

Appendix 1: Terms and Conditions

1. Introduction

- 1.1. These Terms apply to your participation in the Program and document our respective responsibilities, rights and obligations pursuant to the Letter and the Participant Benefits.
- 1.2. If there is any inconsistency between these Terms and the Letter, the documents shall prevail in the order listed in this clause to the extent of any inconsistency.
- 1.3. The Participant Benefits exclude the provision of legal advice or services.
- 1.4. This Agreement contains the entire understanding between you and us in relation to the Program and supersedes any previous agreements, understandings or arrangements (whether written or oral) in respect of the Program. Any change to this Agreement will not be effective unless it is in writing and approved by an authorised representative of both you and us.

2. Your Responsibilities

- 2.1. You shall ensure at least one Participant from your organisation participates in every session provided to you as part of the Program. If you do not do so, we consider this a material breach of the Agreement and may terminate it under clause 7.1 of these Terms.
- 2.2. You acknowledge and agree that the information you receive during the Program from us or any other party associated with the Program is of a general nature and is not intended to address your specific circumstances. You shall not rely on this information.
- 2.3. In relation to any information or equipment provided by you or on your behalf, you warrant that you have given all necessary notifications and obtained all necessary consents and licences:
 - 2.3.1. to disclose that information to us or other third parties in connection with the Program (e.g. the Client and other participants);
 - 2.3.2. to otherwise publish that information in connection with the Program; or
 - 2.3.3. for us to use and/or disclose the equipment and/or information (as appropriate) to the Client and/or as contemplated by this Agreement.
- 2.4. You warrant that our use (and any relevant third party's use) of any information or equipment provided by you or on your behalf in connection with the Program shall not infringe the property rights, Intellectual Property Rights or privacy rights of any third party.
- 2.5. You must comply with all applicable laws at all times when participating in, and otherwise in connection with, the Program.
- 2.6. You are responsible for all incidental costs associated with your participation in the Program.
- 2.7. Regarding your use of, and access to, the online circular economy strategy training program (**Online Program**) which forms part of the Program you acknowledge and agree:
 - 2.7.1. It is delivered via a third party platform.
 - 2.7.2. We may provide you with credentials such as user names and passwords (**Login Credentials**) to access and use the Online Program. You must keep your Login Credentials secure and confidential and take appropriate steps to

prevent unauthorised access to the Online Program. You are responsible for all activities that take place on the Online Program using your Login Credentials.

- 2.7.3. You must ensure that any data, documents, materials or other information you or your nominated employee(s) (**Authorised Users**) provided to us (**Hosted Content**) complies with all applicable laws, does not contain any viruses, bots, worms or other harmful code, are not defamatory, fraudulent, indecent or inappropriate, does not infringe the Intellectual Property Rights of any third party, and does not give rise to any civil or criminal liability for us or any assisting third party.
- 2.7.4. The Online Program is provided for your sole use and benefit and may only be used for the purposes set out in this Agreement or otherwise agreed by us in writing. Except as otherwise agreed in this Agreement or in writing by the parties, you may not: (1) provide or permit use of the Online Program by anyone other than your Authorised Users; or (2) use our name, logo or trademarks in any marketing, promotional material or other publication, unless required by law or with our prior written consent. You must ensure that your Authorised Users comply with this Agreement and you are liable for their conduct as if it were your own.
- 2.7.5. You must:
 - 2.7.5.1. not in any way profit from or otherwise commercially exploit or make available for the benefit of any third party any part of the Online Program;
 - 2.7.5.2. not alter, modify, decompile, disassemble, create derivative works of or reverse engineer the Online Program nor attempt to do so, except as permitted by law;
 - 2.7.5.3. only access the Online Program via the interfaces provided by us, and not create unauthorised links to, or frame or mirror, the Online Program;
 - 2.7.5.4. not compromise or attempt to compromise the Online Program or the infrastructure over which the Online Program are provided;
 - 2.7.5.5. comply with our security, technology and risk management requirements which we advise you of from time to time. You must not use or access the Online Program if you do not agree to comply with those requirements; and
 - 2.7.5.6. notify us if you become aware of any matter that may affect the security or integrity of the Online Program.
- 2.7.6. You acknowledge that there are inherent risks associated with internet based information transmission and online service delivery which are outside our reasonable control. For example, the Online Program may be affected by cyber-attacks or by third parties who provide or maintain aspects of the Online Program. We cannot guarantee that your access to the Online

Program or your Hosted Content will always be secure, uninterrupted or error free. To the maximum extent permitted by law, we will not be liable for any loss (including loss of any Hosted Content) which occurs outside our systems or our reasonable control.

2.7.7. The Online Program is not intended to be used for archival purposes and you should retain separate backup copies of your Hosted Content (to the extent necessary or permitted). You may not be able to access your Hosted Content once the Program has ended.

2.7.8. We (or our licensor(s)) may upgrade, maintain, tune, backup or otherwise alter (**Change**) the Online Program from time to time.

3. Handling Information

3.1. In the course of delivering the Program, either party may disclose Confidential Information to the other and the recipient of such information shall keep it confidential except as provided for in these Terms.

3.2. A party is not required to keep Confidential Information confidential:

- a. where disclosure is expressly permitted under this Agreement;
- b. where disclosure is made to a Hosting Organisation in connection with this Agreement;
- c. to the extent either party is bound to comply with any law or applicable professional and ethical standard or code; or
- d. where Confidential Information has entered the public domain other than as a result of a breach of this Agreement.

3.3. You agree to keep all information or materials of all other participants and the Client which you have access to in connection with the Program confidential in accordance with the terms of this clause 3.

3.4. Our Privacy Policy is available at www.kpmg.com.au. You agree that we may collect, hold, use and disclose Personal Information as set out in our respective Privacy Policy.

3.5. You agree and warrant that you have provided all necessary notifications for, and obtained all necessary consents to, the disclosure and use of any Personal Information or Confidential Information by us, the Client, Hosting Organisations and other participants of the Program as contemplated by this clause 3, our Privacy Policy and this Agreement generally.

3.6. You agree that KPMG, the Client and Hosting Organisations may publicly report on the Program impacts and outcomes which may include Confidential Information, your name, logo and details of the products and services you provide to your clients.

4. Intellectual Property Rights

4.1. This Agreement does not affect the ownership of any party's Intellectual Property Rights or Confidential Information.

4.2. With respect to the Online Program specifically, we grant you a non-exclusive, non-transferable, royalty-free licence to use, and permit your Authorised Users to use, the Online Program for the purpose described in this Agreement.

4.3. You shall not use the Intellectual Property Rights of us, the Client or other participants (including, but not limited to, any contribution of another participant posted to, or made available on, the Online Program) without express consent.

4.4. You agree we, the Client and / or Hosting Organisations may use your Intellectual Property Rights (including, but not

limited to, any Hosted Content) for marketing, promotional, or other business development activities, in order to provide the Participant Benefits and otherwise as contemplated by this Agreement. You grant us a non-exclusive, sub-licensable, royalty-free licence to use your Hosted Content as described in this Agreement including to provide the Program to you. You must ensure such use of your Intellectual Property Rights in accordance with this Agreement does not infringe the rights of any third party.

4.5. We may use and disclose knowledge, experience and skills of general application gained through the provision of the Program.

4.6. If you use any third party websites or other services we may mention in the course of providing the Program (other than the Online Program which is governed by this Agreement), separate terms and conditions may apply to your use of such websites or services which may affect ownership of your Intellectual Property Rights. We exclude all liability in connection with your use of such other third party websites or services.

5. Marketing

We may record and film you or otherwise have access to recordings and films of you (e.g. this may form part of your Hosted Content). This visual and audio may involve the collection of your Personal Information; for example your name, contact details as well as your personal opinions. You understand you may be recorded and/or filmed and/or we may have access to film and/or audio of you which we may use. You consent to us collecting and using such information and materials (including your Personal Information) for use in connection with the Program and as otherwise contemplated by this Agreement, and consent to the disclosure of such information and materials as described in this Agreement, including, without limitation, to the Client and Hosting Organisations. Specifically and moreover:

5.1. You consent to KPMG, the Client and Hosting Organisations using your company name, logo and biography on their respective websites and in other public communications.

5.2. You consent to KPMG, the Client, Hosting Organisations and their subcontractors photographing and filming your participation in the Program.

5.3. You consent to KPMG, the Client and Hosting Organisations using, reproducing and disclosing photographs and film of your participation in the Program (including, but not limited to, any of your Hosted Content such as contributions posted to, or made available on, the Online Program which may include images or audio-visual clips of yourself) for the purpose of promoting the Program and for any other marketing, promotional, or other business development activities.

5.4. You shall promptly provide us with all relevant information as reasonably required to:

- a. evaluate the Program; and
- b. report on Program impacts and outcomes on the KPMG, Client and / or Hosting Organisations websites, in other public communications or in documents and other materials prepared by KPMG for the Client and / or Hosting Organisations.

For the avoidance of doubt, we will report your responses to any survey, Hosted Content or other information and material provided to us by you (or on your behalf) to the Client and Hosting Organisations including quotes, audio and vision of you. We may also provide the Client and Hosting Organisations with original visual and audio recordings (if any).

- 5.5. You shall not use our name, logo or trademarks or any information you receive during the Program from KPMG or any other party associated with the Program in any marketing, promotional material or other publication without our prior written consent.

6. Liability

- 6.1. Subject to clause 6.3 and to the extent permitted by law, the Online Program is provided on an 'as is' basis and all other implied or express warranties, representations and guarantees are expressly excluded. In particular we do not warrant that the operation of the Online Program will be error free or uninterrupted.
- 6.2. Subject to clause 6.3, you agree that, to the extent permitted by law, our liability for any Loss, including without limitation liability for any negligent act or omission by us, shall be limited to an amount equal to AUD2,000.
- 6.3. If we are liable for a breach of any consumer guarantee applied by the ACL to the provision of the Participant Benefits (except where the Participant Benefits are of a kind ordinarily acquired for personal, domestic or household use or consumption), our liability shall be limited, as provided under section 64A of the ACL, to supply of the Participant Benefits again or payment of the cost of having the Participant Benefits supplied again. This clause does not exclude, restrict or modify any right or remedy you may be entitled to under the ACL.
- 6.4. Our total aggregate liability in relation to the provision of the Participant Benefits is limited in accordance with this clause 6.
- 6.5. You agree not to bring any Claim (including in negligence) against any of our employees personally in connection with the Participant Benefits. You agree that each of our employees may rely on this clause as if they were a party to this Agreement.

7. Termination

- 7.1. Either party may terminate this Agreement immediately in whole or in part by written notice to the other if:
- the other commits a material breach of a provision of this Agreement and does not remedy such material breach within 14 days of the date on which it receives written notice identifying the breach and requesting that it be remedied; or
 - the other becomes insolvent.
- 7.2. We may terminate this Agreement immediately by giving you written notice if, in our reasonable opinion, the continued provision of the Participant Benefits, or the Program, by us would:
- breach any applicable law, rule, regulation or professional standard;
 - bring our reputation into disrepute;
 - prejudice our ability to comply with any applicable independence requirement; or
 - expose individuals providing the Participant Benefits and / or the Program to unreasonable physical or personal risk.

8. Dispute Resolution

- 8.1. If a Dispute between you and us arises, before commencing proceeding in respect of a Dispute:
- The person raising the Dispute shall provide the other party with a Dispute Document; and
 - The parties shall engage in confidential senior level

negotiations with a view to resolving the Dispute.

Should such negotiations not be successful in resolving the Dispute within a further 14 days, you agree to participate in mediation as soon as practicable.

- 8.2. Nothing in this clause shall prevent either party from instituting court proceedings to seek Urgent Relief only.

9. Governing Law and Jurisdiction

- 9.1. This Agreement is governed by the law in force in New South Wales, Australia.
- 9.2. Each party unconditionally submits to the exclusive jurisdiction of the courts of New South Wales, Australia, and courts competent to hear appeals from those courts.

10. Miscellaneous

- 10.1. This Agreement does not create a fiduciary relationship or a relationship of employment, agency or partnership between the parties unless such a relationship is expressly created by law.
- 10.2. Clauses 1, 2, 3, 4, 5, 6, 8, 9, 10 and 11 survive termination or expiry of this Agreement, together with any other clause which by its nature is intended to do so.
- 10.3. If any provision of this Agreement is, or becomes, unenforceable, illegal or invalid for any reason, the relevant provision is to be deemed to be modified to the extent necessary to remedy such unenforceability, illegality or invalidity or if this is not possible then such provision must be severed from this Agreement, without affecting the enforceability, legality or validity of any other provision of this Agreement.
- 10.4. A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.

11. Definitions

The following words and phrases used in these Terms have the meanings set out in this clause:

ACL means the Australian Consumer Law that is Schedule 2 to the Competition and Consumer Act 2010 (Cth).

Agreement means these Terms and the Letter. including any other appendices to the Letter.

Client means KPMG's client as described in the Letter who has engaged KPMG to provide the Program.

Claim includes any claim or liability of any kind (including one which is prospective or contingent and one the amount of which is not ascertained) arising from or connected with the Participant Benefits and costs (whether or not the subject of a court order).

Confidential Information means any information in any form whatsoever of a technical, business, corporate or financial nature disclosed by one party to the other:

- that has been marked as confidential;
- whose confidential nature has been made known by the disclosing party to the recipient; or
- which due to its character or nature, a reasonable person in the circumstances would treat as confidential.

Dispute means any dispute, controversy or Claim arising out of, relating to or connected with this Agreement (including any questions regarding its existence, validity or termination), or the Participant Benefits.

Dispute Document means a confidential document marked "Confidential: Dispute Document" that sets out all of the issues that are, or may be, in dispute and offers to discuss them.

Hosting Organisation includes, but is not limited to, local councils, non-government organisations, corporations and other organisations facilitating the Program in conjunction with KPMG and the Client.

Intellectual Property Rights means all and any patents, patent applications, trademarks, service marks, trade names, registered designs, unregistered design rights, copyrights, know how, trade secrets, domain names, internet addresses, rights in Confidential Information, and all and any other intellectual property rights, whether registered or unregistered, and including all applications and rights to apply for any of the same now or in the future.

KPMG means the Australian Partnership of KPMG or any of its associated entities (as defined in section 50AAA of the *Corporations Act 2001* (Cth)).

Letter means the letter incorporating these Terms by reference.

Loss means any loss including any liability, cost, expense (including legal costs on a full indemnity basis), claim,

proceeding, action, demand or damage suffered by you in connection with the Participant Benefits.

Participant means a participant in the Program.

Participant Benefits means the participant benefits detailed in the Letter, any services and any deliverables provided to you under this Agreement.

Personal Information has the meaning given to that term in the *Privacy Act 1988* (Cth).

Program means the Circular Advantage program run by KPMG Australia.

Terms means these Terms and Conditions.

Urgent Relief means urgent injunctive, interlocutory or declaratory relief in respect of a Dispute or the enforcement of a payment due under the Agreement.

Us or we (and derivatives) means KPMG.

You (and derivatives) means the entity to which the Letter is addressed.