



General Terms





Seneca Financial Solutions Pty Limited ABN 17 610 665 711 (Seneca) is the holder of Australian Financial Services License (AFSL) Number 492686.

Seneca operates a service which provides users with a platform for the management of investments (**Service**). You have applied to be able to access and use the Service.

This document sets out the general terms and conditions that you agree to comply with in relation to your access to and use of the Service (**General Terms**). These General Terms apply to you whether you are a Retail Client or Wholesale Client.

The Service may include additional components, such as a Managed Discretionary Account service (**MDA Service**) and an execution-only service (**Execution-Only Service**).

If you wish to access the MDA Service, you will be required to enter into a separate agreement related to the MDA Services (**MDA Contract**), and the terms of the MDA Contract will operate in conjunction with these General Terms. You may also be required to execute brokerage or other agreements.

Capitalised words are defined in clause 14 of these General Terms.

1.0

Service

1.1 Access and use of the Service

- (a) During the Term, provided you comply with your obligations under these General Terms, we will grant you access to the Service to:
 - (i) upload the Portfolio Information to the Service; and
 - (ii) obtain Reports based on such Portfolio Information (using the Service).
- (b) During the Term, provided you comply with your obligations under these General Terms, we will also:
 - (i) provide you with regular reports and transaction confirmations, as specified in Schedule 1; and
 - (ii) provide you with access to and use of the Documentation.
- (b) You acknowledge that you will only have access to or use of the Service once Seneca completes any necessary set up or implementation work and Seneca does not provide any guarantees or commitments regarding the timing for the completion of any such set up or implementation work.

1.2 No Additional Services

Seneca does not have any obligations under these General Terms to provide you with any services or assistance in relation to your access to and use of the Service, including consulting, customisation, implementation, training, integration or other services (**Additional Services**), except to the extent that they are provided in accordance with a separate agreement or any written agreement with you.

1.3 Portfolio information

You acknowledge and agree that Seneca does not control and is not responsible for the uploading or content of the Portfolio Information. Your ability to access Reports and the content of the Reports will be subject to you or your Authorised Persons uploading relevant, complete and accurate Portfolio Information to the Service and you or your Authorised Persons uploading relevant, complete and accurate Portfolio Information to the Service.

1.0 Continued

1.4 Procedures and requirements

You acknowledge and agree that access to and use of the Service by you will be subject to any specific procedures and requirements set out in Schedule 1. You also agree to comply and procure that

your Authorised Persons comply with the procedures specified in these General Terms, including but not limited to any obligations or other requirements imposed on you under Schedule 1.

2.0

Your responsibilities and obligations

During the Term, you must:

- (a) provide us, in a timely fashion, with any information, data and other documents that we reasonably require to provide the Services to you, including the Portfolio Information;
- (b) inform us of any changes to your circumstances which may be relevant to our delivery of the Services to you;
- (c) obtain all consents, permits or approvals necessary for you to access and use the Service as contemplated under these General Terms;
- (d) ensure that the use of the Service by you complies with all applicable laws, regulations or codes of conduct;
- (e) not permit any person other than your Authorised Persons to use the Service and ensure that those Authorised Persons, in using the Service, comply with these General Terms;
- (f) ensure that you maintain sufficient cleared funds in your account to satisfy any liabilities you may incur through your use of the Service, including payment for any Authorised Investments and any fees and costs associated with such Authorised Investments; and
- (g) only use and copy the Documentation to the extent necessary to use the Service in accordance with these General Terms.

3.0

Documentation

You must use only the most recent version of the Documentation provided by Seneca, and must follow Seneca's instructions regarding the return or destruction of any superseded versions of the Documentation. Seneca will ensure that the current version of Documentation is available for you to access online during the Term.

4.0

Term

These General Terms will commence on the Commencement Date and will continue until terminated in accordance with these General Terms.

5.0

Termination

5.1 Termination without cause

Subject to clauses 5.2 and 5.3, either party may terminate this agreement on 30 days' written notice.

5.2 Termination by Seneca

Seneca may, by written notice to you, terminate your access to and use of the Service with immediate effect if:

- (a) you fail to comply with any written notice issued by Seneca requiring you to remedy a breach, non-observance or non-performance of your obligations under these General Terms within seven days of receiving that notice from Seneca;
- (b) you commit a breach of these General Terms which is incapable of remedy;

- (c) you go into liquidation, are wound up, become insolvent or have a receiver appointed over all or any substantial part of its assets; or
- (d) you enter or propose to enter into any scheme of arrangement with your creditors.

5.3 Termination by you

You may, by notice in writing to us, terminate these General Terms if:

- (a) we suffer an Insolvency Event;
- (b) our license to provide financial services is suspended, revoked or cancelled; or
- (c) we are prevented from performing our obligations under these General Terms due to any circumstances or events beyond our reasonable control.

6.0

Consequences of termination

Upon termination taking effect:

- (a) you must immediately:
 - (i) cease using the Service;
 - (ii) return to Seneca any Documentation in your possession or control;
- (b) Seneca will either:
 - (i) terminate your access to all Portfolio Information, unless Seneca agrees with you to continue to provide access to, or reopen access to the legacy Portfolio Information; or
 - (ii) subject to clause 6(c), destroy any and all copies of your Portfolio Information held by Seneca in any form;

- (c) Seneca will, if requested by you prior to destruction, provide to you in a format reasonably requested by you, copies of your Portfolio Information held by Seneca prior to its destruction; and
- (d) Seneca may disable your access to the Service and the access of any Authorised Person to the Service.

Any termination will not affect our right to receive any accrued Fees, or our rights to indemnity or the confidentiality obligations under these General Terms.

7.0

Suspension

Seneca may, in its sole discretion and without prior notice, suspend (in whole or in part) or in any other way restrict your access to or use of the Service or any or all of your Authorised Persons access to or use of the Service if:

- (a) you fail to comply with your obligations under these General Terms; or
- (b) we reasonably believe that such suspension or restriction is necessary to protect the security or stability of the Service and/or prevent adverse impacts on other users of the Service.

8.0

Confidentiality

8.1 Confidentiality obligations

Where a party (Recipient) receives Confidential Information from the other party under these General Terms or otherwise in connection with the Services, the Recipient must:

- (a) keep the Confidential Information confidential;
- (b) subject to clause 8.2, not use, disclose or reproduce the Confidential Information for any purpose other than the purposes of these General Terms; and
- (c) establish and maintain effective security measures to safeguard the Confidential Information from unauthorised access, use, copying or disclosure.

8.2 Permitted disclosure

Notwithstanding clause 8.1, the Recipient may use or disclose Confidential Information to the extent necessary to:

- (a) comply with any law, binding directive of a regulator or a court order;
- (b) comply with the listing rules of any stock exchange on which its securities are listed; or
- (c) obtain professional advice in relation to matters arising under or in connection with these General Terms.

You acknowledge and agree that we may disclose information regarding your access to or use of the Service, your compliance with these General Terms or any issues encountered or other information relating to you accessing or using the Service to your Authorised Persons.

9.0

Intellectual Property

You acknowledge that nothing in these General Terms grants you any ownership of or rights in respect of the Intellectual Property in the Service, the Documentation or any improvements to the Service or Documentation created in connection with these General Terms. Any Intellectual Property in respect of the Service,

Documentation or Reports which is created by or vests in you during the Term is assigned to Seneca immediately upon the Intellectual Property being created or vesting in you and you agree to do all things and execute all documents as is reasonably necessary to effect such assignment.

10.0

Security of Service

Seneca will:

- (a) take all reasonable steps to ensure the security and safety of the Portfolio Information, including by implementing and maintaining data protection and virus screening procedures and technologies that are consistent with industry practice;
- (b) not, without your written consent use any Portfolio Information for any purpose or disclose it to any other person except as permitted under these General Terms or to the extent necessary for Seneca to perform its obligations under these General Terms; and
- (c) ensure that all Portfolio Information that is made available to third party recipients by Seneca as a result of the operation of the Service is released by Seneca only to the relevant recipient nominated by you and not to any other person.

Notwithstanding anything else in this Agreement, Seneca gives no guarantee that the Services will be free from viruses or that access to the Services will be uninterrupted.

11.0

Warranties

You acknowledge and agree that Seneca does not warrant or guarantee under these General Terms that:

- (a) your access or use of the Service will be uninterrupted or error free;
- (b) the Reports generated using the Service will be accurate, reliable or fit for any particular purpose; or
- (c) you will derive any benefits from the use of the Service.

12.0

Liability

12.1 Australian Consumer Law

Nothing in these General Terms should be interpreted as attempting to exclude, restrict or modify your rights to make a claim in respect of any consumer guarantees or other applicable provisions of the Australian Consumer Law.

12.2 Non PDH Services

If you acquire access to or use of the Service or any other services from Seneca and the relevant services are Non PDH Services, then Seneca's liability to you in relation to any claim relating access to or use of the Service or any other services under the Australian Consumer Law is limited, at Seneca's option to:

- (a) the supplying of the services again; or
- (b) the payment of the cost of having the services supplied again.

12.3 Liability capped

Notwithstanding clause 12.2 (and subject to clause 12.1), our maximum aggregate liability to you for any Loss or claims, however caused or arising, suffered in connection with these General Terms or your access to or use of the Service is limited to the total amount of the Fees payable by you to us in respect of the Service in the calendar year in which the events giving rise to the Loss or claim occurred.

12.0 *Continued*

12.4 Your indemnity

You must indemnify and keep Seneca indemnified against any Loss Seneca incurs which arises directly or indirectly out of:

- (a) any claims against Seneca in relation to the content, accuracy or availability of the Portfolio Information which arises as a result of you failing to comply with your obligations under these General Terms; or
- (b) any claims that the Portfolio Information or the use or processing of Portfolio Information by Seneca pursuant to these General Terms infringes the Intellectual Property or other similar rights of a third party or contravenes any applicable law;

- (c) provided that your liability under this clause 12.4 will be reduced to the extent the relevant Loss or claim arises as a result of a breach of these General Terms or negligent or unlawful act or omission of Seneca.

12.5 Consequential Loss

Neither party will be liable for any Consequential Loss (however caused) suffered or incurred by the other party in connection with these General Terms or your access to or use of the Service. This clause applies even if the party knew or ought to have known that the relevant Consequential Loss would be suffered.

13.0

General provisions

13.1 Governing law

These General Terms will be construed and interpreted in accordance with the laws of the state of Victoria, Australia and each party submits to the non-exclusive jurisdiction of courts of that jurisdiction.

13.2 Assignment

Other than as expressly permitted under these General Terms, the parties may not assign or otherwise deal with any of their rights or obligations under these General Terms without the prior written consent of the other party.

13.3 Force Majeure

If a party is prevented, hindered or delayed from performing its obligations under these General Terms by a Force Majeure Event, then as long as that situation continues, that party will be excused from performance of the obligation to the extent it is so prevented, hindered or delayed, and the time for performance of the obligation will be extended accordingly. If a party is affected by a Force Majeure Event it will immediately give the other party a notice of its occurrence and its effect or likely

effect, and use all reasonable endeavours to minimise the effect of the Force Majeure Event and to bring it to an end.

13.4 Waiver and variation

Subject to clause 13.6, these General Terms will not be varied except by a document in writing signed by the parties. No failure to exercise or delay in exercising any right given by or under these General Terms to a party constitutes a waiver and the party may still exercise that right in the future.

13.5 Severability

If any provision of these General Terms is invalid or not enforceable in accordance with its terms in any jurisdiction, it is to be read down, if possible, so as to be valid and enforceable and will otherwise be capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of these General Terms or affecting the validity or enforceability of that provision in any other jurisdiction.

13.0 *Continued*

13.6 Amendment

We may amend or vary these General Terms from time to time by providing you with written notice of the amendment or variation. By continuing to access and use the Service following such notice being provided, you agree to and will be bound by such amendment or variation.

14.0

Definitions and interpretation

14.1 Definitions

In these General Terms:

Australian Consumer Law means the provisions of Part IV of the Competition and Consumer Act 2010 (Cth).

Authorised Investments means any investments that you or your Authorised Persons instruct us to make through the Service, and includes:

- (a) securities;
- (b) managed funds;
- (c) debentures;
- (d) derivatives.

Authorised Persons means any person or persons appointed by you in writing, in the form required by us from time to time, to act on your behalf in relation to the Service.

Commencement Date means the date of execution of these General Terms.

Confidential Information means any information provided by a party to the other party (whether provided before or after the Commencement Date) in connection with Seneca making the Service available to you and you using the Service and includes:

- (a) the Documentation or any other information regarding the Service provided to you (which, for the avoidance of doubt, will be Confidential Information of Seneca); and

- (b) the Portfolio Information (which, for the avoidance of doubt, will be your Confidential Information);

but does not include information which is in or becomes part of the public domain, other than through a breach of these General Terms or of an obligation of confidence, or information which a party proves was independently acquired or developed without breaching any of the obligations set out in these General Terms.

Consequential Loss means loss beyond the normal measure of damages and includes indirect loss, loss of revenue, loss of reputation, loss of profits, loss of actual or anticipated savings, loss of bargain, lost opportunities, including opportunities to enter into arrangements with third parties, loss of use, cost of capital or costs of substitute goods, facilities or services.

Consumer has the meaning given in section 3 of the Australian Consumer Law.

Corporations Act means the Corporations Act 2001 (Cth).

Documentation means any manuals, guides, reference materials or other similar documents in any form made available by Seneca to you in connection with the Service.

Force Majeure Event means the occurrence of an event or circumstances beyond the reasonable control of the party affected by it, including war (declared or undeclared) civil commotion, military action, or an act of sabotage, strike, lockout or industrial action, storm, tempest, fire, flood,

14.0 *Continued*

earthquake or other natural calamity or an ongoing internet or telecommunications outage or impairment.

Intellectual Property includes all patents, designs, copyright, trade marks or circuit layout rights and any right to apply for the registration or grant of any of the above.

Insolvency Event means any one of the following events happening to us:

- (a) ceasing to carry on business;
- (b) becoming subject to any form of insolvency administration;
- (c) ceasing to be able to pay our debts as they become due;
- (d) any step being taken by a mortgagee to take possession or dispose of the whole or part of our assets, operations or business;
- (e) any step being taken to enter into any arrangement between us and our creditors; or
- (f) any step being taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a provisional liquidator, a liquidator, a controller, an administrator or other like person of the whole or part of our assets, operations or business.

Loss means any loss, liability, cost, claim, expense, damage, charge, penalty, outgoing or payment however arising, whether present, unascertained, immediate, future or contingent.

Non PDH Services means services which, for the purposes of the Australian Consumer Law, are not of a kind ordinarily acquired for personal, domestic or household use or consumption.

Portfolio means any Authorised Investments held in respect of you through the Service.

Portfolio Information means the investment data and other information about your Authorised Investments uploaded to the Service.

Retail Client has the same meaning as in the Corporations Act.

Term means the term of these General Terms, as set out in clause 4.

Wholesale Client has the same meaning as in the Corporations Act.

14.2 Interpretation

- (a) Clause headings are for guidance only.
- (b) References to clauses and Schedules are references to clauses of and Schedules to these General Terms. The Schedules and Annexures form part of these General Terms.
- (c) If the Client is two or more persons then:
 - (i) the liabilities of the relevant parties are joint and several;
 - (ii) a right given to those parties is a right given severally; and
 - (iii) a representation, warranty or undertaking made by those parties is made by them jointly and severally.
- (d) The Client is also referred to as “you”, “your” and “yours”.
- (e) Seneca is also referred to as “we”, “us”, or “ours”.