

# Terms and Conditions

These Terms and Conditions (Terms) govern the Bell Direct SMSF Services performed by ExpertSuper. Your electronic signature on your Application constitutes acceptance of these Terms.

## 1. Meaning of words and interpretations

Unless a contrary intention is expressed, in these Terms:

- 1.1. **Account** means your SMSF's bank account as established by us as part of establishing your SMSF (where relevant) or as otherwise nominated by you in the Direct Debit Request.
- 1.2. **Applicable Laws** means all laws and regulations applying to your SMSF and the trustees/ members of the SMSF.
- 1.3. **Application** means a client engagement form for the provision of Services by ExpertSuper, completed by you and provided to ExpertSuper.
- 1.4. **Business Day** means Monday to Friday in Victoria, except a day which is a proclaimed public holiday in Victoria.
- 1.5. **Claim** means any cost, expense, loss, damage, claim, action, proceeding or other liability (whether in contract, tort or otherwise), however arising (whether or not presently ascertained, immediate, future or contingent) and includes legal costs on a full indemnity basis.
- 1.6. **Confidential Information of a party** means any information marked as confidential or which by its nature the other party knows or ought to know is confidential (regardless of the form of the information and when it was acquired) and includes intellectual property, trade secrets, technical knowledge, concepts, designs, plans, precedents, processes, methods, techniques, know-how, innovations, ideas, procedures, research data, financial data, databases, personnel data, computer software and programs, customer and supplier information, correspondence and letters and papers of every description including all copies or extracts of same relating to the affairs or business of the party but does not include information that:
  - 1.6.1. is in the public domain at the time of disclosure;
  - 1.6.2. comes into the public domain after the date of these Terms other than through any breach of these Terms; or
  - 1.6.3. is obtained from a third party without breach of confidentiality.
- 1.7. **Commencement Date** is the date we commence providing Services to you.
- 1.8. **Consequential Loss** means damage, loss, cost and expense classified as falling within the second limb of Hadley v Baxendale (1854) 9 Exch 341, including economic loss, loss of business opportunity, loss of anticipated profits, loss of damages resulting from wasted management time and loss of profit.
- 1.9. **Direct Debit Request** means the direct debit request set out in the Application or as otherwise provided by you to us pursuant to which we can debit your Account in accordance with the Direct Debit Request Service Agreement set out in the Direct Debit Request.
- 1.10. **Fee Schedule** means the Fee Schedule located at [www.expert-super.com.au/bell-direct-fees](http://www.expert-super.com.au/bell-direct-fees)
- 1.11. **Fees** means the fees payable by you to us as set out in the Fee Schedule.
- 1.12. **Fund Information** means all information relating to your SMSF's bank accounts, insurance or investments in any form (including data feeds) and any other personal and financial information relevant to your SMSF from any third party.
- 1.13. **GST** means good and services tax or similar value added tax levied or imposed in Australia under the A New Tax System (Goods and Services Tax) Act 1999 (Cth) or otherwise on a supply.
- 1.14. **ExpertSuper or us, we or our** means ExpertSuper™ Pty Ltd ABN 82 628 032 888, Authorised Representative No. 001274492.

- 1.15. **Personal Information** means personal information, as that term is defined in the Privacy Act 1988 (Cth) disclosed to us, or obtained by us, under or in connection with the Services.
- 1.16. **Privacy Laws** means the Privacy Act 1988 (Cth) as amended from time to time.
- 1.17. **Service Description** means the description of our Services described at [www.expert-super.com.au](http://www.expert-super.com.au).
- 1.18. **Services** means the services set out at clause 3.1 of these Terms, and the services to be provided by us as selected in your Application (or as otherwise requested by you from time to time as further described in the Service Description).
- 1.19. **SMSF** means the self-managed super fund which we establish on your behalf or in relation to which you have engaged us to provide Services.
- 1.20. **Trust Deed** means the deed establishing and governing your SMSF.
- 1.21. **You or your** means the person or people identified in the Application as members/trustees of the SMSF in their capacity as trustees or directors of the trustee and in their personal capacity both jointly and severally.
- 1.22. All words importing the singular shall include the plural and vice versa and any one gender shall include each of the other genders, if applicable.

## 2. Agreement term

We will supply the Services to you from the Commencement Date until terminated pursuant to clause 10.

## 3. Our obligations

- 3.1. We agree to supply the following Services to you in accordance with the instructions in your Application:

### **SMSF Establishment**

If you do not have an existing SMSF, we will arrange to establish an SMSF.

### **SMSF Transition**

Where you have an existing SMSF we will contact your current Tax Agent and notify them of our appointment. We will arrange for the transition of all fund documents to us.

### **Fund administration**

We will handle the SMSF administration on a daily basis including obtaining electronic data feeds where possible and information from Bell Direct and other third parties as available.

### **Annual Reporting**

We will facilitate all annual reporting requirements within the prescribed ATO deadlines.

### **Online Reporting**

ExpertSuper will provide daily online reporting. Where an asset is unlisted and we are unable to obtain a data feed we will email you for information.

### **Compliance obligations**

ExpertSuper will assist you with maintaining your compliance requirements as trustee (however you ultimately are responsible for fulfilling the roll of SMSF trustee).

### **SMSF records**

ExpertSuper will maintain all SMSF specific records including member components and statements, Capital Gains Tax history and accounting information required to administer the SMSF.

### **BAS/IAS**

We will prepare and calculate BAS and IAS returns if required.

### **Pensions**

ExpertSuper will

- Establish new income streams (ABP or TRIS).
- Handle commutation of income streams.
- Prepare lump sum withdrawal documentation if required.

- Request actuary certificates.
  - Prepare Centrelink schedules as requested.
  - Prepare all associated pension establishment and compliance documentation.
  - Provide minimum and maximum pension figures to you.
- 3.2. We will perform the Services using reasonable skill, care and diligence in accordance with the Service Description. However, you are ultimately responsible for the operation and management of your SMSF and ensuring that your SMSF complies with all Applicable Laws.
- 3.3. Where there are multiple trustees for your SMSF or multiple directors for a corporate trustee, you expressly authorise us to act on the instructions of any one trustee or director.
- 3.4. Except as expressly set out in these Terms and to the maximum extent permitted by law, all other warranties in relation to the Services are excluded.

## 4. Your obligations

In order to be able to provide the Services to you, you agree to:

- 4.1. promptly give us accurate and complete information when requested;
- 4.2. manage your SMSF in accordance with the Trust Deed and Applicable Laws and not change your Trust Deed without giving us prior notice;
- 4.3. immediately notify us of any change to the members or trustees of the SMSF.

## 5. Third party products

As part of performing the Services, we may arrange for you to use products or services provided by third parties. We are not responsible for the performance of these products or services. You agree to comply with the terms and conditions that apply to such products and services.

## 6. Fees

- 6.1. You agree to pay us the Fees within the timeframe specified in the Fee Schedule.
- 6.2. Where you ask us to perform any services that are not referred to in the Fee Schedule we will provide a quote to you for such services and will not commence such services until you agree to the quote.
- 6.3. The fees may vary from time to time and we will give you 30 days' notice of any change in Fees.
- 6.4. You must ensure your Account has sufficient cleared funds in order for us to debit all Fees and other amounts payable under these Terms when ExpertSuper issues a tax invoice. You must ensure that at all times we have a valid Direct Debit Request in respect of your Account. To the extent that there are insufficient cleared funds available in the Account, the amount due to us under these Terms remains a debt due and payable by you and must be paid to us by alternative means.
- 6.5. All Fees are quoted inclusive of GST. If at any time the GST rate increases, our Fees will increase to reflect the increase in GST payable by reference to the new applicable rate.

## 7. Confidentiality and privacy

- 7.1. We will implement reasonable measures to protect your Confidential Information. We will delete or destroy your Confidential Information in accordance with Applicable Laws and our record retention procedures.
- 7.2. We will comply with the requirements of the Privacy Laws in relation to any of your Personal Information. For more information please see our Privacy Policy available on our website [www.expert-super.com.au](http://www.expert-super.com.au).

## 8. Complaints

- 8.1. We will implement reasonable measures to protect your Confidential Information. We will delete or destroy your Confidential Information in accordance with Applicable Laws and our record retention procedures.
- 8.2. Please contact us if you have any complaints with respect to our Services or these Terms and we will seek to resolve your concerns as soon as possible. You can contact us by using the details on our website [www.expert-super.com.au](http://www.expert-super.com.au).
- 8.3. If you are not happy with the outcome, you may request a review by writing a letter or email to us. The review will be conducted by our Complaints Officer. Please include all facts and details that are relevant to your complaint and your contact details so our Complaints Officer can contact you.
- 8.4. If you are still not satisfied with the steps taken by us to resolve your complaint, or if we do not respond to you within 45 days after you make the initial complaint to us, you can contact our external dispute resolution service provider, the Australian Financial Complaints Authority (AFCA). The details of AFCA are:

Telephone: 1800 931 678

Write to: GPO Box 3 Melbourne VIC 3001

Fax: 03 9613 6399

Email: [info@afca.org.au](mailto:info@afca.org.au)

Website: [www.afca.org.au](http://www.afca.org.au)

## 9. Liability, indemnity and events outside our control

- 9.1. To the extent permitted by Applicable Laws, neither party will be liable to the other under these Terms for any Consequential Loss.
- 9.2. To the maximum extent permitted by Law we are not liable to you or your SMSF for any Claim except to the extent that the Claim directly results from our fraud, dishonesty or gross negligence. To the maximum extent permitted by Applicable Law, our maximum aggregate liability to you arising out of or in connection with the Services is limited to the total amount of the Fees paid by you to ExpertSuper pursuant to these Terms referable to the relevant SMSF(s) involved in or the subject of any such Claim in the 12 month period immediately preceding the Claim.
- 9.3. In some cases we will be prevented from meeting our obligations due to events beyond our control. This includes forces of nature, any act of God, fire, storm, inundation or explosion, industrial action, war, riot, act of terrorism, any denial of service attack, civil commotion, power shortage, any action or inaction by any government agency, a change in law or new law or a breakdown in telecommunication services. Where any of these events occur, we will notify you of the event and our estimated recovery period and will make reasonable efforts to perform the Services as soon as we can.

## 10. Termination

- 10.1. Either party may terminate these Terms and the provision of Services without cause by providing not less than 30 days' written notice to the other party.
- 10.2. If these Terms are terminated in accordance with clause 10.1 you must pay for all Services performed up to the date of termination.
- 10.3. Within a reasonable period after termination of our Services we will forward any information in our possession in relation to your SMSF to you or your nominee in electronic format using a method we select. We will retain copies in accordance with Applicable Law and our record retention policy.

## 11. Third parties providing the Services

We may engage a third party to provide the Services (or any part of them) at any time. However, we remain responsible for the performance of the Services and compliance with these Terms by any third party we engage to provide Services.

## 12. Notices

Any notice given under these Terms must be hand delivered, sent by prepaid post or electronic mail to the address or electronic mail address (as the case may be) shown in the Application or, in the case of you giving us a notice, to the following address:

ExpertSuper™  
Level 17, HWT Tower  
40 City Road  
Southbank VIC 3006

The notice will be given:

- 12.1. in the case of hand delivery, on the date of delivery;
- 12.2. in the case of prepaid post, 4 Business Days after being sent by prepaid post;
- 12.3. in the case of electronic mail, on the day of transmission provided that the sender can give evidence of transmission and the intended recipient does not give evidence of non-receipt, however if an electronic mail is sent after 5.00pm, it will be taken to be received on the next Business Day.

We may also communicate with you via third party applications.

## 13. Changes to these Terms

- 13.1 We may vary these Terms at any time by giving you notice.

Where we reasonably consider that the changes are material, we will give you 30 day's prior notice. Continuing to receive the Services after we change these Terms constitutes your acceptance of the changes.

## 14. Other items

- 14.1. The parties agree that these Terms and any other document contemplated by these Terms constitutes the entire agreement between the parties.
- 14.2. Any term by its nature intended to survive termination of these Terms survives.
- 14.3. Any provision of these Terms which is wholly or partially void or unenforceable is severed to the extent that it is void and unenforceable. The validity or enforceability of the remainder of these Terms is not affected.
- 14.4. These Terms are governed by the laws of Victoria and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of Victoria.

ExpertSuper Pty Ltd June 2020