

Authorised Representative Agreement

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**AUTHORISED REPRESENTATIVE AGREEMENT** dated in **Item 1** of the Schedule

Between:

Exelsuper Advice Pty Ltd ABN 72 080 419 745, AFSL 428272 of Suite 1, 50 King William Road, Goodwood SA 5061, Ph: 1300 558 713, E: service@exelsuper.com.au (***Exelsuper***)

- and -

The person named in **Item 2** of the Schedule (***AR***)

**INTRODUCTION**

1. Exelsuper has rights to the System.
2. This Agreement provides for Exelsuper to grant an Authority to AR.

**TERMS**

PART 1 – PRELIMINARY

**Dictionary**: In this Agreement:

***Act*** means the *Corporations Act 2001* as amended from time to time, and reference to a ***section*** (***s***.) is to a section of that legislation.

***AFSL*** means at any time the Australian financial services licence held by Exelsuper under the Act.

***Applicable Law*** means individually and collectively:

1. the conditions at the time attaching to the AFSL;
2. the Act, *Superannuation Industry (Supervision) Act 1993,* *Superannuation Guarantee (Administration) Act 1992*, *Income Tax Assessment Act 1936*, *Income Tax Assessment Act 1997*, *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, *Privacy Act 1988*, *Spam Act 2003*, *Family Law Act 1975*, *Financial Sector (Collection of Data) Act 2001*, *Competition and Consumer Act 2010*, any other legislation that covers conduct relating to the provision of financial services, each as amended or replaced from time to time;
3. the regulations, principles or standards at the time made under any legislation described in the above paragraph;
4. any policy statement, guidance note, circular or prudential practice guide issued by a regulator of any legislation referred to in paragraph (b) so far as relevant to the provision of any of the Services;
5. subject to all of the above, common law and principles of equity.

***AR*** means the person named in **Item 2** of the Schedule.

***Authority*** means a non-exclusive right Exelsuper grants to AR to during the Term to provide the Services using the System as an authorised representative of Exelsuper (within the meaning of section 916A(1)).

***Brand*** means the mark 'Exelsuper' (includes any logo, registered trade mark, domain name using that mark alone or in any combination with words or symbols).

***Business Day*** means a day other than:

1. a Saturday, Sunday;
2. a day which is a public holiday or bank holiday; or
3. a day that falls between Christmas and New Year's Day,

at the principal place of business of the party obliged to perform an obligation or receiving a notice under this Agreement as applicable.

***Business Name*** means the name stated in **Item 5** of the Schedule.

***Client*** means a client who is during the Term identified and introduced by AR to Exelsuper, and to whom Exelsuper and / or AR provides any Services during the Term.

***Code*** means *Franchising Code of Conduct* in the *Trade Practices (Industry Codes – Franchising) Regulations 1998*, as amended from time to time.

***Collateral Deed*** means a deed (in the form now annexed, or as the parties to such deed may agree) by which an individual undertakes in favour of Exelsuper to, to any extent Exelsuper requires:

1. keep confidential Exelsuper's Confidential Information;
2. not make adverse comment about Exelsuper;
3. not compete with Exelsuper; and / or
4. guarantee and indemnify AR's obligations under this Agreement.

***Condition Precedent*** means a condition precedent to the grant of the Authority stated in **Item 3** of the Schedule.

***Confidential Information*** means information in any form (visual, written, electronic, oral, by demonstration or inspection) at any time obtained by a party (***Party 1***) in relation to the other party's affairs (***Party 2***), and whether in investigations or negotiations for this Agreement or in performance of this Agreement, excluding information:

1. in Party 1's prior lawful possession or knowledge before disclosure by Party 2;
2. in the public domain (other than as a result of a breach of this Agreement);
3. independently known to Party 1 without any reliance upon Confidential Information;
4. lawfully received by Party 1 from a third party who is not obliged to keep that information confidential;
5. as may be lawfully observed or ascertained from goods or services in distribution; or
6. which Party 2 in writing approves for release from this definition.

To avoid doubt, Exelsuper's Confidential Information includes so much of Exelsuper's Intellectual Property at the time not in the public domain.

***Exelsuper*** means Exelsuper Advice Pty Ltd ABN 72 080 419 745 and includes a successor to the rights and obligations of that person under this Agreement.

***GST***, ***recipient created tax invoice***, ***taxable******supply*** and ***tax invoice*** have their meaning in *A New Tax System (Goods and Services Tax) Act 1999*.

***Intellectual Property*** means at any time any intellectual or industrial property of any kind made available by Exelsuper for use in the System including, without limitation, copyrights, goodwill in brands, trade marks (registered or unregistered), service marks (registered or unregistered), inventions (patentable or not), any application or right to apply for registration of any of those above rights, confidential information, know how, trade secrets, right to protection against unfair competition (passing off).

***Operations Manual*** means at any time operational procedures and specifications as last published by Exelsuper to all its authorised representatives and as deployed by Exelsuper in its own operations (if any). The Operations Manual:

1. is proprietary to, and confidential information of, Exelsuper;
2. has the purpose of ensuring legally compliant, uniform and high standards of service delivery;
3. may deal with any aspect of operations in connection with the provision of Services including, without limitation:
   1. the educational, training, experience and personal presentation required of individuals;
   2. template documents to be used to the exclusion of others;
   3. guidelines for marketing materials;
   4. records to be kept; back up of electronic data;
   5. communications between Exelsuper and its authorised representatives, and between authorised representatives;
   6. premises style guide for authorised representatives working from locations removed from Exelsuper's own premises;
4. is subject to change at any time as Exelsuper thinks fit, acting reasonably.

***Retainer*** means advances against future Split now hoped to become payable by Exelsuper to AR during Stage 1 (GST inclusive) as stated in and payable at the time/s stated in **Item 8** of the Schedule or as the parties may agree in writing. Retainer will be in addition to any Split as may become payable by Exelsuper to AR.

***Retention Amount*** means that portion of the Signing Fee paid stated in **Item 7** of the Schedule that Exelsuper may retain if AR exercises cooling off rights under the Code.

***Security Interest*** meansa security interest (within the meaning of the *Personal Property Securities Act 2009*), and includes any mortgage, charge, pledge, lien or trust.

***Services*** mean to:

1. provide financial services of the kind, and at the time, the conditions attaching to the AFSL allow including, without limitation:
   1. provide financial product advice for a superannuation interest (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) that is an interest in a SMSF;
   2. deal in a financial product by applying for, acquiring, varying or disposing of a superannuation interest (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) that is an interest in a SMSF;
2. provide an eligible service that is not a financial service by reason of, and within the meaning of, regulation 7.1.29 of the *Corporations Regulations 2001*;
3. provide audit services to a SMSF;
4. prepare and submit income tax returns and BAS for a SMSF.

***Services Revenue*** means the gross fee or other consideration Exelsuper receives in cash or immediately available funds from a Client or an issuer of a financial product in consideration of AR's Services, subject to these following rules:

1. deduct any GST paid or payable by Exelsuper included in the gross;
2. deduct any government fee or other external cost or expense included in the gross;
3. deduct any amount included in Services Revenue but later refunded / credited to a Client;
4. where a Client tenders payment by debit card, credit card or by electronic means, the payment is only included when the card issuer or controller of the electronic payment system honours the transaction.

***Signing Fee*** means the amount (GST inclusive) payable by AR to Exelsuper on or before the Starting Date and stated in **Item 6** of the Schedule.

***SMSF*** means a self-managed superannuation fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*).

***Special Condition*** means a provision stated in **Item 10** of the Schedule (if any).

***Split*** means that portion (GST inclusive) of Services Revenue payable by Exelsuper to AR as stated in and payable at the time/s stated in **Item 9** of the Schedule or as the parties may agree in writing. Split would be in addition to Retainer paid or payable by Exelsuper to AR.

***Stage 1*** means the period:

1. starting on the Starting Date, and
2. ending on the earliest of:
   1. the day before the 2nd anniversary of the Starting Date;
   2. such date as the parties may agree in writing; or
   3. the date the Term terminates for any reason.

To avoid doubt, Stage 1 is the "Foundation Period" as may be mentioned in marketing material of Exelsuper promoting the opportunity for persons to become an authorised representative of Exelsuper.

***Stage 2*** means the period during the Term after Stage 1.

***Starting Date*** means the starting date stated in **Item 4** of the Schedule or as the parties may agree in writing.

***System*** means a system for the provision of the Services with the benefit of the Intellectual Property.

***Term*** means the period on and from the Starting Date and continuing indefinitely subject to termination on the earliest of:

1. the date the Authority is revoked under clause ;
2. if a party gives to other party at least 40 Business Days' written notice of termination – upon expiry of that notice period;
3. if the conditions on the AFSL are varied as not to permit the full range of the Services, or the AFSL is cancelled, or for more than 5 Business Days is suspended – on that date;
4. the date a party (***Party 1***) gives written notice of termination to the other party (***Party 2***) because either:
   1. Party 2 failed to remedy its breach of this Agreement within 20 Business Days after written notice from Party 1 specifying the breach and requiring its remedy and stating that Party 1 intends to terminate the Term if Party 2 does not remedy; or
   2. in Party 1's reasonable opinion, Party 2 is insolvent, ceased permanently to trade in the provision of the Services or allowed anything likely to bring Party 1 or its product offering into disrepute.

***Worker*** means a director of AR and any other individual engaged by AR in the provision of any of the Services. The initial Worker/s is/are named in **Item 3** of the Schedule.

Subject to this clause, expressions defined elsewhere in this Agreement have those meanings and, subject to that, expressions have the same meaning as in a provision of the Act that deals with the same matter.

**Interpretation**: In this Agreement: neuter includes masculine and feminine; singular includes plural and *vice versa*; reference to a person includes a body politic or corporate, an individual and a partnership and *vice versa*; headings do not affect construction; no rule of construction applies to the disadvantage of a party because that party put forward this Agreement or any portion of it; another grammatical form of a defined expression has a corresponding meaning.

**Code**: If and so long as the Code applies to the Authority by force of law:

this Agreement is taken to include those provisions the Code requires;

the Code prevails over this Agreement to the extent of any inconsistency; and

the parties in the exercise of their rights and obligations under this Agreement must comply with the Code.

**Conditions Precedent**:

Clause is not effective unless and until each Condition Precedent is fulfilled or waived.

Each Condition Precedent is solely for Exelsuper's benefit, and may be waived in whole or in part on or before the date for its fulfilment by Exelsuper so notifying AR.

If a Condition Precedent is not fulfilled or waived on or before the date for its fulfilment, a party not in default in using its best reasonable endeavours to fulfil each Condition Precedent may terminate this Agreement (except clause ) by so notifying the other.

If with Exelsuper's consent AR starts to carry on the Authority before fulfilment or waiver of a Condition Precedent, any outstanding Condition Precedent is taken to be a condition subsequent and must be fulfilled (if not waived) within 5 Business Days (or such longer period as Exelsuper may allow) after the start of business or AR must then cease to trade the Authority.

**Cooling off**:  AR has those cooling off rights the Code requires.

**Unwinding this transaction**: If AR exercises cooling off rights under the Code or a party terminates this Agreement under clause , neither party has further rights against the other under this Agreement, except:

within 5 Business Days:

AR must destroy or permanently erase all information about the Intellectual Property or the System not in the public domain and in its possession or under its control;

AR must return to Exelsuper this Agreement, any disclosure document received from Exelsuper for this Agreement;

Exelsuper must repay any Signing Fee paid minus the Retention Amount as contribution to Exelsuper's reasonable expenses of negotiating with AR and of preparing this Agreement and a disclosure document;

in respect of any prior default under this Agreement; and

in respect of obligations of confidentiality under clause .

**Warranties**: AR warrants that information (including financial statements and past business history) about AR or any Worker provided to Exelsuper is not false or misleading and, if it relates to any future matter, is based on reasonable grounds.

**Acknowledgments**: AR acknowledges that subject to the express terms of this Agreement or the disclosure document received from Exelsuper for this Agreement, Exelsuper does not warrant or represent or give other assurance as to:

the meaning or effect of this Agreement;

the prospects or profitability of the Authority (despite support and training by Exelsuper);

that Exelsuper would, or would not, modify the System or the Split;

the present or future number, terms and conditions, location or trading history of other authorised representatives of Exelsuper (if any); or

anything else.

PART 2 – AUTHORITY

**Grant**: Subject to clause , Exelsuper grants the Authority to AR, and AR accepts the Authority, on the terms of this Agreement, and this Agreement is the written notice section 916A requires.

**ASIC notification**: Exelsuper will notify the Authority to ASIC within the time section 916F requires.

**Duration**: The Authority is for the Term, subject to early termination if for reasonable cause Exelsuper gives notice under section 916A(4) revoking the Authority to AR, where ***reasonable cause*** means if AR either:

becomes the subject of a banning order under section 920A or section 921A;

is convicted of a serious offence (within the meaning of Code clause 23(d)); or

is fraudulent in connection with operation of the Authority (within the meaning of Code clause 23(f)).

**Exclusivity**: The Authority is not exclusive. Exelsuper may itself or by others provide the whole or any of the Services in competition to AR.

**Territory**: The Authority is limited to Australia, but not any particular geographical territory within Australia.

**Premises**: The Authority is not limited to operate from any particular premises.

**Hours of work**: The Authority does not require work to any fixed hours.

**Delegations**: Except with Exelsuper's prior written consent AR must not make a person AR's authorised representative or an authorised representative of Exelsuper, within the meaning of section 916B(1). Consent may be conditional.

**Security Interests**: Except with Exelsuper's prior written consent (not to be unreasonably withheld), AR must not allow a Security Interest over the Authority. Consent may be conditional.

**Transfer**:

AR must not assign or declare a trust over any of its benefits or obligations under this Agreement. In addition to the usual meaning of ***assign***, AR is taken to assign this Agreement if AR enters into this Agreement as a trustee and there is after the date of this Agreement and without Exelsuper's prior written consent a change of control as applied to AR or that trust, where ***control*** has its meaning in section 50AA and a ***change of control*** means:

if any person who controls, or any number of persons who together control, AR or the trust at the date of this Agreement subsequently ceases or together cease, to control AR or the trust; or

if any person acquires, or any number of persons together acquire, control of AR or the trust.

If during the Term AR intends to transfer or otherwise convey the whole or substantially the whole of its business to a third party so that the third party may be appointed as an authorised representative of Exelsuper in place of AR, AR must:

comply with Code clause 20(1);

give Exelsuper a written offer to sell the assets concerned on terms and conditions no less favourable than those AR intends to offer to or accept from the third party should Exelsuper not accept the offer, and which offer is open for acceptance within 10 Business Days after Exelsuper's receipt of the offer;

if Exelsuper does not accept the offer under clause , upon completion of the conveyance to the third party, pay to Exelsuper the reasonable costs and expenses (including legal costs on a solicitor and client basis) Exelsuper incurs in:

investigating the merits of the proposed transferee (whether or not Exelsuper agrees to appoint that person as its authorised representative); and

(if Exelsuper agrees to appoint that person as its authorised representative) the preparation of any disclosure document to be given by Exelsuper to the transferee and / or in the preparation of any contract to be made between Exelsuper and the transferee.

PART 3 – SIGNING FEE

**Signing Fee payment**: AR must pay the Signing Fee to Exelsuper in the amount/s and at the time/s this Agreement requires.

**Signing Fee refund**: The Signing Fee is not refundable except if the Term ends before the 2nd anniversary of the Starting Date for any of the following reasons:

Exelsuper's un-remedied breach of this Agreement;

Exelsuper becoming an externally-administered body corporate (within the meaning of the Act); or

(if not caused by AR's or its Worker's wilful default or negligence) the conditions on the AFSL being varied as not to permit the full range of the Services, or the AFSL being cancelled or for more than 5 Business Days suspended.

The refund payable is that proportion of the Signing Fee (less GST) that the unexpired portion of that 24 month period bears to the initial 24 months after the Starting Date, and is payable within 10 Business days after that ending of the Term.

PART 4 – RETAINER

**Retainer** **payment**s: Exelsuper must pay the Retainer to AR in the amount/s and at the time/s this Agreement requires.

**About Retainer**: Retainer is in addition to any payments of Split now hoped to become payable by Exelsuper to AR.

**Cessation of Retainer**: Retainer is not payable for any period:

during time/s within Stage 1 as provided in the Schedule; or

after Stage 1 ends or the Term ends (whichever is the earlier).

PART 5 – SERVICES REVENUE

**Services Revenue**: Without exception, all Services Revenue must in the first instance be paid or credited to a bank account or accounts last nominated by Exelsuper in writing.

**Checking of Services Revenue**: At any time during the Term or within 24 months after the last payment of Split (whichever is the later) on reasonable notice and during business hours, AR or an accountant appointed by AR may inspect, copy and take extracts from Exelsuper's records as regards Services Revenue earned or received since the last inspection, conditional upon the accountant first providing such confidentiality undertaking as Exelsuper may reasonably require, while permitting the accountant to report his or her findings to AR. At times of an inspection, Exelsuper must give AR (or accountant) such explanations as reasonably required.

PART 6 – SPLIT

**Split payments**: Subject to clause , Exelsuper must pay from Sales Revenue the Split payable to AR in the amount/s and at the time/s this Agreement requires.

**About Split payments**: A payment of Split is a payment on account only and accordingly:

not an admission of liability or evidence that such payment is in fact payable; and

either party may within 24 months after the payment challenge whether the payment is in fact accurate or the whole amount payable.

Payments of Split not the subject of objection or challenge by either party within 24 months are final and not subject to change.

**Changes to Split**: At any time, after consultation with AR and upon at least 60 Business Days' written notice, Exelsuper may modify the Split in its favour by a reasonable extent having regard only to:

increases in direct, unavoidable, costs to Exelsuper to maintain the System in compliance with Applicable Laws;

increases in legal risk to Exelsuper as holder of the AFSL;

AR's non-temporary inability to commit sufficient time and attention to closing with Clients, which then must be done by Exelsuper.

PART 7 – PAYMENTS GENERALLY

**About Retainer and Split**: Despite any other provision of this Agreement, Exelsuper's liability to pay any Retainer and any Split is subject to clauses - (both inclusive).

**Pre-condition to payment**:Exelsuperis not obliged to make any payment to AR for the provision of any Services until AR has provided to Exelsuper any reports or other documents the Services require to be provided before or at that time.

**Defective provision of Services**: If:

AR fails to perform any of the Services in conformity with the Agreement; and

Exelsuper elects not to terminate the Term by reason of that failure,

Exelsuper may either require AR to provide those Services again, or reduce the Retainer or Split otherwise payable by a reasonable extent.

**Set off**:At any time, Exelsuper may (but is not obliged to) without notice to AR set-off any money payable or to become payable to AR under this Agreement against any debt or liability of AR to Exelsuper under this Agreement or otherwise. For these purposes, if an obligation of AR is unliquidated or otherwise unascertained, Exelsuper may set off an amount estimated by Exelsuper in good faith on account of such obligation, without prejudice to the obligations of the parties to account for any shortfall or excess.

**Withholding**: If, in Exelsuper's reasonable opinion, Exelsuper must on account of the services of AR or any Worker remit to government or a complying superannuation fund an amount for any tax (including income tax, FBT, payroll tax), levy (including Medicare levy), surcharge, employer contribution or child maintenance payments, then Exelsuper may deduct those remittances from payments to AR under this Agreement and remit them as appears required by law.

**GST**:If a party (***Party 1***) becomes liable to pay GST in respect of a taxable supply it makes to the other party (***Party 2***) under this Agreement, then (unless this Agreement expressly states the consideration includes GST) the consideration payable by Party 2 to Party 1 for that taxable supply must be increased by an amount equal to that GST, which additional amount must be paid at the same time as when the consideration for the relevant taxable supply is required to be paid by Party 2, conditional upon Party 1 first providing a tax invoice for that taxable supply to Party 1. Party 1 need not provide a tax invoice however, if Party 2 is entitled to issue, and does issue, a recipient created tax invoice for the payment.

**Payment methods**: Exelsuper may pay AR by cheque or, at the option of either party, by electronic funds transfer in immediately available funds to an account with a bank or credit union in Australia last nominated in writing by AR.

**Exelsuper's certificate**: A certificate signed by or on behalf of Exelsuper as to:

the amount of money owing or payable by one party to the other under this Agreement; or

any other matter in connection with this Agreement,

is sufficient evidence of the matter unless proved incorrect.

PART 8 – SUPPORT

**Office accommodation**: At all times during and for up to 6 months after Stage 1, but subject to clause , Exelsuper must freely allow AR and its Worker:

to be co-located within Exelsuper's own premises for the purposes of the Authority, with business hours access – a lockable office is not however, assured – and provided that AR and its Worker must comply with any reasonable written directions (howsoever called) given by Exelsuper about the management, safety, care or cleanliness of the premises or the preservation of good order therein – and no later than 6 months after the end of Stage 1 AR must promptly remove all its property from those premises and return all keys to Exelsuper, and in default pay any reasonable costs Exelsuper incurs in obtaining new locks;

one car park at Exelsuper's premises, subject to availability; and

shared use of the toilets / kitchen facilities / storage room upon Exelsuper's premises.

**Office support**: At all times during Stage 1 while AR is co-located within Exelsuper's premises, but subject to clause , Exelsuper must freely allow AR:

shared use of any receptionist / administrative assistant / secretary upon Exelsuper's premises as available;

reasonable quantities of stationery and other office consumables;

shared used of office equipment upon Exelsuper's premises as available – includes a broadband Internet-enabled PC / Apple desktop computer with access to Microsoft Office applications / COIN financial planning software / Organise IT file maintenance software, and with restricted access to Exelsuper's own files – and provided that AR and its Worker must comply with any reasonable written directions (howsoever called) given by Exelsuper about the management or security of Exelsuper's network.

**Supplementary office arrangements**: Despite clauses and , if AR has been co-located within Exelsuper's premises for at least total 12 months or cumulative Services Revenue is at least $500,000.00, Exelsuper may elect that AR either:

vacate those premises within 6 months; or

pay a monthly amount as contribution of office expenses as then agreed relative to the space and services required.

**Professional indemnity insurance**:

At all times during the Authority, Exelsuper must ensure that its professional indemnity insurance and any other compensation arrangements section 912B requires of Exelsuper extend to AR and its Worker in providing the Services.

If a claim by Exelsuper under its professional indemnity insurance results from AR's or its Worker's wilful default or negligence, AR is liable for:

any deductible or excess on that claim; and

any increase in premium (plus GST and stamp duty) that results in the following 2 insurance years.

**Dispute resolution system**: At all times during the Authority, Exelsuper must ensure that the dispute resolution system section 912A(1)(g) requires of Exelsuper extends to AR and its Worker in providing the Services.

**Professional development**: At all times during the Authority, Exelsuper must freely provide AR and its Worker:

loan of an up-to-date copy of the Operations Manual (in soft or hard copy) – provided that AR must keep the Operations Manual (including any copies or extracts) in its sole custody;

template documents for the Services as available;

such training as section 912A(1)(f) requires Exelsuper provide its authorised representative – and AR via its Worker must attend all training sessions at Exelsuper's premises of which least 2 Business Days' notice has been given;

such advice or directions reasonably required on professional, commercial, and / or marketing matters;

shared access to a professional library (hard copy or soft copy) of reasonable standard upon Exelsuper's premises as available; and

reasonable mentoring for the purpose of AR or its Worker obtaining registration under the Tax Agent Services Act 2009.

If during the Authority AR proposes to purchase a portfolio of clients from a third party, upon AR's request Exelsuper may (but is not obliged) to provide funding for that purpose on such terms and conditions as then agreed.

**System**: At all times during the Authority, Exelsuper must freely allow AR shared use of the System for the purposes of the Authority.

**Brand**: At all times during the Authority:

Exelsuper must freely allow AR shared use of the Brand, including in marketing materials and one or more email addresses using the Brand – and provided that such use in marketing material is subject to Exelsuper's prior approval in relation to size, prominence, placement, colours and context, and that AR must not use the Brand in radio advertising without Exelsuper's prior approval; and

ignoring its corporate name, AR must promote the Services only using the Brand to the exclusion of any other.

**Exclusions**: At no time is Exelsuper obliged to provide to AR:

cover under public liability insurance as regards Exelsuper's premises, or cover under insurance against loss or damage to AR's property upon Exelsuper's premises;

any motor vehicle, mobile phone, laptop or other portable computer;

membership of any professional association;

any Clients;

contribution to, or reimbursement of, any costs or expenses AR may incur; or

anything else not now stated in this Agreement.

PART 9 – WORKERS

**Number of Workers**: At any time pending Stage 2, there must not be more than 2 Workers.

**Workers**: AR must ensure that a Worker is of good character and competent for the tasks in the Services allocated to him or her.

**Indemnity for Workers**: As a continuing obligation, AR indemnifies and holds harmless Exelsuper against all claims, loss, damage, cost or expense incurred by Exelsuper in connection with:

the employment of a Worker (including all remuneration, leave entitlements, superannuation guarantee); and / or

a claim or finding that a Worker is an employee of Exelsuper.

PART 10 – SERVICES

**General requirements:**  AR must offer and perform the Services in conformity with, in descending order of priority:

Applicable Laws;

offering only those warranties or representations about Services expressly authorised by Exelsuper or required by mandatory operation of law;

any reasonable instructions as may be given by Exelsuper;

such of Exelsuper's policies / procedures / operating guidelines about financial services, records management then current so far as relevant – this includes that no later than close of business on each Business Day AR must enter into Exelsuper's network all the kinds and values of Services on that day supplied in the Authority (differentiating between each kind of Service);

the Operations Manual as then current; and

the exercise of reasonable care and diligence, and good business ethics.

**Complaints**: Insofar as not already actually known to an Exelsuper executive, AR must report to Exelsuper on the same day as received or, if that is not practicable, on the next Business Day:

any non-trivial complaint by a Client, or prospective Client, about the provision of any of the Services; or

any complaint or non-routine enquiry from a regulator of an Applicable Law about the provision of any of the Services,

and Exelsuper has sole management of resolution of any complaint or enquiry as above.

**AR** **to act in support**: If Exelsuper has obligations under Applicable Law or a contract with a Client that Exelsuper cannot fulfil without AR or its Worker acting (or not acting) in a particular manner in relation to the provision of the Services, then:

Exelsuper may direct AR to ensure that such person acts (or does not act) in that manner; and

AR must ensure such direction is complied with immediately, or if a timeframe is specified in the direction, in accordance with that timeframe.

**Liability**: Though under section 917B Exelsuper is responsible, as between it and a Client, for the conduct of AR, as a continuing obligation AR identifies and holds harmless Exelsuper against all claims, loss, damage, cost or expenses incurred by Exelsuper in connection with either:

AR's breach of this Agreement or any Applicable Law; or

the wilful default or negligence of AR or a Worker,

except to any extent the wilful default or negligence of Exelsuper:

contributed to the claim, loss, damage, cost or expense; or

prejudiced a defence, counterclaim, set off or right to contribution that would have been available against a third party.

PART 11 – STAGE 2

**Transition to Stage 2**:AR's transition from Stage 1 to Stage 2 is not assured, and would be conditional upon AR having:

obtained specialist advisor accreditation with SMSF Professionals' Association of Australia; and

in Exelsuper's reasonable opinion, completed professional development as to be fully competent to operate as an authorised representative of Exelsuper at a remote location.

**Stage 2 Authority provisions**: If and so long as during Stage 2 AR remains an authorised representative of Exelsuper, during that period:

Parts 5 (Services Revenue), 6 (Split), 7 (Payments Generally), 8 (except clauses , and ) (Support), 9 (Workers), 10 (Services), 12 (Goodwill), 13 (Collateral Deeds) of this Agreement apply, together with any other provision of this Agreement expressed to apply during the Authority or capable of doing so;

Exelsuper would not unreasonably withhold or delay consent under section 916B(3) to AR authorising any number of individuals to provide Services on behalf of Exelsuper;

AR must hold in its name and from an insurer authorised under the *Insurance Act 1973* to carry on insurance business of that kind, professional indemnity insurance for at least $5,000,000.00 cover extending to the provision of the Services;

AR must maintain specialist advisor accreditation with SMSF Professionals' Association of Australia;

when no longer co-located within Exelsuper's premises, AR must:

operate from first-class business premises that in presentation to the public conform to any brand requirements stated in the Operations Manual, and generally reflect favourably on Exelsuper and the Brand;

have in use an Internet-enabled computer system that can access, and be accessed by, Exelsuper's computer system and that complies with any reasonable written directions (howsoever called) given by Exelsuper about the management or security of Exelsuper's network;

at all times during business hours and on reasonable notice, allow Exelsuper (or agent) to access those premises and that computer system to ensure AR's compliance with this clause;

Exelsuper's website must display AR's contact details;

Exelsuper would refer to AR any credible lead for a new Client resident at a location proximate to AR's own business premises and as becomes known from Exelsuper's marketing or enquires to its website;

audit of SMSF annual returns for Clients must be referred to and performed only by Exelsuper;

(unless at the time AR is a registered tax agent under the Tax Agent Services Act 2009), SMSFs' income tax returns and SMSFs' BAS for Clients must be referred to and performed only by Exelsuper;

if at any time (but not more frequently than once every 6 months) Exelsuper on reasonable notice requires, AR at its cost must attend a face-to-face meeting in Adelaide with Exelsuper and / or Exelsuper's other authorised representatives (if any) to review the System and exchange information of benefit to the participants;

Exelsuper at its own cost and under its sole control, may (but is not obliged to) undertake group marketing of the System on behalf of itself and its authorised representatives provided that except with AR's prior approval, Exelsuper must not undertake group marketing under which AR would be taken to offer Clients a provision of a Service within a fixed time or for a special price. AR must not unreasonably withhold that approval;

Exelsuper must supply to AR such technical or commercial support and assistance in the Authority as AR may reasonably request and Exelsuper is able and agrees (with or without charge) to supply.

PART 12 – GOODWILL

**Intellectual Property**:

Only during and for the purposes of the Authority, the Authority entitles AR to a non-exclusive right to know and exploit the Intellectual Property.

AR does not by virtue of the Authority obtain a proprietary or security interest in the Intellectual Property.

A development or improvement or adaptation of the Intellectual Property made or discovered by AR or its Worker becomes on creation Exelsuper's sole property.

AR must not allow anything likely to prejudice the ownership of the Intellectual Property, or the value of the Intellectual Property to Exelsuper.

Excepting registration of the Business Name, AR must not use or register a Brand or confusingly similar words as a corporate name, business name, domain name, email address, trade mark or within any website, and if AR breaches this provision it holds such registration on trust for Exelsuper.

AR at its cost may register the Business Name as a business name in the State or Territory of Australia in which AR's principal office is located, provided that if at any time Exelsuper requires, within 5 Business Days AR must give an unconditional consent to Exelsuper (or nominee) registering similar business or company names in the same jurisdiction.

If at any time during the Term any registered trade mark is comprised in the Intellectual Property, AR must not use it except with the symbol ®.

Exelsuper alone and at its cost and sole benefit may take and resolve steps against a third party alleged to have infringed any of the Intellectual Property.

As a continuing obligation, but conditional upon Exelsuper at its cost having sole defence and resolution of the claim, Exelsuper indemnifies and holds harmless AR against a claim that the right to know and exploit the Intellectual Property now granted of itself infringe the rights of a third party.

Where AR records any information as part of, or for the purpose of, any of the Services, ownership of Intellectual Property in that record vests in Exelsuper upon creation, subject to a royalty-free, non-assignable, non-exclusive licence back to AR during the Term. If at any time Exelsuper requires, AR must take reasonable steps to perfect that vesting in Exelsuper.

**Attribution**: At all times during the Authority, AR must on its letterhead, business cards, all its marketing materials and / or in dealing with third parties for the purposes of the Services indicate that AR is an authorised representative of Exelsuper.

**Third party offerings**:  If at any time during the Term AR has commercial activities in addition to the Services, such must not be marketed or supplied using the Brand or as authorised representative of Exelsuper.

**Conduct**: In the Services, the appearance and demeanour of a (each) Worker must reflect favourably on Exelsuper and the Brand.

**Conflict of interest**:If during the Term AR knows of an actual or potential conflict of interest in AR's performance of this Agreement, AR must promptly notify Exelsuper in writing giving reasonable details. Exelsuper would treat such information as confidential.

**Confidentiality**: A party (***Party 1***) must not before, during or for 24 months after the end of the Term use or disclose to a third party any Confidential Information about the other party (***Party 2***) obtained in investigations or negotiations leading to this Agreement or in the performance of this Agreement except:

in the proper performance of this Agreement or in seeking a remedy under this Agreement;

required so Party 1 can obtain funds or insurance to perform this Agreement;

the third party is an officer or employee or consultant or professional adviser of Party 1 or of a related body corporate of Party 1;

the third party proposes to purchase substantially the whole of the business of Party 1 or make a material equity investment in Party 1;

where required by applicable law; or

where Party 2 gives prior consent in writing.

**Non-compete**: Except with Exelsuper's prior written consent, AR must not directly or indirectly, alone or with others (in any capacity) do any of the following:

(except as Exelsuper's authorised representative during the Term) during or within 12 months after the Term provide any Services to a Client;

hold a share or office in a company, or hold a beneficial interest in trust, that during or within 12 months after the Term provides any Services to a Client; or

during or within 12 months after the Term, solicit or procure a person who was an authorised representative of Exelsuper during the Term to terminate that role.

For this purpose:

***provide*** a Service means either as a holder of an Australian financial services licence or as an authorised representative of a person who holds such licence;

***Client*** excludes a Client any of whose affairs are transferred to another holder of an Australian financial services licence under clause .

**Adverse comments**: A party must not before, during or for 24 months after the Term make or cause to be made any derogatory or adverse comment to the public or on social media about any the other party, its staff or any of its products.

PART 13 – COLLATERAL DEEDS

**About Collateral Deeds**: A Collateral Deed does not prejudice any rights Exelsuper has against AR under this Agreement.

**Collateral Deeds may be required**: At any time during the Term, Exelsuper may require AR to within 10 Business Days procure a Collateral Deed be given by a person who has not given a current Collateral Deed of that kind and who is either:

an officer or shareholder of AR, or a person who controls AR (within the meaning of section 50AA);

if AR is trustee of a trust - a holder of a beneficial interest in the trust, or a person who controls the trust (within the meaning of section 50AA);

a Worker with a management role (except a guarantee and indemnity cannot be required from him or her in that capacity).

PART 14 ‑ MISCELLANEOUS

**Winding up the Term**: On the end of the Term (for any reason):

accrued rights and obligations are not affected;

AR is entitled to payment of Split on any Sales Revenue:

wholly earned before the end of the Term; or

received by Exelsuper within 30 days after the end of the Term;

there is terminated (without right to compensation) any obligation of Exelsuper to supply anything AR has not yet paid for;

AR must on and from that day stop using the System (including the Intellectual Property) including, without limitation:

remove or obliterate from AR's property anything that associates AR with the System or a Brand;

destroy or permanently erase any of Exelsuper's Confidential Information (includes any copy or extract of the Operations Manual) in AR's possession or under its control;

AR must freely transfer to Exelsuper (or nominee) the Business Name;

AR must not thereafter promote itself as having been an authorised representative of Exelsuper;

AR is not entitled to compensation for any benefit to Exelsuper arising from AR having carried on the Authority;

if Exelsuper so requires, AR must give Exelsuper copies of records that this Agreement obliges AR to keep and not previously provided;

AR must promptly send to all Clients a letter (in form approved by Exelsuper) giving them an election to either:

remain a client of Exelsuper (as holder of the AFSL); or

transfer to another (named) holder of an Australian financial services licence,

and stating that, absent an election to transfer given to Exelsuper within 30 days after the date of the letter, the recipient will be taken to have elected to remain a client of Exelsuper. If a Client elects to transfer, then these parties promptly must do everything necessary to effect that transfer;

Exelsuper may without notice to AR inspect and access any premises or computers to verify AR's performance of this clause, and / or to enforce the provisions of this clause;

the parties must perform any other provision of this Agreement the operation of which is conditional upon the end of the Term, and the parties remain subject to and liable to observe and perform such provisions of this Agreement as are expressed to survive the end of the Term or are capable of doing so; and

each party must do all things necessary for effecting the orderly winding up of the Term.

**No waiver**: A party waives a right under this Agreement only by written notice that it waives that right. A waiver is limited to the specific instance to which it relates.

**Vicarious liability**: As between these parties, AR is liable to Exelsuper for anything done or not done by a Worker that if done or not done by AR would breach this Agreement.

**Default costs**: A party (***Party 1***) is liable to pay all reasonable costs or expenses the other party (***Party 2***) incurs in recovering or attempting recovery of moneys owing by Party 1 to Party 2 under this Agreement or in otherwise enforcing Party 2's rights under this Agreement. Such costs may include legal costs on a solicitor / client basis.

**Injunction**: In the event of a breach or threatened breach of this Agreement by a party (***Party 1***), then (without limiting its other remedies) the other party (***Party 2***) may obtain an injunction restraining Party 1 from committing a breach of this Agreement without proving any actual damage sustained by Party 2. The parties agree that a breach of this Agreement may cause injury for which damages may not be an adequate remedy.

**Legal relationship**: This Agreement constitutes the parties as:

between a holder of an Australian financial services licence and its authorised representative; and

franchisor and franchisee.

The parties are independent contractors, and not partners, joint venturers, nor trustee and beneficiary.

***Force majeure***: A party is not liable for failure to perform this Agreement to the extent and for so long as its performance is prevented or delayed because of circumstances outside the party's direct control and without fault or negligence by that party, but only if that party:

immediately notifies the other party; and

does everything reasonable to remedy the cause quickly.

**Assignment by Exelsuper**: Exelsuper may by notice to, but without consent of, AR assign its benefits or obligations under this Agreement to a party that both:

holds an Australian financial services licence the conditions of which extend to the Services; and

comes to own the Intellectual Property in substitution for Exelsuper.

Upon such assignment, Exelsuper is released from all future obligations under this Agreement.

**Notices**: To be effective, a notice under this Agreement must be signed by or for the party giving it, and given to the recipient either:

by registered post to the recipient's address now stated or as last notified - notice by post is given 3 days after it is posted or (if earlier) at the time at which the letter would be delivered in the ordinary course of post;

by email to the recipient's email address now stated or as last notified - notice by email is given if and when the recipient issues a notice (by email or otherwise) confirming the notice has been read;

as permitted by legislation applicable to the recipient.

**Resolving disputes**: If a dispute between the parties in connection with this Agreement arises during or after the Term:

the party raising the dispute must tell the other party in writing the information Code clause 29(1) would require;

excepting Code clause 29(1) and (4), Code clauses 29 – 31 (both inclusive) apply as if set out in full in this Agreement; and

to avoid doubt, a mediator has no power to make a decision binding on a party.

**Other matters**: The parties must do everything reasonably required to carry out this Agreement.

**Entire contract**: This Agreement is the whole contract between the parties about its subject matter, and:

this Agreement is effective and binding on the parties on execution;

this Agreement supersedes any prior contract or obligation between the parties about its subject matter;

at this date and ignoring any Collateral Deed, there is no contract between the parties collateral to this Agreement;

this Agreement can be amended only by written agreement of the parties.

**Governing law**: The laws in South Australia govern this Agreement. The courts of South Australia or the Federal Court of Australia (Adelaide Registry) have exclusive jurisdiction in connection with this Agreement. The parties irrevocably submit to the jurisdiction of those courts, and any courts that have jurisdiction to hear appeals from those courts.

**Costs**: Subject to clause , a party must pay its own costs of negotiation, preparation and execution of this Agreement and any instrument a Transaction Document requires.

**Special Conditions**: Any Special Condition prevails over the other provisions of this Agreement to the extent of any necessary inconsistency.

**Counterparts**: This Agreement may be executed in counterparts; each executed counterpart is deemed an original of this Agreement.

|  |  |
| --- | --- |
| Signed for Exelsuper: …………………………..  Name: Chris Harris  Title: Director | Signed by / for AR: ………………………….  Name:  Title: Director |
| A person signing this Agreement on behalf of a party warrants that he or she has authority to bind that party for that purpose | |

SCHEDULE

Item 1: Date of the Authorised Representative Agreement

The day of 20

Item 2: AR

Legal Name: ABN

Mailing address:

Ph: ( ) E:

Item 3: Conditions Precedent

All must be satisfied no later than the Starting Date:

1. AR gives Exelsuper the written statement Code clause 11(1) requires.
2. AR gives Exelsuper a signed statement Code clause 11(2) requires.
3. AR tenders payment of the Signing Fee.
4. AR holds, or makes valid application for, an Australian Business Number as regards the Authority.
5. As regards AR's right to occupation within Exelsuper's premises during Stage 1, AR gives to Exelsuper:

* A certificate by a lawyer in the form following this Schedule.
* Evidence AR holds public liability insurance extending to those premises of at least $10 million.
* Evidence AR holds insurance against loss or damage to its property upon those premises for replacement values.

1. As regards [*insert name*] an (each) initial Worker/s:

* Exelsuper is satisfied with the outcomes of background checks as concern the Worker (such checks being of a kind and scope as ASIC *Regulatory Guide 104* suggests).
* If any is or will be an employee of AR, evidence of AR having registered as an employer under the *Worker's Rehabilitation and Compensation Act 1986* (SA) (or equivalent legislation if AR is to operate from, and that person be employed, outside South Australia).
* The Worker executes and delivers a Collateral Deed as Exelsuper may require.

Exelsuper may require the same for any later Worker.

1. As regards each director of AR and also any other person as clause may allow and Exelsuper requires, AR procures each to give a Collateral Deed to Exelsuper.

Item 4: Starting Date

The day of 20

Item 5: Business Name

"Exelsuper (*insert region*)"

Item 6: Signing Fee

$55,000.00 (GST inclusive).

Item 7: Retention Amount

$2,750.00 (GST inclusive).

Item 8: Retainer

$66,000.00 (GST inclusive) per 12 months, payable in equal monthly instalments in arrears on the 15th of each month during the Authority (commencing in the month after the month in which the Starting Date falls), and *pro rata* for any period of less than a month.

Despite the above, Retainer is not payable if and so long as Services Revenue for a calendar quarter (the first of which starts on the 1st day of the 1st calendar quarter on, or if applicable immediately following, the Starting Date) is less than that stated against that period in the following Table.

|  |  |
| --- | --- |
| Quarter | Accumulated Services Revenue to the end of the Quarter |
| Quarter 1 | $4,500.00 |
| Quarter 2 | $25,000.00 |
| Quarter 3 | $50,000.00 |
| Quarter 4 | $75,000.00 |
| Quarter 5 | $100,000.00 |
| Quarter 6 | $150,000.00 |
| Quarter 7 | $200,000.00 |
| Quarter 8 | $260,000.00 |

Once accumulated Services Revenue at least meets that stated for the relevant period, payments of Retainer would resume with catch up on payments withheld.

Item 9: Split

|  |  |  |
| --- | --- | --- |
| Services Revenue in the last rolling 12 months to date | Stage 1 | Stage 2 |
| <$180,000.00 | 25% | 85% |
| $180,000.00 - $300,000.00 | 75% | 85% |
| $300,001.00 - $500,000.00 | 85% | 90% |
| $500,001.00 - $1,000,000.00 | 90% | 95% |
| >$1,000,001.00 | 95% | 97% |

Split is payable in arrears on the 15th of each month during the Term (commencing in the month after the month in which the Starting Date falls).

LAWYER'S CERTIFICATE

*Retail and Commercial Leases Act 1995* section 20K(3)

1. I do not act for Exelsuper.

2. I have, at the request of AR, explained the effect of clause of the Authorised Representative Agreement and how Part 4A of the *Retail and Commercial Leases Act 1995* would apply in relation to the right to occupy space within Exelsuper's premises if the Authorised Representative Agreement did not include that clause.

3. AR gave me apparently credible assurances that AR was not acting under coercion or undue influence in requesting or consenting to the inclusion of that clause .

Lawyer signing certificate: . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

Date: Signature: . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

TEMPLATE FORM OF COLLATERAL DEED

**Collateral Deed**

By: [*insert full name*] of [*insert residential address*] (***Obligor***)

In favour of: Exelsuper Advice Pty Ltd ABN 72 080 419 745 (***Exelsuper***)

Re: An *Authorised Representative* *Agreement* (***Agreement***) made, or to be made, between Exelsuper and [*insert AR's name*] ABN / ACN [*insert*] (***AR***)

**Terms**

* + - 1. The Obligor enters into this Deed in consideration of payment by Exelsuper to the Obligor of $1.00 if demanded and for other valuable consideration.
      2. Insofar as can be made applicable, the Obligor **undertakes** in favour of Exelsuper: (a) a duty ofconfidence as applies to AR under Agreement clause ; (b) a dutynot to compete as applies to AR under Agreement clause ; and a duty not to make adverse commentsas applies to AR under Agreement clause .
      3. The Obligor **guarantees** to Exelsuper the performance on time of AR's obligations under the Agreement.
      4. As a separate promise, the Obligor **indemnifies** and holds harmless Exelsuper against any loss, damage, cost or expense Exelsuper suffers because: (a) AR does not observe or perform any obligation of AR under the Agreement; (b) Exelsuper cannot recover money from AR under the Agreement by operation of law; (c) Exelsuper considers that a payment by AR under the Agreement might be void or voidable. As between Exelsuper and the Obligor, the Obligor is a primary debtor jointly and severally liable with AR.
      5. The Obligor's liability to Exelsuper under the guarantee and / or the indemnity is a personal and continuing obligation, unlimited in amount or time and not affected by: (a) the Obligor ceasing to be associated with AR or AR's enterprise; (b) Exelsuper's failure to obtain another deed the same or substantially the same as this Deed from any other person; (c) another deed the same or substantially the same as this Deed being unenforceable against any other person; (d) Exelsuper obtaining or releasing any other security or surety for any obligations of AR under the Agreement; (e) the death or legal incapacity of any individual; (f) the insolvency of any person; (g) the making, modification, breach or termination of any contract or other arrangement between Exelsuper and AR with or without the Obligor's knowledge; (h) Exelsuper exercising, not exercising or delaying in exercising its rights against AR; (i) a concession or waiver or other indulgence by Exelsuper, or a compromise or compounding binding on Exelsuper; (j) any notice or failure to give notice by Exelsuper to AR; or (k) anything else that under rules of equity might otherwise prejudice or terminate the Obligor's liability.
      6. The Obligor is discharged from this Deed only when Exelsuper discharges the Obligor in writing.
      7. This Deed is immediately enforceable against the Obligor on demand, without need for Exelsuper to make prior demand to, or have recourse against, AR or any third party.
      8. Exelsuper may by notice to, but without consent of, the Obligor assign its benefits under this Deed to a party to whom Exelsuper assigns its rights and obligations under the Agreement.
      9. In this Deed: neuter includes masculine and feminine; singular includes plural and *vice versa*; reference to a person includes a body politic or corporate, an individual and a partnership and *vice versa*; no rule of construction applies to the disadvantage of Exelsuper because Exelsuper put forward this Deed. This Deed can be amended only by written agreement of both parties. The laws in South Australia govern this Deed. The courts of South Australia or the Federal Court of Australia (Adelaide Registry) have exclusive jurisdiction in connection with this Deed. The parties irrevocably submit to the jurisdiction of those courts, and any courts that have jurisdiction to hear appeals from those courts.

Executedunconditionally as a deed poll

Dated the day of 20

|  |  |  |
| --- | --- | --- |
| Signedby the Obligor in the presence of:  .................................................................  Witness  .................................................................  Name of Witness | ) | .................................................................. |