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## 1. Definitions

In these Terms and Conditions:

- 1.1 **CA ANZ** means Chartered Accountants Australia and New Zealand ABN 50 084 642 571.
- 1.2 **Deliverable** means, in respect of any Services, the deliverables and outputs ordered and/or acquired by CA ANZ pursuant to these Terms and Conditions and all other material created by the Supplier as part of the Services.
- 1.3 **GST/VAT** means the applicable goods and services tax or value added tax which is imposed in relation to the supply of Goods and/or Services under the Agreement, including without limitation:
- 1.3.1 the goods and services tax under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth); and
  - 1.3.2 the goods and services tax under the *Goods and Services Tax Act 1985* (NZ).
- 1.4 **Fee Cap**, in respect of the Goods and/or Services subject to this Agreement, means:
- 1.4.1 where a fixed fee is agreed between CA ANZ and the Supplier in writing, that fixed fee; or
  - 1.4.2 where the Supplier provides an estimated fee and CA ANZ agrees to that estimate in writing, that estimated fee.
- 1.5 **Insolvency Event**, in relation to a party, means any of the following events:
- 1.5.1 the party ceases (or is unable) to pay its creditors (or any class of them) in the ordinary course of business, or announces its intention to cease to do so or, in relation to an individual, that individual is, or is likely to become, bankrupt;
  - 1.5.2 a receiver, receiver and manager, administrator, liquidator or similar officer is appointed to that party or any of its assets;
  - 1.5.3 such party enters into, or resolves to enter into, a scheme of arrangement, compromise or composition with any class of creditors;
  - 1.5.4 a resolution is passed or an application to a court is taken for the winding up, dissolution, official management or administration of that party; or
  - 1.5.5 anything having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.
- 1.6 **Purchase Order** means written confirmation of CA ANZ's intention to acquire goods and/or services from the Supplier in respect of which these Terms and Conditions are attached or in which they are

referenced, including without limitation an email from CA ANZ containing the applicable purchase order number and a link to these Terms and Conditions.

- 1.7 **Supplier** means the person identified as the supplier or similar which receives the Purchase Order.
- 1.8 **Terms and Conditions** means these terms and conditions.
- 1.9 Other capitalised terms used in these Terms and Conditions have the meaning given elsewhere in these Terms and Conditions.

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## 2. General

- 2.1 These Terms and Conditions apply to any goods (**Goods**) and/or services (**Services**) ordered by CA ANZ with the Supplier through a Purchase Order.
- 2.2 No other terms or conditions apply to this Purchase Order under any circumstances except where expressly agreed to by CA ANZ in writing. Any inconsistency between terms will be resolved in accordance with clause 16.7.
- 2.3 No amendments to these Terms and Conditions will be binding on CA ANZ unless approved in writing.

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## 3. Offer and acceptance

- 3.1 The Supplier is taken to have accepted a Purchase Order if it notifies CA ANZ that it accepts the Purchase Order or delivers the Goods and/or Services as ordered by the Purchase Order.
- 3.2 If the Supplier is unable or unwilling to accept the Purchase Order, it must promptly notify CA ANZ.
- 3.3 The Purchase Order once accepted, combined with these Terms and Conditions and any other terms and conditions incorporated in accordance with clause 2.2, will form a binding agreement between CA ANZ and the Supplier (**Agreement**).

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## 4. Delivery, risk and title

- 4.1 The time period for delivery of the Goods and/or Services will be, as applicable:
- 4.1.1 as communicated to the Supplier by CA ANZ;
  - 4.1.2 as agreed between CA ANZ and the Supplier; or
  - 4.1.3 if clauses 4.1.1 and 4.1.2 do not apply, , as soon as practicable and in any event within a reasonable time,

and time will be of the essence with respect to the Supplier's delivery obligations under the Agreement.

- 4.2 Any Goods to be supplied must be packed, marked and labelled to ensure their safe delivery and safe handling by CA ANZ after delivery and, if specific packing, marking or labelling is required by CA ANZ, comply with those requirements.
- 4.3 CA ANZ may reject any Goods found not to be in accordance with the Agreement, in which case CA ANZ will not be liable to pay for such rejected Goods or

for any damage or costs arising from inspection or rejection of such Goods.

- 4.4 The Goods and/or Services will become the property of CA ANZ on the earlier of:
- 4.4.1 delivery to the delivery address specified by CA ANZ in writing; or
  - 4.4.2 payment by CA ANZ for those Goods and/or Services.
- 4.5 Risk in any Goods supplied passes to CA ANZ upon delivery to the delivery address specified by CA ANZ in writing.

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## 5. Payment of Fees and GST

- 5.1 In consideration for the provision of Goods and/or Services under the Agreement, CA ANZ agrees to pay to the Supplier, as applicable:
- 5.1.1 where CA ANZ and the Supplier agrees to a fixed fee in writing, the fixed fee so agreed, or
  - 5.1.2 where the Supplier provides an estimated fee and CA ANZ agrees to that estimate in writing, an amount no more than the estimated fee,
- (either, **Fees**).
- 5.2 Unless agreed in writing by CA ANZ, the Fees:
- 5.2.1 are inclusive of all taxes (other than GST), freight, insurance, delivery and other expenses which may be incurred by the Supplier; and
  - 5.2.2 may only be varied with the prior written consent of CA ANZ.
- 5.3 The parties agree that CA ANZ is under no obligation to make any payment to the Supplier in respect of the Fees under the Agreement unless it receives a correctly rendered tax invoice from the Supplier in accordance with clause 5.4. CA ANZ will pay the Supplier no later than 30 days after receiving a correctly rendered tax invoice.
- 5.4 A tax invoice may only be rendered by the Supplier once the Goods and/or Services have been duly delivered and/or performed (as applicable) in accordance with the Agreement, must contain the Purchase Order number, and be delivered to the contact person set out in the Purchase Order or as otherwise directed by CA ANZ.
- 5.5 If GST/VAT is payable in connection with the Goods and/or Services to be supplied under the Agreement, unless the Fees are specifically described as "GST/VAT inclusive", the Fees do not include an amount on account of GST/VAT and the Fees will be increased by, and CA ANZ must also pay to the Supplier, an amount equal to the GST/VAT payable by the Supplier on that supply.
- 5.6 The parties agree that any payment by CA ANZ to the Supplier is in fulfilment of its payment obligations of the Fees only, and is not to be taken as acceptance by CA ANZ that the Supplier has satisfactorily performed any obligations under the Agreement.

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## 6. Warranties

### 6.1 The Supplier

The Supplier warrants that:

- 6.1.1 it has the power, capacity and authority to enter into and perform its obligations under the Agreement and has obtained all necessary consents to enable it to do so;
- 6.1.2 it will comply with all applicable laws, standards and policies when performing its obligations under the Agreement, and will maintain all necessary licences, consents and permissions necessary for the performance of its obligations under the Agreement;
- 6.1.3 all information it (or its representatives) has provided to CA ANZ, whether prior to, on or after the date of the Agreement, is true and correct in every respect and not misleading or deceptive; and
- 6.1.4 it has the skill, expertise, suitably trained, qualified, skilled and experienced personnel and sufficient resources to provide the Goods and/or Services, and to perform its obligations under the Agreement.

### 6.2 The Goods and/or Services

The Supplier warrants that the Goods and/or Services and, where applicable, the Deliverables will:

- 6.2.1 be of satisfactory quality and, at a minimum, meet any performance criteria and all other requirements set out under the Agreement;
- 6.2.2 be fit for the purpose for which they are provided; and
- 6.2.3 where applicable, be free from defects in material, design, workmanship and installation.

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## 7. Indemnity and insurance

### 7.1 Indemnity by the Supplier

The Supplier indemnifies and holds harmless CA ANZ against all claims, losses, liabilities, damages, fines, expenses and costs (including legal costs on an indemnity basis), incurred by CA ANZ in connection with:

- 7.1.1 any breach of its warranties under the Agreement;
- 7.1.2 any unlawful, negligent or wrongful act or omission of the Supplier (or its employees, servants, agents and representatives); and/or
- 7.1.3 any breach of clause 8 (Intellectual Property Rights), clause 10 (Confidentiality), clause 12 (Modern slavery compliance) or clause 13 (Anti-bribery and corruption),

except, in each case, to the extent that the claim, loss, liability, damage, fine, expense and/or cost was caused or contributed to by CA ANZ (or its employees, servants, agents or representatives).

## 7.2 Insurance

- 7.2.1 The Supplier must obtain, pay for and maintain such insurance policies with an established and reputable insurer as are appropriate or reasonably required by CA ANZ in respect of the Goods and/or Services to be provided under the Agreement, which will include at a minimum product and public liability insurance and professional indemnity insurance, with a minimum indemnity limit of AU\$10,000,000 for each and every claim.
- 7.2.2 On CA ANZ's request, the Supplier will provide CA ANZ with a copy of the certificate(s) of insurance evidencing the required coverage and limits.

## 8. Intellectual Property Rights

- 8.1 Subject to clause 8.2, the Supplier hereby assigns to CA ANZ all right, title and interest (including all Intellectual Property Rights) in the Deliverables (**Assigned Material**) absolutely and for the territory of the world. This assignment operates as an assignment of future Intellectual Property Rights to the extent that the Assigned Materials are not in existence at the date of the Agreement.
- 8.2 CA ANZ will not have any claim, ownership or interest in any Intellectual Property of the Supplier owned or licenced by the Supplier prior to the submission of the Purchase Order by CA ANZ (**Background IP**), however to the extent necessary the Supplier grants CA ANZ a transferrable, perpetual, non-exclusive, royalty-free licence to use any such Background IP in connection with the Deliverables, Goods and/or Services.
- 8.3 The Supplier warrants that the use or exploitation of the Intellectual Property Rights in the Assigned Material, any Background IP licenced to CA ANZ under clause 8.2 and/or the use of the Goods and/or Services in any manner does not, and will not, infringe any person's rights (including Intellectual Property Rights).
- 8.4 In this clause, **Intellectual Property Rights** or **Intellectual Property** means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trade marks, trade secrets, know-how, confidential information, patents, invention and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

## 9. Limitation of liability

- 9.1 To the maximum extent permitted by law, CA ANZ excludes its liability to the Supplier under or in respect of the Agreement for any consequential loss or indirect, incidental, punitive or exemplary loss regardless of whether that liability arises in contract,

tort (including negligence), at common law, in equity, under statute, under an indemnity or otherwise howsoever arising.

- 9.2 To the maximum extent permitted by law, the aggregate liability of CA ANZ to the Supplier under or in respect of the Agreement whether in contract, tort (including negligence), statute or any other cause of action (other than the obligation to pay the Fees) is limited to the Fee Cap.

## 10. Confidentiality

- 10.1 The Supplier must keep secret and confidential any Confidential Information disclosed to it and must only use such Confidential Information for the purpose of performing its obligations or exercising its rights under the Agreement.
- 10.2 In this clause, **Confidential Information** means all data and/or information provided to the Supplier by CA ANZ for the purposes of the Agreement before, on or after the date of the Agreement relating to the business, technology or other affairs of CA ANZ.

## 11. Termination

### 11.1 Termination by CA ANZ for convenience

- 11.1.1 CA ANZ may, at any time before delivery of the Goods and/or Services, cancel a Purchase Order (and thereby terminate the Agreement).
- 11.1.2 If the Supplier has already incurred costs and expenses in arranging for the order, performance or delivery of the Goods and/or Services, CA ANZ will pay the Supplier's reasonable costs and expenses incurred, but only to the extent that those costs and expenses cannot be avoided or recovered by the Supplier elsewhere (including by re-sale of the relevant Goods). The costs recoverable under this clause by the Supplier will be capped at the Fee Cap.

### 11.2 Termination by CA ANZ for cause

Without prejudice to any other right or remedy, CA ANZ may terminate the Agreement, effective immediately and without any obligation to pay the Fees, by giving notice in writing to the Supplier, if the Supplier:

- 11.2.1 has breached any material term of the Agreement which is not capable of being remedied;
- 11.2.2 has breached any term of the Agreement which is capable of being remedied, and has failed to remedy such breach within 10 days of the date of notice from CA ANZ requiring rectification of the breach;
- 11.2.3 becomes subject to an Insolvency Event;
- 11.2.4 breaches an obligation under clause 8 (Intellectual Property Rights), clause 10 (Confidentiality), clause 12 (Modern

slavery compliance) or clause 13 (Anti-bribery and corruption); and/or

- 11.2.5 has, in the reasonable opinion of CA ANZ, acted in a manner likely to prejudice the reputation of CA ANZ or its business interests.

### 11.3 Termination by Supplier

Once accepted, the Supplier may not cancel the supply of Goods and/or Services ordered by CA ANZ through a Purchase Order, except as set out in clause 13.3 or if an Insolvency Event occurs in respect of CA ANZ, in which case the Supplier may cancel the supply (and thereby terminate the Agreement) immediately by notice in writing to CA ANZ.

### 11.4 No effect on accrued rights and obligations

Except as expressly set out in this clause, termination of the Agreement for any reason shall not affect any rights and obligations of the Supplier or CA ANZ which have accrued as at the date of the termination.

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## 12. Modern slavery compliance

### 12.1 The Supplier will:

- 12.1.1 provide the Goods and/or Services to CA ANZ under the Agreement in accordance with all applicable laws and CA ANZ's Supplier Code of Conduct (a copy of which is available at <https://www.charteredaccountantsanz.com/about-us/corporate-responsibility/modern-slavery-statement>);
- 12.1.2 take reasonable steps to ensure that there is no conduct in its operations or supply chains that would constitute an offence under any Modern Slavery Law;
- 12.1.3 promptly notify CA ANZ if it becomes aware of any conduct of the kind described in paragraph 12.1.2 or that would breach CA ANZ's Supplier Code of Conduct; and
- 12.1.4 to the extent reasonably practicable, promptly provide CA ANZ with all information and records reasonably requested by CA ANZ to help it comply with its obligations under the Modern Slavery Laws.

### 12.2 In this clause 12, **Modern Slavery Laws** mean:

- 12.2.1 the *Modern Slavery Act 2018* (Cth), the *Modern Slavery Act 2018* (NSW), the *Modern Slavery Act 2015* (UK) and equivalent legislation; and
- 12.2.2 all laws relating to the prohibition on using child labour and any form of forced or compulsory labour and all forms of trafficking in persons, slavery and slavery-like practices, including conduct defined as modern slavery or slavery and human trafficking in the legislation referred to in paragraph 12.2.1.

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## 13. Anti-bribery and corruption

- 13.1 Each party represents, warrants and undertakes to the other party that it, its related entities and each of their officers, employees and agents will not engage in any conduct that amounts to bribery or corruption (including under CA ANZ's Anti-Bribery and Corruption Policy, a copy of which is available at <https://www.charteredaccountantsanz.com/about-us/corporate-responsibility/modern-slavery-statement>) or the breaching of any trade, economic or financial sanctions.
- 13.2 Each party must immediately notify the other party in writing if it becomes aware or suspects that its representations, warranties and undertakings in clause 13.1 are no longer accurate or true.
- 13.3 If either party breaches any provision of this clause 13 then the other party may immediately terminate the Agreement (in whole or in part), and will not be liable to make any further payments pursuant to the Agreement or be liable for any loss (of any kind whatsoever) that the breaching party may suffer as a result of any such termination.

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## 14. Records and Audit

The Supplier must retain copies of all materials associated with the provision of the Goods and/or Services. CA ANZ is permitted to conduct a review of all materials held by the Supplier associated with the provision of the Goods and/or Services, in order to assess the Supplier's compliance with the Agreement. The Supplier must provide all necessary assistance to facilitate CA ANZ's review of such materials.

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## 15. Assignment and subcontracting

- 15.1 CA ANZ may, at its sole discretion, assign, novate, transfer, sub-contract or otherwise dispose of any or all of its rights and/or obligations under the Agreement by notice in writing to the Supplier.
- 15.2 The Supplier may not assign, novate, transfer, sub-contract or otherwise dispose of any or all of its rights and/or obligations under the Agreement without the prior written consent of CA ANZ, such consent may be given or withheld at CA ANZ's absolute discretion.
- 15.3 Where the Supplier sub-contracts all or any part of its obligations under the Agreement with the prior written consent of CA ANZ:
- 15.3.1 the Supplier is not released from any liability or obligation under the Agreement; and
- 15.3.2 any act or omission of any sub-contractor appointed by the Supplier to perform the obligations of the Supplier under the Agreement is deemed to be an act or omission of the Supplier, and the Supplier is fully liable for that act or omission as if it were the act or omission of the Supplier.

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## 16. Miscellaneous

### 16.1 Governing law

The governing law of the Agreement is as follows:

16.1.1 the laws of New South Wales, Australia, in respect of the Goods and/or Services which are supplied to CA ANZ in Australia; or

16.1.2 the laws of New Zealand, in respect of the Goods and/or Services are supplied to CA ANZ in New Zealand.

Each of the parties submits to the non-exclusive jurisdiction of the courts having jurisdiction in New South Wales, Australia or New Zealand (as applicable), for the resolution of any disputes arising out of, or in connection with the Agreement.

16.8.2 the members of CA ANZ are not liable for the debts and liabilities of CA ANZ.

## 16.2 **Waiver**

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that right or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

## 16.3 **Survival**

16.3.1 Expiration or termination of the whole or any part of the Agreement does not prejudice any right or liability that accrued to a party before the date of such expiration or termination.

16.3.2 Clauses 6, 7.1, 8, 9 and 10 and this clause 16 continue to apply after expiration or termination of the Agreement, as does any other clause that, by its nature, is intended to survive such expiry and termination.

## 16.4 **Severability**

If a term or part of a term of the Agreement is or becomes illegal or unenforceable, it may be severed from the Agreement and the remaining terms or parts of the term of the Agreement continue in force.

## 16.5 **Set off**

CA ANZ may set off against any amount due for payment by CA ANZ to the Supplier any amount owed by the Supplier to CA ANZ.

## 16.6 **Good faith**

The Supplier must act in good faith in a timely manner in relation to all of its dealings with CA ANZ under the Agreement.

## 16.7 **Inconsistency**

If there is an inconsistency between a provision of:

16.7.1 these Terms and Conditions; and

16.7.2 any annexures or attachments to the Purchase Order;

then the terms listed first in this clause shall prevail in the order set out in this clause.

## 16.8 **Members' liability**

The Supplier acknowledges that:

16.8.1 CA ANZ is an Australian registered body corporate which is formed in Australia; and