

# SuperGuardian Terms and Conditions

## 1. DEFINITIONS

In these Terms and Conditions:

**Adviser** means any of the Client's professional advisers as nominated by the Client in the Client Engagement Form or as otherwise notified to SuperGuardian from time to time.

**Business Day** means Monday to Friday in South Australia, except a day which is a proclaimed public holiday in South Australia.

**Client** means either (as the context applies):

- the trustees of the proposed or registered SMSF, or the directors of the corporate trustee of the SMSF (in their personal capacity as director) (as applicable) at all relevant times; or
- the members of the proposed or registered SMSF at all relevant times.

For the avoidance of doubt, where there is more than one individual trustee or director of a corporate trustee, any decision or instruction provided to SuperGuardian by one trustee or one director of a corporate trustee (as applicable) binds all of the trustees/corporate trustee (as applicable).

**Client Engagement Form** means the client engagement form provided by the Client with SuperGuardian for the provision of Services by SuperGuardian.

**Direct Debit Authority Service Agreement** means the direct debit authority service agreement entered into between the Client and SuperGuardian from time to time.

**Dishonour Fee** means an amount of \$15 or any other amount SuperGuardian determines from time to time in its sole discretion.

**Fee Schedule** means the fees and costs published by SuperGuardian via <https://www.superguardian.com.au/our-fees/> as amended from time to time.

**Fee Quote** means a quote provided by SuperGuardian to the Client setting out the fees payable by the Client for SuperGuardian to provide particular Services.

**Financial Services** means the financial services that SuperGuardian is authorised to provide under Australian Financial Services Licence number 485643.

**Promotion** means any promotion offered by SuperGuardian to the Client from time to time where a reduced fee may be applicable to the Services.

**Services** means the services set out in sections 4 and 5 of these Terms and Conditions, and any additional services as agreed between SuperGuardian and the Client as per section 6 of these Terms and Conditions.

**SMSF** means the Client's self-managed superannuation fund.

**SMSF Bank Account** means the bank account for the SMSF as nominated by the Client in the Client Engagement Form.

**Tax Invoice** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* as amended from time to time.

## 2. AGREEMENT

2.1 These Terms and Conditions along with the Client Engagement Form, the Fee Schedule, the Direct Debit Authority Service Agreement (if applicable) and/or any Fee Quote constitute the Client's agreement with SuperGuardian for the provision of the Services (**Agreement**).

2.2 In the event of any inconsistency between the documents constituting the Agreement, the order of priority in which each document will prevail to the extent of the inconsistency is the order as set out in clause 2.1. For the avoidance of doubt, these Terms and Conditions will overall prevail to the extent of any inconsistency.

2.3 By submitting a Client Engagement Form (including electronically) to SuperGuardian, the Client agrees to be bound by these Terms and Conditions.

## 3. APPOINTMENT OF SUPERGUARDIAN

### Initial Appointment

3.1 If the Client notifies SuperGuardian in the Client Engagement Form that it does not have an existing SMSF, SuperGuardian will take the required steps to:

- where required, provide Financial Services to the Client on whether an SMSF is appropriate and in the best interests of the Client;
- establish an SMSF in accordance with the Financial Services provided by SuperGuardian or instructions submitted by the Client using the Client Engagement Form, as applicable; and
- if required in accordance with the Financial Services provided by SuperGuardian or instructions contained in the Client Engagement Form, incorporate a company to act as corporate trustee of the SMSF, as applicable.

3.2 If the Client notifies SuperGuardian in the Client Engagement Form that it has an existing SMSF, SuperGuardian will:

- prepare and provide to the Client, the required paperwork to effect the transfer of the administration of the SMSF to SuperGuardian; and
- notify the Client's previous accountant in respect of the SMSF of the cancellation and appointment of SuperGuardian.
- liaise with the Client or Adviser to obtain all documentation required by SuperGuardian to provide the Services.

### Services to select from

3.3 In the Client Engagement Form, the Client will be required to select one of the following Services options:

- SGDaily – see section 4; or
- SGAnnual- see section 5.

## 4. SGDAILY - Services

If the Client has selected SGDAILY in the Client Engagement Form, SuperGuardian will undertake the Services set out in this section 4 for the term of the Agreement:

### Online Reporting

4.1 SuperGuardian will provide daily online reporting to the Client in respect of the SMSF where banks and financial institutions provide electronic data to the third party software platform utilised by SuperGuardian.

4.2 From time to time unknown items may appear online until SuperGuardian receives confirmation of a transaction.

### Investment Administration and Reconciliation

4.3 SuperGuardian will establish and maintain the administration for the SMSF.

4.4 SuperGuardian will act as the registered address for all investment-related correspondence that is sent to the SMSF.

4.5 Subject to clause 8.3, SuperGuardian will use best endeavours to advise the Client or the Adviser of any obvious errors or exceptions identified during the course of undertaking the Services considered by sections 4.3 – 4.5.

### Capital Gains Tax Records

4.6 SuperGuardian will maintain capital gains tax records for the SMSF.

### Corporate Actions – Mergers/Takeovers, Bonus Shares

4.7 Where SuperGuardian is nominated as the registered address for investment-related correspondence for the SMSF (as per section 4.4), SuperGuardian will reasonably endeavour to forward to the Client or Adviser correspondence in relation to any merger, takeover, bonus share rights issue buy-back or similar corporate action offered to the SMSF.

4.8 The Client is ultimately responsible for actioning the SMSF's response in relation to the actions specified in section 4.77.

#### Membership Records

- 4.9 SuperGuardian will:
- provided it receives all information it requires from the previous accountant or administrator of an existing SMSF, maintain detailed membership records for each member of each SMSF, which include individual member balances, rollover and contribution information, tax and preservation components (**Member Statements**);
  - provided the Client complies with its obligations under this Agreement, update each Member Statement monthly;
  - make all Member Statements available through an online means nominated by SuperGuardian in its sole discretion.

#### Lump Sum Withdrawals

- 4.10 SuperGuardian will, at the direction of the Client, prepare and lodge lump sum withdrawal documents for the members of the SMSF, including preparation and management of associated documentation, such as minutes, payment summaries and other registration requirements prescribed by the Australian Tax Office (**ATO**).

#### Pensions

- 4.11 SuperGuardian will, at the direction of the Client, arrange for the conversion of accumulation balances to pensions where required, including calculation and payment of pensions and PAYG withholding tax to be remitted to the ATO and preparation of all associated documentation.
- 4.12 SuperGuardian will, at the direction of the Client, arrange for the commencement of a pension where required and preparation of all associated documentation.
- 4.13 SuperGuardian will, at the direction of the Client, arrange for the consolidation of multiple pensions where required and preparation of all associated documentation.

#### BAS/IAS

- 4.14 SuperGuardian will prepare and lodge Business Activity Statements and Instalment Activity Statements in accordance with the SMSF's GST registration and PAYG obligations.

#### Transfer Balance Account Reporting

- 4.15 SuperGuardian will prepare and lodge Transfer Balance Account Reports in accordance with the SMSF's lodgment obligations.

#### 290-170 Notices

- 4.16 SuperGuardian will prepare a notice in the approved form as required by section 290-170 of the Income Tax Assessment Act 1997 for member contributions and confirm all contributions received by the SMSF for members.

#### Annual Reporting

- 4.17 At the end of each financial year of the SMSF, SuperGuardian will prepare the following reports for the SMSF:
- Operating Statement (Profit and Loss)
  - Statement of Financial Position (Balance Sheet)
  - Notes to Accounts
  - Member Statements
  - Annual Taxation and Regulatory Return
  - Minutes of Meetings/Resolutions of Trustees
- 4.18 Whilst the income tax expense estimate for the SMSF will be reflected in the online accounts, the final tax liability can only be determined once all year-end tax statements have been received.
- 4.19 The reports prepared under section 4.177 will be sent to the Client for signing and return. The Client must sign the reports before they can be submitted with the ATO. The timing of this is at the discretion of SuperGuardian, though will be within the prescribed ATO lodgment deadlines.

#### Audit

- 4.20 SuperGuardian will engage an independent third-party SMSF auditor on behalf of the Client to undertake the annual audit for the SMSF. The auditor may change from time to time without notice.

- 4.21 This engagement is a direct engagement between the Client and third-party SMSF auditor. We do not endorse nor are responsible or liable for the services provided by the third-party SMSF auditor.

#### Rollovers

- 4.22 SuperGuardian will, at the direction of the Client, facilitate a rollover of a member's balance within the SMSF and preparation of associated documentation.

#### Property

- 4.23 Where the SMSF invests in property, the Client must inform SuperGuardian of this fact and agrees to provide all material requested on the annual property checklist in full in a timely manner.
- 4.24 The Client agrees to arrange the annual property valuation either independently or via SuperGuardian for a fixed fee.
- 4.25 Commercial property with more than one tenant or property being developed will attract additional fees.

#### Financial Services

- 4.26 At the request of the Client, SuperGuardian can provide the Financial Services to the Client in relation to the SMSF.

SuperGuardian can provide Financial Services in relation to:

- SMSF Structuring;
- Member contribution strategies;
- Pension strategies;
- Adhoc strategies.

#### 5. SGAnnual – Services

If the Client has selected SGAnnual in the Client Engagement Form, SuperGuardian's engagement will be limited to only providing the Services set out in this section 5 for the term of the Agreement:

- 5.1 At the end of each financial year of the SMSF, SuperGuardian will prepare the following reports for the SMSF:
- Operating Statement (Profit and Loss)
  - Statement of Financial Position (Balance Sheet)
  - Notes to Accounts
  - Member Statements
  - Annual Taxation and Regulatory Return
  - Minutes of Meetings/Resolutions of Trustees

When electing to utilise SGAnnual, the Client acknowledges and agrees that they are responsible for the SMSF compliance and administration at all times.

#### 6. ADDITIONAL SERVICES

- 6.1 The Client may request the provision of additional services that SuperGuardian can offer, as notified to the Client from time to time, including Financial Services.
- 6.2 The provision of any additional services as considered by this section 6 will be governed by the terms of the Agreement.

#### 7. FEES PAYABLE TO SUPERGUARDIAN

##### Description of Fees

- 7.1 Except where the Services are provided under any Promotion, the Client must pay the following fees to SuperGuardian:
- for the provision of the Services set out in section 3.1, the applicable SMSF establishment fee as set out in the Fee Schedule (**New SMSF Establishment Fee**);
  - for the provision of the Services set out in section 3.2, the fee set out in the Fee Quote, or otherwise a time-based fee calculated in accordance with the hourly rates published by SuperGuardian from time to time (**Existing SMSF Fee**);
  - for the provision of SGDaily Services set out in section 4, the annual fixed fee as set out in the Fee Schedule (**SGDaily Fee**);
  - for the provision of SGAnnual Services set out in section 5, the fee set out in any Fee Quote, or otherwise a time-based fee calculated in accordance with the hourly rates published by SuperGuardian from time to time (**SGAnnual Fee**);
  - for the provision of additional services set out in section 6, the fee set out in any Fee Quote, or otherwise a time-based fee calculated in accordance with the hourly rates published by SuperGuardian from time to time (**Additional Services Fee**); and

- (f) any other adhoc fees as set out in the Fee Schedule (**Adhoc Fees**).
- 7.2 For purposes of section 7.1 (and where relevant for the SGAnnual Fee), the Client must ensure that at all times SuperGuardian has a valid Direct Debit Authority Service Agreement under which SuperGuardian may direct debit amounts that it is entitled to receive under this Agreement.

- 7.3 When there are insufficient funds in the SMSF Bank Account for SuperGuardian to direct debit any fee under section 7.1, the Client will be liable to pay the Dishonour Fee.

#### Method of Payment

##### New SMSF Establishment Fee

- 7.4 The New SMSF Establishment Fee is payable by the Client and either:
- SuperGuardian will provide the Client with a Tax Invoice for the New SMSF Establishment Fee and the Client will pay the amount owing in the Tax Invoice upfront; or
  - the New SMSF Establishment Fee will be direct debited from the SMSF Bank Account within 2 months from the date of lodging the Client Engagement Form.

##### Existing SMSF Fee

- 7.5 The Existing SMSF Establishment Fee is payable by the Client and will be direct debited from the SMSF Bank Account within 2 months from the date of lodging the Client Engagement Form.

##### SGDaily Fee

- 7.6 The SGDAILY Fee is payable by the Client and will be direct debited from the SMSF Bank Account on a monthly basis on or around the 28<sup>th</sup> day of each month.

##### SGAnnual Fee

- 7.7 SuperGuardian will provide the Client with a Tax Invoice for the SGAnnual Fee. The Client may nominate to either:
- pay the amount owing in the Tax Invoice within 14 days of receiving the Tax Invoice; or
  - have the amount owing in the Tax Invoice direct debited from the SMSF Bank Account within 14 days of receiving the Tax Invoice.

##### Additional Services Fee

- 7.8 SuperGuardian will provide the Client with a Tax Invoice for the Additional Services Fee. The amount owing in the Tax Invoice will be direct debited from the SMSF Bank Account within 14 days of the Client receiving the Tax Invoice.

##### Adhoc Fees

- 7.9 SuperGuardian will provide the Client with a Tax Invoice for the Adhoc Fees. The amount owing in the Tax Invoice will be direct debited from the SMSF Bank Account within 14 days of the Client receiving the Tax Invoice.

##### Interest

- 7.10 If an amount payable by the Client remains unpaid for 30 days after the date it is issued, SuperGuardian may charge the Client interest from that date to the date SuperGuardian receives payment. SuperGuardian may charge the Client interest at the rate equal to the Cash Rate Target (being the percentage (or maximum percentage) specified by the Reserve Bank of Australia as the Cash Rate Target) as at the date of issue of the fee plus 2.00%.

## 8. SUPERGUARDIAN'S OBLIGATIONS

- 8.1 The Client acknowledges and agrees that SuperGuardian will have no obligations under this Agreement until such time as the Client has:
- completed and returned the Client Engagement Form and all other documentation and information requested by SuperGuardian that is necessary for the provision of the Services;
  - if relevant, signed and returned the Direct Debit Authority Service Agreement and returned it to SuperGuardian;
  - signed and returned a witnessed Limited Power of Attorney in accordance with clause 9;
  - paid any outstanding fees in full;

- 8.2 SuperGuardian undertakes that in providing the Services, it will exercise reasonable care and skill.
- 8.3 SuperGuardian solely relies on information and documents provided to it in undertaking the Services. SuperGuardian does not provide forensic services and will not consider the validity or appropriateness of any transactions undertaken by the SMSF, other than where it is obvious that the transactions are in breach of *Superannuation (Industry) Supervision Act 1993*.
- 8.4 Where these Terms and Conditions express that SuperGuardian will provide a Service upon the request or direction of the Client (or words to that effect), SuperGuardian will only provide such Service after receiving a written request or direction from the Client. SuperGuardian will not be under any obligation to remind or otherwise take steps to undertake any Services which these Terms and Conditions only require SuperGuardian to perform after receiving instructions from the Client.
- 8.5 Notwithstanding any other clause of the Agreement, SuperGuardian's obligation to provide the Services is subject to and interdependent on the Client performing its obligations under these Terms and Conditions.

## 9. LIMITED POA

- 9.1 The Client agrees to appoint SuperGuardian as its attorney to do such things in its or the attorney's name which is reasonably required for the attorney to perform the Services and the Client agrees to execute a limited power of attorney instrument in a form and substance required by SuperGuardian for this purpose.
- 9.2 The Client agrees to ratify anything done by the attorney under the limited power of attorney given for the purposes of section 9.1. An attorney may delegate its powers (including the power to delegate) to any person for any period and may revoke the delegation.
- 9.3 The Client agrees to indemnify and pay on demand to the attorney any expenses or liabilities incurred by the attorney which arise from the lawful exercise of any right by the attorney under the power of attorney given for the purposes of section 9.1.

## 10. CLIENT'S OBLIGATIONS

- 10.1 The Client acknowledges and agrees that:
- it will provide all material, information and assistance requested by SuperGuardian as necessary to provide the Services in full and in a timely manner;
  - it will provide SuperGuardian with all required authorities as necessary to allow SuperGuardian to provide the Services;
  - it will provide SuperGuardian with all valid instructions reasonably necessary to enable SuperGuardian to provide the Services;
  - it will promptly inform SuperGuardian of any material change to the SMSF or the Client;
  - it will ensure that all information relating to the SMSF or the Client provided to SuperGuardian (including in the Client Engagement Form) is true, accurate, complete and not misleading;
  - it will promptly reply to SuperGuardian's correspondence and return SuperGuardian's phonecalls; and
  - SuperGuardian will rely on the information or material provided by the Client and is not obliged to verify such information to confirm its accuracy, validity or completeness. This includes, but is not limited to, documents which on their face purport to have been signed by the relevant members or trustees of the Client.
- 10.2 The Client acknowledges that:
- it is solely responsible for managing the SMSF's assets in accordance with the SMSF's investment strategy and ensuring that the SMSF's funds are invested appropriately;
  - the online reporting provided by SuperGuardian as per section may be inaccessible due to planned or unforeseen outages, including outages caused by systems failure, upgrades or routine maintenance;
  - it remains solely responsible for the SMSF's compliance with the *Superannuation (Industry) Supervision Act 1993* and supporting regulations, as amended from time to time; and
  - it remains solely responsible for meeting the minimum pension requirements as prescribed by the ATO from time to time, and that SuperGuardian will not assist the Client with meeting these requirements unless the Client requests this assistance directly from SuperGuardian.
- 10.3 The Client undertakes to:
- ensure that SuperGuardian is the sole administrator of the investments of the SMSF;
  - immediately notify SuperGuardian if it receives a determination that the

SMSF is non-complying or for any reason ceases to exist or of any other matter that may affect the administration of the SMSF;

- (c) notify SuperGuardian as soon as practicable where any information previously supplied to SuperGuardian (including in the Client Engagement Form) has changed or is incorrect;
- (d) immediately notify SuperGuardian if it receives personal information (as defined by the *Privacy Act 1988* (Cth)) of another individual, and immediately handle that information in accordance with SuperGuardian's instructions.

#### 11. OWNERSHIP

- 11.1 The title to any documents prepared for the Client does not pass to the Client until payment in full has been made. SuperGuardian retains ownership of all working papers and draft documents relating to the Client and/or SMSF.
- 11.2 Until payment is received, SuperGuardian is not obligated to supply documents and information to the Client but the Client is treated as having received those documents and services.

#### 12. GOODS AND SERVICES TAX (GST)

- 12.1 SuperGuardian's billing process will generally involve increasing amounts for both professional fees and disbursements by the prevailing GST rate (currently 10%) to take into account the GST liability we pay as a result of the supply of our services.

#### 13. SUPERGUARDIAN'S LIABILITY

- 13.1 SuperGuardian's liability is limited by a scheme approved under Professional Standards Legislation. Further information on the scheme is available from the Professional Standards Councils' website at the following link, <http://www.professionalstandardscouncil.gov.au>

#### 14. ALTERATIONS AND VARIATIONS

- 14.1 SuperGuardian may vary the terms of the Agreement at any time by providing at least:
  - (a) in the case of changes to fees payable under this Agreement, 30 days' notice of the change to the Client; and
  - (b) in any other case, 5 Business Days' notice of the change to the Client.
- 14.2 If the Client does not agree to the variation, the Client may terminate this Agreement in accordance with clause 14.5.
- 14.3 SuperGuardian may vary the Fee Schedule or its hourly rates (as considered in section 7.1) at any time in its reasonable discretion by providing at least:
  - (a) in the case of variations to reflect any change in regulation or government imposed charge, 30 days' notice of the change to the Client; and
  - (b) in any other case, 5 Business Days' notice of the change to the Client.

#### 15. TERMINATION

- 15.1 The Agreement may be terminated without cause by either party by providing 1 month's written notice to the other party.
- 15.2 The Agreement may be terminated immediately by written notice to the other party if the other party breaches the Agreement, and in the case of a breach which is capable of being remedied, does not remedy that breach within 5 Business Days of being required in writing to do so.
- 15.3 SuperGuardian may suspend the supply of the Services immediately if:
  - (a) the Client fails to pay any amount that is payable under the Agreement; or
  - (b) there is a reasonable likelihood that the Client is insolvent.

#### 16. CONSEQUENCES OF TERMINATION

- 16.1 If the Agreement is terminated in accordance with clause 15, then:
  - (a) the Client will be responsible for arranging the annual return, regulatory reporting and audits of the SMSF for the current financial year and any other work that would have previously been completed by SuperGuardian and the cost of each of these activities;
  - (b) **subject to** any outstanding fees being paid in full, SuperGuardian will provide a copy of all documents held by SuperGuardian for the

SMSF to the Client or to a third party at the direction of the Client.

- 16.2 Termination of the Agreement for any reason will be without prejudice to the rights of either party arising prior to termination.

- 16.3 Clauses 7, 13 and this clause 16 survive termination of the Agreement.

#### 17. FORCE MAJEURE

- 17.1 SuperGuardian will not be liable for its inability to perform its obligations under this Agreement in the event that SuperGuardian is prevented from carrying out its obligations under the Agreement as a result of any cause beyond its control such as but not limited to acts of God, war, strike, lock out, flood and failure of third parties. If such a force majeure event lasts for more than 30 days either party may terminate this Agreement by giving the other party 30 days written notice.

#### 18. PRIVACY

- 18.1 SuperGuardian's Privacy Policy sets out detailed information about how, why and when personal information is collected, disclosed, used, stored and otherwise handled by SuperGuardian. SuperGuardian's Privacy Policy is available at <https://www.superguardian.com.au/privacy-policy/> or the Client may request a copy of the Privacy Policy in hard copy by calling 1300 787 576.
- 18.2 SuperGuardian's Privacy Policy, sets out:
  - (a) the purposes for which SuperGuardian collects personal information;
  - (b) the consequences if personal information is not provided to SuperGuardian;
  - (c) the third parties to which SuperGuardian disclose personal information;
  - (d) how an individual can access and seek correction of their personal information;
  - (e) how to complain about a breach of SuperGuardian's obligations in respect of personal information and how SuperGuardian will deal with such a complaint; and
  - (f) whether personal information is likely to be disclosed by SuperGuardian to overseas entities and in which countries these entities reside.

#### 19. GENERAL

- 19.1 A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms or parts of the terms continue in force.
- 19.2 Any term by its nature intended to survive termination of this Agreement survives termination of this Agreement.
- 19.3 The laws of South Australia govern this Agreement, and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of South Australia.