
TERMS AND CONDITIONS

The following are the general terms and conditions that will apply if you decide to acquire the S-Pay Service. In these terms and conditions, you are referred to as the 'Client' and 'we' are referred to as 'SuperChoice'. A User is a person accessing the S-Pay Service. A Contribution is your payment on behalf of your employee. Contribution Data is information concerning a Contribution. Data is any information concerning this Agreement and its performance, and includes Contribution Data. A reference to Agreement means these terms and conditions (as they may be varied at any time) and the contents of the FSG and PDS.

1 General Client/User Access Obligations

- 1.1 Client warrants it is authorised to enter into this agreement to receive the S-Pay Service ("Service").
- 1.2 Client must ensure that all its Users are fully authorised to access the Services.
- 1.3 Client must ensure that all its Users comply with all obligations and responsibilities imposed on it under these Terms and Conditions.
- 1.4 Client must ensure access to the site providing the S-Pay Services ("Site") and Services is undertaken in a secure manner.
- 1.5 Client must ensure at its own cost that its software and hardware is capable of accessing the Site and that they utilise a web browser which is compatible with the Site (current compatible browsers are Microsoft Internet Explorer 6 (or later) and Mozilla Firefox 3 (or later) and may be changed without notice).
- 1.6 Client is responsible for maintaining its own industry standard anti-virus and security measures to prevent unauthorised access to S-Pay Services and to avoid viruses affecting the Site.
- 1.7 Client must not, and must use reasonable endeavours to ensure Users do not, change, impair or damage the Site or SuperChoice's computer systems.

2 Availability/Access to the Site

- 2.1 SuperChoice will ensure that S-Pay is available for use by the Client 24 hours a day, 7 days a week, except for outages for routine or emergency maintenance.
- 2.2 Access to Users will not be provided unless a Valid Login and Password is entered.
- 2.3 Access to Users will not be provided if Client's registration has been suspended or cancelled.

3 Security of Login and Password

- 3.1 A User's Login and Password must be kept safe and secure.
- 3.2 Users must not disclose the Login or Password to any other person.
- 3.3 Users must not record their Login or Password in any way which would allow anyone else to identify the record as their Login or Password.
- 3.4 Users must not permit any other person to use their Login or Password.
- 3.5 Users must not select a Login or Password which is easily identifiable, such as a birth date or a street name.
- 3.6 Users must take care to log off the system and/or close the browser window (if necessary) to ensure unauthorised users do not obtain access to the system.
- 3.7 SuperChoice must be notified immediately if a record of Client's Login or Password is lost or stolen or if Client is aware or suspects that another person knows or has used its Login or Password. SuperChoice will then cancel the Login or Password and will arrange for Client to select a new one.
- 3.8 SuperChoice may cancel a Login or Password at any time without notice if SuperChoice believes that the Login or the Password is being misused or has been used to perform an unauthorised transaction.
- 3.9 SuperChoice takes no responsibility for any loss whatsoever where unauthorised parties have used Client's Login and Password.

4 Security of the Services

- 4.1 SuperChoice will utilise a range of security measures to help ensure the security of the S-Pay Service including:
- (a) Firewalls; and
 - (b) Data encryption (128 bit Secure Sockets Layer (SSL) protocol).
- 4.2 SuperChoice will comply with its security policy which complies with the Australian Information Security Management Policy (AS ISO/IEC 20000.1-2007). For more details see the Standards Australia website at www.standards.com.au.
- 4.3 SuperChoice cannot guarantee that any data transmission over the internet is totally secure.
- 4.4 If Client becomes aware of a breach or potential breach of security relating to the Site or the S-Pay Services, it must notify SuperChoice as soon as is reasonably possible and must take all steps available to stop the breach or prevent the breach from re-occurring.

5 Client's Obligations in order to Receive Services

- 5.1 It is the responsibility of the Client to undertake the following tasks in receiving the S-Pay Services:
- (a) Create User Accounts for staff to access the service.
 - (b) Create/Change/Update employer details.
 - (c) Authorise and make payments for contributions as applicable.
 - (d) Authorise and make payments for fees as applicable.
 - (e) Register new employees (members) including providing all required and optional data as applicable.
 - (f) Nominate the employee's Superannuation Fund.
 - (g) Allocate contribution types as applicable.
 - (h) Assign contribution amounts to employees as applicable.

- (i) Change/update/amend employee details as applicable.
- (j) Notification of exiting employees in a timely manner.
- (k) Confirm that any Fund chosen by an employee is a complying Fund.
- (l) Provide the unique Fund Identifiers (SPIN, ABN, Fund Name) as required to identify a Fund.
- (m) Appropriately consider any applicable alert messages provided in respect of any employee's chosen Superannuation Fund.
- (n) Promptly action any e-mail messages or return notifications provided.
- (o) Notify SuperChoice in advance if Client changes their bank account.
- (p) Ensure that Client's nominated bank account holds sufficient funds to meet the Contribution payment.

6 Contribution Services

- 6.1 Client may make Contributions through the S-Pay Service only by using the on-line facility, in which case, SuperChoice will provide the following services:
- (a) Based on the Contribution Data for a Contribution Period, it will identify the Superannuation Fund to be paid, the total amount payable to each Superannuation Fund, the employees for whom the Contributions are payable and their individual amounts.
 - (b) It will withdraw (via Direct Debit) the Contribution and any transaction fees from Client's Bank Account.
 - (c) If Contribution Data has been provided in full and without error or defect, it will arrange to reconcile matching Contribution Data to the Contribution payment including any transaction fees

- prior to the Cut-Off Time each Business Day (4.00pm).
- (d) If Contribution Data has not been provided in full, or has an error or defect, or there is a mismatch between the Contribution Data and the Contribution payment, it will endeavour to contact Client within 5 working days to resolve the error and either return the Contribution or prepare a re-submission of the Contribution.
- (e) Once there is an exact match between the Contribution Data and the Contribution payment including any transaction fees, within a maximum of 5 business days it will initiate payment of the Contribution to the account (EFT) or address (cheque) of each nominated Superannuation Fund, accompanied with either electronic remittance or paper that sets out the Contribution Data to enable the Superannuation Fund to reconcile the Contributions.
- (f) From the time we initiate payment SuperChoice will use reasonable endeavours to arrange payment of the Contribution to the account (EFT) or address (Cheque) of each nominated Superannuation Fund within 5 business Days.
- (g) If the Contribution or the corresponding Contribution Data is not received on a Business Day (i.e. weekend or public holiday in New South Wales), it is taken to be received on the next Business Day.
- 6.2 Client can only use the Service to make contributions to a Complying Superannuation Fund or Retirement Saving Account which is a fund that has elected to be regulated and complies with the *Superannuation Industry Supervision (SIS) Act, 1993*.
- 6.3 Client may need to comply with certain other requirements of a Superannuation Fund before it can make a Contribution to it. For example, it may be a requirement of some Superannuation Funds that a client (who is the employer) be registered with that Superannuation Fund before Contributions can be accepted. SuperChoice will publish messages identifying Superannuation Funds which require prior employer registration, but it is Client's responsibility to meet the registration requirements before contributing.
- 6.4 SuperChoice will use reasonable endeavours to arrange payment of the Contribution to the account (EFT) or address (cheque) of each nominated Superannuation Fund as soon as possible, but it may take up to 10 Business Days from the date SuperChoice receives the correct Contribution Data for the Fund to receive the Contribution.
- 7 Making contribution payments through the S-Pay Service**
- 7.1 By Direct Debit
- (a) A valid Direct Debit Request must be in place to provide the Service. If Client cancels or revokes the Direct Debit Request or Client's bank account is closed or not available for deduction, SuperChoice cannot provide the Service.
- (b) Client must make sure that its bank account remains open and it has sufficient funds to cover the Contribution payment including any transaction fees. If the financial institution dishonours the debit, it may charge the Client a dishonour fee.
- (c) Client must complete and send a new Direct Debit Request form to SuperChoice if it changes its bank account details.
- 8 Contribution Data Services - Obligations**
- 8.1 Client obligations
- (a) It is Client's obligation to provide Contribution Data and the Contribution payment in a timeframe that ensures the Client will meet its obligations under the

*Superannuation Guarantee
Administration Act (SGAA) 1992.*

Each quarter, employers are legally required to submit their Superannuation Guarantee Contributions to the receiving Superannuation Fund by the 28th of the month following the end of the quarter. Client must make contributions well before the 28th of the relevant quarter to ensure sufficient time is allowed for the clearing of monies to meet the deadlines. SuperChoice suggests making contributions at least 10 Business Days before the deadline.

- (b) If Client believes there has been a mistake in the Contribution Data, such as the amount of a Contribution and the corresponding bank transaction, it must notify SuperChoice immediately. Any delay in notifying SuperChoice may prejudice the ability to rectify the error.

8.2 SuperChoice obligations

- (a) SuperChoice will transfer correctly submitted Contribution Data to the relevant superannuation fund, so that it reaches the Fund within 10 Business Days of SuperChoice receiving the Contribution Data.
- (b) SuperChoice will notify the Client within 5 Business Days if it becomes aware of incorrectly supplied or inaccurate Contribution Data or if the Bank transaction fails to match the Contribution Data.
- (c) SuperChoice will make all reasonable endeavours but has no responsibility if incorrect Contribution Data is submitted by Client.
- (d) SuperChoice may, at any time and without notice, add or remove or make changes to the S-Pay Services to enhance or improve the Services where such changes may require Client to update or upgrade their internet browser to continue to access the Site.

9 Delayed Contributions

9.1 Delayed Contributions may occur when

- (a) The Contribution Data and Contribution are received on a weekend, public or bank holiday.
- (b) The Contribution Data (and Contribution) is received after the Cut-Off time on a Business Day.
- (c) Other circumstances identified below.

10 Unsuccessful and Mistaken Contributions

10.1 Submitted Contribution Data generally cannot be cancelled or changed except in the circumstances outlined below:

- (a) Contribution Data may not be promptly and successfully processed online if there is an error in the Contribution Data.
- (b) In limited circumstances Client may be able to correct an error and re-submit Contribution Data if the Contribution has not been processed).
- (c) Client must notify SuperChoice before 4.00pm (Cut-Off time) on the same day if it wishes to stop a Contribution.
- (d) If Client receives notice that a Contribution has been dishonoured (e.g. because of insufficient cleared funds in bank account), Client may be charged a dishonour fee by the bank and by SuperChoice in relation to the dishonour.
- (e) If a technical error prevents processing the Contribution (to the Superannuation Fund) SuperChoice will notify Client after receiving notice that the file has been rejected and either correct the technical errors or create a replacement Contribution. If the technical error cannot be

corrected, SuperChoice will notify Client immediately.

- (f) If any Contribution is not accepted or returned by the Superannuation Fund, and SuperChoice is unable to resolve the problem within 10 Business Days of receipt of the returned payment, it will refund the money to Client's bank account and notify Client of the error by email, in which event Client must resolve the issue with the Fund and re-submit the Contribution.

11 Data Maintenance

11.1 SuperChoice will:

- (a) maintain at least 7 years of historical data on-line at any point in time.
- (b) Use best endeavours to ensure that the Client has access to the Data at all times except during scheduled or emergency downtime.

12 Confidentiality of Data

- 12.1 SuperChoice is committed to the protection of confidential Data and will collect, record and disclose it only as outlined in its Privacy Policy, a copy of which the Client may obtain upon request.
- 12.2 Client agrees that SuperChoice may contact and liaise with third parties about Client's Data for the purpose of providing the S-Pay Service.
- 12.3 Client agrees that SuperChoice may use Client's Data to compile usage statistics where such statistical results do not include confidential Data or data which can be used to identify Client or employees.
- 12.4 SuperChoice may disclose Data:
 - (a) To relevant employees, its payment agent and to superannuation funds for the purposes of providing the S-Pay Service.
 - (b) To legal advisers, auditors and other consultants of either party

- (c) If it is required to disclose the information by law or a regulatory body or in connection with any legal proceedings.

13 Production of Data

- 13.1 If required by any law or any judicial, regulatory, administrative or similar body (whether foreign or Australian), SuperChoice will produce reports and information, answer enquiries, attend court and meetings and deal with any similar requests, provided that, where permitted by law, SuperChoice notifies Client prior to actioning any request. Client must pay to SuperChoice at SuperChoice's then current standard rates, its costs and expenses (including the costs of legal and other professional advice) which SuperChoice incurs.

14 Fees and Charges

- 14.1 Client must pay the fees set out in the PDS.
- 14.2 Transaction fees are paid at the same time as the Superannuation Contributions. A tax invoice will be provided online for these charges. All other fees are charged monthly in arrears.
- 14.3 If the fees are not expressed to be GST inclusive, the amount is increased by an amount equal to the GST payable.
- 14.4 Client acknowledges it may incur bank fees from its Bank and/or from SuperChoice for any Contributions payments that are dishonoured.
- 14.5 SuperChoice reserves the right to increase fees and charges with 30 days written notice.

15 Warranties

- 15.1 Where any law implies in this agreement any term that cannot be excluded or modified, such term is deemed to be included. However, subject to any law, SuperChoice's liability for breach of that term will be limited to the resupply of

services or payment of the Client's cost of the resupply of the services.

16 Limits to SuperChoice Liability

16.1 SuperChoice is not liable:

- (a) for any loss of funds resulting from incomplete or inaccurate Contribution Data or non-matching Contributions that directly lead to either delays or mistaken or unsuccessful transactions.
- (b) for any loss of funds or any interception of Data through any unauthorised access to Client's bank account(s) unless SuperChoice caused or contributed to such loss by any negligent or wilful act on the part of its employees or contractors.
- (c) for any loss due to charges being levied on Client by any Government agency for late payment of superannuation Contributions.

16.2 Client's Liability

- (a) Client must indemnify SuperChoice against any loss, liability or damage which SuperChoice may suffer arising from Client's or its User's failure to observe its obligations under this Agreement or arising from the Client or its User acting negligently or fraudulently when accessing the S-Pay Service.

17 Limit to Client's and SuperChoice's Liability

- 17.1 To the fullest extent permitted by law, in no circumstances will either Client or SuperChoice be liable for any special or indirect loss or damage (including consequential loss or loss of profits) .
- 17.2 SuperChoice's total liability for any loss or damage for which it may be liable is limited to \$2 million for any one event involving the provision of the Clearing House facility and \$1 million for any default in the provision of any other SuperChoice Service.

18 Termination

- 18.1 Either party may terminate this Agreement by giving 30 days notice in writing (including by email) to the other party.
- 18.2 SuperChoice may suspend the Services if the Client is in default of any of its obligations until such default is rectified.
- 18.3 The Client may suspend payment of fees if SuperChoice is in default of any of its obligations under this Agreement until such default is rectified.
- 18.4 On termination of this Agreement, and subject to payment of all reasonable fees and expenses calculated at SuperChoice's then standard rates, SuperChoice will provide the Client access to Client's Data.
- 18.5 On termination of this Agreement, the Client will return all hardcopies and delete all electronically stored copies of SuperChoice's documentation and materials.
- 18.6 The parties will meet their own expenses associated with discharging their obligations on termination of the Agreement.

19 Changes to the Agreement

- 19.1 SuperChoice may change this Agreement at its discretion with 30 days written notice. If Client does not agree to any such change, Client must immediately provide notice of intention to terminate the Agreement in accordance with clause 18.1.
- 19.2 Notice of any change may be given electronically (including by posting notices on the SuperChoice website).

20 General Provisions

- 20.1 The parties will be deemed to have entered into this Agreement when SuperChoice accepts the Client's Application to receive the S-Pay Service.
- 20.2 Entire Agreement: This Agreement, the Direct Debit Lodgement Form and the

Financial Services Guide and the Product Disclosure Statement constitute the entire agreement of the parties in respect of the S-Pay Service.

- 20.3 Agents/Contractors: SuperChoice may engage agents or subcontractors to assist it with performing its obligations under this Agreement without the prior consent of the Client. However, SuperChoice remains principally liable under the Agreement.
- 20.4 Assignment: Client may assign or novate all or any of its rights or obligations under this Agreement to a related company provided that it gives SuperChoice not less than 30 days prior written notice. An assignment or novation to a non-related company by the Client must be consented to by SuperChoice, which will not unreasonably withhold consent. SuperChoice may charge reasonable fees for any services provided as a consequence of any assignment or novation by the Client. SuperChoice may assign or novate its rights and/or obligations in this Agreement at any time upon notification on its website.
- 20.5 Jurisdiction and governing law: This Agreement is governed by the laws in force in New South Wales, the courts of which shall have non-exclusive jurisdiction to determine all matters arising from the Agreement and its performance.