



# Adviser Online and Licensee Agreement

December 2021

Fund name	ABN Number
HOSTPLUS PTY LIMITED	79 008 634 704
Address	
LEVEL 9, 114 WILLIAM STREET, MELBOURNE VICTORIA 3000	

## 1 Adviser Details \*Denotes mandatory fields

Title

Mr Mrs Ms Dr  Other

First name\*

Last name\*

Address\*

## 2 Licensee Details

Name\*

ABN\*

Address

AFSL Bank Account Name

BSB Bank Account Number

- A** Host-Plus is the trustee of the Hostplus Fund.
- B** The Adviser acts as a financial adviser on behalf of Hostplus Fund Members.
- C** The Adviser is authorised by the Licensee to provide financial advice services to the Hostplus Fund Members.
- D** At or around the time of this Agreement, the Adviser has or will become a Registered Adviser.
- E** The parties agree that Host-Plus will pay Advice Fees to the Licensee upon the terms of this Agreement.

**It is agreed:****1. Definitions and interpretation clauses****1.1 Definitions**

In this Agreement unless the context otherwise requires:

**Advice Fee** and **Advice Fees** have the meaning as described in the Terms and Conditions;

**Adviser Online** means an internet based superannuation registration and administration facility provided by Host-Plus;

**Australian Financial Services Licence** means a licence granted under section 913B of the Corporations Act 2001 (Cth) that authorises a person who carries on a financial services business to provide financial services;

**Business Day** means a day that is not a Saturday, Sunday or public holiday in Victoria;

**Commencement Date** means the date this Agreement is executed;

**Confidential Information** means in respect of:

- (a) Host-Plus, the contents of any statement of advice provided by the Adviser or Licensee to Host-Plus; and
- (b) the Adviser and Licensee, any information, data or documents of any kind that the Adviser or Licensee can or may access directly or indirectly via Adviser Online;

**Hostplus Fund** means the Hostplus Superannuation Fund (ABN 68 657 495 890);

**Hostplus Fund Members** means those members of the Hostplus Fund who have agreed with Host-Plus that the Adviser may access their account details on Adviser Online and may have Advice Fees deducted from their account balances for the purposes of paying for authorised financial advice;

**Material Ownership Change** means a change in which an individual's ownership or control of the shares or any other equitable interest, or otherwise voting rights, in the Licensee changes as follows:

- (a) increases from below 20 percent to 20 percent or more; or
- (b) increases or decreases from 20 percent or more by an amount of 10 percent or more;

**Registered Adviser** has the meaning as contained in the Terms and Conditions;

**Regulator** means either or both, as the context in the Agreement requires the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission and their successors;

**Relevant Law** means any requirements, responsibilities or standards imposed by any of SIS, *the Corporations Act 2001* (Cth), and their regulations, and any other present or future legislation or requirement or any requirement, standard or rule of a Regulator with which either party must comply with at any time;

**RSE Licence** means a registrable superannuation entity licence and conditions as issued by the Australian Prudential Regulation Authority, pursuant to the requirements of SIS;

**SIS** means the *Superannuation Industry (Supervision) Act 1993* (Cth);

**Terms and Conditions** means the Adviser Online terms and conditions as contained in Schedule 1 to this Agreement, as amended from time to time.

## **1.2 Interpretation**

In this Agreement unless the context otherwise requires or a contrary intention is expressed:

- (a) the singular includes the plural and the plural includes the singular;
- (b) a party includes the party's executors, administrators, successors and permitted assigns;
- (c) "including" and similar expressions are not words of limitation;
- (d) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning;
- (e) the schedules form part of this Agreement;
- (f) a provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement; and
- (g) if an act must be done on a specified day, which is not a Business Day, it must be done on the next Business Day.

## **2. Payment terms**

### **2.1 Hostplus Adviser Online Portal**

- (a) The Adviser's use of Adviser Online and the payment of Advice Fees are conditional upon the Adviser complying with the Terms and Conditions, including but not limited to providing Host-Plus with a copy of the relevant statement of advice, as required.

### **2.2 Payment of Adviser Fee**

- (a) Host-Plus will pay Advice Fees to the Licensee:
  - (i) in accordance with this Agreement and the Terms and Conditions;
  - (ii) in accordance with the payment and banking instructions as provided to Host-Plus during the Adviser's Online registration process; and
  - (iii) on the condition that the Adviser complies with the Terms and Conditions.

### **2.3 Limitation of liability and release**

- (a) Upon correct payment of a particular Advice Fee by Host-Plus to the Licensee:
  - (i) the Adviser releases and forever discharges Host-Plus from all claims, proceedings, suits, demands, damages, charges, costs and expenses of every description whatsoever in respect of that particular Advice Fee;
  - (ii) the Adviser indemnifies and agrees to keep Host-Plus indemnified against all claims, actions, suits, demands and other proceedings made or brought against Host-Plus and against all damage, loss, cost, expense or liability for tax which but for this indemnity Host-Plus may suffer or may incur to a Hostplus Fund Member or that Hostplus Fund Member's beneficiaries arising by reason of, arising out of, or in connection with the payment of the particular Advice Fee; and
  - (iii) subject to any agreement between the Adviser and Licensee, the Licensee will become wholly liable for the payment of the Advice Fee, or any proportion thereof, to the Adviser.
- (b) Host-Plus's liability to the Adviser and Licensee is limited to the lower of the value of:
  - (i) the Advice Fee claimed by the Adviser or Licensee; and
  - (ii) the Hostplus Fund Member's account balance, less amounts owed and payable to Host-Plus, at the time the Advice Fee is claimed.

### **2.4 Terms and Conditions**

- (a) The parties agree to comply with the Terms and Conditions, to the extent applicable to each of them.
- (b) Host-Plus:
  - (i) may amend the Terms and Conditions; and
  - (ii) will provide the Adviser and Licensee with amended Terms and Conditions as soon as is reasonably practicable subsequent to their amendment.

### **3. Warranties**

#### **3.1 Host-Plus**

(a) Host-Plus represents and warrants that during the Agreement's term:

- (i) it is the trustee of the Hostplus Fund and it has the power and relevant authorities to enter into and perform this Agreement, and has duly executed the Agreement so as to constitute valid and binding obligations on it;
- (ii) it has a right to be fully indemnified out of the Hostplus Fund Member's Hostplus Fund account balance in respect of Advice Fees payable; and
- (iii) it will, at all times during the term of this Agreement, be the holder of all relevant licences, registrations, policies necessary to fulfilling its obligations under this Agreement.

#### **3.2 Adviser**

(a) The Adviser represents and warrants that during the Agreement's term, he or she:

- (i) has the power to enter into and will perform his or her obligations under this Agreement, and has duly executed the Agreement so as to constitute valid and binding obligations on him or her;
- (ii) will be the holder of an authorisation under the Licensee's Australian Financial Services Licence that will enable him or her to provide such services to enable the charging of an Advice Fee;
- (iii) will not be a disqualified person under a Relevant Law; and
- (iv) will maintain the confidentiality of Confidential Information.

(b) The Adviser further represents and warrants:

- (i) that during and subsequent to the Agreement's term, he or she will not use Confidential Information in order to procure advice clients or to encourage Hostplus Fund Members, other than his her own clients via a statement of advice and pursuant to clause 5.1(c), to leave the Hostplus Fund; and
- (ii) to his or her knowledge there are no actions, claims, proceedings or investigations pending or threatened against or by him or her which may have a material effect on the subject matter of this Agreement.

#### **3.3 Licensee**

(a) The Licensee represents and warrants that during the Agreement's term:

- (i) it has the power to enter into and will perform its obligations under this Agreement, and has duly executed the Agreement so as to constitute valid and binding obligations on it;
- (ii) it will be the holder of an Australian Financial Services Licence that will enable it to provide such services to enable the charging of an Advice Fee, and hold all other licences required to be held under all applicable legislation governing its activities;
- (iii) it will not be a disqualified person under a Relevant Law;
- (iv) it will maintain the confidentiality of Confidential Information;
- (v) it will undertake to inform Host-Plus of any Material Ownership Change within 5 Business Days of the Material Ownership Change occurring; and
- (vi) to its knowledge there are no actions, claims, proceedings or investigations pending or threatened against it or by it which may have a material effect on the subject matter of this Agreement.

(b) The Licensee further represents and warrants that during and subsequent to the Agreement's term, it will not use Confidential Information in order to procure advice clients or to encourage Hostplus Fund Members to leave the Hostplus Fund.

#### **3.4 Inaccurate warranty**

(a) If a warranty given by a party to this Agreement ceases to be accurate, that party must immediately advise the other parties in writing.

## 4. Liability

### 4.1 Advisers and Licensee

- (a) The Adviser and Licensee are jointly and severally liable for direct losses or liabilities suffered or incurred by Host-Plus or the Hostplus Fund as a result of:
  - (i) any breach of this Agreement, the Terms and Conditions or the Relevant Law; or
  - (ii) the negligence, of or by the Adviser, Licensee and their officers, employees or agents.
- (b) Each of the Adviser and Licensee are severally liable for indirect and consequential losses or liabilities suffered or incurred by Hostplus or the Hostplus Fund as a result of the wilful default, fraud or dishonesty of or by the Adviser or Licensee, as relevant, and their respective officers, employees or agents.
- (c) The Adviser and Licensee jointly and severally indemnify Host-Plus for all losses arising pursuant to clause 4.1(a).
- (d) Each of the Adviser and Licensee severally indemnify Host-Plus for all losses arising pursuant to clause 4.1(b).

### 4.2 Host-Plus

- (a) Subject to clause 2.3, Host-Plus is liable to pay the Licensee Advice Fees payable to the Adviser.
- (b) Host-Plus is not otherwise liable to the Adviser or Licensee for any loss, liability, cost, charge or expense.

## 5. Confidentiality and security

### 5.1 Confidential Information

- (a) The parties must ensure that all Confidential Information they receive remains confidential and secure.
- (b) Except as stated in this Agreement and to the extent necessary to exercise its powers and properly perform its obligations under this Agreement, including without limitation any requirements of the Relevant Law, the Adviser and Licensee:
  - (i) must not and must not permit any of their officers, employees, agents or related companies to use or to disclose any Confidential Information without Host-Plus's prior written consent;
  - (ii) take reasonable measures to preserve the confidentiality of any Confidential Information provided to it in connection with this Agreement; and
  - (iii) must only permit authorised staff to have access to the Confidential Information.
- (c) The Adviser may use Confidential Information but only to the extent that the Confidential Information is specific to a particular Hostplus Fund Member for the purpose of drafting a statement of advice for that Hostplus Member, pursuant to that Hostplus Fund Member's instructions and provided that the Adviser remains a Registered Adviser.

### 5.2 Security

- (a) The parties must have appropriate security policies and standards to protect Confidential Information within their control from unauthorised access and will ensure that their officers, employees or agents comply with those policies and standards.

### 5.3 Breach

- (a) A party (**Party A**) must notify the other party (**Party B**) of any suspected or actual breach of confidentiality under this Agreement and must provide Party B with details of the breach and the manner in which the breach has been rectified as soon as is practicable or otherwise within 2 Business Days of Party A determining that such a breach may have or has occurred.
- (b) In addition to any other legal remedy that may be available, a party will be entitled to injunctive relief to protect its interests in respect of any breach under this clause 5. Without limiting any other rights under this Agreement or otherwise, in the event that a party (**Party A**) breaches this clause 5 it will reimburse the other party (**Party B**) for all costs and expenses, including legal fees associated with Party B enforcing its entitlements.

### 5.4 Continuing obligation

- (a) The provisions of this clause 5 survive the termination of this Agreement.

## **6. Termination**

### **6.1 Term**

- (a) This Agreement commences on the Commencement Date, and is in force until such time as it is terminated.
- (b) The Adviser will be denied access to Adviser Online once the Agreement is terminated.

### **6.2 Right to terminate**

- (a) A party may terminate the Agreement, without cause, subject to 5 Business Days' prior written notice.
- (b) This Agreement may be terminated, immediately and without prior written notice by Host-Plus if:
  - (i) a Hostplus Fund Member directs Host-Plus to de-authorise the Adviser's access to Adviser Online or otherwise directs Host-Plus not to deduct Advice Fees from that Hostplus Fund Member's account balance;
  - (ii) either the Adviser or Licensee breaches this Agreement or the Terms and Conditions, or Host-Plus reasonably suspects a breach of clause 5 to have occurred or to be likely to occur;
  - (iii) the Adviser is no longer the holder of an authorisation under the Licensee's Australian Financial Services Licence to provide such services to enable the charging of an Advice Fee;
  - (iv) either the Adviser or Licensee conducts any activity that jeopardises Host-Plus's ability to hold either or both of an RSE Licence or an Australian Financial Services Licence;
  - (v) either the Adviser or Licensee commits an act of dishonesty, misconduct or negligence in connection with the performance of any obligation under this Agreement or the Terms and Conditions;
  - (vi) either the Adviser or Licensee goes into liquidation or an administrator, receiver, receiver and manager, administrative receiver or similar person is appointed with respect to the assets and undertakings of either the Adviser or Licensee;
  - (vii) the Licensee sells or transfers or makes any agreement for the sale or transfer of its main business and undertaking or of a beneficial interest therein, other than to a related body corporate for purposes of corporate reconstruction; or
  - (viii) the Relevant Law requires the Agreement to terminate.

### **6.3 Claims and transactions**

- (a) The Agreement's termination does not affect any:
  - (i) claim by the Adviser or Licensee in respect of Advice Fees incurred in respect of the period to termination;
  - (ii) obligations of confidentiality or any indemnity given; or
  - (iii) other claim which either party may have against the other.

### **6.4 Survival of terms**

- (a) The provisions of this 6 survive the termination of this Agreement.

## **7. Variation**

- (a) An amendment or variation to this Agreement is not effective unless it is in writing and signed by the parties.

## **8. General**

### **8.1 Governing law and jurisdiction**

- (a) This Agreement is governed by and is to be construed under the laws in force in Victoria.
- (b) Each party irrevocably submits to the exclusive jurisdiction of the courts exercising jurisdiction in Victoria and courts of appeal from these courts in respect of any proceedings arising out of or in connection with this Agreement.

### **8.2 Further assurances**

- (a) Each party must, at its own expense, do all things and execute all further documents necessary to give full effect to this Agreement.

### **8.3 No reliance**

- (a) Neither party has relied on any statement by the other party which has not been expressly included in this Agreement or the Terms and Conditions.

#### 8.4 Assignment

- (a) Neither the Adviser nor Licensee may assign or otherwise deal with this Agreement without Host-Plus's prior written consent, which may be withheld in Host-Plus's absolute discretion.
- (b) Host-Plus may assign, novate or otherwise deal with this Agreement by providing written notice to the parties of which the parties must not unreasonably withhold their consent.

#### 8.5 Counterparts

- (a) This Agreement may be executed in any number of counterparts, each signed and dated by one or more parties. Each counterpart when so executed is deemed to be an original and all such counterparts taken together constitute one document with the Agreement taking effect from that date that it was last signed.

#### 8.6 Waiver

- (a) A provision of this Agreement may not be waived except in writing signed by the party granting the waiver.
- (b) A failure of a party to enforce a right under this Agreement does not constitute a waiver of that right.
- (c) A waiver of any right is effective only in respect of the specific circumstance to which it relates under this Agreement and a waiver of any right does not limit the rights of a party in respect of other breaches under this Agreement.

#### 8.7 Severability

- (a) If any provision in this Agreement is unenforceable, illegal or void or makes this Agreement or any part of it unenforceable, illegal or void, then that provision is severed and the rest of this Agreement remains in force.
- (b) A waiver of any right is effective only in respect of the specific circumstance to which it relates under this Agreement and a waiver of any right does not limit the rights of a party in respect of other breaches under this Agreement

## 4 Schedule 1 - Terms and Conditions

### Adviser Online Terms and Conditions

The Hostplus Adviser Online portal ("**Adviser Online**") is an internet based superannuation registration and administration facility provided by Host-Plus Pty. Limited ("**Hostplus**", "**us**", "**we**", "**our**", "**Trustee**") ABN 79 008 634 704 AFSL 244392, RSE Licence No. L0000093 as trustee of the Hostplus Superannuation Fund ABN 68 657 495 890 RSE No. R1000054 MySuper No. 68657495890198 which incorporates Hostplus Pension, through its Administrator Australian Administration Services Pty Limited ABN 62 003 429 114 which forms part of the Link Group of companies.

Adviser Online is made available to Hostplus members ("**Member**") via their registered financial advisers ("**Adviser**").

Adviser Online houses information provided by Hostplus and information transmitted to us electronically, by phone or on paper. The below Terms and Conditions ("**AO Terms**") relate to use of Adviser Online.

You acknowledge and agree that:

Access, registration and termination

- a. Adviser Online can only be accessed:
  - i. by an Adviser whilst the Member has a Hostplus account, and after the Adviser completes the Adviser registration process and whilst the Adviser is registered to access Adviser Online ("**Registered Adviser**");
- b. the Adviser will receive an Adviser ID in order to access Adviser Online and the Adviser remains responsible for ensuring the security of its Adviser ID and password;
- c. we cannot verify whether any party other than the Registered Adviser is accessing Adviser Online in cases where the correct username and password has been used in order to access Adviser Online;
- d. the Member has the right to terminate the Adviser's access to Adviser Online at any time;
- e. the Adviser has the right to terminate its access to Adviser Online at any time;
- f. we retain the right to terminate the Adviser's access to Adviser Online at any time, at our discretion;
- g. we will terminate an Adviser's access to Adviser Online, and notify the Adviser of the termination, in the event the Member revokes that authorisation (verbally or in writing);
- h. we will not assign an Adviser's authorisation, or any agreement in respect of that authorisation, to a third party;

#### *Adviser use of Adviser Online and fee requests*

- i. an Adviser's use of Adviser Online is limited to a read only function;
- j. an Adviser will not have rights to change or modify information in respect of the Member's account, direct Hostplus in any manner including but not limited to investment or insurance arrangements;
- k. an Adviser may seek to have advisory fees deducted from a Member's account ("Advice Fee"), subject to agreement with Hostplus and subject to any additional terms and conditions that Hostplus requires as a result of such agreement;
- l. any request for the deduction of Advice Fees must be made no later than 60 calendar days subsequent to a statement of advice being given to the Member;
- m. Hostplus:
  - i. will not directly pay Advice Fees to an Adviser but will pay the amount to the relevant Australian Financial Services licensed entity on behalf of the Adviser ("Adviser Entity");
  - ii. will not pay Advice Fees to the Adviser Entity unless it has received the properly completed all required documentation and does not breach these AO Terms and provided that the funds available in the Member's Hostplus account exceed the Advice Fee subject to an annual cap (financial year) of \$3,000 or 1.5% of the account balance, whichever is lowest, in addition, the Member must retain a minimum of \$6,000 in their Hostplus account;
  - iii. will only deduct and pay Advice Fees in respect of authorised services related to the Member's interest in the Hostplus account;
  - iv. may request that the Adviser provides it with a copy of any statement of advice that any Advice Fee relates to;
  - v. may withhold Advice Fees unless the Adviser provides it with the correct copy of any statement of advice as requested;
  - vi. may refuse to pay Advice Fees or may make payment of Advice Fees for only a portion of the amount specified for any reason and without giving any reasons;
  - vii. has the right to withhold any Advice Fees to the extent it forms the reasonable view that the statement of advice does not relate to a matter that would allow Hostplus to action the deduction of Advice Fees, under the relevant law; and
  - viii. may, by notice to the Adviser Entity, require the Adviser Entity to refund the Advice Fee to Hostplus within 14 days if Hostplus becomes aware or suspects that an Advice Fee has been charged in breach of any relevant law or following the death of a Member;
- n. the Adviser must immediately notify Hostplus if it knows or suspects that an Advice Fee has been charged in breach of any relevant law;

#### *Functionality*

- o. Adviser Online may not operate on a continuous basis, and may be unavailable from time to time, including for maintenance purposes;
- p. Hostplus reserves the right to revise the content appearing on Adviser Online, the Adviser Online functionality, or withdraw access to Adviser Online at any time without prior notice to the Adviser; and
- q. Adviser Online may rely on data feeds from external sources and at times there may be delays in these data feeds, and transactions and account values may not be current;

#### *Information*

- r. Adviser Online and/or its functionality may rely on data feeds from external sources, including the Member and/or Adviser and Hostplus assumes that the information is complete and accurate as at the time it is provided;
- s. the information contained in Adviser Online has been prepared based on information that is believed to be accurate and reliable at the time of publication. Examples provided are for illustrative purposes only and subject to the assumptions and qualifications disclosed;
- t. to the extent permitted by law, Hostplus makes no representation for the accuracy, reliability or completeness of the information contained in Adviser Online;



### *Liability and indemnity*

- u. Hostplus is not liable to the Adviser:
  - i. if we terminate access to Adviser Online;
  - ii. for any security breach caused or contributed to by the Adviser when accessing Adviser Online;
  - iii. for any breach of confidentiality or privacy caused or contributed to by the Adviser when accessing Adviser Online;
  - iv. in respect of information provided by third parties, the Member, or Adviser that forms any part of Adviser Online's functionality whether or not caused by any negligent act or omission; and
  - v. in respect of any use or reliance on the information that forms any part of Adviser Online's functionality whether or not caused by any negligent act or omission.
- v. the Adviser ("Indemnitor") will indemnify and keep us indemnified against any loss or damage or cost incurred by or in connection with any breach of these AO Terms or any other legal obligation by the Indemnitor or the Indemnitor's use of or conduct on Adviser Online;

### *Terms and Conditions binding*

- w. access to Adviser Online will remain subject to these AO Terms as amended from time to time, the Hostplus Privacy Policy, disclaimers and any further agreement, additional terms and conditions, or statements contained on Adviser Online (collectively referred herein as the "Terms and Conditions"); and
- x. Hostplus reserves the right to revise the Terms or Conditions at any time without prior notice to you; and
- y. variation of Terms and Conditions made under the above provision will take effect immediately. Any subsequent access to, or use of Adviser Online by the Adviser will constitute an acceptance of those varied Terms and Conditions.

**Executed** as an agreement.

**Executed by Host-Plus Pty Limited (ACN 008 634 704)** in accordance with section 127 of the Corporations Act:

Name of Director

**Signature of Director**

Date

/ /

Name of Director/Secretary

**Signature of Director/Secretary**

Date

/ /

**Executed by [Adviser]** in the presence of:

Name of Witness

**Signature of Adviser**

Date

/ /

**Executed by [Licensee] ([Licensee ACN])** in accordance with section 127 of the Corporations Act:

Name of Director

**Signature of Director**

Date

/ /

Name of Director/Secretary

**Signature of Director/Secretary**

Date

/ /