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# McIntyre Dick & Partners Limited Terms Of Engagement

One of the requirements of being a member of Chartered Accountants Australia and New Zealand (CAANZ), our industry regulator, is that we hold a current and signed terms of engagement letter from all of our clients. This is also a requirement of Inland Revenue and enables us to file tax returns on your behalf, if required.

Our terms of engagement set out clearly what services we have agreed to provide to you and both parties rights and obligations under this agreement. This reflects best business practices and ensures compliance with both CAANZ and Inland Revenue requirements.

We appreciate your assistance and prompt attention to the completion of this matter. Should you require any further information or clarification of the terms of engagement, please do not hesitate to contact us.

# Terms Of Engagement

## 1. Introduction

These terms of engagement confirm that McIntyre Dick and Partners Limited has been retained/appointed to provide the services set out below for:-

[Client 1.FirstName] [Client 1.LastName]

## 2. Terms Of Engagement

These terms of engagement set out the services to be provided, the obligations and duties of each party in respect to this engagement.

We are a member of Chartered Accountants Australia and New Zealand (CAANZ) where we are required to comply with their membership obligations.

This document and any proposal letters accepted by you, comprise the entire agreement. The contract shall supersede all previous letters of engagement, undertakings and agreements.

If there should be future adjustments to these terms and conditions, we will update these on our website and communicate with you at this time.

## 3. Services

We will provide the services described below (the services). You are responsible for determining that the scope of the services is sufficient to meet your needs.

Unless specifically stated to the contrary:-

(a) We have a dispersed workforce that may not be located at our office in Invercargill. They may be located within New Zealand or internationally. Our workforce is made up of employees and sub-contractors. We will ensure the person undertaking your work is appropriately trained and skilled.

(b) We may use contractors from time to time to perform parts of your job such as drafting financial statements. These include local based contractors in New Zealand or they may be based overseas in South East Asia. All work is reviewed for completeness and accuracy and is signed off by a Chartered Accountant who holds a Certificate of Public Practice.

(c) We may allocate appropriate principals and staff to perform the services and may replace any personnel named in the engagement letter with personnel of similar skill.

(d) Timetabled dates are intended for planning and estimating purposes only and are not contractually binding.

(e) The services do not involve an audit or examination conducted in accordance with New Zealand auditing standards and we will not express an opinion on any financial statements or information taken as a whole, nor provide any opinion on the achievability of prospective financial information.

(f) We will rely on the information that you provide and we will not verify that information.

(g) The services do not include the provision of legal advice or legal due diligence services.

(h) If the services depend upon laws, regulations or interpretations by Government agencies, we are not responsible for any changes in those laws, regulations or interpretations (whether or not having retrospective effect) which occur after the date of our report and are not required to notify you of such changes.

(i) The services are not designed to reveal fraud or misrepresentation. Accordingly we do not accept responsibility for detecting fraud or misrepresentation whether by directors, management, staffer external parties.

(j) We are not responsible for the work of any other person who you engage to perform work in conjunction with our services.

(k) Where the words "examination", "compilation", "review", "opinion", "assurance" or "agreed upon procedures" are used to specify any services those words have the meanings assigned to them in professional standards of the Chartered Accountants Australia and New Zealand or External Reporting Board.

## 4. The services we may provide include but are not limited to:-

### Financial Statements

If required, compile annual financial statements from information and records you provide in accordance with the Compilation Engagement Standards issued by the Chartered Accountants Australia and New Zealand.

These financial statements will be prepared as special purpose financial statements and in accordance with taxation principles contained in the Income Tax Act 2007 and for companies, disclosure requirements contained in the Tax Administration (Financial Statements - Domestic Trusts) Order 2022 except where the entity is required to, or we are requested to prepare general purpose financial statements.

Where special purpose financial statements are prepared, they are prepared for tax and internal management purposes only and should not be relied on for any other purpose.

The way in which your financial information has been compiled will be disclosed as part of the financial information. If this does not represent a true and fair view of the information, this will be explained in the reports and any departures from the practice will be disclosed in the financial reports.

### Taxation and Compliance

From information and explanations, you provide, prepare returns of income, other taxation type returns and act as tax agent or agent.

and:-

(a) To calculate taxation due or payable by reference to the returns.

(b) To obtain information from Inland Revenue through all channels including electronic ones.

(c) To obtain information for all tax types (except child support).

(d) To respond to any queries directed to us by Inland Revenue regarding the affairs of those listed above.

(e) To maintain taxation files for the statutory period determined by relevant taxation legislation.

(f) To provide assistance with the preparation of GST, FBT, your returns, imputation and other sundry tax issues or returns when requested to do so.

(g) To register your company as a look-through company, if requested to do so.

(h) Provide specific taxation advice on various matters as requested.

(i) To provide other services as requested.

To enable timely processing of your taxation returns you authorise us to electronically file, if we deem appropriate to do so, these with Inland Revenue 4 weeks after they have been posted to you or by the due date if this is earlier.

#### **Statistics**

To prepare Department of Statistics returns as required.

#### **Statutory**

To maintain the minute book (including resolutions and certificates), the share register, charges register, interest register and prepare the annual company return and forward it to you for signature and filing prior to due date.

#### **Companies Office**

Act on behalf of your company at the Companies Office.

#### **Business Advisory**

From information and explanations you provide, engage in the provision of other business advice as and when requested. This may include but not be limited to trust services, management accounts, receivership/liquidations, cash flows and forecasts.

#### **Valuations**

To form an opinion of the fair value of shares as defined below:-

Fair value is defined as the price which is equitable between buyer and seller. Where the transaction is not in the open market but rather both parties have been brought together under the provisions of an agreement, such as the pre-emptive rights contained in a company's constitution.

#### **Taxation Consultancy**

To provide ongoing tax consultancy services, both verbal and written, on various matters as required by you or on matters that we bring to your attention that you request we review.

#### **Business Software and Secretarial Service**

We will provide the services in relation to your software/secretarial requirements. These services include but are not limited to:

- Accounting system review
- Software selection
- Software installation

#### **5. Your Responsibilities**

We mutually agree that your responsibilities in connection with the work that you wish us to perform for you will include the following:-

(a) To provide us with the records, information, documents and explanations that are true, accurate and not misleading, on which we will rely, and to maintain your accounting records in a form necessary to enable us to carry out the various professional assignments as detailed above on a timely basis.

(b) To advise us of any changes in any personal details such as address, family members and marital status, to enable us to fulfil various obligations resulting from these changes.

(c) Advise all of our personnel who are required to visit your premises of what is required of them in relation to health and safety in relation to safety equipment, emergency evacuations, the reporting of accidents and hazards and other matters.

(d) Whilst we shall exercise all due care and skill in preparing the financial statements and/or return of income, it is understood and agreed that you have responsibility for the accuracy and completeness of:-

(i) the content of all information provided to us; and

(ii) the financial statements; and

(iii) the tax returns.

Similarly, by law, ultimate responsibility for any penalties or interest arising from any error in your return of income or financial statements, or for any reason (e.g. failure to pay taxation when due) will rest with you.

#### **6. Audit**

You do not require us to carry out any audit of your records or business affairs. This engagement is not to be relied upon to prevent or detect fraud and error and the responsibility for the prevention or detection of fraud or error remains with you.

#### **7. Independence**

Independence is not a requirement for a compilation engagement. However, the CAANZ Code of Ethics requires us to act objectively and must be, and be seen to be, independent. If we are aware that our independence may be breached for whatsoever reason, we will disclose this in the financial report.

For engagements other than compliance any potential breach of independence will be discussed with you before commencing the engagement.

#### **8. Access to Bank Accounts**

We do not need or require access to your bank accounts. If you wish us to be able to transfer funds between your accounts or to be involved with transactions such as account or wage payments, we will require you to sign a separate engagement form.

### 9. Third Party Software

(a) Prices quoted for software sources from third parties are subject to confirmation at the time of order. McIntyre Dick & Partners Limited is not responsible for errors or omissions made by third parties.

(b) Where McIntyre Dick & Partners Limited supplies third party software, the client agrees to abide by all software license agreements enforced by the software copyright owner.

(c) While McIntyre Dick & Partners Limited takes every effort to supply fault-free software, we cannot be held responsible for any flaws or bugs in the design of the third party software, nor any costs or loss of income arising from such flaws.

(d) It is the responsibility of the software's recipient to carry out a virus check on any attachments before launching any documents, whether received on an external portable device or otherwise.

(e) You agree to pay all subscription and maintenance charges for the software, when required, in full and on time.

### 10. Confidentiality Documents

Subject to our responsibility to respond to queries directed to us by Inland Revenue, we will maintain confidentiality with respect to the business records and personal affairs of those listed above.

In the absence of specific instructions from you (verbal or written) copies of the financial statements and/or returns of income will be provided only to yourself and Inland Revenue and to such other persons as we are required by law to provide.

### 11. Practice Review

The Chartered Accountants Australia and New Zealand requires practitioners to be subject to review from time to time in order to ensure that professional standards are being maintained. Reviews are based on a sample of files and your file may be selected by the reviewer for examination. The reviewer is officially appointed by the Institute, and is bound by declarations of secrecy, meaning utmost confidentiality is maintained.

Further, the reviewer is the only person from the Institute who has access to your records, and no copies are made, but the review could include anonymous reference to information provided by you. If you have any questions about practice review, please contact us.

### 12. Confidentiality

Subject to any need to make disclosures required by law or professional or ethical obligation, both parties agree that information or documents received by or provided to the other for the purposes of the contract and provision of the services, and which are marked confidential or are manifestly confidential (confidential information) will be treated as confidential, except if the information:-

(a) Is or becomes generally available to the public other than by a breach of the obligations under the contract.

(b) Is known to the parties prior to entering into the contract.

(c) Is received from a third party who owes no obligation of confidence in respect of the information.

You agree that McIntyre Dick & Partners Limited may disclose confidential information:

(d) For the purpose of providing the services and on a "need to know" basis, to our personnel (including contractors and sub-contractors) and to our insurers and legal advisors.

(e) To the Practice Review Board of the Chartered Accountants Australia and New Zealand in relation to quality control reviews performed by that board.

(f) Once a completed transaction is no longer confidential, we may cite the performance of the services to clients and prospective clients as an indication of our experience.

### 13. Data Protection and Privacy

Each party to the contract will comply with the data protection legislation, including the Privacy Act 2020 and related codes and regulations and subsequent legislation, applicable to itself, in relation to any personal information shared in connection with the contract.

You will not provide McIntyre Dick & Partners Limited with personal information unless the personal information is required for the performance of the contract. In respect of any personal information disclosed to McIntyre Dick & Partners Limited, you confirm you have the necessary authority for McIntyre Dick & Partners Limited to use it in accordance with the contract, and that data subjects have been given necessary information regarding its use.

Each party may process personal information for the purposes of:

(a) performing the contract;

(b) security, quality and risk management activities;

(c) complying with any requirement of law, regulation or a professional body of which it is a member;

(d) administering and managing its business and services.

Each party may transfer personal information shared with it to any of its affiliates or contractors or sub-contractors or suppliers in relation to any set of the purposes set out in clause 4. Some of the recipients may be located outside the country or territory where the personal information originated, or the data subjects are located. Each party may disclose the personal information only where it has a lawful basis to do so and any appropriate contractual or comparable safeguards required by applicable data protection legislation are in place to protect the personal information being disclosed.

### 14. Publications

As part of our services to clients we produce a number of regular publications on matters that may be of interest to you. We may from time to time send you these publications free of charge.

### 15. Documents

The working papers that we produce in the course of performing the services are our property and we have no obligation to disclose our working papers to you or any other person.

Inevitably, in dealing with client work, some documents which come into our possession belong to the client rather than to us. Whilst we would normally return the original of any document belonging to a client which has enduring significance, it is likely that over a period of time other less important records, which strictly remain the client's property, will be filed amongst our own papers.

It would assist in managing our storage facilities to have your consent in advance to destroy any papers when they are seven years old.

Unless you notify us to the contrary we shall regard your acceptance of the terms of this letter as including your consent for us to destroy any papers which might belong to you at that time.

## 16. Liability

Our liability for any loss or damage that you suffer caused by our breach of contract, tort (including negligence), breach of fiduciary duty or other actionable wrong of any kind shall be limited as follows:-

(a) We shall have no liability for any consequential or indirect loss or loss of profit.

(b) Our liability will be reduced to take into account any contributory negligence on your part pursuant to the Contributory Negligence Act 1947.

(c) In the event that more than one person caused or contributed towards your loss, our liability to you will be limited to the proportion of the loss that the Court would apportion to us under section 17 of the Law Reform Act 1936, based on an assessment of our degree of responsibility and the responsibility of the others who contributed to the loss (whether or not those other persons are able to meet any liability they may have).

(d) Notwithstanding the foregoing, our liability for loss shall in no circumstances exceed the amount of 5 times the fees paid (the liability cap) or such other amount specified as the liability cap in the engagement letter.

Where there is more than one addressee to the engagement letter, the amount of our liability as derived above is a total limit to be allocated between addressees, such allocation being entirely a matter for the addressees, who will be under no obligation to inform us of it.

## 17. Time Limit for Claims

No legal proceedings may be commenced later than two years after the date on which the party bringing the claim became aware or ought reasonably to have become aware of the facts giving rise to the claim.

In any event, no legal proceedings may be commenced more than four years after the date on which the facts giving rise to the claim occurred.

## 18. Disclosure of Our Work

The services are intended for the addressee of the engagement letter only and should not be relied upon by management of, or advisors to, the addressee in their personal capacities.

You must not disclose any report or other information provided as part of the services to any other person without our prior written consent.

You must not use our name in connection with any prospectus, information memorandum or other offer or marketing document, whether public or private, without our prior written consent.

## 19. Other Engagements

Nothing in this contract prevents McIntyre Dick & Partners Limited from providing services to other clients provided that we take reasonable steps to ensure that each client's confidential information is not disclosed to other clients.

This contract is separate from other engagements that we may perform for you or for other clients and we have no obligation to utilise knowledge gained from such other engagements when performing the services under this contract.

By entering into this contract and providing the services, we do not assume a responsibility to you in relation to any reports or opinions that we may have provided under separate engagements, including statutory audit reports, or in relation to any other work that we may have performed for any other client, whether or not that client is the subject of the services.

## 20. Fees and Payment

Your fee is as agreed with your advisor and as set out in the proposal letter.

The fee for any services not covered by a proposal letter will be determined after considering the services provided, skills, experience, urgency and complexity of the matters involved.

To avoid fee problems, we are happy to provide you with an estimate of the fee for the services to be provided. Please note however, that an estimate is an approximate cost only and we reserve the right to alter the estimate.

If we discover on receiving an assignment or commencing an assignment the fee estimate is inadequate we will contact you and discuss an alteration to the fee estimate.

Accounts are normally rendered progressively over the term of our work.

All of our accounts must be paid within 14 days following the date of our invoice, except where we have agreed in writing that other terms shall apply ("the Due Date").

If you do not make payment on the Due Date, we may charge interest on unpaid accounts at our current bank overdraft rate, which shall accrue on a daily basis on the total amount outstanding from the Due Date to the date of payment in full (including after judgment).

If payment is outstanding for 14 days after the Due Date, we may suspend performance of our services to you on credit until the date of payment in full.

You must pay our costs of and incidental to the enforcement or attempted enforcement of our rights, remedies and powers under our terms of engagement, including but not limited to:

- Legal costs, as between solicitor and client;
- Our reasonable administration and other expenses incurred by us in relation to the recovery or attempted charges for the recovery of an unpaid amount; and
- Third party debt collection expenses incurred by us.

Any failure or delay by us to charge interest on an unpaid amount or to exercise any of our other rights will not operate as a waiver of those rights.

You agree we may use and disclose any personal information (as defined in the Privacy Act 2020) for the purpose of recovering unpaid amounts.

#### **21. Indemnity**

To the maximum extent permitted by law, you agree to indemnify McIntyre Dick & Partners Limited, its principals and staff, and to hold each harmless against any liabilities, losses, expenses and other costs reasonably incurred in connection with any claims made against them by any third party arising out of or in connection with the services.

This clause is for the benefit of the third parties referred to herein and they may enforce this clause under the Contract and Commercial Law Act 2017 Part 2, Subpart 1.

#### **22. Personal Indemnity**

In consideration of your requesting on behalf of the client that we provide services to the client, you personally agree to indemnify us, and if you have signed these terms of engagement on behalf of the client you personally agree to guarantee and also indemnify us as follows:-

(a) For so long as the engagement is in place between the client and us.

(b) For the full and punctual payment by the client of all amounts owed to us by the client.

#### **23. Contract Solely with McIntyre Dick & Partners Limited**

You agree that in relation to the services and the contract the client relationship is solely with McIntyre Dick & Partners Limited. Accordingly, you agree not to bring a claim of any nature against any principal, employee, contractor or sub-contractor of McIntyre Dick & Partners Limited.

#### **24. Intellectual Property Rights**

Intellectual property rights in all documentation, systems, materials, methodologies and processes ("tools") brought to and utilised by McIntyre Dick & Partners Limited in relation to the services or created in the course of providing the services, and in all working papers and reports, remain vested in McIntyre Dick & Partners Limited.

Subject to the requirement to treat confidential information as confidential any spreadsheet, database, system, technique, methodology, idea, concept, information or know how developed in the course of the contract may be used in any way we deem appropriate, including by or for our clients, without any obligation to account to you.

In the case of documentation or software prepared by McIntyre Dick & Partners Limited for you we may, on termination or completion of the contract, retain one copy of such information as a professional record of our involvement.

#### **25. Termination of Contract**

The contract may be terminated by either party by written notice.

You will pay McIntyre Dick & Partners Limited for all services provided up to the date of termination.

Where you terminate the contract before we have completed the services, you will pay any additional costs that we incur in connection with the early termination.

The provisions of the contract which expressly or by implication are intended to survive its termination or expiry will survive and continue to bind both parties.

#### **26. Resolving Disputes**

The contract is governed by New Zealand law.

Should any dispute arise, the parties will attempt to resolve it in good faith by senior level negotiations (this may include mediation using the services of an agreed mediator).

If the dispute is not resolved through negotiation or mediation the New Zealand Courts will have exclusive jurisdiction over all claims that may arise out of or in connection with the contract.

Each party hereby irrevocably waives any claim that an action is brought in an inconvenient forum, or that the New Zealand Courts do not have jurisdiction.

#### **27. Benchmark Results**

In some circumstances we are able to benchmark your business results against your industry/profession. This provides valuable management information to you.

The provision of your information for benchmark purposes is carried out in a confidential manner.

Please advise us if you do not want to be part of the benchmark process.

#### **28. Consumer Guarantees Act 1993**

Where you are acquiring our services for the purposes of a business (as provided in sections 2 and 43 of the Consumer Guarantees Act 1993), that Act will not apply.

#### **29. Use of Experts**

From time to time we may require the use of an outside expert in order to provide any of our services. If we need to use an expert to provide any services we will advise you of this in advance.

#### **30. Circumstances outside the Parties Control**

Neither party will be liable to the other for any failure to fulfil obligations caused by circumstances outside its reasonable control.

#### **31. Sub-contractors Selected by You**

Where you are using third parties in connection with the services to be provided in accordance with this contract, you will ensure that you have appropriate agreements with them. Unless agreed otherwise in the engagement letter, you will be responsible for the management of those third parties and the quality of their input and work.

Where you require McIntyre Dick & Partners Limited to contract the services of a Sub-contractor specified by you, you will accept responsibility for the work to be performed by such Sub-contractor.

In the above circumstances, you will be responsible and liable for, and will indemnify McIntyre Dick & Partners Limited against and from, any liability which McIntyre Dick & Partners Limited may incur to any person and against all claims, demands, proceedings, damages, losses, costs and expenses made against, suffered or incurred by McIntyre Dick & Partners Limited, directly or indirectly as a result of or in connection with the work performed by any such Sub-contractor.

**32. Employment**

During the term of this contract or within 12 months of its termination or completion you will not directly or indirectly solicit for employment any of McIntyre Dick & Partners Limited's employees who have been providing services or otherwise connected with this contract without prior written consent.

**33. Electronic Communications**

We do not accept any responsibility relating to the sending or receiving of information by email. You bear all risks of communication. Unless you notify us in writing that email is not an acceptable means of communication, we will assume that email is acceptable.

Both parties will ensure they maintain appropriate backup, security and virus checking procedures.

**34. Authority to Obtain Information**

I authorise McIntyre Dick & Partners Limited to act as my tax agent and to communicate with the appropriate banks, solicitors, finance companies, Inland Revenue, ACC and any other person or organisation as required in order to obtain such further information as required in relation to my personal, business and tax affairs, and to debit my account for any charges incurred in providing such information.

This authority continues until such time as it is revoked in writing.

**35. General**

While we both reserve the right to resign from the engagement, the arrangements outlined in these terms of engagement will continue in effect from year to year unless we mutually agree in writing to vary them. Your instructions to proceed with any assignment will constitute acceptance of these terms of engagement.

**36. Complaints Process**

If at any time you would like to discuss how our service could be improved or you are dissatisfied with any aspect of the services you are receiving please contact your advisor directly. If you are dissatisfied with the response received, or wish to discuss your complaint further, you may refer your complaint to our Operations Manager on 03 211 0801.

**37. Acknowledgement and Acceptance**

Please acknowledge your acceptance of the terms of this agreement under the contract by signing below and returning one copy in the envelope provided.

**Signed by:**

[Client 1.FirstName] [Client 1.LastName]

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

IRD Number:

**Signed on behalf of McIntyre Dick & Partners Limited by:**

[Client Owner.FirstName] [Client Owner.LastName]

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

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# Authority To Obtain Information

I authorise McIntyre Dick and Partners Limited to act as my tax agent and to communicate with the appropriate banks, solicitors, finance companies, First AML, Inland Revenue, ACC and any other person or organisation as required in order to obtain such further information as required in relation to my personal, business and tax affairs, and to debit my account for any charges incurred in providing such information.

This authority continues until such time as it is revoked by me in writing.

**Signed by:**

[Client 1.FirstName] [Client 1.LastName]

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

IRD Number: