

Terms and Conditions

E&P SMSF Services



November 2023

Terms of your agreement with E&P SMSF Services Pty Limited, ACN 139 490 118 (**E&P SMSF Services**) to you as a client.

Who is providing the services?

1. These terms govern the provision of accounting and administration services by E&P SMSF Services or its Related Bodies Corporate (as defined in the Corporations Act 2001 (Cth)). E&P SMSF Services is a registered tax agent with the Tax Practitioners Board (Registration no. 56340003).
2. References to:
 - a. 'us', 'our' or 'we' in this document means the relevant company that is providing the Services as described in these Terms and Conditions.
 - b. 'you' or 'the client' in this document means the client as they appear on the relevant client 'account' or 'service' opening form.
3. E&P SMSF Services is a member of the E&P Financial Group Limited (ACN 609 913 457) group of companies (E&P Group).

E&P SMSF services and obligations

4. E&P SMSF Services provides accounting and administration services for self-managed superannuation funds (SMSF) including, without limitation, establishment, accounting, administration, auditing and tax reporting services (Services).
5. E&P SMSF Services does not provide investment or financial advice that takes into consideration your personal objectives, financial situation or needs, and nor does it provide any form of advice or recommendations in relation to your SMSF for which it would be obliged to hold any form of Australian Financial Services Licence.
6. Any information provided by E&P SMSF Services is limited to factual information.
7. Before acting on any information provided by E&P SMSF Services, you must consider the appropriateness of the advice having regard to your own particular circumstances, objectives, financial situation and needs.
8. If you have specific financial product advice requirements in connection with your SMSF, we may refer you to an appropriate Australian Financial Services licensee.

Your Obligations

You acknowledge that:

9. Other than the services referred to in clause 4, E&P SMSF Services does not provide you with personal legal, tax, accounting, financial, or other professional advice in relation to your SMSF and that you must obtain your own advice for any such matters.
10. Prior to engaging E&P SMSF Services, you have received independent advice in relation to your SMSF and the Services to be provided by E&P SMSF Services.
11. You as the trustee of your SMSF are responsible for the ongoing operation, management and compliance of your SMSF in accordance with the trust deed and applicable laws and regulations, and that E&P SMSF Services' role in servicing your SMSF is limited to the provision of accounting and administration services.
12. You must provide E&P SMSF Services with all information reasonably required by us in a timely manner in order to enable E&P SMSF Services to perform its Services within applicable deadlines.
13. E&P SMSF Services relies on the information provided by you to be true, correct and complete and you warrant that

when given, such information will be accurate, true and correct to the best of your knowledge and belief. You agree to promptly notify E&P SMSF in writing upon becoming aware that any such information is no longer accurate, true and correct.

14. You authorise E&P SMSF Services to engage third party service providers (which may include its Related Bodies Corporate) where reasonably required for the proper performance of the Services. E&P SMSF Services remains responsible for the services provided by any appointed third-party service provider.
15. It is your responsibility to keep E&P SMSF Services informed on a timely basis of any change in your circumstances that may affect the Services provided to you.

Authority

16. If more than one person constitutes the client, then each person is jointly and severally bound by these Terms and Conditions.
17. Until otherwise specified in writing to us, all persons constituting the client agree that we are entitled to rely on, and treat as authorised by each person constituting the client, an instruction received from any one of those persons or their duly authorised attorney under a valid Power of Attorney, without the need to refer to or notify any other person in connection with those instructions. For these purposes, each person constituting a client appoints each other person constituting a client to act on their behalf in providing instructions to us. By way of example: if an SMSF client has two (2) trustees, we may act on an instruction received from one (1) of those trustees.
18. For corporate trustees with more than one director, E&P SMSF may only act upon the instructions from an individual director where we have been duly authorised in writing by the corporate trustees to do so. In such a case you represent and warrant that the corporate trustee has taken all necessary actions to authorise the provision of binding instructions by such director.
19. E&P SMSF is under no obligation to verify the validity of any instructions received in accordance with the above.
20. If you are a trustee, the trustee is bound in its capacity as trustee and personally.
21. You represent and warrant that you have authority to provide instructions to us in respect of the Services that we or our Related Bodies Corporate provide under these Terms and Conditions, which may include (without limitation): open bank accounts, transfer funds between bank accounts, make payments from bank accounts electronically or by other means, or make other payments and that you are acting as principal and not as agent for any other party.
22. These Terms and Conditions will bind you and each of your respective SMSF trustees' successors and permitted assigns. If you are an individual, you agree that should you die while a client of ours, your personal representative(s) must ratify and confirm all acts and things reasonably done, or caused to be done by us, for the purpose of meeting our obligations or exercising our rights under these Terms and Conditions, between the date of your death and receipt by us of notice of your death.

Instructions

23. You may provide instructions to us in writing (including electronically) or verbally. Subject to compliance with these Terms and Conditions and any law, regulation, or policy that applies from time to time to the provision of Services under these Terms and Conditions, we will give effect to your instructions in a timely manner. However, we will not be responsible for the failure to give effect to, or for delays or errors in giving effect to your instructions, arising from matters or conditions reasonably beyond our control, including (without limitation) any government restriction, cyberattacks on your network or personal device, theft, sabotage, war, earthquakes, strikes, and force majeure.
24. Unless you otherwise instruct us in writing (which you may do at any time), we are entitled to rely on any communication from you or that appears to us (acting reasonably) to be from you, including electronic communications and verbal (face-to-face, telephone or otherwise), as being instructions from you without making further enquiry. While we are under no obligation to do so, in our discretion (acting reasonably) we may seek to confirm or verify the receipt of instructions or their authenticity before acting on them if we have reasonable concerns regarding their validity.

Electronic Delivery of Documents

25. Where possible we prefer to provide all correspondence and disclosure notices to you electronically, including by email, as email attachments, on websites or by hyperlinks within emails, so that you can download the relevant documents or other content. If you have provided your email address to us we will typically use that email address for all correspondence and you agree to accept delivery of documents by email, including emails that contain a hyperlink to a relevant document or a reference to a website address where the document can be found. Should you not wish to be sent correspondence electronically, please advise us of a postal address and we will update our records accordingly.
26. You acknowledge that any form of communications may be delayed, corrupted, or intercepted as a result of events or circumstances beyond the reasonable control of E&P SMSF, including but not limited to postage or internet service disruptions, telecommunications outages, cyberattacks on your network or personal device, and we accept no responsibility for any such delay, corruption, or interception.
27. All documents to be delivered electronically will be sent to the last notified email address. You acknowledge that it is your responsibility to promptly advise us of any change to your contact details and, to the extent it is reasonably within your control, to ensure that your email remains capable of receiving electronic communications.

Term

28. Our agreement with you, including these Terms and Conditions, will commence on the date of execution by all parties of the application form and will continue until terminated by either party in accordance with these Terms and Conditions (**Term**).

Fees and Charges

29. You agree to pay us all fees, charges, interest, duties and taxes (including GST) disclosed to you at commencement of the Term, or subsequently agreed in writing by you, or otherwise notified to you in writing from time to time in respect

of the services that we provide to you. Unless agreed otherwise, we must give you not less than one (1) month's written notice of any fee increase or the introduction of any new fee or cost. If you do not wish to accept a fee increase or the introduction of a new fee or cost, you may terminate this agreement in accordance with these Terms and Conditions. Fees for our standard services are invoiced annually in advance and payable within 14 days of the invoice date.

30. In addition to fees for our standard services, you will also be required to pay fees and charges levied by or arising directly from our engagement of third parties, as may be applicable to the Services that we provide to you from time to time. Such fees and charges may include (without limitation) an annual ATO supervisory levy, an actuarial certificate fee for external actuarial services, an annual GST administration fee (for GST-registered funds), and an SMSF auditor surcharge for non-standard external SMSF audits. We will (where possible) notify you of these fees and costs prior to payment.
31. You authorise E&P SMSF Services to deduct all fees and costs (including applicable third-party fees and costs) from your nominated SMSF bank account and agree to execute any relevant documentation required to authorise and enable E&P SMSF Services to do so.
32. You agree it is your responsibility to ensure your nominated SMSF bank account holds sufficient funds to cover the fees and costs payable to E&P SMSF Services.
33. If, in accordance with these terms and conditions, you terminate our agreement with you within the first twelve months from the date of your first invoice from E&P SMSF, and such termination is not due to our default, breach, or insolvency, then you agree that we may charge you an amount of \$1,100.00 (including GST) as an administration fee. The administration fee is intended to reasonably compensate E&P SMSF Services for the costs incurred and work performed in the establishment of your SMSF service and the transfer out to you or your nominated replacement service provider, including (as applicable) all documentation preparation, administrative work, and costs and fees paid by us in setting up, registering, or transferring your SMSF. The administrative fee is not a penalty for your termination or cancellation of service.

Payments of Referral Fees

34. From time to time we have arrangements where we may pay referral fees or other benefits to third parties. Where you have been referred to us by a third party that we have such an arrangement with, you may request in writing, details of any referral fee paid in respect of you becoming and continuing to be our client and we will provide you with those details. In some cases the referral fee is a means of extending our financial support to a potential charity, not-for-profit, sporting club and or community partnerships. Any such payments will not be an additional cost to you.

Privacy

35. You acknowledge and agree that your personal information (including sensitive financial related personal information) will be collected, used, disclosed and stored in order to provide you with the Services. The personal information you share will be handled in accordance with the Privacy Act 1988 (Cth) (as may be amended from time to time) and our Privacy Policy, which is available at <https://www.eandp.com.au/ep-privacy-policy/>

Document Retention

36. We will retain your documents, which may be in electronic format, in accordance with the E&P Group's policies and procedures regarding document retention, including our Privacy Policy. Your express or implied agreement to these Terms and Conditions constitutes your authority for us to destroy, including delete or otherwise purge, your documents on expiry of the relevant retention periods. This authority does not relate to any documents that are deposited in safe custody that will, subject to agreement and your continued payment of appropriate fees, be retained on your behalf indefinitely.
37. Once you cease to be a client you will be liable for any reasonable costs of retrieving documents in physical or electronic storage, including, photocopying charges and an hourly rate in connection with the procurement and provision of your documents to you or as directed by you.

Acknowledgements

38. You acknowledge and agree that:
- You will manage your SMSF in accordance with the relevant SMSF Trust Deed documentation and the applicable laws and regulations.
 - You must immediately notify E&P SMSF Services if you receive a determination that your SMSF is not in compliance with applicable laws.
 - You must promptly notify E&P SMSF Services of any other matter that may affect the administration of your SMSF.
 - You will maintain a balance of sufficient funds in your nominated SMSF bank account at all times to meet your obligations and liabilities, including but not limited to the payment of fees and costs for E&P SMSF Services.

Amendments to Terms And Conditions

39. These Terms and Conditions may be amended by E&P SMSF Services from time to time. We will give you one (1) month's notice of any amendment, after which time the amendment will become effective. You may at any time request a copy of the then current Terms and Conditions.

Termination

40. Either party may terminate the Services at any time and, for any reason by giving not less than 30 days' notice in writing to the other. This agreement and the Services will terminate on the earlier of the expiry of the notice period and the date upon which your SMSF services have been transitioned to a replacement provider.
41. We may suspend, or discontinue any aspect of our services to you (including the Services) at any time where, in our opinion (acting reasonably) the continuation of such services would or may cause us or you to be in breach of any law, regulation, licensing requirement or government policy or procedure, provided that we must use reasonable endeavours to give prior written notice of any such suspension or discontinuation.
42. Either party may terminate this agreement (including the Services) with immediate effect in the case of the other party's insolvency, or if the other party is in material breach of these Terms and Conditions and fails to remedy the material breach within 14 days of written notice to the other requiring remedy. Material breach in respect of you may include (without limitation):

- your failure to adhere to the requirements of your trust deed;
 - your breach of any applicable laws or regulations such as the Superannuation Industry (Supervision) Act 1993; or
 - failure to pay any fees, charges or expenses invoiced to you.
43. If either party terminates the Services, any prepaid fees for unused services shall be refunded. However, you will remain liable for any services provided, and we reserve the right to deduct any outstanding fees, charges, or expenses incurred up to the date of termination from the refund amount.
44. Upon termination of the Service and where possible, we will endeavour to assist, at your cost, with the transition of the accounting and administrative services of your SMSF to your new service provider.

Capital Gains Tax

45. You acknowledge that the accuracy of capital gains tax reporting in the event of asset disposal is dependent on the cost base information supplied to us by you or your previous accountant or adviser.

Severability

46. Each part of these Terms and Conditions is severable from the balance of these Terms and Conditions and if any part of these Terms and Conditions is illegal, void, invalid or unenforceable, then that will not affect the legality, effectiveness, validity or enforceability of the balance of these Terms and Conditions.

Information

47. Except as otherwise permitted by these Terms and Conditions or for a purpose related to the proper performance of the Services, without your prior consent we may not disclose to our Related Bodies Corporate or third parties any information provided by or on behalf of you that ought reasonably to be treated as confidential, except where such information becomes public other than through breach of these Terms and Conditions, was known to the recipient at the time of disclosure, or must be disclosed under applicable law, regulation, or legal process.

Indemnity In Relation to Untrue Or Incorrect Information

48. To the fullest extent permitted by law, you agree to indemnify us, our Related Bodies Corporate and any of our or their employees, officers or directors (each an Indemnified Person) from and against all reasonable and documented liabilities, losses, damages, costs, or expenses (Loss) which any Indemnified Person may suffer or incur directly as a result of, or in connection with any information provided by you being untrue or incorrect.
49. Notwithstanding Clause 49, your obligation to indemnify the Indemnified Persons under this clause will be reduced proportionately to the extent that an Indemnified Person's negligence, wilful default or fraud, or breach of these Terms and Conditions caused or contributed to the relevant Loss. Each Indemnified Person must take reasonable steps to mitigate any Loss incurred, including giving notice of the events and circumstances giving rise to the Loss to the other party and allowing the other party a reasonable opportunity to rectify the Loss in whole or in part (if possible) those events and circumstances giving rise to the Loss.

Limitation Of Liability

50. We do not exclude or limit the application of any law where to do so would contravene that law or cause any part of these Terms and Conditions to be void. We exclude all conditions, warranties or terms implied by statute, general law or custom except to the extent that such exclusion would contravene any law or cause this clause to be void. To the extent permitted by law, where E&P SMSF is supplying you with services which are not of a kind ordinary acquired for personal, domestic, or household use, E&P SMSF's liability under the ASIC Act with respect to any breach of an implied condition or warranty under that Act will be limited to the supplying of the services again or the payment of the cost of having the services supplied again.
51. Where any scheme approved under professional standards legislation applies to any Services, E&P SMSF's liability in relation to those Services to which the scheme applies is limited in accordance with the relevant scheme.
52. To the extent permitted by law, neither party may seek to recover from the other, whether in contract or tort, under statute or otherwise, any amount with respect to any loss of profit, loss of opportunity, data or goodwill, or any other form of indirect or consequential loss, costs, or damage in connection with claims arising out of these Terms and Conditions or otherwise relating to the Services, whether or not the likelihood of such loss or damage was contemplated.

Regulatory Reporting

53. In providing services to you we are bound by regulatory reporting obligations which may mean that we have to report conduct, dealings or omissions by you to regulatory authorities, including, but not limited to, the Australian Taxation Office, ASIC and the Australian Federal Police.

Assignment

54. You may not assign or purport to assign, transfer or convey any of your rights under these Terms and Conditions without our prior written consent. E&P SMSF Services must act reasonably in deciding whether to grant or withhold its consent and you agree to provide it with such information as it reasonably requests for the purposes of making its decision.
55. You acknowledge, E&P SMSF Services may assign its interest in these Terms and Conditions, at any time without your consent by giving written notice to you.

Waiver

56. The right to exercise any right, power or remedy under these Terms and Conditions will not be waived by any delay or failure to exercise or by any exercise in part.

Cumulative Rights

57. Except as expressly provided in these Terms and Conditions, the rights of you and or E&P SMSF Services are in addition to and do not exclude or limit any other rights or remedies provided by law.

Governing Law

58. These Terms and Conditions are governed by the laws of New South Wales. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales.

Interpretation

59. **In these terms and conditions**

- a. Words expressed in the singular include the plural and vice versa.
- b. this "agreement" is a reference to these Terms and Conditions and the applicable application forms signed by you in relation to the Services to be provided to you.
- c. Unless context otherwise requires, a reference to a document or agreement includes any variation or replacement of it and a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision.
- d. in these Terms and Conditions, headings are for convenience of reference only and do not affect interpretation.
- e. the word "includes" and its derivatives are not words of limitation.

60. Severance

If any provision of these Terms and Conditions or part of it is invalid and not enforceable in accordance with its terms, all other provisions or part of it which are self-sustaining and capable of separate enforcement without regard to the invalid provisions are and continue to be valid and enforceable in accordance with their terms.

61. Inconsistency

You agree that in any event of inconsistency between these Terms and Conditions and:

- a. the application forms, these Terms and Conditions shall prevail to the extent of any inconsistency; and
- b. any applicable laws, the latter will prevail to the extent of the inconsistency.

62. **Access To Online Portal** - You acknowledge, for the duration of your service, we (at our discretion) may provide to you access to a portal to access your account information only if you are a client of E&P SMSF Services and not utilising any other services of the E&P Group. If you would like access to the portal, please contact us.

Contact Details

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