

**ENGAGEMENT DOCUMENT FOR INCOME TAX  
 AND/OR ACCOUNTING SERVICES  
 TERMS AND CONDITIONS**

Client Name: (Mr / Mrs / Ms / Miss):			
Entity Name <i>(if applicable)</i> :			
D.O.B		Email:	
Phone No (H):	(W):	(M):	
Billing Address:		State:	Postcode:

**Only fill the following section if your details have changed or you are a new client.**

Tax File Number:		ABN / ACN:	
Are you an Australian resident for tax purposes? <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> Unsure:			
Occupation:			
<b>Spouse Details</b> <i>(if applicable)</i>			
Full Name:		D.O.B:	

This agreement sets out the terms and conditions of our appointment to act as your Accountants. These terms and conditions will apply to all future assignments in which we act as your Accountants unless we enter into a subsequent "Terms and Conditions of Professional Engagement" agreement. Please read this agreement carefully and if you have any queries regarding its contents contact us as soon as possible.

**PURPOSE, SCOPE & OUTPUT OF THE ENGAGEMENT**

The purpose and scope of the engagement would be for the preparation and lodgement of annual income tax returns, and the preparation of any annual and/or interim financial statements relevant to any business structure you may have as of this date.

This document is to confirm our understanding of our engagement and the nature and limitations of the Services we will provide.

## DOCUMENTATION

Prior to any necessary documentation being lodged by us on your behalf, we will provide draft documentation for your approval. Upon approval, evidenced by your signature(s), draft documentation will become final documentation ready for submission. We shall endeavour to ensure that final documents are lodged with the relevant authority by the due date, subject to:

- (a) you (the Client) providing all information and documents relevant to the proper performance of the work at the outset of the engagement and during the engagement in a timely manner. This includes promptly advising us of anything that occurs subsequently to render information already provided misleading or incomplete, or advising of any change in your circumstances relevant to the work; and
- (b) return of final signed documentation for lodgement.

If during the engagement you become aware of any conflict of interest or potential conflict of interest or there is a change of circumstances which may result in a conflict, you must advise us. Events which may give rise to a conflict of interest or potential conflicts during the engagement include events affecting you, such as deaths, matrimonial disputes as well as litigation (threatened or actual) or changes in the nature or structure of your business or your business relationships.

There are provisions in the Taxation Administration Act 1953 that provide you (as from 1<sup>st</sup> March 2011) with "safe harbours" from administrative penalties for incorrect or late lodgement of returns, if, among other things, you gave us "all relevant taxation information" in a timely manner. This means that it is to your advantage to give us all information necessary for us to do the work.

Please Note: that lodgement fees, where applicable, must be provided to our office before final documents will be considered ready for lodgement.

We understand that an audit of the financial statement is not required and therefore no assurance will be expressed.

This engagement will be conducted in accordance with the relevant standards and ethical requirements of CPA Australia.

As the special purpose financial report will be prepared exclusively for your benefit we will rely on you for both the completeness and accuracy of the information supplied to us and you are solely responsible to users of the special purpose financial report compiled by us. This includes responsibility for the maintenance of adequate accounting records, an adequate internal control structure and the selection and application of appropriate accounting policies.

The Australian taxation system is based upon self-assessment. Therefore it will be necessary for you to maintain the appropriate receipts, dockets, cash register tapes and other original items to substantiate any claims for deductions that you might make.

## SERVICES AND ADVICE NOT PROVIDED UNLESS SPECIFICALLY REQUESTED

This agreement does not cover provision of Services or advice in the following areas, unless specifically requested by you:

- |                                |  |
|--------------------------------|--|
| 1. Management advice/services  | 10. Centrelink   |
| 2. Taxation planning           | 11. Maintenance and keeping of all books of account                  |
| 3. Estate planning             | 12. Capital Gains Tax (e.g. cash payments/receipts)                  |
| 4. Business acquisitions/sales | 13. Leasing  |
| 5. Payroll Tax                 | 14. Investment Advice  |
| 6. Workcover                   | 15. Attendance at monthly meetings                                   |
| 7. Superannuation Funds        | 16. Budget Planning & Reporting                                      |
| 8. Fringe Benefits Tax         | 17. Tax Planning incorporating recommended strategies and structures |
| 9. Stamping of documents       |  |

## GOODS & SERVICES TAX REQUIREMENTS

- |  |                                   |
|--|-----------------------------------|
| 1. Australian Business Number Registration | 6. Instalment Activity Statements |
| 2. Business Activity Statements            | 7. Pay as You Go Instalments      |
| 3. Pay as You Go Withholding Tax           | 8. Wine Equalisation Tax          |
| 4. Luxury Car Tax                          | 9. Fuel Tax Credits               |
| 5. Goods & Services Tax Registration       |                                   |

## **SUBSTANTIATION REQUIREMENTS**

Specifically related to your individual and/or partnership tax returns(s), we will advise you of the requirements under the substantiation provisions of the legislation, and hereby advise the necessity to maintain bona fide receipts as specifically required by the legislation. As a guide all receipts must carry the following detail as a minimum.

- The name of the supplier
- The nature of the goods purchased
- The date of the transactions (and the receipt)
- The amount of the expense

The involvement of this type of engagement may not disclose fraud, defalcations or other irregularities, which may occur. However any material weakness in your accounting or internal control system which comes to our notice will be drawn to your attention.

The information will be prepared in accordance with appropriate Accounting Standards and any applicable laws.

As stated above our reports will be prepared for you therefore we disclaim any assumption of responsibility for any reliance on our report by any party other than your Business and our report will contain a disclaimer to this effect.

## **RELATIVE RESPONSIBILITIES**

The conduct of this engagement shall be in accordance with the standards and ethical requirements covered by the Institute of Chartered Accountants in Australia and New Zealand, and CPA Australia which monitor compliance with Professional Standards by their members which means that information acquired by the Practice in the course of the engagement is subject to strict confidentiality requirements. That information will not be disclosed by the Practice to other parties except as required or allowed for by law or professional standards, or with your express consent.

The Practice files may, however, be subject to review as part of the quality control review program by the CPA Australia which may on occasion monitor the Practice's Clients records. The Client acknowledges that, if requested, the Practice files relating to this engagement of Services will be made available upon request.

### *Financial Statements.*

It is understood and agreed that:

- (a) the Client will provide the Practice with accurate and complete information necessary to compile the Client's financial statements and income tax return;
- (b) the responsibility for the accuracy and completeness of the assertions in the financial statements and/or taxation return remains with the Client;
- (c) each page of the financial statements will be conspicuously marked as being unaudited;
- (d) the Client will attach the Practice's disclaimer when distributing the financial statements to the Australian Taxation Office (ATO), financial institutions or other parties and acknowledge that the financial statements prepared by the Practice is for the Client's purpose only;
- (e) the Client accept responsibility for;
  - (i) all records and information supplied to the Practice; and
  - (ii) any failure to supply the Practice with relevant records and information;
- (f) the Client grant the Practice full authority to contact any organisation (including the Client's Bank and the ATO) for the purposes of obtaining information necessary to complete the Client's tax return and the financial statements. The Client acknowledges that this information would not otherwise be available due to the Privacy Act restrictions, but the Client gives the Practice full authority for this statement to be used as written confirmation of the Client's agreement to the Practice obtaining information for any organisation from the above mentioned purposes.

### *Returns*

You acknowledge our end of year procedures and confirm that you will supply all the information required to complete the appropriate returns including Fringe Benefits Tax, Goods and Services Tax, and state taxes such as Land Taxes and other State and Federal Taxes. You will also need to complete, sign and return our year end checklist.

We are authorised to prepare and file the Business' and/or Individual's Income Tax Return (together with any other Returns required for associated legal entities as defined in this Letter of Engagement's signatory box below) from the information and records supplied to us. However, you are responsible for meeting your tax obligations and for any penalties imposed by the ATO for non-compliance with those obligations.

We understand that we are responsible for the preparation and filing of the Business' Company Statement, when applicable, with the Australian Securities and Investment Commission from information supplied by you, as well as the preparation of any shareholders and directors resolutions you may request and to assist with the maintenance of the statutory records. Where appropriate, you may request us to act as your registered office.

### *Australian Taxation Office Linking and Tax Assessments*

You agree to be linked to our practice in relation to all income tax types to enable us to obtain information regarding outstanding taxes. This will enable us to best serve you in dealings with the ATO. Our address will be used by the ATO for service of notices and we are responsible for checking tax assessments. We shall also endeavour to advise the amounts and due dates of tax instalments. However, the responsibility for paying the correct tax and paying on time rests with you. Any penalties arising from lateness, errors, wrong estimates or for any other reason are payable by your Business as the taxpayer and/or where applicable as an Individual.

### **LIMITATION OF LIABILITY (refer clause 19 of the Terms and Conditions)**

The liability limitations of the Practice, its Partners, associates, and employees shall be limited to the amount of cover provided under the Practice's Professional Indemnity Insurance policy.

The Client agrees to indemnify the Practice, its Partners, associates, employees and any other person who may be sought to be made liable in excess of the limit of liability as described in the above paragraphs in respect of any activity arising from or connected with these terms in respect of any claim of whatever kind, including negligence, that may be made by any person and any costs and expenses that may be incurred by the Practice.

The Practice shall be under no liability whatsoever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Practice of these terms and conditions.

### **CLIENT'S ACKNOWLEDGMENT OF THE LIMITED LIABILITY OBLIGATION**

We have discussed with you the limitation of our liability created by this clause. You acknowledge that we have advised you that you may wish to obtain legal advice on all questions arising from the terms of our engagement letter and, in particular, the limitation of liability provisions, because they may impact on your legal rights.

### **FEES**

Our fees (including the appropriate amount of GST) will be billed as work progresses and are based on the time required by the individuals assigned to the engagement plus direct out-of-pocket expenses such as, but not limited to, photocopying, sending or receiving facsimile transmissions and any other disbursements outlaid on your behalf, these shall be detailed accordingly on each Client's "Charge Out Sheet". **Please Note: The Fees are subject to review on an annual basis effective from 1 July each year.**

### **ESTIMATE**

Due to the nature of accounting we are unable to give accurate estimates of the professional costs which will be incurred, however, we will provide an initial best estimate of hourly costs if so required. To enable you to plan and make allowance for your ongoing commitment for professional costs we shall submit to you if required, accounts for payment on a monthly basis and/or upon completion of a particular assignment. Fees are payable within fourteen (14) days of the account being rendered and you acknowledge that we have a general possessory lien on all books, records and other documentation for any outstanding fees.

### **CALCULATION**

Calculation of professional costs will be made in accordance with CPA Australia guidelines (APLES 110) being a fair reflection of the value of work performed, taking into account:

- a) the skill and knowledge required for the type of work involved, while the work, as defined, is within our knowledge and skills, any changes to the work may necessitate making new arrangements with you;
- b) the level of training and experience of the persons necessarily engaged on the work;
- c) the time necessarily occupied by each person engaged on the work; and
- d) the degree of responsibility that the work entails

The rates charged (on time basis) as at 1<sup>st</sup> July, 2019, cover staff hours only, including travelling time at an hourly rate to the maximum of \$396.00 (including GST) per hour. Time is charged in 6 minute increments and electronically recorded and collated for any work that is performed by any member of our staff in the provision of but not limited to:

- Preparation of any and all required documentation for the completion and lodgement of Tax Returns and Financial Reports
- ASIC reporting
- GST requirements for all individuals and any associated entities and/or related parties

This includes any form of advice, including meetings, telephone discussions, communications, - written, verbal or electronic, Centrelink queries, appraisals, investigations, research and form completion, maintenance and administration

of your taxation/company/super/trust/partnership files and any other matters on which time is spent in relation to your affairs.

**SEVERABILITY**

We agree that each of the promises and undertakings given in this Engagement document are independent from one another and severable.

Please sign below the acceptance of the Terms and Conditions together with the duplicate copy of this Engagement document for return to this office to indicate that it is in accordance with your understanding of the arrangements.

<b>ACCEPTANCE OF TERMS</b>	
In accordance with the Privacy Act (1988) I/we authorise any person or company to give information as may be required in response to credit enquiries. I/we have read and understand the attached TERMS AND CONDITIONS of <b>Roy A McDonald</b> which form part of, and are intended to be read in conjunction with this Letter of Engagement and agree to be bound by these conditions. I/we acknowledge that we have been advised that I/we may wish to obtain legal advice on all questions arising from the terms and conditions of contract and, in particular, the limitation of liability provisions (clause 18), because they may impact on my/our legal rights.	
SIGNED (CLIENT): _____ Full Name: _____ Position: _____ Date: ____ / ____ / ____	SIGNED (CLIENT): _____ Full Name: _____ Position: _____ Date: ____ / ____ / ____
SIGNED (FOR AND ON BEHALF OF THE FOLLOWING ENTITIES): _____ _____	
SIGNED (WITNESS TO CLIENT'S SIGNATURE): _____ Full Name: _____ Date: ____ / ____ / ____	
SIGNED (PRACTICE): _____ Date: ____ / ____ / ____	Name: _____

*Complete in duplicate mark one "Client Copy"*

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## 1. Definitions

- 1.1 "Practice" shall mean Roy Alexander McDonald T/A Roy A McDonald (ABN 70 929 740 177) and/or *where applicable* in conjunction with Lindale Insurances Pty Ltd ATF Lindale Insurance Trust (ABN 27 027 421 832) T/A Lindale Insurances Pty Ltd (ACN 005 205 336, an associated corporation), its successors and assigns or any person acting on behalf of and with the authority of the Practice.
- 1.2 "Client" means the person/s or any person acting on behalf of and with the authority of the Client requesting the Practice to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and (b) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
  - (c) includes the Client's executors, administrators, successors and permitted assigns.
- 1.3 "Documentation" means any goods, documents, reports or materials supplied, (inclusive of software), created or deposited incidentally by the Practice in the course of it conducting, or supplying to the Client, any Services.
- 1.4 "Services" shall mean all services supplied by the Practice to the Client and includes any advice or recommendations.
- 1.5 "Fee" means the price payable (plus any GST where applicable) for the Services as agreed between the Practice and the Client in accordance with clause 4 of this agreement.
- 1.6 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

## 2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts Services provided by the Practice.
- 2.2 These terms and conditions may only be amended with both parties consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Practice.
- 2.3 None of the Practice's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Practice in writing nor is the Practice bound by any such unauthorised statements.
- 2.4 These terms and conditions are meant to be read in conjunction with the Practice's Letter of Engagement or cost disclosure documentation (each where applicable), or any other documentation provided by the Practice to the Client. If there are any inconsistencies between any such documents and the terms and conditions herein then the terms and conditions contained in this document shall prevail.
- 2.5 On completion of any Services the Practice will retain Documentation as follows for:
- (a) **Meeting of Members and Directors** – five (5) years from the date of the last entry;
  - (b) **Financial Records and Audit Files** – seven (7) years from the date of the Director' report or, where an audit has been conducted, the auditor's report;
  - (c) **Taxation Records** – five (5) years after the date on which they were prepared or obtained;
  - (d) **Superannuation Funds Records** – ten (10) years after the auditor concludes the audit or review of the financial statements.
- Thereafter, unless separate arrangements have been made, the Practice may destroy or erase the documents and records created and/or produced by the Practice during the course of the engagement (except where provided by law) and documents addressed to the Practice remain the property of the Practice in accordance with clause 7.
- 2.6 The Practice and the Client agree that both parties may communicate with each other electronically, and electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions (Victoria) Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act. The Client acknowledges that electronic transmissions are inherently insecure, can be corrupted or intercepted, may not be delivered or may contain viruses. The Practice is not responsible to the Client for any loss suffered in connection with the use of e-mail as a form of communication with the Client.

## 3. Change in Control

- 3.1 The Client shall give the Practice not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by the Practice as a result of the Client's failure to comply with this clause.

## 4. Fee And Payment

- 4.1 At the Practice's sole discretion:
- (a) the Fee shall be as indicated on invoices provided by the Practice to the Client in respect of Services supplied;
- or

- (b) the Fee as at the date of delivery of the Services according to the Practice's current Fee list (Fee lists are subject to annual reviews); or
  - (c) the Practice's quoted price (subject to clause 4.2) which will be valid for the period stated in the Letter of Engagement or otherwise for a period of thirty (30) days.
- 4.2 The Practice reserves the right to change the Fee in the event of a variation to the Practice's Fees. Any variation from the plan of scheduled Services (including but not limited to, any increases in government/statutory taxes, filing fees with ASIC for company formations, professional fees such as lawyers) will be charged for on the basis of the Practice's Fees and will be shown as variations on the invoice. The Client shall be required to respond to any variation submitted by the Practice within ten (10) working days. Failure to do so will entitle the Practice to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 4.3 At the Practice's sole discretion a non-refundable deposit may be required.
- 4.4 Time for payment for the Services being of the essence, the Fee will be payable by the Client on the date/s determined by the Practice, which may be:
- (a) on delivery of the Services; or
  - (b) be made by instalments in accordance with the Practice's payment schedule; or
  - (c) the date specified on any invoice or other form as being the date for payment; or
  - (d) failing any notice to the contrary, the date which is fourteen (14) days following the date of any invoice given to the Client by the Practice.
- 4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and the Practice.
- 4.6 The Client authorises the Practice to receive and bank into the Practice Trust Account, as my agent, any cheque from the Australia Taxation Office (ATO), which may be payable to me in respect of my Income Tax Return and to apply such portion of the amount banked as is required to satisfy any unpaid fees for Services rendered and forward to me any remaining balance. Client monies will be disbursed as soon as reasonable possible within three (3) to five (5) business days, exceptions to this timeframe may occur during office closures such as the Christmas/New Period, Easter, Australia Day and/or State statutory holidays.
- 4.7 The Client shall not be entitled to set off against, or deduct from the Fee, any sums owed or claimed to be owed to the Client by the Practice nor to withhold payment of any invoice because part of that invoice is in dispute.
- 4.8 Unless otherwise stated the Fees does not include GST. In addition to the Fees the Client must pay to the Practice an amount equal to any GST the Practice must pay for any supply by the Practice under this or any other agreement for providing the Practice's Services. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Fees. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Fees except where they are expressly included in the Fees.

## **5. Provision of the Services**

- 5.1 The Services shall be as described in the Letter of Engagement provided by the Practice to the Client.
- 5.2 These terms and conditions are to be read in conjunction with the Practice's Letter of Engagement. If there are any inconsistencies between the two documents then the Terms and Conditions contained in this document shall prevail.
- 5.3 At the Practice's sole discretion:
- (a) delivery of the Services shall take place when:
    - (i) the Services are supplied to the Client at the Practice's address; or (ii) the Services are supplied to the Client at the Client's nominated address;
  - (b) the cost of delivery is included in the Price.
- 5.4 The Practice may deliver the Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 5.5 The Practice's team members will be assigned to undertake the agreed Services, according to the level of qualification appropriate for the assignment. All work is reviewed by fully qualified leaders who are subject to ongoing professional education requirements.
- 5.6 The Practice will work with the Client to ensure the agreed deadlines are achieved. If the Practice anticipates that there will be a delay in the completion of their Services, the Practice will contact the Client.
- 5.7 As the special purpose financial report will be prepared exclusively for the Client's benefit the Practice will rely on the Client for both the completeness and accuracy of the information supplied to them and the Client is solely responsible to users of the special purpose financial report compiled by the Practice. This includes responsibility for the maintenance of adequate accounting records, an adequate internal control structure and the selection and application of appropriate accounting policies.



5.8 Any time specified by the Practice for delivery of the Services is an estimate only and the Practice will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Services to be supplied at the time and place as was arranged between both parties. In the event that the Practice is unable to supply the Services as agreed solely due to any action or inaction of the Client then the Practice shall be entitled to charge a reasonable fee for resupplying the Services at a later time and date.

## **6. Risk**

6.1 All risk for the Services passes to the Client on delivery.

6.2 Irrespective of whether the Practice retains ownership of any Documentation all risk for such items shall pass to the Client as soon as such items are delivered to the Client and shall remain with the Client until such time as the Practice may repossess the Documentation. The Client must insure all Documentation on or before delivery.

## **7. Title**

7.1 The Practice and the Client agree that where it is intended that the ownership of Documentation is to pass to the Client that such ownership shall not pass until:

- (a) the Client has paid the Practice all amounts owing for the Services; and
- (b) the Client has met all other obligations due by the Client to the Practice in respect of all contracts between the Practice and the Client.

7.2 Receipt by the Practice of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Practice's ownership or rights in respect of the Documentation shall continue.

7.3 It is further agreed that:

- (a) the Client is only a bailee of the Documentation and must return the Documentation to the Practice immediately upon request by the Practice;
- (b) the Client shall not charge or grant an encumbrance over the Documentation nor grant nor otherwise give away any interest in the Documentation while they remain the property of the Practice;
- (c) the Client irrevocably authorises the Practice to enter any premises where the Practice believes the Documentation are kept and recover possession of the Documentation.

## **8. Personal Property Securities Act 2009 ("PPSA")**

8.1 In this clause, financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

8.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Documentation that have previously been supplied and that will be supplied in the future by the Practice to the Client.

8.3 The Client undertakes to:

- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Practice may reasonably require to;
  - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
  - (ii) register any other document required to be registered by the PPSA; or
  - (iii) correct a defect in a statement referred to in clause 8.3(a)(i) or 8.3(a)(ii);
- (b) indemnify, and upon demand reimburse, the Practice for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Documentation charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of the Practice;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Documentation in favour of a third party without the prior written consent of the Practice.

8.4 The Practice and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

8.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

8.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

8.7 Unless otherwise agreed to in writing by the Practice, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.

8.8 The Client must unconditionally ratify any actions taken by the Practice under clauses 8.3 to 8.5.

- 8.9 Subject to any express provisions to the contrary (including those contained in this clause 8) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

## 9. Security and Charge

- 9.1 In consideration of the Practice agreeing to supply Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 9.2 The Client indemnifies the Practice from and against all the Practice's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Practice's rights under this clause.
- 9.3 The Client irrevocably appoints the Practice and each director of the Practice as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 9 including, but not limited to, signing any document on the Client's behalf.

## 10. Defects, Warranties and the Competition and Consumer Act 2010 (CCA)

- 10.1 The Client must inspect the Practice's Services on completion of the Services and must within fourteen (14) days notify the Practice in writing of any evident defect in the Services or Documentation provided (including the Practice's workmanship) or of any other failure by the Practice to comply with the description of, or quote for, the Services which the Practice was to supply. The Client must notify any other alleged defect in the Practice's Services or Documentation as soon as is reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Practice to review the Services or Documentation that were provided.
- 10.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**NonExcluded Guarantees**).
- 10.3 The Practice acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 10.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Practice makes no warranties or other representations under these terms and conditions including, but not limited to, the quality or suitability of the Services. The Practice's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 10.5 If the Client is a consumer within the meaning of the CCA, the Practice's liability is limited to the extent permitted by section 64A of Schedule 2.
- 10.6 If the Practice is required to rectify, re-supply, or pay the cost of re-supplying the Services under this clause or the CCA, but is unable to do so, then the Practice may refund any money the Client has paid for the Services but only to the extent that such refund shall take into account the value of Services and Documentation which have been provided to the Client which were not defective.
- 10.7 If the Client is not a consumer within the meaning of the CCA, the Practice's liability for any defective Services or Documentation is: (a) limited to the value of any express warranty or warranty card provided to the Client by the Practice at the Practice's sole discretion; (b) otherwise negated absolutely.
- 10.8 Notwithstanding clauses 10.1 to 10.7 but subject to the CCA, the Practice shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly maintain or store any Documentation;
  - (b) the Client using the Documentation for any purpose other than that for which they were designed;
  - (c) the Client continuing to use any Documentation after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (d) interference with the Services by the Client or any third party without the Practice's prior approval; (e) the Client failing to follow any instructions or guidelines provided by the Practice; (f) fair wear and tear, any accident, or act of God.

## 11. Default & Consequences Of Default

- 11.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Practice's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 11.2 If the Client owes the Practice any money the Client shall indemnify the Practice from and against all costs and disbursements incurred by the Practice in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Practice's contract default fee, and bank dishonour fees).
- 11.3 Further to any other rights or remedies the Practice may have under this agreement, if a Client has made payment to the Practice, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed

transaction, in addition to any further costs incurred by the Practice under this clause 11 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.

11.4 Without prejudice to the Practice's other remedies at law the Practice shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Practice shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to the Practice becomes overdue, or in the Practice's opinion the Client will be unable to make a payment when it falls due;
- (b) the Client has exceeded any applicable credit limit provided by the Practice;
- (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

## **12. Use of Reports and Advice**

12.1 Any advice that the Practice gives to the Client, its employees or agents is for the Client's exclusive use and must be used only for the purpose described in the quotation.

12.2 Unless the Practice gives the Client prior written consent, the advice:

- (a) must not be used or disclosed for any other purpose, referred to in any document or made available to any other person, except the Client's lawyers or other professional advisor assisting in the Services; and (b) may not be relied upon by any other party other than the Client.

12.3 The Practice is not responsible to any other party other than the Client, who is provided with or obtains a copy of the Practice's advice.

12.4 The Practice's advice may, on occasion, be given to the Client in draft form or orally only on the basis that the Client may not rely on advice in that form. Accordingly, the Practice shall not be responsible if the Client or any other party relies on the advice or chooses to act, or refrains from acting, on the basis of any draft advice or oral comments or advice.

12.5 The Client acknowledges that the signed copy of the Practice's final advice is the definitive version.

## **13. Confidentiality / Intellectual Property**

13.1 Both the Client and the Practice agrees to treat all information and ideas communicated to it by the other confidentially and agree not to divulge it to any third party, without the other party's written consent. The parties will not copy any such information supplied, and will either return it or destroy it (together with any copies thereof) on request of the other party.

13.2 Exceptions to clause 13.1 will be disclosures to legal advisers, disclosures required by law, and disclosures necessary for the proper performance of the Services.

13.3 Where the Practice has developed software, spreadsheets, training materials, databases, proposals, tender documents and other electronic tools ("**Tools**") in providing the Services for the Client, then the copyright in those software, spreadsheets, training materials, databases, proposals, tender documents and other electronic tools shall remain vested in the Practice, and shall only be used by the Client at the Practice's discretion.

13.4 The Client warrants that any software, spreadsheets, databases, electronic tools or instructions provided by the Client to the Practice will not cause the Practice to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Practice against any action taken by a third party against the Practice in respect of any such infringement.

13.5 Whether the Practice or the Client retains the copyright in relation to Tools which are specifically developed for the Client shall be as is agreed, recorded in writing, and signed by both parties to this agreement.

## **14. Relative Responsibilities**

14.1 The conduct of this engagement shall be in accordance with the standards and ethical requirements covered by the Institute of Chartered Accountants in Australia and New Zealand, and CPA Australia which monitor compliance with Professional Standards by their members which means that information acquired by the Practice in the course of the engagement is subject to strict confidentiality requirements. That information will not be disclosed by the Practice to other parties except as required or allowed for by law or professional standards, or with your express consent.

14.2 The Practice files may, however, be subject to review as part of the quality control review program by the CPA Australia which may on occasion monitor the Practice's Clients records. The Client acknowledges that, if requested, the Practice files relating to this engagement of Services will be made available upon request. **Financial Statements**

14.3 It is understood and agreed that:

- (a) the Client will provide the Practice with accurate and complete information necessary to compile the Client's financial statements and income tax return;

- (b) the responsibility for the accuracy and completeness of the assertions in the financial statements and/or taxation return remains with the Client;
- (c) each page of the financial statements will be conspicuously marked as being unaudited;
- (d) the Client will attach the Practice's disclaimer when distributing the financial statements to the Australian Taxation Office (ATO) financial institutions or other parties and acknowledge that the financial statements prepared by the Practice is for the Client's purpose only;
- (e) the Client accept responsibility for;
  - (i) all records and information supplied to the Practice; and
  - (ii) any failure to supply the Practice with relevant records and information;
- (f) the Client grant the Practice full authority to contact any organisation (including the Client's Bank and the ATO) for the purposes of obtaining information necessary to complete the Client's tax return and the financial statements. The Client acknowledges that this information would not otherwise be available due to the Privacy Act restrictions, but the Client gives the Practice full authority for this statement to be used as written confirmation of the Client's agreement to the Practice obtaining information for any organisation from the above mentioned purposes.

## **15. Disclosure - Referral**

15.1 The Client acknowledges that:

- (a) the Practice can, and may, refer the Client for products and/or professional services associated with the provision of the Services by the Practice. The Client further acknowledges that the Practice may expect to derive consideration, either monetary or otherwise, from the referral; and
- (b) a third party may derive consideration, either monetary or otherwise, from the referral; and
- (c) unless any such consideration in respect of a referral is in excess of three hundred dollars (A\$300), the Practice shall not be required to disclose written notice, of the nature, source and amount of any consideration from a third party, that the Practice will receive the benefit from the referral.

## **16. Cancellation**

16.1 Without prejudice to any other remedies the Practice may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Practice may suspend or terminate the supply of Services to the Client. The Practice will not be liable to the Client for any loss or damage the Client suffers because the Practice has exercised its rights under this clause.

16.2 The Practice may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are commenced by giving written notice to the Client. On giving such notice the Practice shall repay to the Client any money paid by the Client for the Services. The Practice shall not be liable for any loss or damage whatsoever arising from such cancellation.

16.3 In the event that the Client cancels delivery of the Services the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Practice as a direct result of the cancellation (including, but not limited to, any loss of profits).

## **17. Privacy Act 1988**

17.1 The Client agrees for the Practice to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by the Practice.

17.2 The Client agrees that the Practice may exchange information about the Client with those credit providers and with related body corporates for the following purposes:

- (a) to assess an application by the Client; and/or
- (b) to notify other credit providers of a default by the Client; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
- (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.

17.3 The Client consents to the Practice being given a consumer credit report to collect overdue payment on commercial credit.

17.4 The Client agrees that personal credit information provided may be used and retained by the Practice for the following purposes (and for other agreed purposes or required by): (a) the provision of Services; and/or (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Services; and/or (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or (d) enabling the collection of amounts outstanding in relation to the Services.

17.5 The Practice may give information about the Client to a CRB for the following purposes:

- (a) to obtain a consumer credit report;
- (b) allow the CRB to create or maintain a credit information file about the Client including credit history.

17.6 The information given to the CRB may include:

- (a) personal information as outlined in 17.1 above;
- (b) name of the credit provider and that the Practice is a current credit provider to the Client;
- (c) whether the credit provider is a licensee;
- (d) type of consumer credit;
- (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
- (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and the Practice has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
- (g) information that, in the opinion of the Practice, the Client has committed a serious credit infringement;
- (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).

17.7 The Client shall have the right to request (by e-mail) from the Practice:

- (a) a copy of the information about the Client retained by the Practice and the right to request that the Practice correct any incorrect information; and
- (b) that the Practice does not disclose any personal information about the Client for the purpose of direct marketing.

17.8 The Practice will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.

17.9 The Client can make a privacy complaint by contacting the Practice via e-mail. The Practice will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au)

## **18. Lien**

18.1 Where the Client has left any of the Client's documentation with the Practice for the Practice to provide any Services in relation to that documentation and the Practice has not received or been tendered the whole of the Fee, or the payment has been dishonoured, the Practice shall have:

- (a) a lien on the documentation; and
- (b) the right to retain the documentation whilst the Practice is in possession of the documentation until such time as payment has been made in full; and
- (c) the lien of the Practice shall continue despite the commencement of proceedings, or judgment for the Fee having been obtained; and
- (d) the Practice shall be under no obligation to release the documentation to the Client if the Client is in default of payment except as may be required by any law or statute.

## **19. Liability Limitations**

19.1 The liability limitations of the Practice, its Partners, associates, and employees shall be limited to the amount of cover provided under the Practice's Professional Indemnity Insurance policy.

19.2 The Client agrees to indemnify the Practice, its partners, associates, employees and any other person who may be sought to be made liable in excess of the limit of liability described in clause 19.1 in respect of any activity arising from or connected with these terms in respect of any claim of whatever kind, including negligence, that may be made by any person and any costs and expenses that may be incurred by the Practice.

19.3 The Client acknowledges and accepts that the Practice shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):

- (a) resulting from an inadvertent mistake made by the Practice in the formation and/or administration of this agreement; and/or
- (b) contained/omitted in/from any literature (hard copy and/or electronic) supplied by the Practice in respect of the Services.

19.4 In the event such an error and/or omission occurs in accordance with clause 19.3, and is not attributable to the negligence and/or wilful misconduct of the Practice; the Client shall not be entitled to treat this agreement as repudiated nor render it invalid.

19.5 The Practice shall be under no liability whatsoever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Practice of these terms and conditions, (alternatively

the Practice's liability shall be limited to damages which under no circumstances shall exceed the Practice's Professional Indemnity Insurance in place).

## **20. Service of Notices**

20.1 Any written notice given under this agreement shall be deemed to have been given and received:

- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this agreement;
- (c) by sending it by registered post to the address of the other party as stated in this agreement;
- (d) if sent by facsimile transmission to the fax number of the other party as stated in this agreement (if any), on receipt of confirmation of the transmission;
- (e) if sent by email to the other party's last known email address.

20.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

## **21. Trusts**

21.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust (Trust) then whether or not the Practice may have notice of the Trust, the Client covenants with the Practice as follows:

- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
- (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
- (c) The Client will not without consent in writing of the Practice (the Practice will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;
  - (i) the removal, replacement or retirement of the Client as Trustee of the Trust;
  - (ii) any alteration to or variation of the terms of the Trust; (iii) any advancement or distribution of capital of the Trust; or (iv) any resettlement of the trust property.

## **22. General**

22.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

22.2 These terms and conditions and any agreement to which they apply shall be governed by the laws of Victoria in which the Practice has its principal place of business, and are subject to the jurisdiction of the Ringwood Court in Victoria.

22.3 The Practice may licence and/or assign all or any part of its rights and/or obligations under this agreement without the Client's consent.

22.4 The Client cannot licence or assign without the written approval of the Practice.

22.5 The Client agrees that the Practice may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Practice to provide Services to the Client.

22.6 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

22.7 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.