

# Prime SMSF Solution: Terms & Conditions

These Terms and Conditions (**Terms**) govern the Services performed by us for you. You accept these Terms and agree to be bound by them by submitting an Application to us.

## 1. MEANING OF WORDS AND INTERPRETATION

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 your Client Engagement Form.
- 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 anticipate 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.primefinancial.com.au/smsf-solution/smsf-solution-for-trustees](http://www.primefinancial.com.au/smsf-solution/smsf-solution-for-trustees).
- 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. **Insolvent** means where a party has become or is deemed insolvent, bankrupt or unable to pay its debts as and when they fall due or is dissolved, wound up, placed in liquidation, enters into a scheme of arrangement or compromise with creditors (except for the purpose of a solvent reconstruction or amalgamation) or suffers the appointment of a receiver, receiver and manager, administrator, provisional liquidator or similar officer.

- 1.15. **Prime SMSF Solution** or **us**, we or our means Primestock Securities Ltd ABN 67 089 676 068 AFSL No. 239180.
- 1.16. **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.
- 1.17. **Privacy Laws** means the Australian Privacy Act 1988 (Cth) as amended from time to time, as if the party were subject to those laws.
- 1.18. **Service Description** means the description of our Services described at [www.primefinancial.com.au/smsf-solution/smsf-solution-for-trustees](http://www.primefinancial.com.au/smsf-solution/smsf-solution-for-trustees).
- 1.19. **Services** means 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).
- 1.20. **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.
- 1.21. **Trust Deed** means the deed establishing and governing your SMSF.
- 1.22. **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.
- 1.23. 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.
- 1.24. Reference to schedules is to schedules annexed to these Terms.
- 1.25. Reference to a person includes a body corporate, firm or partnership.
- 1.26. Reference to a party includes the party's executors, administrators, successors and permitted assigns.
- 1.27. Reference to dollars or \$ is to Australian Dollars.
- 1.28. "Including" and similar expressions are not words of limitation.

## 2. TERMS

We will supply the Services to you from the Commencement Date until terminated pursuant to clause 11 (Term).

## 3. OUR OBLIGATIONS

- 3.1. We agree to supply the Services 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. We will follow your instructions where they are clear, complete and comply with all Applicable Laws. We are not required to follow your instructions where they do not meet these requirements and will let you know where we cannot follow them.
- 3.5. 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. promptly action any tasks or requests we send you;
- 4.3. give us clear and complete instructions;
- 4.4. comply with all Applicable Laws;
- 4.5. manage your SMSF in accordance with the Trust Deed and not change your Trust Deed or wind up your SMSF without giving us prior notice;
- 4.6. immediately notify us of any change to the members or trustees of the SMSF;
- 4.7. immediately notify us of any matter that could affect the management or administration of your 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. THIRD PARTY INVOLVEMENT

- 6.1. We may from time to time engage third party specialist professionals and other public practitioners, where warranted to obtain the advice you need or to assist us to provide our service to you. These may include cloud service providers and outsourced service providers.
- 6.2. We will seek your consent if third party involvement is likely to exceed the fixed price (if applicable).
- 6.3. We have outsourcing arrangements with Trypod Australia in Sydney, Australia whom we engage from time to time to assist us. The nature and extent of the services include HR, payroll, administration and self managed super fund accounting.
- 6.4. In providing our services to you, we utilise Class Super using Cloud Computing provided by Class Limited which is based in Sydney, Australia.
- 6.5. Acceptance of our services in conjunction with this engagement document indicates your acceptance of the use of outsourced services as described above.

## 7. FEES

- 7.1. You agree to pay us the Fees. We can change the Fees at any time by giving you 30 days' prior notice. All Fees are payable within 14 days of the date of a valid invoice issued by us.
- 7.2. In the course of providing the Services we may incur third party fees and charges on behalf of your SMSF (including government fees and charges). You are required to pay all third party fees and charges in addition to our Fees. We will debit such additional fees and charges from your Account pursuant to the Direct Debit Request when they are payable to the relevant third party.
- 7.3. Where you ask us to perform 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.
- 7.4. You must ensure your Account has sufficient cleared funds in order for us to debit all Fees and other amounts payable under these Terms. You must ensure that at all times we have 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.
- 7.5. Where you establish a SMSF but do not effect a rollover or make a contribution within the first 3 months you are personally liable to pay our Fees and any other amounts payable to us by the SMSF.
- 7.6. 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.

## 8. CONFIDENTIALITY & PRIVACY

- 8.1. We will implement reasonable measures to protect your Confidential Information. We will delete or destroy your Confidential Information in accordance with our record retention procedures.
- 8.2. We will comply with the requirements of the Privacy Laws in relation to any of your Personal Information.

## 9. COMPLAINTS

- 9.1. We have internal processes in place to deal with any complaints that you may have in relation to our Services
- 9.2. 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.
- 9.3. If you are not happy with the outcome, you may request an independent review by writing a letter or email to us. The independent 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.

9.4. 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)

## **10. LIABILITY, INDEMNITY AND EVENTS OUTSIDE OUR CONTROL**

10.1. To the extent permitted by law, and other than in respect of the indemnities set out in clause 9.1, neither party will be liable to the other under these Terms for any Consequential Loss.

10.2. 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 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 under this Agreement referable to the relevant SMSF(s) involved in or the subject of any such Claim in the 12 month period immediately precedent the Claim.

10.3. 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.

## **11. TERMINATION**

11.1. Either party may terminate these Terms and the provision of Services without cause by providing not less than 30 days' notice written to the other party.

11.2. We may terminate our Services where you establish a SMSF but do not effect a rollover to the SMSF within 12 months after its establishment.

11.3. If these terms are terminated in accordance with clauses 11.1 or 11.2, you must pay for all Services performed up to the date of termination.

11.4. Within a reasonable period after termination of our Services we will forward any information in our possession in relation to your SMSF in electronic format using a method we select. We retain copies in accordance with our record retention.

## **12. 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.

## **13. 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 you give us notice, to the following address:

Prime SMSF Solution

Level 17, HWT Tower

40 City Road

Southbank VIC 3006

The notice will be given:

- 13.1 in the case of hand delivery, on the date of delivery;
- 13.2. in the case of prepaid post, 4 Business Days after being sent by prepaid post;
- 13.3. 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.

## **14. CHANGES TO THESE TERMS**

- 14.1. We can change these Terms at any time by giving you notice by posting them to the website [www.primefinancial.com.au/smsf-solution/smsf-solution-for-trustees](http://www.primefinancial.com.au/smsf-solution/smsf-solution-for-trustees). Where we reasonably consider that the changes are material, we will give you 30 days prior notice. Continuing to receive the Services after we change these Terms constitutes your acceptance of the changes.

## **15. OTHER ITEMS**

- 15.1. Our relationship with you is that of independent contractor. Nothing in these Terms constitutes any partnership or other fiduciary type of relationship between you and us.
- 15.2. Any term by its nature intended to survive termination of these Terms survives termination of these Terms.
- 15.3. 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.
- 15.4. We can transfer our rights and obligations under these Terms to any third party (including any of our related bodies corporate) by giving you notice.
- 15.5. These Terms are subject to the laws of Victoria.