TERMS OF ENGAGEMENT

# Corporate Secretarial Services

## 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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| **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 5, revised terms for clause 10 for Privacy, clause 11.3 Confidentiality | Aug 2021 |
| 4 | Update clause 10.4 Privacy and clause 11.2 Confidentiality | Sep 2021 |
| 5 | Additional terms on ‘Consumer Data Right’ in clause 3.3 and 4.2; update privacy clause 10.3 and confidentiality clause 11.2 | Apr 2022 |

<insert date>

<insert client name>

<address line 1>

<address line 2>

Dear <insert name>,

**Terms of Engagement – Corporate Secretarial Services**

Thank you for selecting us to conduct your professional accounting needs. 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>

# Terms of Engagement for Corporate Secretarial Services

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

1. **Purpose**

This Terms of Engagement for Corporate Secretarial Services (**TE**) confirms our understanding of the engagement and the nature and limitations of services provided.

1. **Term**
	1. This TE will commence at the time you indicate acceptance and will continue <until revoked by us or you> / <insert a date> / <the conclusion of the scope of work output>.
2. **Objectives and Scope of work**
	1. We will provide you with corporate secretarial services in compliance with APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* (the Code) and Corporations Act 2001 which include*:*

<Member to insert scope of work agreed with the client>, for example:

* To maintain a registered office, and to notify ASIC of any change in address within 28 days (s 142);
* To keep the registered office open to the public during certain hours (public company only) (s 145);
* To notify ASIC of a change to the principal place of business (s 146);
* To maintains the client’s statutory registers (s 168 – s 171)
* To notify ASIC of changes to the member register (proprietary company only) (s 178A);
* To notify ASIC of changes to the share structure (proprietary company only) (s 178C);
* To maintains the consent to act as director of the company (s 201D(2)) or as secretary of te company (s 204C(2));
* To lodge notices with ASIC regarding personal details of directors and secretaries (s 205B);
* To maintain the company’s minutes book / minutes of meeting (s 251A)
* To notify ASIC of any issue of shares (s 254X);
* To lodge financial reports with ASIC (s 319(1));
* To respond to extract of particulars, and to return of particulars (s 346C, 348D);
* to lodge notices with ASIC, in the instance where a negative resolution under s.347A was passed by the company (s 347B),
* To notify ASIC of changes to ultimate holding company (proprietary company only) (s 349A).
* To register and establish companies, discretionary trusts, unit trusts and Self Managed Superannuation Funds
* To explain and interpret the complex clauses within an entity's constitution and rules
	1. As part of our engagement, we will provide you with <insert any documentation relevant>.
	2. 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.
1. **Our Promise**
	1. We will perform procedures (guided by the APES suite of standards) required that are directly related to the engagement consistent with our Fundamental Principles of integrity, objectivity, professional competence and due care, confidentiality, professional behaviour, and identifying, avoiding and dealing with conflicts of interests.
	2. We will seek to understand your requirements and provide you services confidentially and professionally. 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 10 of this letter.
	3. We will document sufficient and appropriate records of the procedures performed for the TE, which may be subject to CPA Australia Best Practice Program assessment under APES 320 *Quality Control for Firms*.
2. **Our obligations**
	1. We are obliged to consider whether our clients create any threats to compliance with our Fundamental Principles and where we cannot reduce the risk to an acceptable level we are obliged to cease the TE under the Code (section 320) to decline or cease the client engagement.
	2. We have a duty to act in your best interests, unless this duty is inconsistent with our duty to act in the public interest.
	3. We are responsible for maintaining records for a period of <insert at least five-year period> unless otherwise required by legislation.
	4. 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 ~~will~~:
		1. discuss the matter with the appropriate level of management, those charged with governance or the internal auditor, as appropriate
		2. communicate the non-compliance or suspected non-compliance with <*insert client’s name*>’s external auditor, unless prohibited by law or regulation
		3. disclose the matter to an appropriate authority even when there is no legal or regulatory requirement to do so; and/or
		4. withdraw from the engagement and the professional relationship where permitted by law or regulation
	5. 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.
	6. <insert any other obligations in accordance with the scope of work agreed with clients>.
3. **Your obligations**
	1. You are responsible for other corporate secretarial duties that are not stated under the scope of work in this TE.
	2. You are responsible for full disclosure of all relevant information.
	3. You provided us with <insert details of information or paperwork provided> records relating to the stated scope of work You are responsible for your own record keeping relating to your affairs.
	4. You are responsible for retaining paperwork for as long as legally required.
4. **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).
	3. 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>.
	4. Acceptance of our services in conjunction with this engagement document indicates your acceptance of the use of outsourced services as described above.
5. **Fees, Billing & Trust Monies**
	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.
	2. Our professional fees will be calculated on a <delete as appropriate <fixed fee> <time-cost basis>>, which will be specified in the letter of engagement. 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.
	3. 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).
	4. Unless other payment terms are agreed, each invoice is payable within 30 days of receipt.
6. **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.
7. **Privacy**

[***PLEASE NOTE:***

***Not all businesses are bound by the*** [***Privacy Act 1988***](https://www.legislation.gov.au/Series/C2004A03712) ***(Cth), the clauses 10.1 to 10.4 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 1 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 10.5):*

*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)**

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>.

1. **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.
2. **Other**

This letter will be effective for future years unless we advise you of its amendment or replacement, or the engagement is terminated.

**<INSERT CLIENT NAME>** has read, understood and agrees to the provisions of this Terms of Engagement <delete as appropriate <and has directed their duly authorised representative to execute this Terms of Engagement.>>

|  |  |
| --- | --- |
| **Signature:** |  |
| **Printed name:** |  |
| **Title:** |  |
| **Date:** |  |

# APPENDIX 1

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.