

CPA AUSTRALIA MASTER SERVICES AGREEMENT

Effective 3 May 2018

CPA AUSTRALIA LTD (ABN 64 008 392 452), of Level 20, 28 Freshwater Place, Southbank Melbourne in the State of Victoria (CPA Australia);

- And-

The supplier specified in Item 1 of the statement of work (**Supplier**),

(individually a "**Party**" and together the "**Parties**").

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**"). The 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 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.

1. Term

- 1.1 This Agreement commences on the date specified in the SOW (**Commencement Date**) and will continue for the period specified in the SOW (**Initial Term**), unless renewed for a further term(s) in accordance with Clause 1.2 or earlier terminated in accordance with Clause 12 of this MSA.
- 1.2 If a further term(s) is specified in the SOW (**Further Term(s)**), CPA Australia may (at its option) elect to extend this Agreement for that Further Term(s), by giving the Supplier written notice.
- 1.3 The Initial Term and any Further Term(s) are referred to in this Agreement as the "**Term**".

2. Engagement of the Supplier

- 2.1 From the Commencement Date and for the Term, CPA Australia engages the Supplier on a non-exclusive basis to provide Services and Deliverables in accordance with the terms and conditions of this Agreement.
- 2.2 CPA Australia reserves the right to update the MSA at any time, effective upon posting an updated version on its website; however, the Parties' rights and obligations shall be as provided in the version of this MSA available to the Supplier at the time a relevant SOW is executed.
- 2.3 The Supplier will provide the Services and Deliverables:
 - (a) in compliance with all relevant laws and regulations;
 - (b) in the manner set out in this Agreement;
 - (c) with all due skill, care and diligence;
 - (d) using only suitably qualified personnel;
 - (e) within the timeframes specified;
 - (f) in accordance with accepted professional and business practices; and
 - (g) must ensure that the Services are fit for their intended purpose.
- 2.4 The Supplier must not sub-contract any part of the provision of the Services and Deliverables without the prior written consent of CPA Australia. Notwithstanding any consent given by CPA Australia, the Supplier will be responsible for ensuring:
 - (a) the sub-contractor is suitably skilled and holds the necessary qualifications, licences, permits required to undertake the Services and Deliverables and
 - (b) the work performed by any subcontractor is in accordance with the terms of this Agreement.
- 2.5 The Supplier will be liable for the acts and/or omissions of each sub-contractor as if such acts and/or omissions were the acts and/or omissions of the Supplier.
- 2.6 The Services and Deliverables will be accepted by CPA Australia only once CPA Australia has provided written notification of its acceptance to the Supplier (**Acceptance**).

3. Payment

3.1 Fees and Expenses

- (a) In consideration of the successful provision of the Services and delivery of each of the Deliverables in accordance with this Agreement, CPA Australia will pay the Supplier the fee specified in the relevant SOW (**Fee**).
- (b) Subject to clause 3.2(d) below, the Fee will be payable within 30 days of CPA Australia receiving a valid tax invoice from the Supplier following Acceptance.
- (c) CPA Australia will reimburse the Supplier for reasonable expenses incurred by the Supplier in connection with the provision of the Services and Deliverables provided:
 - (i) such expenses have been approved in writing by CPA Australia prior to the Supplier incurring the expense, and
 - (ii) it is provided with a valid tax invoice or receipt evidencing the expense incurred.

3.2 Payment not wages or salary

- (a) The Supplier is responsible for any tax payable under the Income Tax Assessment Act 1936, the Income Tax Assessment Act 1997 or any other statute imposing any liability for tax in respect of the Supplier.
- (b) The Supplier consents to CPA Australia providing the Commissioner of Taxation with the Supplier's name and address and all details of payments made to the Supplier by CPA Australia.
- (c) The Supplier agrees that the Fee and the expenses referred to in Clause 3.1 are the only remuneration or financial benefits to which the Supplier is or may become entitled and no additional charges, fees, losses, liabilities or expenses may be claimed by the Supplier, including (but not limited to):
 - (i) any government taxes, duties, levies or charges; or
 - (ii) redundancy, long service leave, sick leave, parental leave, holiday leave or superannuation.
- (d) CPA Australia may set off against Fees, any amount (whatsoever) payable to CPA Australia by the Supplier.

3.3 Payment Card Industry Data Security Standard (PCI DSS) compliance

- (a) Where, as part of its provision of the Services and Deliverables, the Supplier and/or any of its Related Persons has access to credit card information (**Cardholder Data**) and/or may be responsible for the security of Cardholder Data, the Supplier acknowledges and agrees:
 - (i) to comply with all applicable PCI DSS obligations, requirements and standards;
 - (ii) to complete any documentation required to comply with PCI DSS;

- (iii) to maintain and be responsible for proper security of Cardholder Data that it and/or Related Persons processes, stores, or transmits;
 - (iv) to provide CPA Australia with access to its policies and procedures for compliance with PCI DSS (upon request by CPA Australia).
- (b) The Supplier will, no less than once in every calendar year, provide a written verification as to its PCI DSS compliance status to CPA Australia.
- (c) CPA Australia may terminate this Agreement immediately with written notice to the Supplier if the Supplier fails to comply with any of its obligations under Clauses 3.4(a) and 3.4(b) above.

4. Calculation of Payments

The following principles apply when determining the amount payable (**Payment**) for anything supplied under this Agreement:

- (a) If GST is payable in relation to the supply, the amount payable will be the consideration specified in this Agreement excluding GST.
- (b) If the Payment is determined by reference to any liability incurred by a party (**Payee**), the relevant amount is the actual amount incurred by the Payee less the amount of any GST input tax credit the Payee is entitled to claim in respect of that liability.
- (c) The Parties will provide each other with all documentation required to claim any GST input tax credit, set off, rebate or refund for or in relation to any GST included in any Payment made under this Agreement.

5. Conflicts of Interest

The Supplier warrants that it and its Related Persons have no vested commercial, personal or other interests that would likely impact the performance of its obligations under this Agreement (**Conflict**). If any Conflict arises, the Supplier will immediately notify CPA Australia in writing of that Conflict and take steps to avoid or mitigate that Conflict as required by CPA Australia.

6. Relationship of Parties

- 6.1 The relationship between CPA Australia and the Supplier is 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 and/or provide any warranty and/or representation regarding any matter on behalf of CPA Australia.
- 6.2 In this Agreement, "**Related Person**" means any director, officer, employee, agent, subcontractor or professional advisor of either Party.

7. Confidential Information

7.1 No disclosure of Confidential Information

- (a) In this Agreement "**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 this Agreement.
- (b) The Supplier must not disclose, and ensure that each of its Related Persons do not disclose, publish, release or make available, the Confidential Information, directly or indirectly, to any third person, except as contemplated by this Agreement and as necessary except in providing the Services and Deliverables and then only with the prior written consent of CPA Australia.

7.2 Return and destruction of Confidential Information

The Supplier must, immediately on demand by CPA Australia:

- (a) return to CPA Australia all copies and extracts containing, and cease using, the Confidential Information and all summaries, reports and notes made that relate to or use the Confidential Information, whether on paper, in

an electronic information storage and retrieval system, or in any other storage and retrieval system or medium, in the Supplier's and its Related Persons' possession or control;

- (b) permanently delete all Confidential Information from every computer disk or electronic storage facility of any type owned or used by the Supplier, except that the Supplier may retain one copy for its own audit records); and
- (c) despite anything else in this Agreement, cease to make use of the Confidential Information and must confirm promptly when it has done so.

7.3 Assistance

The Supplier must provide all reasonable assistance to CPA Australia both during and after the Term to assist CPA Australia in preventing any unauthorised use or disclosure of the Confidential Information and in taking action to prevent or prosecute the unauthorised use or disclosure and 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 Agreement. In addition the Supplier must cooperate with the reasonable requirements of CPA Australia in relation to any such unauthorised use or disclosure.

7.4 Exceptions

Clauses 7.1 and 7.2 do not apply to:

- (a) information generally available to the public other than by way of: (i) a breach of this Agreement; or (ii) any other misuse or unauthorised disclosure by the Supplier of any Confidential Information;
- (b) a disclosure to the extent required by law or the rules of any stock exchange, in which case the Supplier will 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 Agreement; or
- (c) the use, copying, reproduction, recording or disclosure of information if the Supplier receives that information from a third person legally entitled to possess and disclose the information, if that use, copying, reproduction, recording or disclosure accords with the rights or permission lawfully granted to the Supplier by that third person.

8. Privacy

8.1 The Supplier:

- (a) warrants that it and its Related Persons will comply with all relevant privacy and anti-spam laws and regulations including (but not limited to) the *Privacy Act 1988* (Cth) and *Spam Act 2003* (Cth) (as amended from time to time);
- (b) warrants that it is authorised to collect, use and disclose any personal information it may provide to CPA Australia; and
- (c) consents to CPA Australia collecting, using and where necessary disclosing the personal information the Supplier has provided to CPA Australia for the purpose of discharging its obligations under this Agreement (including disclosing it to any Related Person and/or related bodies corporate).

8.2 European Union General Data Protection Regulation 2016/679 (GDPR)

- (a) To the extent the provisions of the GDPR apply to data under the Agreement, the Supplier agrees to be bound by the terms of the CPA Australia European Data Processing Agreement (**EDPA**) (available at www.cpaustralia.com.au/otheragreements), and to complete and deliver to CPA Australia (by no later than the Commencement Date) a Data Processing Schedule as contained in the EDPA and the terms of the EDPA are incorporated by reference into the Agreement.

- (b) If the provisions of the GDPR become applicable to data under the Agreement during the Initial Term or any Further Term(s), 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 EDPA, with the terms of the EDPA to be incorporated by reference into the Agreement.

9. Intellectual Property and Copyright

9.1 Definition of Intellectual Property

In this Agreement, “**Intellectual Property**” means any form of intellectual property capable of being granted protection at law including, but not limited to registered and unregistered trade marks, patents, copyright, designs, plant breeders’ rights, circuit layouts, and trade secrets in existence prior to or after the date of this Agreement.

9.2 CPA Australia Intellectual Property

- (a) CPA Australia’s Intellectual Property will remain the property of CPA Australia and the Supplier acknowledges that nothing in this Agreement will be construed as transferring or creating 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 Deliverables to CPA Australia in accordance with this Agreement unless a licence is expressly granted to the Supplier in a relevant SOW to use CPA Australia’s Intellectual Property.

9.3 Developed Intellectual Property

- (a) Any and all Intellectual Property developed pursuant to the terms of 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 Deliverables in accordance with this Agreement.

9.4 Warranties

Subject to clause 9.5, the Supplier warrants that:

- (a) the Supplier is the sole owner of any Intellectual Property assigned under clause 9.3(a) before that assignment;
- (b) no use, disclosure, publication, exhibition, performance, transmission, communication, adaptation or reproduction (**Use**) of any Developed IP by CPA Australia will infringe any Intellectual Property or other rights of any third person or give rise to any obligation on behalf of CPA Australia to pay compensation, fees or royalties to any person; and
- (c) the Developed IP is not and will not be subject to any encumbrances, a grant of any licences or any other defects that would prevent or impact CPA Australia from exercising any of its ownership rights.

9.5 Third Party Intellectual Property

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

9.6 Supplier Intellectual Property

- (a) Any Intellectual Property owned by the Supplier prior to the commencement of this Agreement (**Supplier Intellectual Property**) will remain the property of the Supplier and CPA Australia acknowledges that nothing in

this Agreement will be construed as transferring title in or ownership of any Supplier Intellectual Property 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 Intellectual Property as are incorporated in the Developed IP; (ii) without limiting clause 9.6(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 9.6 will be construed to grant CPA Australia any right to use or exploit such Supplier Intellectual Property in its stand-alone form.
- (d) The Supplier agrees to the use of Developed IP by CPA Australia without requiring the relevant author(s) to be attributed and releases and forever discharges CPA Australia from any claims, actions, proceedings or liability arising from such use. Additionally, the Supplier agrees to procure consent from any agent or other party involved in the authorship of Developed IP on the terms outlined above at no cost to CPA Australia.

9.7 Use of CPA Australia Trade Marks

The Supplier acknowledges and agrees that, CPA Australia owns and will continue to own all right, title and interest to its trade marks. If CPA Australia grants to the Supplier, a non-exclusive licence to use its trade marks for the sole purpose of providing the Services and delivering the Deliverables under this Agreement, the Supplier must use the trade marks strictly in accordance with the ‘CPA Australia Brand Guidelines’ as provided by CPA Australia from time to time.

10. Insurance

- 10.1 The Supplier will insure (with a reputable insurer against losses and damages which are the result of the act, fault or negligence of the Supplier and which relate to this Agreement, including, professional indemnity up to a minimum level of (five) **\$5,000,000** per event and public liability, personal injury, and property damage up to a minimum level of (twenty) **\$20,000,000** per event. In addition, during the Term, the Supplier will maintain all necessary workers’ compensation and any other applicable insurances relating to the provision of the Services and Deliverables required by law.
- 10.2 If requested, the Supplier must provide CPA Australia with a certificate of currency evidencing the insurances referred to in clause 10.1.

11. Indemnity

The Supplier fully indemnifies CPA Australia and its Related Persons, and will keep all of them indemnified, from and against all claims, actions, losses, costs (including solicitor’s fees on an indemnity basis), damages, expenses and other liability (each a “**Loss**”) that they may incur or sustain directly or indirectly (including based on any liability to, or claims by, any third party) including, but not limited to any Loss arising from: (a) any breach of the Supplier’s obligations under this Agreement (including a breach of any warranty); (b) any negligent, unlawful, wilful or fraudulent act or omission of the Supplier or its Related Persons in connection with this Agreement; (c) any claim that the provision of the Services 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 CPA Australia Confidential Information other than in accordance with the terms of this Agreement; or (e) any obligations of the Supplier under applicable privacy laws.

12. Termination

12.1 *By Notice*

CPA Australia may terminate an Agreement at any time and without cause by giving the Supplier not less than 14 days' written notice.

12.2 *Termination for cause*

- (a) Failure by either Party to comply with any material term or condition under this Agreement will entitle the other Party to give the defaulting Party written notice requiring it to cure the default. If the defaulting Party has not cured the default within 5 business days following receipt of the written notice, the notifying Party will be entitled, in addition to any other rights it may have under this Agreement or otherwise at law or in equity, to immediately terminate this Agreement.
- (b) Notwithstanding any other provision contained in this Agreement, CPA Australia may, with written notice to the Supplier, immediately terminate this Agreement in the event that CPA Australia determines that the actions or inactions of the Supplier may bring themselves or CPA Australia or its members into disrepute.

13. Consequences of Termination

13.1 *Consequences*

If this Agreement is terminated under clause 12.1. then:

- (a) CPA Australia must pay any fees for Services and Deliverables Accepted by CPA Australia in writing up to the date of termination; or
- (b) if CPA Australia has paid the Supplier the Fee or any part of the Fee, the Supplier must refund a pro-rated amount of that amount paid less any amount directly connected with the Services and Deliverables already Accepted by CPA Australia.

13.2 If this Agreement is terminated under clause 12.2, then in addition to any other rights CPA Australia may have under this 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.

13.3 On termination of the Agreement, the Supplier must hand over to CPA Australia all materials used or produced by the Supplier, and any other property of CPA Australia, that are or ought to be in the Supplier's possession, custody or control including any of CPA Australia's Intellectual Property.

13.4 *Continuing clauses*

Clauses 2.5, 4, 6, 7, 8, 9, 10, 11, 13, 14(f), 14(g), and 14(h) of this Agreement will continue to apply after termination of this Agreement.

14. General

- (a) The Supplier warrants that it will comply and ensure that its Related Persons comply with all Australian and any other applicable laws and regulations.
- (b) This Agreement contains the entire agreement between the Parties with respect to its subject matter and supersedes all prior agreements and undertakings between the Parties in connection with it.
- (c) Neither party may assign any of its rights and obligations under this Agreement.
- (d) The SOW may be executed simultaneously in 2 or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument. The exchange of a fully executed SOW (in counterparts or otherwise) email will be sufficient to bind the Parties to the Agreement and will be evidence of the Supplier's acceptance of the MSA and the formation of the Agreement.
- (e) If either party cannot perform any of its respective obligations for reasons beyond its reasonable control (including but not limited to acts of God, acts of any pertinent governmental authority, fires, floods, explosions

or other catastrophes, epidemics and quarantine restrictions) then the non-performing party will (1) notify the other party, (2) take reasonable steps to resume performance as soon as possible, and (3) not be considered in breach during the period performance is beyond the party's reasonable control.

- (f) Notice under this Agreement must be in writing and sent to the party concerned by hand, post or facsimile, at its last known, or registered office address or by email (provided an email received notification is received by the sender of the email).
- (g) In the event any provision of this Agreement is held to be invalid or unenforceable for any reason, such invalidity or unenforceability will attach only to such provision and will not affect or render invalid or unenforceable any other provision of this Agreement.
- (h) This Agreement will be construed in accordance with the laws applicable in the State of Victoria, Australia and each party waives any inconvenient forum objection claim whether now or in the future.