme), or visit
* [Professional Standards Councils’ website](https://www.psc.gov.au/consumer-information) for additional consumer information.

Alternatively, if you want to clarify anything in the TE please call us on <insert contact number>.

Yours sincerely,

<insert your name>

<insert firm name>

**Example engagement letter for audit of real estate agent’s trust account in accordance with Australian Assurance Engagement Standards ASAE 3100 and the relevant law and regulation.**

Terms of Engagement for Audit of Real Estate Agent’s Trust Account Engagement

Between <insert practices name> (**us** or **we** or **our**) and <insert client / entity name> (**you** or **your**) for the Term specified.

1. **Purpose**

 This Terms of Engagement for Audit of Real Estate Agent’s Trust AccountEngagement Services (**TE**) confirms our understanding of the engagement and the nature and limitations of services provided.

1. **Objectives and scope of work**
	1. You have requested that we audit your compliance with <*insert relevant State legislation, please refer to* ***Appendix 1***> for [insert name of entity], for the year ending [insert DD Month YY]. We are pleased to confirm our acceptance and our understanding of this reasonable assurance engagement by means of this letter.
	2. Our assurance engagement will be conducted with the objective of expressing an opinion on [*insert name of entity*]’s compliance with <*insert relevant State legislation, please refer to* ***Appendix 1***>(the Regulation) [throughout the specified period or as at a specified date].
	3. *<Member could detail the criteria of compliance in here too>*
	4. We acknowledge that you may authorise an Accredited Data Recipient under the Consumer Data Right (‘CDR’) to provide CDR data to us via a Trusted Adviser Insight. We confirm that for this purpose you may nominate <insert name> as your Trusted Adviser and that <insert name> complies with the definition of a Trusted Adviser under the Competition and Consumer (Consumer Data Right) Amendments Rules (No. 1) 2021.
2. **Our responsibilities (or Auditor’s responsibilities)**
	1. We will comply with the independence and other relevant ethical requirements under the Code relating to assurance engagements and apply Auditing Standard ASQC 1 *Quality Control for Firms that Perform Audits and Reviews of Financial Reports and Other Financial Information, and Other Assurance Engagements* in undertaking this assurance engagement.
	2. We will conduct our audit in accordance with the Regulation, ASAE 3100 *Compliance Engagements,* and the Accounting Professionals and Ethical Standards APES 210 *Conformity with Auditing and Assurance Standards*. Those standards require that we comply with ethical requirements and plan and perform the engagement to obtain reasonable assurance to support our conclusion. A compliance engagement involves performing procedures that depend on the auditor’s judgment, including the assessment of risks of non-compliance, whether due to fraud or error.
	3. Because of the inherent limitations of an assurance engagement, together with the inherent limitations of internal control, there is an unavoidable risk that some non-compliance may not be detected, even though the engagement is properly planned and performed in accordance with ASAE 3100.
	4. In making our risk assessments, we consider internal control relevant to [insert name of entity]’s compliance in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of [insert name of entity]’s internal control. However, we will communicate to you in writing any significant deficiencies in internal control relevant to compliance with the Standard that we have identified during the engagement.
	5. Our engagement is not designed to be a complete examination of all aspects of your system. Accordingly, any matters that are reported to you verbally or in writing should not be regarded as all-inclusive.
	6. During the course of our engagement, if we identify or suspect that Non-Compliance with Laws or Regulations (NOCLAR) has occurred or may occur, which may have a direct effect on material amounts or disclosures in the financial statements or compliance and may be fundamental to <*insert client’s name*>’s ability to continue its business or to avoid material penalty, we may:
		* discuss the matter with the appropriate level of management, those charged with governance or the internal auditor, as appropriate
		* communicate the non-compliance or suspected non-compliance with <*insert client’s name*>’s external auditor, unless prohibited by law or regulation
		* disclose the matter to an appropriate authority even when there is no legal or regulatory requirement to do so; and/or
		* withdraw from the engagement and the professional relationship where permitted by law or regulation
	7. Where appropriate we will inform you of our intention to disclose the matter to an appropriate authority before disclosing the matter. However, if we have reason to believe that the actual or intended conduct would constitute an imminent breach of a law or regulation that would cause substantial harm to the general public, we may immediately disclose the matter to an appropriate authority in order to prevent or mitigate the consequences of such imminent breach of law or regulation.
	8. Any information pertaining to your affairs, whether it be provided by you, or through a Trusted Adviser Insight via the CDR, will be utilised and stored in an appropriate manner to maintain our professional standards and obligations. Further information on privacy is noted at section 9 of this letter.
3. **Your responsibilities (or [insert name of entity]’s responsibilities)**
	1. Our engagement will be conducted on the basis that you acknowledge and understand that [insert name of entity] has responsibility:
		* For compliance with <*insert relevant State legislation, please refer to Appendix 1*>
		* To provide us with:
			+ 1. Access to all information of which you are aware that is relevant to the engagement;
				2. Additional information that we may request for the purpose of the engagement; and
				3. Unrestricted access to persons within [insert name of entity] from whom we determine it necessary to obtain evidence.
* To advise us of any material and / or contentious issues relating to the engagement.
* To ensure that proper internal controls are in place.
	1. Such internal controls reduce but do not eliminate the risk of non-compliance. [insert name of entity] assumes responsibility for such risk. While the conduct of this engagement may act as a deterrent against fraud or error we cannot be held responsible for not preventing them.
	2. As part of our engagement, we will request [insert name of entity]’s written confirmation concerning oral representations made to us in connection with the engagement and that [insert name of entity] acknowledges that such representations would be relied upon by us during the engagement.

1. **Reporting**
	1. A report on our conclusion will be prepared in accordance with <*insert relevant State legislation, please refer to Appendix 1*> and the applicable ASAE 3100. There is no assumption of responsibility for any reliance on our report other than for its stated purpose. Accordingly, our report may include a disclaimer to this effect.
	2. In case of a modified opinion, in accordance with <*insert relevant State legislation, please refer to Appendix 1*>, we are required to lodge <*insert the relevant report>* to <*insert the applicable Professional Body / Regulator>* within <*insert*> days of the completion of the audit.
2. **Third Party Involvement**
	1. We may from time to time engage third party specialist professionals and other public practitioners, where warranted to obtain the advice you need or to assist us to provide our service to you. These may include cloud service providers and outsourced service providers.
	2. We will seek your consent if third party involvement is likely to exceed the fixed price (if applicable).

* 1. We have outsourcing arrangements with <insert the third party> in <insert location> whom we engage from time to time to assist us. The nature and extent of the services that we utilise are as follows:<insert the relevant activities>.
	2. Acceptance of our services in conjunction with this engagement document indicates your acceptance of the use of outsourced services as described above.
1. **Administration, Fees and Billings**
	1. Our professional fees will be calculated on a <delete as appropriate <fixed fee> <time-cost basis>>, which will be specified in <insert document>. If no method is specified, our fees will be calculated on a time-cost basis at a rate of <insert rate including GST> per hour.
	2. Our invoices may also include disbursements paid by us. These may include photocopying charges, telephone and facsimile transmission charges, travel fares and expenses, stamp duty and fees paid to third parties such as couriers, registration fees or fees for other professionals. These may be in addition to the fixed price (if applicable).
	3. Unless other payment terms are agreed, each invoice is payable within 30 days of receipt.

* 1. If the engagement involves the use of trust monies, we will manage those funds in accordance with APES 310 *Client Monies* and as authorised by you in the Trust Account Authority Letter (if applicable) or as otherwise instructed by you.
1. **Ownership of materials**
	1. You own all original materials given to us.
	2. We own all materials produced by us that resulted from our skill and attention to the extent that the materials produced by us incorporate any original materials you give to us.
	3. We may exercise a lien of your documents in our possession in the event of a dispute, which will be handled in accordance with our firm’s dispute resolution process.
	4. Subject to the payment of all outstanding professional fees and disbursements owing to us, we will provide you with materials produced by us for you in the event you engage the services of another practitioner and the materials are required by your new practitioner.
2. **Privacy**

[***PLEASE NOTE:***

***Not all businesses are bound by the*** [***Privacy Act 1988***](https://www.legislation.gov.au/Series/C2004A03712) ***(Cth), the clauses 9.1 to 9.4 inclusive are applicable for those who are bound by the Privacy Act 1988 (Cth). If your business is not bound by the Privacy Act, please insert your own privacy policy. Please refer to Appendix 2 for more information on how to determine whether your business is bound by the Privacy Act 1988 (Cth).***

***Information that may be included in this Terms of Engagement:***

* *A link to your privacy policy*
* *Outline broadly the privacy practices of your firm*
* *Outline how an individual can make a request to access their personal information and appropriate contact details if the personal information will be disclosed to another party (e.g. outsourced service provider) – who and under what circumstances and what actions they take to ensure the outsourced service provider handles the personal information appropriately*
* *Any appropriate security measures which have been implemented to protect the personal information from loss, inappropriate access, misuse, etc.*
* *If they engage cloud computing services and where the information is likely to be stored especially if outside of Australia (i.e. country)*
* *To insert (refer to clause 9.5):*

*If your personal information is disclosed to CPA Australia for the purpose of conducting a CPA Australia Best Practice Program assessment on the services provided, your personal information will be handled as outlined in the*[*CPA Australia Privacy Policy*](https://www.cpaaustralia.com.au/privacy-policy-and-statement)*.*]

* 1. Our collection use and disclosure of your personal information (**PI**) may be subject to the *Privacy Act 1988* (Cth) and accordingly we will only collect PI about you that relates to the TE. We may disclose PI about you for the primary purpose of this TE or to third parties by express consent or as required by law. This PI may be stored overseas in <insert the overseas server location> (if applicable). If you would like to access any PI we might hold about you contact us on <insert number>.
	2. We may collect PI about you, your representatives, your clients and others when we provide services to you. If we do, you agree to work with us to ensure that we both meet our respective obligations under the *Privacy Act 1988* (Cth). Your obligations may include ensuring your privacy policy and contracts include a reference to your collection practices, how you will use the PI and that you may disclose the PI to an agent for public accounting services.
	3. Where an outsourced service requires the disclosure of PI to an overseas recipient, we take care to ensure that other third parties outside Australia to whom we disclose PI are subject to contractual obligations relating to privacy and the handling of your personal information and can only use the information for the purposes stipulated by us.
	4. In providing our services to you, we utilise <insert relevance system> using Cloud Computing provided by <insert the provider> which is based in <insert location> and we rely on their security measures. We also store client information in a data server managed in <insert location, e.g. Australia>, which may subject to <insert country, e.g. Australian> privacy law.
	5. If your PI is disclosed to CPA Australia for the purpose of conducting a CPA Australia Best Practice Program assessment on the services provided, your personal information will be handled as outlined in the [CPA Australia Privacy Policy](https://www.cpaaustralia.com.au/privacy-policy-and-statement).
1. **Confidentiality**
	1. We have an ethical duty of confidentiality, which means we must not share or disclose your details of this TE to anyone, except as otherwise specified in this clause, without your consent unless required to by law.
	2. We may disclose your personal and confidential information details, as part of our working papers of the services provided to you, to CPA Australia Ltd, (if requested) for the purposes of conducting a CPA Australia Best Practice Program assessment aimed at maintaining high industry professional standards.  Any such disclosure of confidential information does not change any of our commitments to safeguard your information, and the information remains subject to any existing confidentiality obligations. We advise you by signing this letter you acknowledge, our engagement files relating to this assessment will be made available under this program.
2. **Professional Indemnity Insurance (PII)**
	1. We hold professional indemnity insurance of at least the minimum amount prescribed in the CPA Australia Ltd By-Laws or as required by law. Our PII cover at the time of this TE is <insert cover>.
3. **Professional Standards Scheme & Limitation of Liability**
	1. We participate in the CPA Australia Ltd Professional Standards Scheme (Scheme), which facilitates the improvement of professional standards to protect consumers and may limit our liability to you in a cause of action.
	2. The Scheme applies to professional accounting services including accounting, bookkeeping, taxation, auditing and assurance, insolvency and corporate reconstruction, management accounting, management consulting, forensic accounting, valuation services.
4. **Other**
	1. This letter will be effective for future years unless we advise you of its amendment or replacement, or the engagement is terminated.

Please sign and return the attached copy of this letter to indicate your acknowledgement of, and agreement with, the arrangements for our audit of the financial report including our respective responsibilities.

Yours faithfully

|  |
| --- |
|  |

Partner

<insert practices name>

Acknowledged and agreed on behalf of <insert entity name> by:

|  |  |
| --- | --- |
| **Signed:** |  |
| **Name and title:** |  |
| **Date:** |  |

# Appendix 1

## Summary of Relevant legislation in relation to Real Estate Agent’s trust account

**Australian Capital Territory**

*Agents Act 2003*.[*https://www.legislation.act.gov.au/a/2003-20*](https://www.legislation.act.gov.au/a/2003-20)

Agents Regulations 2003.[*https://www.legislation.act.gov.au/sl/2003-38/*](https://www.legislation.act.gov.au/sl/2003-38/)

**New South Wales**

*Property, Stock and Business Agents Act 2002.*

Property, Stock and Business Agent Regulation 2014.

[https://www.fairtrading.nsw.gov.au/about-fair-trading/legislation-and-publications/ list-of-legislation](https://www.fairtrading.nsw.gov.au/about-fair-trading/legislation-and-publications/%20list-of-legislation)

**Northern Territory**

*Agents Licensing Act 1979*. <https://legislation.nt.gov.au/en/Legislation/AGENTS-LICENSING-ACT-1979>

Agents Licensing Regulations 1979. <https://legislation.nt.gov.au/en/Legislation/AGENTS-LICENSINGREGULATIONS-1979>

**Queensland**

*Property Occupations Act* 2014.

Property Occupations Regulations 2014.

*Agents Financial Administration Act* 2014.

Agents Financial Administration Regulation 2014.

<https://www.qld.gov.au/law/laws-regulated-industries-and-accountability/queensland-laws-and-regulations/regulated-industries-and-licensing/regulatedindustries-licensing-and-legislation/property-industry-regulation/>

**South Australia**

*Land Agents Act* 1994.

Land Agents Regulations 2010.

<http://www.legislation.sa.gov.au/LZ/C/A/LAND%20AGENTS%20ACT%201994.aspx>

**Tasmania**

*Property Agents and Land Transactions Act* 2016.

<https://www.legislation.tas.gov.au/view/html/inforce/current/act-2016-058>

Property Agents and Land Transaction Regulations 2006.

<https://www.legislation.tas.gov.au/view/html/inforce/2015-05-29/sr-2006-132>

**Victoria**

*Estate Agents Act* 1980.

Estate Agents (General, Accounts and Audit) Regulations 2018.

<http://www.consumer.vic.gov.au/resources-and-education/legislation/legislationwe-administer#e>

**Western Australia**

*Real Estate and Business Agents Act* 1978.

Real Estate Agents (General) Regulations 1979.

<https://www.legislation.wa.gov.au/legislation/statutes.nsf/main_mrtitle_810_homepage.html>

# Appendix 2

The application of the [*Privacy Act 1988*](https://www.legislation.gov.au/Series/C2004A03712) (**Privacy Act**) is a determination that each public accounting service provider should determine for their own business and then provide advice to their own clients based on this determination.

The considerations and determinations you should make and the type of information you may wish to include in your terms of engagement:

Determine your own privacy obligations – these will depend on the size of the organisation (small business exemption) and a number of other factors. Noting the small business exemption does not extend to consumer credit information, credit reports and TFNs.

The Office of the Australian Information Commissioner (OAIC) has a checklist for businesses to determine if bound by the Privacy Act - [Small business — OAIC](https://www.oaic.gov.au/privacy/privacy-for-organisations/small-business/)

Most small businesses are not covered by the Privacy Act, but [some are](https://www.oaic.gov.au/privacy/the-privacy-act/rights-and-responsibilities/#WhoHasResponsibilitiesUnderPrivacyAct). A small business is one with an annual turnover of $3 million or less. Annual turnover for the purposes of the Privacy Act includes all income from all sources. It does not include assets held, capital gains or proceeds of capital sales

The second issue is the list of businesses the Privacy Act applies to regardless of turnover – this includes a business that has opted in to be covered by the Privacy Act – OAIC information [here](https://www.oaic.gov.au/privacy/privacy-registers/privacy-opt-in-register/)

If not covered by the Privacy Act determine if you wish to adopt the Australian Privacy Principles (APPs) in the handling of your client personal information. Again the OAIC has some tips for good privacy practices - [here](https://www.oaic.gov.au/privacy/privacy-for-organisations/tips-for-good-privacy-practice/). The OAIC also provides advice for organisations who may wish to opt-in to the Privacy Act - [here](https://www.oaic.gov.au/privacy/privacy-registers/privacy-opt-in-register/opting-in-to-the-privacy-act/).

The type of information you may wish to include in the terms of engagement will be determined by 1 and 2 above. These should all reflect your actual practices. You may then include in the terms of engagement the following types of information relating to privacy (this reflects obligations under the Privacy Act and APPs):

a link to your privacy policy

outline broadly your privacy practices – e.g. how you handle personal information such as for the purpose it was collected or as provided for or required by law

how an individual can make a request to access their personal information and appropriate contact details

if the personal information will be disclosed to another party (e.g. outsourced service provider) – who and under what circumstances and what actions you take to ensure the outsourced service provider handles the personal information appropriately

any appropriate security measures which have been implemented to protect the personal information from loss, inappropriate access, misuse, etc.

if you engage cloud computing services and where the information is likely to be stored especially if outside of Australia (i.e. country)

Include the following clause re any disclosures to CPA Australia (ensure links are active):

* 1. If your personal information is disclosed to CPA Australia for the purpose of conducting a CPA Australia Best Practice Program assessment on the services provided, your personal information will be handled as outlined in the [CPA Australia Privacy Policy](https://www.cpaaustralia.com.au/privacy-policy-and-statement) and the [member collection notice](https://www.cpaaustralia.com.au/privacy-policy-and-statement/members-collection-notice).

Any other relevant privacy information required to be included in accordance with advice from the Accounting Professional & Ethical Standards Board (**APESB**).

Please note the above is general advice only. You, as a public accounting service provider, should consider whether the advice is suitable for you and your circumstances, and seek your own independent privacy advice.