



Ongoing Fee Arrangements, Fee Disclosure Statements & Ongoing Fee Consents Policy

Entity: Integrity Financial Planners (**INTEGRITY**)

ABN: 71 069 537 855

AFSL: 225051

Template Administration History		
Action (e.g. creation)	Date	Description/Reason (e.g. new precedent)
Creation	1.10.2021	New precedent
Amendment	1.6.2022	<p>*2.2 (d) an arrangement under which the only fee payable is an insurance commission on a premium (this is excluded under S9962A(4))</p> <p>*2.7 Paragraph 3 replace <i>“As a fee recipient, you must give the client an FDS between 1 July 2021 and 30 June 2022 (i.e the transition period) for an existing ongoing fee arrangement (see section 1637C). The day that you provide the client with an FDS during the transition period will become the anniversary day for that arrangement in each subsequent year (see section 1673C(6)).”</i> with <i>“The transitional arrangements for ongoing fee arrangements that were in force immediately before 1 July 2021 allowed the fee recipient to select a specific day to issue an FDS to the client between 1 July 2021 and 30 June 2022 (ie. the transition period) which became their anniversary date for that arrangement in each subsequent year (see section 1673C(6)).”</i></p> <p>*2.8 – Note 1 add: <i>“As this is a new process for product providers,”</i> Integrity understands that the product provider forms and processes will likely change from time to time and you will need to check that you have the right documents completed for clients.</p> <p>3.4 – remove <i>“For an FDS that is provided during the transition period, the FDS can include a reasonable estimate of the amount of fees and information about services for the last 60 days of the 12 month period ending immediately before the transition day, if the exact amount cannot be determined. An explanation of the method used to work out te same estimate (see section 962H(2B) must also be included (see Item 3.5 – A reasonable estimate’</i></p> <p>*Remove sections 3.8 to 3.12</p> <p>*4.2 last paragraph updated to <i>“The written consent will take the form determined by the product provider from which the fees will be deducted. To avoid delays or confusion, please contact the relevant provider and ensure you access the correct form. In addition, fee consents can be obtained from clients electronically. We expect that there will be further improvements and developments in this area.”</i></p> <p>*4.3 Update contact email from Integrity @iplan.com.au to Compliance@iplan.com.au</p> <p>*4.12 Remove</p> <p>*Add 7 Historical Transition Year Information (previously Sections 3.8 to 3.12)</p>

		<p>*Item 8 – Templates available was previously Item 7 to item 8</p> <p>*8.1 (iii) remove “<i>Fee Disclosure Statement: more than 12 months – for use during the Transition Period where the time between the new FDS and previous FDS is greater than 12 months.</i>”</p>
--	--	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Contents

1	Purpose of document	1
1.1	Background	1
1.2	Purpose and framework	1
1.3	Responsibility	1
1.4	What if your client is a wholesale client?	1
2	Ongoing fee arrangements	1
2.1	What is an ongoing fee arrangement?	1
2.2	What is not an ongoing fee arrangement?	2
2.3	Fixed term arrangements	2
2.4	What are the Ongoing Fee Arrangement (OFA) obligations?	3
2.5	What are the consequences of not complying with the OFA obligations?	3
2.6	When do the OFA obligations commence?	3
2.7	What is the 'anniversary day' for an ongoing fee arrangement?	3
2.8	How and when can a client renew an ongoing fee arrangement (OFA)?	4
2.9	What happens if the client does not renew the ongoing fee arrangement (OFA)?	5
2.10	When does an ongoing fee arrangement (OFA) end – Termination?	6
2.11	Consequences of termination	6
2.12	How can an existing client enter into a <i>new</i> ongoing fee arrangement (OFA)?	6
2.13	What records need to be kept?	7
2.14	Having a system in place to record fees charged and services provided	8
3	Fee disclosure statement obligations	8
3.1	When does an obligation to give an FDS arise?	8
3.2	Who must give an FDS	9
3.3	When must an FDS be provided?	9
3.4	What must be included in an FDS?	10
3.5	What ongoing fees do I need to disclose in an FDS for the upcoming year?	10
3.6	How should information be presented? Can you include extra information?	11
3.7	How must an FDS be given?	11
4	Ongoing Fee Consents	12
4.1	When do I need to obtain written consent?	12
4.2	What types of account do I need to obtain written consent for?	12
4.3	When can I arrange to deduct ongoing fees from a client's account?	12
4.4	Can someone else deduct fees from a client's account on my behalf?	13
4.5	When must I stop deducting ongoing fees from a client's account?	13
4.6	What happens when a client's written consent is withdrawn or varied?	13
4.7	When does the written consent cease to have effect?	14
4.8	What information must be included in the written consent?	14
4.9	Can I seek written consent electronically?	15
4.10	Does the written consent need to state the date when consent is given?	15
4.11	What happens if there is more than one account holder?	15
5	Assignment (transferring) Ongoing fee arrangements	16
5.1	FDS implications when assigning an ongoing fee arrangement	16
5.2	Renewal notice implications when assigning an ongoing fee arrangement	16
5.3	Future obligation is on the acquiring adviser	16
6	Fee for no service	17
6.1	What is a fee for no service?	17

6.2	Does an 'offer of review' entitle you to retain the fees charged?	17
6.3	What if the ongoing fee arrangement only requires you to 'offer a review'?	17
6.4	What evidence is necessary to demonstrate that a service has been provided?	17
6.5	What if the client paid 'bundled fees'?	18
7	Historical Transition Year Information	18
7.1	When did an FDS for an existing ongoing fee arrangement during the transition period need to be provided?	18
7.2	What is the transition day for an ongoing fee arrangement?	19
7.3	What information needed to be included in an FDS during the transition period?	19
7.4	What happens to an existing obligation to provide an FDS before 1 July 2021 during the transition period?	20
7.5	What happens if you changed the anniversary date of an existing arrangement during the transition period?	21
7.6	When did I need to obtain a client's written consent for ongoing fee arrangements that existed before 1 July 2021?	22
8	Templates available	23
8.1	Integrity templates	23

Intellectual Property and disclaimer

This document was produced in July 2021. All present and future rights to intellectual property in this document shall remain with Integrity Financial Planners Pty Ltd (**Integrity**). While Integrity endeavours to ensure the accuracy of this document, it does not accept any responsibility for the accuracy, completeness or currency of the material included in this publication and will not be liable for any loss or damage arising out of any use of, or reliance on, this document.

Version 3 – June 2022

References

Corporations Act 2001 Section 962H: Fee disclosure statements

ASIC Information Sheet 256: FAQs: Ongoing fee arrangements

1 Purpose of document

1.1 Background

- (a) The obligation to give clients a fee disclosure statement (FDS) annually where there is an ongoing fee arrangement has applied since 1 July 2012.
- (b) From 1 July 2021, two broad additional obligations apply where there is an ongoing fee arrangement. The obligations to seek to renew an ongoing fee arrangement annually and to obtain a client's written consent to deduct ongoing fees from financial products, which were introduced by the *Financial Sector Reform (Hayne Royal Commission Response No. 2) Act 2021*.

1.2 Purpose and framework

This policy (**Policy**) is developed by Integrity Financial Planners (**Licensee**) for the purposes of enabling the Licensee to meet its obligations under the Corporations Act and ASIC guidance.

1.3 Responsibility

A Responsible Manager (or a delegate with appropriate experience and seniority) will be responsible for ensuring that the Licensee:

- (a) meets the requirements of this Policy;
- (b) reviews this Policy not less than an annual basis (unless more immediate updates are required due to legislative or regulatory change).

1.4 What if your client is a wholesale client?

The Ongoing Fee Arrangements (OFA), Fee Disclosure Statements (FDS) and ongoing fee consent (OFC) obligations only apply where the client is a retail client. If your client is a wholesale client, these requirements do not apply to that client.

2 Ongoing fee arrangements

2.1 What is an ongoing fee arrangement?

An ongoing fee is any fee (however described or structured) that is paid under the terms of an ongoing fee arrangement between the fee recipient and the client, for an advice provider (the fee recipient) to provide ongoing personal advice to a retail client during a period of more than 12 months.

If a third party pays the fee recipient a fee (e.g. commissions), this will generally not be an ongoing fee, where it is paid under a commercial arrangement between a product issuer or platform operator and a fee recipient. However, commissions may also be considered ongoing fees if they are paid with the clear consent, or at the direction, of the client.

ASIC would not generally consider that a commission arrangement is entered into with the clear consent of, or at the direction of, the client merely because it has been disclosed in a Statement of Advice.

- (a) An ongoing fee arrangement exists when:
 - (i) a retail client is given personal advice;
 - (ii) the client enters into an arrangement with the adviser; and
 - (iii) the terms of the arrangement are such that the client will be charged an ongoing fee for a period of more than 12 months.

- (b) An ongoing fee arrangement is usually structured as follows:
 - (i) Member ongoing advice fees and advice;
 - (ii) Review fees – fixed fees or asset based fees.

2.2 What is not an ongoing fee arrangement?

- (a) initial advice fees (upfront advice fees);
- (b) advice implementation fees;
- (c) an upfront advice fee paid in instalments (this is excluded under s962A(3));
- (d) an arrangement under which the only fee payable is an insurance commission on a premium (this is excluded under s962A(4));
- (e) fixed term arrangements i.e. an arrangement for fees that are to be paid for a period of less than 12 months; and
- (f) an arrangement to the extent that the fee payable is a product fee (this is excluded under s962A(5) and reg 7.7A.10).

2.3 Fixed term arrangements

Where a fee recipient enters into an ongoing arrangement for a fixed term that does not exceed 12 months, this is determined to be a fixed term arrangements and therefore the ongoing fee arrangement obligations do not apply.

It is Integrity's considered position that if the *intention* is for the fee arrangement to continue beyond 12 months, this will be determined to be an ongoing fee arrangement. In determining the intention of a fee arrangement, the history of the arrangement will be examined. If the client has entered into 2 (two) or more fixed term arrangements, it will be considered if the arrangement is intended to be an ongoing fee arrangement rather than a fixed term arrangement.

Fixed term arrangements can be utilised for clients to align FDS dates with the business, if the business process is to issue FDSs in bulk at particular dates/periods during the year. For example, a new client seeks advice from an adviser in July, however the adviser issues FDSs on the 1st of February each year. To align the client with the businesses processes, a fixed

term arrangement is entered into describing the services that will be delivered and the cost for the period between July to 31st January.

2.4 What are the Ongoing Fee Arrangement (OFA) obligations?

A fee recipient who enters into an ongoing fee arrangement with a client must comply with the obligations in Division 3 of Part 7.7A of the *Corporations Act 2001*. These obligations include:

- (a) Seeking the client's renewal of the ongoing fee arrangement on an annual basis;
- (b) Giving the client an FDS annually; and
- (c) Obtaining the client's written consent before you deduct, arrange to deduct, or accept deductions of, ongoing fees from the client's account.

2.5 What are the consequences of not complying with the OFA obligations?

If a fee recipient fails to comply with the OFA obligations, the ongoing fee arrangement will terminate.

The fee recipient must not continue to charge ongoing fees after termination of the ongoing fee arrangement. Civil penalties apply to a breach of this requirement, with the value of one penalty unit being \$222 on or after 1 July 2020, with a maximum penalty of the greater of 5,000 penalty units (\$1.11 million) for individuals or three times the benefit obtained and detriment avoided. For companies the civil penalty for a breach of this requirement is the greater of 50,000 penalty units (currently \$11.1 million); three times the benefit obtained and detriment avoided; or 10% of annual turnover, capped at 2.5 million penalty units (currently \$555 million).

Failure to comply with the obligation to provide an FDS or the obligation not to deduct, or arrange to deduct, ongoing fees without the client's written consent are also subject to civil penalties.

2.6 When do the OFA obligations commence?

The obligations on fee recipients to renew an ongoing fee arrangement annually, to provide an FDS covering information for the upcoming year, and to obtain a client's written consent to deduct ongoing fees were introduced by the *Financial Sector Reform (Hayne Royal Commission Response No. 2) Act 2021*. These obligations commence from 1 July 2021 for all ongoing fee arrangements that are entered into before or after this date.

2.7 What is the 'anniversary day' for an ongoing fee arrangement?

The 'anniversary day' is defined in the law. It is the anniversary of the day on which the ongoing fee arrangement was entered into (see section 962G (3)).

For example, if the client signs an Authority to Proceed / Client Service Agreement / other relevant documentation to enter into an ongoing fee arrangement on 15 August 2021, then

the anniversary day for that arrangement will be 15 August for all future years. This will be the case even if the client begins paying fees and receiving services on, for example, 20 August 2021. If you have a specific date that you want the anniversary date to be on any given month, it is imperative that in the advice document or a Client/Ongoing Service Arrangement it is stipulated that services will commence on that specific date.

For all ongoing fee arrangements that are in force immediately before 1 July 2021, the *Financial Sector Reform (Hayne Royal Commission Response No. 2) Act 2021* introduced transitional arrangements for fee recipients in relation to providing FDS's.

The transitional arrangements for ongoing fee arrangements that were in force immediately before 1 July 2021 allowed the fee recipient to select a specific day to issue an FDS to the client between 1 July 2021 and 30 June 2022 (i.e. the transition period) which became their anniversary date for that arrangement in each subsequent year (see section 1673C(6)).

For example, if you provided a client an FDS on 2 July 2021 under the transition arrangements:

- The anniversary day for the ongoing fee arrangement will become 2 July for all future years; and
- Each FDS in the future will need to cover information for the period between 2 July to 1 July (i.e. the previous year) and from 2 July to 1 July (i.e. the upcoming year) (see 1673C(4)(b)).

As defined by law (see section 1673), the 'transition day' for an ongoing fee arrangement is the earlier of:

- The day that you give an FDS to the client; or
- The last day of the transition period (i.e. 30 June 2022).

The 'transition day' is relevant to determining the period of information that must be covered in an FDS given during the transition period.

If a fee recipient has entered into two or more separate ongoing fee arrangements with a client, there will be multiple anniversary days, and the obligation to provide an FDS will apply to each anniversary day separately. Integrity sees that this is a situation that will occur only very occasionally. If you believe you have a client who falls within this scenario, please seek further guidance from Integrity Compliance.

If a fee recipient wants to change the anniversary day for an ongoing fee arrangement, the fee recipient must cancel the existing arrangement in writing with the client, enter into a new ongoing fee arrangement with the client and notify the product provider of the updated ongoing fee if it is to be deducted from the product. As an example, this situation may occur if a client has not returned their consent for renewing the ongoing fee arrangement within the prescribed period (see Item 2.9).

2.8 How and when can a client renew an ongoing fee arrangement (OFA)?

A client may only renew the ongoing fee arrangement in writing and during the 'renewal period'.

The renewal period is defined in the law (see section 962L). It is a period of 120 days beginning on the anniversary day. For example, if the anniversary day is 1 July 2023, the client will need to respond in writing by 28 October 2023 to renew the arrangement.

Your clients may renew an ongoing fee arrangement electronically, so long as it is done in writing. For example, the client may:

- Reply to you via email or SMS confirming that they wish to renew their ongoing fee arrangement; or
- Click a check box on a webpage in response to a statement such as 'By ticking the box, you elect to renew the ongoing fee arrangement'; or
- Electronically signing the Renewal Section of the FDS and returning this to you via email or post.

Note: please check with the relevant product provider as to what form they will accept for ongoing consent. As this is a new process for product providers, Integrity understands that the product provider forms and processes will likely change from time to time and you will need to check that you have the right documents completed for clients.

Note: please ensure that you have adequate systems to capture the means above by which a client has renewed the ongoing fee arrangement with you. For example: how will an SMS message be recorded in your filing system e.g. Xplan/AdviserLogic/Xeppo?

2.9 What happens if the client does not renew the ongoing fee arrangement (OFA)?

If the client does not renew the ongoing fee arrangement during the renewal period (120 days from the anniversary day), the ongoing fee arrangement will terminate 30 days after the end of the renewal period (see section 962N).

For example, if the anniversary day is 1 July 2023, the client will need to respond in writing by 28 October 2023 to renew the arrangement. If they do not respond by this date, the ongoing fee arrangement will terminate on 27 November 2023 (i.e. 30 days after the end of the renewal period on 28 October 2023). If the client has not responded, you must notify the product provider immediately once 120 days from the anniversary date has passed. Should this occur, it is an Integrity policy that you write to your client and advise that fees will no longer be charged and services will no longer be provided.

If the client wishes to re-engage after 120 days from the anniversary date, a new Ongoing Service Arrangement needs to be entered into (Client Service Agreement) and effectively the anniversary date will now change to the date of the new arrangement, as per the effective date of the agreement.

Integrity understands that some product providers require a copy of the fee consent to be sent to them within 30 days of the client signing the document (or notifying that they wish to continue the arrangement), whereas others will allow up to 30 days from the end of the renewal period for the consent to be provided to them. Integrity advises that you forward

the client's ongoing fee consent to the product provider (where required) immediately once it has been received from the client.

2.10 When does an ongoing fee arrangement (OFA) end – Termination?

A client or a fee recipient (adviser) can end an ongoing fee arrangement at any time, in writing (see section 962E).

An ongoing fee arrangement can also come to an end if:

- a client does not renew the ongoing fee arrangement before the renewal period ends; or
- the fee recipient fails to comply with their OFA obligations (see sections 962F and 962FA).

If the ongoing fee arrangement terminates, no further fees can be charged under the arrangement and there is no obligation to continue to provide services to the client. As per Item 2.9, it is an Integrity policy that you write to your client and advise that fees will no longer be charged and services will no longer be provided.

2.11 Consequences of termination

- (a) It is the adviser's responsibility to ensure that ongoing advice fees cease on termination. This means that advisers need to have processes in place to ensure that their instructions to cease charging advice fees are executed and that any fees received after the date of termination of the arrangement are refunded;
- (b) If the fee received by the adviser is a lump sum fee paid annually for his or her services, depending on the time of termination, the adviser should consider refunding the portion of the fees that relate to services not yet provided;
- (c) The adviser must notify the client in writing that the ongoing fee arrangement has terminated and that service will no longer be provided.
- (d) If the period of time between the last FDS and the termination of the arrangement is less than 12 months, a FDS does not need to be provided for that period.

2.12 How can an existing client enter into a new ongoing fee arrangement (OFA)?

A new ongoing fee arrangement will generally be in place when both of the following conditions are met:

- The old arrangement is terminated and a new arrangement commences (these may occur on the same day);
- The client signs a new document (e.g. a letter of engagement or Client Service Agreement) to enter into the new arrangement and that document sets out the terms of the new arrangement.

After the old arrangement is terminated, you must stop charging ongoing fees under that arrangement. This includes notifying relevant third-party account providers that fees can no longer be deducted under the old arrangement. You are also not required to continue providing services under the old arrangement.

The date that the new ongoing fee arrangement commences will be the date specified in the agreement that the client signs, expressing their agreement to the terms of the arrangement. That date can be the same as the date the old arrangement terminated.

You must also obtain a new written consent to deduct fees under the new ongoing fee arrangement (see Item 4.1). This also involves notifying any third-party account providers of the termination of the previous written consent for the existing ongoing fee arrangement.

2.13 What records need to be kept?

The Financial Sector Reform (Hayne Royal Commission Response – Advice Fees) Regulations 2021 set out the compliance records that must be kept by fee recipients. These records can be kept electronically.

As required under the law, a fee recipient must keep the following records in relation to an FDS:

- Each FDS you have given to your clients, including the date when the FDS was given and how it was given (e.g. via email or post or online access);
- Any notification from a client to renew, not renew or terminate an ongoing fee arrangement, and the date on which the notification was given; and
- If an ongoing fee arrangement has been terminated, the date on which it terminated and the basis on which it terminated (see regulation 7.7A.11AA).

You must keep the following records in relation to a written consent:

- Each written consent given to you by a client, including the date when the consent was given (e.g. if the client provides their written consent by signing a box on a webpage, you can keep a time-stamped screenshot of that page to evidence the client’s written consent);
- Each notice to vary or withdraw a written consent given to you by a client, including:
 - The date you were given the notice, and
 - The date you confirmed you had received the notice
- Communications from you (e.g. emails, SMS and letters) about giving the third-party account provider:

- A copy of the written consent;
 - A copy of a notice to withdraw or vary the consent; and
 - Written notice of when the consent ceases; and
- Details of any arrangement between you and an account provider (see regulation 7.7A.11AA).

Records of electronic documents must also be kept. For example, you can keep an image of an SMS, the sender's name and date of receipt.

As the authorised representative of an AFSL, you must ensure that your AFSL (Integrity) has access to these records to allow for monitoring your compliance with your OFA obligations (see section 912A(1)(ca)).

All client records must be kept for a period of at least seven (7) years from the date that the client is recorded to no longer be a client.

Failure to comply with the record-keeping obligations for ongoing fee arrangements is a criminal offence (see section 962X(1)).

2.14 Having a system in place to record fees charged and services provided

- (a) Advisers are required to have systems and processes in place to track whether services promised have been delivered;
- (b) Advisers are required to periodically review the terms of their ongoing fee arrangements with clients to determine what services the client was charged for and what services were provided;
- (c) The licensee may periodically inspect or carry out checks to ensure the advisers have met the record keeping obligations and that these systems and processes are effective.

3 Fee disclosure statement obligations

3.1 When does an obligation to give an FDS arise?

- (a) The obligation to give an FDS only arises if an ongoing fee arrangement exists between a client and a licensee or its adviser.
- (b) As above, an ongoing fee arrangement exists when a licensee or its adviser gives personal advice to a retail client and the client enters into an arrangement with the licensee or adviser, the terms of which provide for the payment of a fee during a period of more than 12 months.

- (c) FDS obligations must be met for all retail clients who have entered into an ongoing fee arrangement. This includes both pre-FOFA clients and post FOFA clients.

3.2 Who must give an FDS

- (a) An FDS must be given by the 'fee recipient'. A fee recipient is:
 - (i) a licensee or an adviser under a licensee who enters into an ongoing fee arrangement with a client; or
 - (ii) if the rights of the person who entered into the ongoing fee arrangement have been assigned, the person who currently holds those rights (i.e. the assignee).

Note: An assignee is a licensee or an adviser under its licence who is assigned the rights under an ongoing fee arrangement of another licensee or an adviser under that licensee. An assignor is the licensee or the adviser under that licensee who assigns its rights to the assignee. This occurs when an adviser moves licensees and when client servicing rights are sold to another adviser. Unless and until the previous arrangements are terminated in writing with the clients and a new ongoing service arrangement is entered into, the adviser who has been assigned the rights must honour the service arrangements (see Item 5: *Assignment (transferring) Ongoing fee arrangements*).

- (b) Generally, the fee recipient is one of the Licensee, the adviser or the corporate authorised representative which is the adviser's business entity.
- (c) When the adviser is responsible for giving an FDS, the Licensee must monitor the adviser's compliance with the FDS obligations, in accordance with the licensee's general obligations under s912A(1)(ca).
- (d) The adviser may outsource some of its administrative or compliance functions under a commercial arrangement with a third-party agent. For example, an adviser may engage an administration provider to generate and provide FDS's on its behalf. However, the adviser cannot themselves transfer the actual obligation or liability to provide an FDS. The responsibility remains with the individual adviser to ensure that this obligation is met.

3.3 When must an FDS be provided?

As a fee recipient, you must give your clients an FDS no later than 60 days after the anniversary of the ongoing fee arrangement each year (see section 962G(1)).

For example, if the anniversary day is 1 July 2022, you can give the FDS to your client any time between 1 July 2022 and 30 August 2022 (i.e. 60 days after the anniversary day of 1 July 2022). These dates will remain fixed each year, unless the existing arrangement is terminated in writing and a new arrangement is entered into.

Note: The 'anniversary day' is the anniversary of the day that the client enters into an ongoing fee arrangement (see section 962G (3) and item 2.7 of this Policy). This means that you do not need to give your client an FDS when they first enter into an ongoing fee arrangement, but you do need to give your client an FDS for each subsequent year after that.

3.4 What must be included in an FDS?

- (a) An FDS is a statement in writing that includes information about the previous 12-month period of an ongoing fee arrangement: s962H. That 12-month period must end no more than 60 days before the statement is given to the client.
- (b) The following information must be included in an FDS:
 - (i) the amount (in Australian dollars) of each ongoing fee paid by the client under the ongoing fee arrangement in the previous year. An 'ongoing fee' is any fee payable under an ongoing fee arrangement: see s962B. The requirement to express the amount of each ongoing fee in Australian dollars (s962H) means that the fees must be stated as dollar amounts rather than, for example, as a percentage of funds under advice;
 - (ii) the amount of each ongoing fee your client will be required to pay under the arrangement during the upcoming year (see Item 3.5);
 - (iii) information about the services that the client received, and was entitled to receive, under the ongoing fee arrangement in the previous year (including from any previous fee recipient under the client's arrangement, if you have purchased a client's advice arrangements);
 - (iv) the services your client will be entitled to receive under the arrangement during the upcoming year;
 - (v) the ongoing fees your client will pay after the end of the upcoming year, but for services they are entitled to receive during the upcoming year; and
 - (vi) how to renew the arrangement (see section 962H).

3.5 What ongoing fees do I need to disclose in an FDS for the upcoming year?

The FDS must state the amount of each ongoing fee your client will be required to pay during the upcoming year (see section 962H(2A)(a)). The amount of ongoing fees must be in Australian dollars. For example, the anniversary day for an ongoing fee arrangement is 1 July. The client is entitled to receive a service between 1 July 2022 and 30 June 2023 (i.e. the upcoming year) and will need to pay an ongoing fee on 5 July 2023 for that service. The FDS for the period covering 1 July 2022 to 30 June 2023 will need to state that ongoing fee.

The FDS does not need to state an ongoing fee if the fee is for:

- the administration, management or operation of a financial product (e.g. a monthly account-keeping fee for a basic deposit product or an administration or investment fee charged by a superannuation trustee or a responsible entity of registered scheme); or
- intra-fund advice (see regulations 7.7A.11(1) and 7.7A.10A(3)).

A reasonable estimate

If the amount of an ongoing fee cannot be determined at the time of preparing the FDS (e.g. asset-based fees), the FDS must include:

- a reasonable estimate of the amount; and
- an explanation of the method used to work out the estimate (see section 962H(2B)).

A reasonable estimate should be based on all of the relevant information available to the fee recipient at the time the estimate is made. It should also reflect the fee recipient's most accurate account of the client's position at that time.

For example, when the fee being charged is an asset-based fee, the information could include:

- employer contributions that are expected to be made throughout the year to a client's superannuation fund;
- additional investments that may be made by a client based on the advice provided; and
- any known large withdrawals to be made during the following 12 months.

3.6 How should information be presented? Can you include extra information?

The FDS should be consumer-friendly, concise and easy to read.

The law does not prescribe the level of detail required in an FDS. However, in relation to services provided to the client, you must clearly distinguish between the services the client was entitled to receive and the services the client actually received in the previous year.

You may include information in the FDS which is additional to the information required by section 962H. However, any additional information should be kept separate from the required information.

3.7 How must an FDS be given?

- (a) An FDS must be provided in writing (see s962H(1)). The FDS can be given to the client using a range of media and technologies. For example, an adviser can provide a client with an FDS by:
- (i) giving the client a paper FDS personally;
 - (ii) sending a paper FDS to the client's postal address;
 - (iii) sending an electronic FDS by email, either in the body of the email or through an attachment; or
 - (iv) sending correspondence with a reference to a secure online portal where the FDS can be found.
- (b) You should agree to an appropriate form of communication with your clients, taking into account how your clients prefer to receive documents. If you wish to provide an

FDS to clients electronically, you will need to agree to this with the client (see ASIC guidance in *RG 221: Facilitating digital financial services disclosures*).

For the avoidance of doubt, an FDS cannot take the form of a video. This is because the law requires the FDS to be a statement in writing (see section 962H(1)).

4 Ongoing Fee Consents

4.1 When do I need to obtain written consent?

As a fee recipient, you must obtain the written consent of the account holder (i.e. your client) before you can deduct, arrange to deduct, or accept the payment of, fees under an ongoing fee arrangement (see sections 962R and 962S).

4.2 What types of account do I need to obtain written consent for?

The requirement to obtain written consent applies when:

- your client holds an account with you from which you intend to deduct ongoing fees under an ongoing fee arrangement (see section 962R), or
- your client holds an account with a third-party account provider (e.g. a superannuation trustee or responsible entity of a managed investment scheme) from which you intend to arrange to deduct ongoing fees under an ongoing fee arrangement (see section 962S).

This written consent requirement does not apply if your client's account from which you intend to deduct, or arrange to deduct, ongoing fees is an account linked to a credit card or is a basic deposit product: see sections 962R(1)(c) and 962S(1)(c).

The written consent will take the form determined by the product provider from which the fees will be deducted. To avoid delays or confusion, please contact the relevant provider and ensure you access the correct form. In addition, fee consents can be obtained from clients electronically. We expect that there will be further improvements and developments in this area.

4.3 When can I arrange to deduct ongoing fees from a client's account?

When a third-party account provider (e.g. a superannuation trustee or responsible entity) holds your client's account, you must not arrange to deduct fees from that account unless:

- you have obtained the client's written consent to arrange for the third-party account provider to deduct ongoing fees from their account;
- the written consent meets the requirements in [ASIC Corporations \(Consent to Deductions—Ongoing Fee Arrangements\) Instrument 2021/124](#); and
- you have given a copy of the client's written consent to the third-party account provider (see Item 4.2).

Deducting, arranging to deduct, or accepting payment of, fees from your client's account without obtaining written consent is subject to a civil penalty: see section 962R(4) and section 962S(5) and (8).

Note: once written consent has been obtained from the client, Integrity can provide you with a direct debit authority to deduct the agreed amount on your client's nominated bank account, credit or debit card, if this is the client's preferred method of payment. Contact compliance@iplan.com.au for the prescribed authority form.

4.4 Can someone else deduct fees from a client's account on my behalf?

Yes. If a third party is arranging a deduction of fees on behalf of the fee recipient as its agent, and the client has given consent to the fee recipient to arrange such a deduction, the third party can rely on the consent given to the fee recipient: see section 962S(2).

For example, if your client has given you their written consent, Integrity (as your AFSL) can act as your agent and rely on the written consent given to you.

4.5 When must I stop deducting ongoing fees from a client's account?

You must stop deducting, arranging to deduct, or accepting the payment of, ongoing fees from your client's account if the client's written consent has:

- been withdrawn;
- been varied in any way that does not allow for the deduction to be made from the account; or
- ceased to have effect because:
 - the consent has expired or been withdrawn; or
 - the ongoing fee arrangement has terminated (see Item 2.10): see sections 962U and 962V.

4.6 What happens when a client's written consent is withdrawn or varied?

Your client may withdraw or vary their consent at any time by giving you written notice (e.g. by email, text or any other written form): see section 962U.

You must within 10 business days of receiving this written notice:

- give written confirmation to the client that you received the notice; and
- if a copy of the consent was provided to a third-party account provider, give the account provider a copy of the notice.

If your client gives notice to the third-party account provider asking them to stop fees being deducted from their account, the third-party account provider should immediately stop deducting fees when they receive this notice. If the third-party account provider is a superannuation trustee, they will need to stop deducting fees from their member's account as part of their existing obligations.

You should have appropriate communication methods with the account provider(s) to ensure you are made aware in a timely manner when a client gives notice to an account provider.

Where the client holds accounts with multiple third-party account providers, you should consider your privacy obligations when passing on confidential information in the written consent to different account providers. If you are unsure of the privacy obligations and how they may apply in this situation, please contact Integrity Compliance.

4.7 When does the written consent cease to have effect?

Your client's written consent will cease to have effect 150 days after the anniversary day, unless your client:

- terminates the ongoing fee arrangement at an earlier date; or
- gives a new written consent in relation to the arrangement.

At the end of the 150-day period, you must:

- notify the account provider within 10 business days that the consent has ceased; and
- not continue to deduct, arrange to deduct, or accept the payment of, any further ongoing fees unless you have obtained a new written consent from the client: see section 962V.

If you accept payment of ongoing fees from an account provider after the client has withdrawn their consent, you have 10 business days from the date of payment to repay the amount into the client's account: see section 962S(9). If you do not repay the amount, the client will have rights to seek a refund of that amount in court: see section 1317GB.

4.8 What information must be included in the written consent?

The written consent you ask your client to complete must contain, at a minimum, the following information in [ASIC Corporations \(Consent to Deductions—Ongoing Fee Arrangements\) Instrument 2021/124](#):

- the name of the account holder(s) (i.e. your client(s));
- the name and contact details of the fee recipient (i.e. your name and contact details);
- an explanation of why you are seeking the client's consent;
- information about either:
 - the amount of ongoing fees that the client will pay during the upcoming year, or
 - if you cannot determine the exact amount, a reasonable estimate of the ongoing fee and the method you used to calculate the estimate;
- information about the frequency of ongoing fee deductions that the client will pay during the upcoming year;

- details about what accounts the fees will be deducted from and how much will be deducted out of each account;
- a statement about how long the consent will last;
- a statement to the effect that the client can vary or withdraw their written consent at any time; and
- a date indicating when the consent was given by the client.

The written consent must be worded and presented in a clear, concise and effective manner. Completing a product application form is not enough to satisfy the written consent requirement, unless the form meets the requirements in the ASIC instrument.

See ASIC's [example written consent form \(ongoing fees\)](#) for an example of a written consent. You can also refer to the [Explanatory Statement](#) to the ASIC instrument for applied examples and a detailed explanation of the information required in a written consent.

4.9 Can I seek written consent electronically?

Yes. You can seek written consent electronically (e.g. via email or on a webpage).

Your client can also sign the written consent electronically by, for example:

- clicking a check box on a webpage in response to a statement such as: 'By ticking the box, you consent to the charging of the ongoing fees that are set out in this document', or
- sending you their written consent via email with their electronic signature attached.

However, a client cannot give consent verbally (e.g. a voice recording or verbal confirmation). This is because the law requires written consent.

4.10 Does the written consent need to state the date when consent is given?

Yes. The written consent must include the date on which consent was given by your client. This could be done by including a date field in the written consent for the client to complete or time-stamping the written consent.

4.11 What happens if there is more than one account holder?

Where there is more than one account holder (e.g. a couple), all joint holders of the account must give the written consent every year.

5 Assignment (transferring) Ongoing fee arrangements

5.1 FDS implications when assigning an ongoing fee arrangement

- (a) If an ongoing fee arrangement has been assigned during the 12-month period covered by an FDS, the FDS must include information about:
 - (i) the fees paid to the assignor and the services received (or entitled to be received) by the client from the assignor; and
 - (ii) the fees paid to the current Adviser (i.e. the assignee) and the services received (or entitled to be received) by the client from the assignee during that 12-month period: s962H.

That is to say, if you have received, acquired or purchased a book of clients, the FDS needs to include the fees paid to and the services received by, the vendor AND, the fees paid to and received by you, as the new adviser as fee recipients under an ongoing fee arrangement. When an ongoing fee arrangement is assigned, assignees should ensure that they obtain the information that is required to be included in the next FDS. For example, assignees should consider including a provision in their agreement with the assignor that requires the assignor to provide this information.

- (b) Failure to comply with the content requirements for an FDS for a post-FOFA client will result in the termination of the ongoing fee arrangement: s962F. Accordingly, if an adviser is unable to comply with the content requirements for an FDS for a client, following the assignment of the client's ongoing fee arrangement, the Adviser should enter into a new ongoing fee arrangement with the client to avoid termination of the arrangement. In these circumstances, Advisers would only need to include information about the new ongoing fee arrangement in the FDS.

5.2 Renewal notice implications when assigning an ongoing fee arrangement

- (a) As above, if an adviser acquires a book of clients, the adviser must give the client a fee disclosure statement for the 12-month period leading up to the disclosure date;
- (b) For renewal of an ongoing fee arrangement, an ongoing fee arrangement that is transferred remains the same (i.e. same services, fees, renewal periods) when transferred from one adviser to another;
- (c) The adviser and the client may elect to terminate the assigned or transferred ongoing fee arrangement to commence a new ongoing fee arrangement.

5.3 Future obligation is on the acquiring adviser

The adviser who acquires the ongoing fee arrangements must obtain sufficient information about the clients from the selling adviser to ensure that he or she can comply with the ongoing FDS obligations.

6 Fee for no service

6.1 What is a fee for no service?

Fee for no service is the failure to deliver ongoing advice services to clients who were charged fees for those services. This typically occurs where an adviser fails to deliver an annual (or other periodic) advice review that was promised to a client.

Should it be determined that fee for no service has occurred, Integrity may be required to report the significant incident to ASIC under the Breach Reporting Obligations.

6.2 Does an 'offer of review' entitle you to retain the fees charged?

- (a) It is the licensee's view (and ASIC's view) that when a client has paid to receive an annual review, the adviser's 'mere offer' to review the client (but has not in fact carried out the review) will not satisfy the regulatory expectation that the promised financial services have provided 'efficiently, honestly and fairly' (See Info Sheet 232).
- (b) If a client did not receive the annual review that they were entitled to (and have paid for), the Licensee's (and ASIC's) expectation is that compensation needs to be paid to the client for the services charged but not delivered.

6.3 What if the ongoing fee arrangement only requires you to 'offer a review'?

If the ongoing fee arrangement specifically limits the adviser's obligation to 'the mere offer of a review', the licensee's expectation (and ASIC's expectation) is that the fees charged to the client should be commensurate with that level of service expected to be provided by the adviser.

For example, ASIC is unlikely to consider that a significant annual fee can be justified where the service in the ongoing fee arrangement is the 'mere offer' of a review. In these circumstances, it is unlikely that ASIC would consider such fees to be 'efficient, honest or fair' in the provision of financial services (Info Sheet 232).

The licensee expects advisers to review the service model to ensure that the services promised are commensurate with their value proposition to clients.

Under Standard 7 of the FASEA Code of Ethics, advisers have an ethical obligation and duty of care to their clients to ensure that the fees charged for the services provided are "*fair and reasonable, and represent value for money for the client*".

6.4 What evidence is necessary to demonstrate that a service has been provided?

- (a) The nature of the ongoing service agreement should determine the type of documentation to be kept;

- (b) If the ongoing fee arrangement includes an annual review, this would constitute personal advice. Therefore, the licensee expects the adviser to have either a Statement of Advice (SOA) or Record of Advice (ROA) on file to evidence the delivery of the annual review;
- (c) In the absence of an SOA or an ROA, the onus will be on the adviser to provide evidence to demonstrate that the services promised have been delivered;
- (d) Unless the licensee is otherwise satisfied that the promised services have been delivered, the licensee expects, in accordance with Info Sheet 232, that the fees charged for services not proven to have been delivered must be refunded back to the client in full.

6.5 What if the client paid 'bundled fees'?

- (a) If the adviser charges the client one ongoing fee that includes 'bundled or ancillary services' such as newsletters and invitation to seminars, market updates etc, ASIC's view is that these services are generally less valuable to a client than the annual review;
- (b) Accordingly, Integrity (consistent with ASIC's view) expects that where an annual review has been promised but not delivered, that the adviser will refund the full amount of the ongoing service arrangement fee rather than assigning particular values to each ancillary service;
- (c) Only in exceptional circumstances will Integrity consider apportioning fees to other substantive services that are covered by the 'bundled' ongoing service arrangement fee. Integrity will only consider partial refund of fees where the adviser can provide an evidence-based methodology for apportioning value to each service.

7 Historical Transition Year Information

7.1 When did an FDS for an existing ongoing fee arrangement during the transition period need to be provided?

For all ongoing fee arrangements that are in force immediately before 1 July 2021, the *Financial Sector Reform (Hayne Royal Commission Response No. 2) Act 2021* introduced transitional arrangements for fee recipients in relation to providing FDSs.

As a fee recipient, you had to give the client an FDS between 1 July 2021 and 30 June 2022 (i.e. the transition period) for an existing ongoing fee arrangement (see section 1673C). The FDS that you provided had to include the information outlined under "*section 3.4 - What must be included in an FDS?*" of this policy.

The day that you provided the client with an FDS during the transition period will become the anniversary day for that arrangement in each subsequent year (see section 1673C(6)).

For example, if you provided an FDS on 2 July 2021:

- The anniversary day for the ongoing fee arrangement will become 2 July for all future years; and
- Each FDS in the future will need to cover information for the period between 2 July and 1 July (i.e. the previous year) and from 2 July to 1 July (i.e. the upcoming year) (see section 1673C(4)(b)).

7.2 What is the transition day for an ongoing fee arrangement?

The ‘transition day’ for an ongoing fee arrangement is defined in the law (see section 1673).

It is the earlier of:

- The day that you gave an FDS to the client (during period 1/7/2021 & 30/6/2022 or
- The last day of the transition period (i.e. 30 June 2022).

The ‘transition day’ is relevant to determining the period of information that must be covered in an FDS given during the transition period (see items 7.3 & 7.4).

7.3 What information needed to be included in an FDS during the transition period?

An FDS that was provided during the transition period must comply with the usual information requirements for an FDS (see Item 3.4), including requirements about the amount of ongoing fees and the services to be provided under the ongoing fee arrangement (see section 1673C).

An FDS provided during the transition period must cover information for:

- The previous year – a 12-month period that ends just before the transition day for the ongoing fee arrangement (see Item 7.1); and
- The upcoming year – a 12-month period that begins on the transition day for the arrangement (see section 1673C(4)).

For example, if you gave the client an FDS on 1 July 2021, the information in the FDS must cover the periods:

- 1 July 2020 to 30 June 2021 for the previous year; and
- 1 July 2021 to 30 June 2022 for the upcoming year.

However, in relation to:

- Information about services – you could provide a reasonable estimate of services received during the period of 60 days ending immediately before the transition day (e.g. you can describe in general terms the services that the client is scheduled to receive but may or may not receive in the last 60 days); and

- Information about ongoing fees – you could provide a reasonable estimate of any amount of ongoing fees that relates to the period of 60 days ending immediately before the transition day (see regulation 7.7A.11(2)).

For information about ongoing fees, if you knew the actual amount of any ongoing fees, paid by the client during this 60-day period, this must be disclosed in the FDS. For example, if you know the actual ongoing fees paid by the client for 11 of the 12 months immediately before the transition day, you must disclose the actual ongoing fees in the FDS and provide a reasonable estimate of ongoing fees for the last month.

A reasonable estimate should be based on all of the relevant information available to the fee recipient at the time the estimate is made. It should also reflect the fee recipient's most accurate account of the client's position at that time (see Item 3.5).

There is no flexibility in the law in relation to these transitional arrangements. ASIC does not have any powers to modify the period of information that was to be covered in a transition FDS or make exemptions in relation to the transitional arrangements.

7.4 What happens to an existing obligation to provide an FDS before 1 July 2021 during the transition period?

Under former sections 962G and 962K of the Corporations Act, you had:

- A period of 60 days after the 'disclosure day' (i.e. the day when the obligation to provide an FDS is triggered) to provide an FDS to your client; and
- A period of 60 days after the renewal notice day to provide a renewal notice and an FDS to your client.

There will be circumstances where your obligation to provide an FDS and/or renewal notice is triggered, but not discharged, before the new ongoing fee arrangement reforms commenced on 1 July 2021. This is because the 60-day period you have to give the client an FDS and/or renewal notice under the previous law ends on or after 1 July 2021.

For example, if you have a disclosure day of 1 June 2021, the 60-day period will end on 31 July 2021 (i.e. after the reforms commence).

In these circumstances, you will only need to give your client one FDS during the transition period (see sections 1673D and 1673E).

In these circumstances, the FDS must:

- For previous years – include information about the fees charged and services provided to the client covering the period between the day the client received their latest FDS and the transition day (see section 1673D); and
- For the upcoming year – include information about fees to be charged and services the client is entitled to receive for the next 12 months after the transition day.

For example, if your obligation to give an FDS was triggered on 18 June 2021 (i.e. the 'disclosure day' under the previous law) but this obligation was not discharged before 1 July

2021 and you later provide the client an FDS on 13 September 2021 under the transition arrangements, that FDS had to include:

- For previous years – information about services already provided and fees already paid by the client in previous years:
 - The period of 12 months immediately before 13 September 2021 (i.e. 13 September 2020 to 12 September 2021); and
 - A further period of 86 days (i.e. 18 June 2020 to 12 September 2020). This is because the last FDS was given to the client on 18 June 2020 and covered the period from 18 June 2019 to 17 June 2020; and
- For the upcoming year – information about services the client is entitled to receive and fees to be paid by the client in the upcoming year for the period of 12 months starting on 13 September 2021 (i.e. 13 September 2021 to 12 September 2022). The anniversary day is 13 September for future years.

There is no flexibility in the law in relation to these transitional arrangements. ASIC does not have any powers to modify the period of information that must be covered in a transition FDS or make exemptions in relation to the transitional arrangements.

7.5 What happens if you changed the anniversary date of an existing arrangement during the transition period?

There will be circumstances where you changed the anniversary date for a client during the transition period. As the requirement required the date you issue an FDS during the transition period (1 July 2021 to 30 June 2022) to become the anniversary date for each period after this (unless you cancel and reset the service arrangement: see Item 2.7).

For example, if the client was previously issued an FDS for the period ending 8 August 2020 and you now wish to change the FDS issue date to 1 November 2021.

In these circumstances, you will only had to give your client one FDS during the transition period (see sections 1673D and 1673E).

In these circumstances, the FDS must:

- For previous years – include information about the fees charged and services provided to the client covering the period between the day the client received their latest FDS and the transition day (see section 1673D); and
- For the upcoming year – include information about fees to be charged and services the client is entitled to receive for the next 12 months after the transition day.

To cover the previous year, the FDS must include information about services already provided and fees already paid by the client in previous years:

- The period of 12 months immediately before 1 November 2021 (i.e. 1 November 2020 to 31 October 2021);
- A further period of 90 days (i.e. 9 August 2020 to 31 October 2020). This is because the last FDS covered the period from 9 August 2019 to 8 August 2020; and

- For the upcoming year – information about services the client is entitled to receive and fees to be paid by the client in the upcoming year for the period of 12 months starting on 1 November 2021 (i.e. 1 November 2021 to 31 October 2022). The anniversary day is 1 November for future years.

There is no flexibility in the law in relation to these transitional arrangements. ASIC does not have any powers to modify the period of information that must be covered in a transition FDS or make exemptions in relation to the transitional arrangements.

7.6 When did I need to obtain a client's written consent for ongoing fee arrangements that existed before 1 July 2021?

For ongoing fee arrangements in force immediately before 1 July 2021, you had to obtain written consent from your client before deducting, arranging to deduct, or accepting the deduction of, ongoing fees under the arrangement, prior to 1 July 2022: see sections 1673B and 1673F.

For example, if you had an ongoing fee arrangement in place with a client on 1 June 2021, you will need to obtain the client's written consent for that arrangement prior to 1 July 2022 onwards.

However, a client can withdraw and vary their consent at any time: see section 1673F(2).

8 Templates available

8.1 Integrity templates

In order to meet your obligations under this policy, Integrity have the following template documents available via our website (www.iplan.com.au).

- (i) Client Engagement Letter: outlining the free, prior and informed consent for clients to engage with the AR;
- (ii) Ongoing Service Agreement: detailing the ongoing fee arrangement including the services to be provided, the cost of the services and the engagement of all parties (this is a contractual agreement);
- (iii) Fee Disclosure Statement: standard FDS template