

# Next Step Super Terms of Engagement

Dear Client,

Thank you for your instructions to attend to the accounting and taxation requirements for your family members and corporate and trustee entities. A list of the individuals and entities for whom we are to act (**the Group**) is set out in the accompanying *Schedule of Clients* and our comments below are directed to all those persons.

This letter sets out our terms of engagement and the scope of the work to be performed by us within that engagement and supersedes any previous engagement letter provided by us. Please read it carefully and if you have any queries or wish to discuss any aspect, do not hesitate to contact us.

Since 1 March 2010, tax practitioners have been regulated in accordance with the requirements of the *Tax Agent Services Act 2009 (TASA)* and the accompanying regulations. The TASA regime has implications for registered tax agents and also for their clients.

An important feature of TASA is the provision of a “safe harbour” protection from penalties in certain circumstances for taxpayers who engage registered tax agents.

To obtain the benefits of safe harbour protection, the legislation requires the taxpayer to provide the registered tax agent with “all relevant taxation information” to enable accurate statements to be provided to the Australian Taxation Office (ATO). This requirement may be important to both parties in identifying and understanding the purpose and scope of the engagement as set out below and may also affect other matters discussed below.

You will find further discussion on the safe harbour protections in the accompanying document entitled ***Clients’ rights and obligations under the taxation laws***.

We may have a legal, regulatory or professional obligation to disclose non-compliance with laws or regulations to a regulatory authority if the non-compliance has a material effect on the work that we perform under this engagement.

If the terms of our engagement are acceptable, we ask that **all** persons sign the enclosed copy of this engagement letter in the places indicated and return it to our office.

## Terms of Engagement

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### 1 Purpose and scope of engagement

Our engagement is to attend to the following matters for the Group, as applicable:

- Prepare and lodge Business Activity Statements (BASs).
- Prepare the annual financial statements.
- Prepare and lodge annual income tax returns.
- Lodge Single Touch Payroll reports.
- Prepare and lodge annual returns for your superannuation fund.

Unless otherwise agreed, we will prepare the above returns and statements on an ongoing basis, in relation to the period following that for which the returns and statements have most recently been finalised, and for each subsequent period.

Each member of the Group engages us on the terms set out in this letter and is bound by those terms. Those persons are jointly and severally liable to pay our accounts, regardless of which Group member those accounts are addressed to, and regardless of which Group member received the benefit of the work performed.

If we are asked to act for a new or additional member of your family group, we may forward to you an updated *Schedule of Clients* which each existing Group member agrees will apply in place of any previous *Schedule of Clients*. We will also require the new Group member to sign an acknowledgement of these terms of engagement.

Our services will be provided to you on a fee for service basis.

This letter relates only to the abovementioned services and details the basis and terms of this engagement. Unless otherwise agreed, our engagement will be limited to the matters described in this letter. Work that is performed or disbursements that are incurred which are outside the scope of this letter will be the subject of additional charge.

Our engagement commences as soon as you return this engagement letter, and it has been signed by you. In addition to any other rights you might have, you can terminate this engagement at any time by telling us in writing. We also reserve the right to do so by providing you with 14 days' written notice.

If either you or we terminate this engagement, the provisions of clause 2.6 of this letter will apply.

### 2. Basis and terms of engagement

Our engagement is to assist with the preparation of the financial accounts and the preparation and lodgment of the taxation returns for your Group. This includes the non-trading individual members of your family (**Individuals**), as well as your trading entities (including individuals, corporate entities, partnerships, trustees and superannuation entities) (**Entities**).

### 3. Details of services to be provided

#### Your protections under TASA

The *Tax Agent Services Act 2009 (TASA)* and complementary amendments to the applicable taxation administration legislation provide statutory protections for taxpayers who engage registered tax agents.

In particular, as your tax agent, we are bound by a statutory Code of Professional Conduct which is administered by the Tax Practitioners Board. That Code requires us, amongst other things, to act lawfully in your best interests and with honesty and integrity in the performance of our duties.

In addition, as the client of a registered tax agent, you have statutory "safe harbour" exemptions from penalties in certain circumstances.

### **2.1 Accounting and record-keeping**

In undertaking this engagement, you must generally ensure the following:

- The bookkeeping for all Entities is maintained on a regular basis. In fact, we recommend the bookkeeping and record-keeping tasks be attended to each week.
- Reconciliations for the bank accounts, debtors and creditors are performed at the end of each month for each of the Entities.
- A stocktake will be performed during the last weekend in June for each entity that deals in trading stock.
- It is expected that the trial balance of each of the Entities will be completed no later than 30 June each year.

In respect of the personal tax returns for Individuals, we require that all relevant information be collated and forwarded to our office by 30 June each year. We shall detail more specific requirements in respect of the Individual tax returns later in this letter.

### **2.2 Taxation services**

In engaging us to provide taxation services, it is important for you to understand the following:

- You are responsible for the accuracy and completeness of the particulars and information provided to us by you.
- Any advice we provide is only an opinion based on our knowledge of your particular circumstances.
- You have obligations under the self-assessment regime to keep full and proper records in order to facilitate the preparation of accurate returns.
- We cannot provide taxation services if we find that information on which those services are to be based includes false or misleading information, or material information is omitted, and you are not prepared to appropriately amend that information.

### **2.3 Compilation of financial statements**

By engaging us to compile financial statements, you acknowledge that:

- the reliability, accuracy and completeness of the accounting records are your responsibility; and
- you have disclosed to us all material and relevant information.

### **2.4 No statutory financial audits are conducted**

You and your employees are responsible for the maintenance of the accounting systems and internal controls for all the Entities. That includes the keeping and maintenance of all required books of account. Our firm cannot be relied upon to disclose irregularities, such as fraud, and other illegal acts and errors that may occur with regard to such matters.

Our firm is not being engaged to conduct a statutory audit of the financial records of any of your Entities and we will not express an auditor's opinion as to the truth and fairness of the financial statements.

### **2.5 Documentation**

Before we lodge any returns on your behalf, we will forward the documents to you for approval. We will endeavour to ensure that the returns are lodged by the due dates and will advise you at the beginning of the financial year when documentation should be provided to us.

If you are late in providing information, we will do our best to meet the time limits, but we will not be responsible for any late lodgment penalties or interest charges you may incur.

### **2.6 Ownership of documents**

The financial statements, tax returns and any other documents which we are specifically engaged to prepare, together with any original documents given to us by you, shall be your property. Any other documents brought into existence by us, including general working papers, the general ledger and draft documents will remain our property at all times.

If our services are terminated (by either party), each client separately agrees that we shall be entitled to retain all documents owned by that client (including all tax refund cheques of that client which come into our possession) until payment in full of all outstanding fees from all members of the Group on any account. Where copies of any documents released to you are required for our records, you will be charged for the cost of photocopying at our normal rates.

### 2.7 Additional services

The scope of our engagement is the preparation and lodgment of the accounting and taxation matters detailed above. Any agreed fee applies only to services and advice provided within the scope of our engagement. This fee includes checking and forwarding original assessments and payment notices that are received from the ATO and the Australian Securities & Investments Commission (ASIC).

However, any additional services or advice that you request are outside the scope of this letter and are not included in this agreed fee. We will separately advise you of the fee for these services, including any direct out of pocket expenses. Please note in particular that any correspondence from the ATO or ASIC that does not relate to initial assessments or original payment notices, will be charged as additional services.

### 2.8 Fees and charges

Our services will be provided to you on a fee for service basis.

Unless otherwise stated in writing, any estimates which we provide to you of our anticipated fees, disbursements and charges for any work are only indicative of the amounts you can expect to be charged. Estimates are not quotes or caps and are not binding on us.

Where an estimate is given and the scope of the work changes, or if it becomes apparent that the work involves matters which were not taken into account in the estimate, we will endeavour to advise you and provide an amended estimate as soon as it is practicable to do so.

We may require you to deposit money into our trust account in anticipation of our fees and charges. If you fail to make a required trust deposit, we may suspend work or terminate this engagement. Each client in the Group authorises us to apply trust moneys held on their behalf towards payment of fees and disbursements, and to meet our bill of costs which have been rendered and which have not been paid or disputed within 14 days after issue of the bill of costs.

Each client in the Group is jointly and severally liable to pay our fees in respect of all work performed for all members of the Group. We may require that payment of our fees be guaranteed by one or more persons who are associated with the Group but are not themselves our clients (for example, company directors). If you fail to provide a required guarantee, we may suspend work or terminate this engagement.

If we suspend work or terminate this engagement by reason of your failure to make a trust deposit or provide a guarantee as required, we will not be liable for any loss or damage suffered by any client in the Group as a result of the suspension or termination.

#### 2.8.1 Goods and Services Tax (GST) – Professional fees

Our professional fees are inclusive of GST. If our services are provided to Individuals or Entities that are registered for GST, then those Individuals or Entities may be able to claim a GST input tax credit for the GST they pay on our services. However, this will not be the case if the services we provide are used by the recipient in making an input taxed supply or otherwise for a non-creditable purpose. In this situation, the GST associated with our professional fees cannot be claimed as an input tax credit.

If your matter involves a mixture of taxable, GST-free and input taxed supplies, we will not apportion our professional fees between these categories of supply unless you have expressly requested us to do so.

Please note that if you make such a request after the commencement of any particular matter, it may not be possible for us to subsequently apportion professional fees that were incurred prior to receiving your request. If you need separate advice on whether you will receive the benefit of a GST input tax credit for the GST paid to us, then please contact us.

### 2.8.2 GST – Disbursements

In addition to our professional fees, you will be responsible for payment of expenses which we incur on your behalf (together with the GST that we pay in relation to such expenses), as set out below.

Certain government charges and fees included in some matters undertaken in the scope of our engagement are effectively GST-free to the applicant but will attract the 10% GST if paid by this firm and then passed on to you as part of our services.

Accordingly, for certain disbursements in this category, namely:

- ASIC fees;
- new company and trust deed orders; and
- other specific disbursements notified from time to time,

we will act as your agents in incurring those disbursements. You will therefore technically be primarily liable to pay the account to the supplier. Under this agency relationship, you will receive the benefit of any concessional GST treatment of any part of the disbursement.

Where GST is payable on some or all of a supply acquired by us as your agent, we will forward you the Tax Invoice and you will be able to claim the input tax credits directly if you are GST-registered (or are required to be GST-registered) and are entitled to claim input tax credits.

For disbursements incurred in this manner, we may in some cases require that you provide us with separate cheques for the relevant amounts to be paid directly to the relevant government body or supplier.

For all other disbursements (e.g., couriers, searches, photocopying, etc.), the treatment will be the same as for professional fees – i.e., we will incur the costs at first instance and invoice them on to you after making allowance for any GST input tax credits received by us on the acquisition. These invoices will include GST for which you may be entitled to claim an input tax credit.

### 2.9 Confidentiality

We will keep information acquired as a result of this engagement confidential and will not disclose confidential information relating to clients in the Group without permission, unless there is a legal duty to do so. We will also not use any information acquired as a result of this engagement for our own personal advantage or for the advantage of a third party.

We may also need to disclose information relating to one client's affairs to other clients in the Group to assist in performing our work, to persons responsible for the governance of an entity to comply with professional standards, to the relevant parties in order to protect our professional interests in legal proceedings, to a professional or regulatory body in response to an inquiry or investigation, to the relevant parties in order to comply with technical and professional standards (including ethics requirements), or to a professional body of which we are a member, in relation to a quality review program undertaken by that body. Each client in the Group hereby authorises us to do so when we consider it appropriate to further our performance of work for the Group, or when requested by the relevant party.

### 2.10 Utilising outsourced services

From time to time, our firm may use “outsourced services” (which may include “Cloud Computing”) to perform some of the services we are engaged to perform for you.

The list of third party service providers currently used by our firm, to whom client information will or may be disclosed, are as follows:

- *JC Accounting Services*
  - *Annual SMSF Audit*
  - *Melbourne, Australia*

We will notify you of any change to this list from time to time.

Each client in the Group hereby authorises us to disclose information relating to that client’s affairs to such third party service providers as we may choose to engage to perform such work.

Where we outsource services to third party providers, we are nevertheless responsible for the conduct and activities of those providers and for the delivery of the services we are engaged to perform for you.

### 2.11 Use of “Cloud Computing” (that is not an outsourced service)

From time to time, our firm may utilise “Cloud Computing” in the performance of services under this engagement which is **not** an “outsourced service”.

The list of “cloud computing” service provider(s) currently used by our firm in the provision of services which is not an outsourced service, to whom client information will or may be disclosed, is as follows:

- BGL Simple Fund 360
- Sage Handisoft
- MYOB
- Xero

We will notify you of any change to this list from time to time.

Each client in the Group hereby authorises us to disclose information relating to those clients’ affairs to such “Cloud Computing” service providers as we may choose to engage.

### 2.12 Non-compliance with Laws and Regulations (NOCLAR)

During the performance of our work under this engagement, we may detect conduct or a transaction that is considered to constitute NOCLAR, which has a material effect on any documents or information that might be required to be provided to a regulatory authority (RA), such as the ATO.

If we detect any NOCLAR, we may have a professional requirement to make a disclosure to a RA. We will follow a formal process which will include advising you of our concerns and, if necessary, seeking legal advice. If we do seek legal advice, we reserve the right to ask you to pay or reimburse us for our reasonable costs.

If we are required to make a disclosure to a RA, you agree to forever release us from any claim for costs or losses you incur in responding to or dealing with anything that arises from our disclosure.

### **2.13 Losses from unauthorised cyber-activity**

We will take all reasonable precautions to ensure that any electronic data that contains your private information is securely stored and that any email transmissions are protected and are not able to be intercepted by third parties. However, we cannot be held liable for any loss that you might incur as a consequence of any third party intervention that accesses, procures or copies any data that contains your private information from any medium or device we use to store or transmit such information.

In the event that, despite our firm having taken reasonable precautions to securely store your private information, you suffer any losses arising from unauthorised cyber-activity, you agree to forever release us from any claim for your losses.

### **2.14 Limitation of liability**

Our firm's liability may be limited by a scheme approved under Professional Standards legislation and applicable regulations of the Professional Body.

#### **When did the safe harbour provisions commence?**

The safe harbour applies for returns lodged on or after 1 March 2010.

#### **How does the safe harbour work?**

In order to benefit from the safe harbour should the need arise, it is a requirement for you to ensure that you provide us with all of the relevant tax information. This includes any records, or documents we request from you plus any other information relevant to the preparation of your tax return. The information provided must be complete and accurate.

It is equally important that you provide us with this information by the time it is requested so as to allow the return to be lodged by its due date. The safe harbour from late lodgment penalties can also apply where a Business Activity Statement, Instalment Activity Statement, or Fringe Benefits Tax return is lodged late.

#### **What does the safe harbour apply to?**

Whilst the safe harbour can apply to exempt the penalty for an error made in a tax return, it is important to note that the tax and interest will still be payable.

#### **What if the safe harbour does not apply?**

Even if you are not eligible for the safe harbour, it is still possible to request the ATO to remit or reduce the penalty.