

LGNSW Workplace End User Terms

1 The Terms

1.1 What the Terms cover

These **Terms** are the terms on which we, in collaboration with the Head User, provide access to You via our website the 'LGNSW Workplace' subscription product (**Workplace**) which is hosted on the domain www.mybusiness.com.au (**Platform**).

1.2 Accessing Workplace as End User

We have entered into the Head User Terms with the Head User under which the Head User has purchased Workplace for and on behalf End Users nominated by the Head User.

These Terms apply to You as an End User accessing Workplace under the Head User's Workplace subscription pursuant to the Head User Terms.

As an End User, Your access to Workplace is paid for by the Head User in accordance with the Head User Terms.

1.3 Why You should read them

Please read these Terms carefully before You access Workplace. These Terms tell You how we provide access to Workplace to You as an End User, what to do if there is a problem as well as other important information about Your use of Workplace.

Breach of any of the Terms may, in our absolute discretion, result in Your use of the Platform and/or Workplace ceasing.

1.4 Changes to these Terms

These Terms may change from time to time. We will notify You of changes to these Terms by email. The continued use of the Platform or Workplace by You or Your Authorised Users after a change in these Terms is Your deemed acceptance of the changes.

1.5 When the Terms become binding on You

You agree that these Terms become binding on You upon You or Your Authorised User checking the 'tick box' on the Platform indicating that You agree to these Terms. You must ensure that Your Authorised Users comply with these Terms.

1.6 Other Terms applicable to You

By accessing the Platform (including to access Workplace) You also agree to the Website Terms of Use, which are accessible at <https://www.mybusiness.com.au/website-terms-of-use>.

Also, as per clauses 3.1 and 3.2, as a Member You will also be subject to and bound by the Membership Terms and Conditions.

2 Our relationship with You

2.1 How to contact us

You can contact us in relation to Workplace by email at

onlinesupport@mybusiness.com.au or by writing to us at: Attention: My Business, Level 7, 8 Chifley Square, Sydney NSW 2000.

2.2 How we may contact You

If we have to contact You we will do so using the email address that You provide us when agreeing to these Terms in accordance with clause 1.5..

3 Membership and accessing Workplace functionality

3.1 Accessing the benefits and functionality of the Workplace solution

You will be given access to Workplace from the date you are admitted as a Member (in a membership class other than the Honorary Member membership class). Membership is free. Your ongoing access to Workplace is conditional on You remaining a Member.

3.2 Becoming a Member

Once these Terms become binding on You in accordance with clause 1.5, we will send you an email containing instructions on how to become a Member for free. On acceptance of You as a Member You will be provided with login details for Your Member Account. The Membership Terms and Conditions, accessible at <https://www.mybusiness.com.au/membership-terms-and-conditions>, and the Constitution, accessible at <https://www.businessnsw.com/about/Governance/constitution>, apply to You on becoming a Member, whether or not You access Workplace.

3.3 Logging into Workplace

To access Workplace You must log into Your Member Account. You do so at the login page which is accessible by visiting www.mybusiness.com.au and clicking 'Login' at the top of the page and then clicking 'Login Name' and then selecting 'Workplace' from the drop down menu.

4 Providing Workplace to You

4.1 Benefits of Workplace

Benefits included in Workplace are set out on the Platform. Core benefits of Workplace include:

- a) access to a library of template workplace contracts, documents, policies and other resources created by the Head User (workplace documents);
- b) functionality that allows You to create bespoke workplace documents from the above library;
- c) functionality that allows You to add Your employees to the platform and electronically assign workplace documents to Your employees and obtain their signature on those documents;
- d) a repository for Your workplace documents;
- e) access to premium content; and
- f) access to toolkits to help You manage the employment relationship with employees.

4.2 Changes to Workplace

We may make changes to Workplace and/or the benefits associated with Workplace at any time in accordance with the Head User Terms.

4.3 Usage statistics

We collect de-identified statistical information based on Your and other Members' use of Workplace.

4.4 Account support

If You experience technical difficulty accessing or using Workplace You may contact us by email at onlinesupport@mybusiness.com.au. We will use our reasonable endeavours to resolve any issues promptly.

4.5 We are not responsible for delays outside our control

Some benefits or services of Workplace rely on the provision of goods or services by a third party. In such cases the delay in or failure to supply the content may be outside of our control and, if so, we will inform You of the delay and take steps to minimise the impact of such.

4.6 Cancellation of your Workplace access by us

We may cancel your access to Workplace:

- a) at any time by giving not less than 30 days' notice;
- b) if the Head User has removed You as an End User in accordance with the Head User Terms; or
- c) the Head User's subscription or access to Workplace is cancelled for any reason.

4.7 Cancellation of Your Workplace access by You

You can cancel Your access at any time by giving at least 30 days notice.

4.8 What happens to Data on termination of Your Workplace access

It is Your sole responsibility to download, transfer or copy (at Your cost) Your Data prior to the end of Your access to Workplace (and regardless of whether we or You cancel Your access). We may, in our discretion and without liability to You, permanently delete or cause to be permanently deleted any or all of Your Data on or after the date that is 30 days after the end of Your access.

5 Our responsibility for loss or damage

5.1 Breach of Terms

If we fail to comply with the Terms and that failure is responsible for loss or damage You suffer that is a foreseeable result of our breaking this contract or our failing to use reasonable care and skill we are liable to You, subject to clause 5.2, but we are not responsible for any loss or damage that is not foreseeable or for any consequential loss or damage. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time the contract was made, both we and You knew it might happen, for example, if You discussed it with us.

5.2 Our total liability

Our total liability to You, all End Users and all Authorised Users of You, the Head User and all End Users under or in connection with these Terms or Workplace is

limited to the fees or charges paid by the Head User.

5.3 Application of the Australian Consumer Law

We have certain obligations and You have certain rights under the Australian Consumer Law. We do not exclude or limit our liability to You where it would be unlawful for us to do so under that law or any other Australian law. Under the Australian Consumer Law, consumer guarantees apply in respect of goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption.

Pursuant to section 64A of the Australian Consumer Law, the following applies in respect of any of the goods or services supplied under the Terms which are not of a kind ordinarily acquired for personal, domestic or household use or consumption (unless You establish that our reliance on the following would not be fair and reasonable). Liability for breach of a guarantee conferred by the Australian Consumer Law, other than those conferred by sections 51 to 53 of the Australian Consumer Law, is limited:

- a) in the case of goods, to any one of the following as determined by us:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the goods repaired; and
- b) in the case of services, to any one of the following as determined by us:
 - (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.

6 Rules about Your use of Workplace

6.1 Internal business use only

You and Your Authorised Users may only use the Platform and Workplace for Your internal business purposes. You must not permit users other than Authorised Users to access Workplace.

6.2 Prohibited activities

You and Your Authorised Users must not change, add to, remove, deface, hack or otherwise interfere with the operation of the Platform or any material or content displayed on the Platform (i.e. including Workplace) unless You are authorised by us in writing to do so.

You and Your Authorised Users must not:

- a) repackage or resell any aspect of the functionality of the Platform or Workplace;
- b) impersonate another person on Workplace;
- c) provide inaccurate information about Your identity on Workplace;
- d) do anything unlawful, misleading, fraudulent or for an illegal or unauthorised purpose;
- e) interfere with or impair the operation of the Platform or Workplace or any other

- individual's legitimate use of Workplace;
- f) use or attempt to use any automated computer program (e.g. a bot or web scraper) to access Workplace including by integrating all or a part of
 - g) access Workplace's functionality through an API;
 - h) enter, upload or post any content to Workplace that is bullying, harassing, defamatory, objectionable or explicit in nature;
 - i) attempt to buy, sell or transfer Your access to Workplace or login details to another person;
 - j) post private or confidential information about Yourself or any other person;
 - k) allow an individual to access the Platform or Workplace with another individual's login details; or
 - l) allow any person under the age of 18 years to access Workplace or the Platform;
 - m) use Workplace to violate any other person's rights, including intellectual property or moral rights.

6.3 Not used

6.4 Indemnity

You indemnify us against any loss, cost, claim, expense, damage or liability incurred by, or third party claim brought against, us, in either case arising from any act or omission of Yours or an Authorised User that is in breach of these Terms, negligent, unlawful or misleading or deceptive.

7 Availability and downtime

We will use our reasonable endeavours to ensure the Platform and Workplace is accessible at all times. However, from time to time either or both of the Platform or Workplace may not be accessible or may suffer service degradation due to scheduled maintenance such as software patches, platform upgrades and configuration changes, disaster recovery operations and/or failures or service degradation of third party systems outside the Platform infrastructure.

8 Content and intellectual property

8.1 Content on Workplace is not professional advice

Content on or available via the Platform, including content in Workplace and other Products, has been developed by the Head User and either been reviewed by the Industrial Relations team at the Head User or is an industry standard resource. This content does not constitute legal, financial or business advice, is not intended as a substitute for and should not be relied on as such. You should seek professional legal, financial or business advice (as appropriate) in relation to Your business' circumstances.

8.2 Who owns the intellectual property?

Unless otherwise noted, all intellectual property rights in software and content in Workplace and any source code in the Platform, any content or copy displayed on the Platform and the Company logos are either:

- (a) our property;

- (b) the property of our licensors; or
- (c) the property of the Head User.

You agree not to reproduce, transmit, distribute, disseminate, sell or re-sell, publish, broadcast or circulate materials comprising any of the Workplace content or any of the Platform including any of our intellectual property, the intellectual property of our licensors or the intellectual property of the Head User without express prior written consent of that party. Your right to use the workplace documents is strictly limited to use for Your own business purposes and only with respect to the relationship (as contemplated by the relevant document) between Your business and Your Authorised Users.

8.3 Intellectual property rights in content

For Workplace (and all Products on the Platform) we and/or, as applicable, our licensees and/or the Head User reserve all intellectual property rights in such including in relation to the content.

8.4 Third party websites

Workplace and/or the Platform and digital content accessible or downloadable from the Platform may contain links to other websites operated, controlled or produced by third parties. Unless otherwise indicated, we do not control, endorse, sponsor or approve any such third party websites or their content. We do not provide any warranty or take any responsibility for any aspect of those websites or their content.

9 Your privacy and other Data matters

We are subject to and will comply with the Privacy Act and our Privacy Policy which is accessible at <https://www.mybusiness.com.au/privacy-policy>.

By accessing Workplace or the Platform or providing any personal information to us You acknowledge that:

- (a) we will collect, use and disclose Your personal information (as operator of the Platform and provider of Workplace) in accordance with our Privacy Policy; and
- (b) Your personal information and other Data may be disclosed to SmartComms Pty Ltd ABN 31 110 278 521 (**SmartComms**) who provide the technological functionality of Workplace on the Platform;
- (c) SmartComms may disclose Your personal information and other Data to SmartComms' related companies, contractors providing services to SmartComms and to other third-party service providers (such as cloud hosting service providers and service providers that assist SmartComms with providing support services to customers, managing customer data (setting up accounts to access the Platform) and administrative and finance related functions SmartComms uses in conducting its business. Some of these third parties (and SmartComms related companies) may be located overseas including UK, Ireland and the U.S. Further information about how SmartComms handles personal information can be found in SmartComms' Privacy Policy available at: <https://www.smartcommunications.com/privacy-policy/>.

10 Other terms

10.1 Nobody else has any rights under the Terms

These Terms are between You and us. No other person has any rights to enforce any of its terms.

10.2 Even if we delay in enforcing these Terms we can still enforce them later

If we do not insist immediately that You do anything You are required to do under these Terms, or if we delay in taking steps against You in respect of Your breaching these Terms, that does not mean that You do not have to do those things and it will not prevent us taking steps against You at a later date.

10.3 Which law applies to these Terms and where may legal proceedings be brought?

These Terms are governed by the laws applicable in the State of New South Wales. Both You and we are subject to the jurisdiction of the courts of the State of New South Wales.

Should a dispute, controversy or claim arise between You and us out of, relating to or in connection with these Terms, both parties must first negotiate in good faith to resolve the dispute. If (and only if) the dispute is not resolved after 15 Business Days of negotiation either party may submit the dispute to arbitration at the Australian Disputes Centre (**ADC**). The arbitration will be conducted in Sydney in accordance with the ADC Rules for Domestic Arbitration operating at the time the dispute is referred to ADC (**ADC Rules**). The ADC Rules are hereby incorporated into the Terms.

Nothing in this clause 10.3 prevents either You or us from seeking urgent equitable relief before an appropriate court.

10.4 Entire agreement

These Terms constitute the entire agreement between the parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter. The parties further agree that all prior agreements and arrangements relating to, or connected with, the HR Advance product and any associated services are terminated with effect from the date these Terms become binding on you in accordance with clause 1.5.

10.5 Severability

A term or part of a term of these Terms that is illegal or unenforceable may be severed from these Terms and the remaining terms or parts of the terms of these Terms continue in force.

11 Definitions

In these Terms, unless the context otherwise requires:

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Authorised Users means Your Employees and includes the Employee of Yours who is authorised to operate Your Member Account under the 'Admin Management' panel of the 'Portal Setting' on the Platform.

Business Day means a weekday that is not a public holiday in the State of New South Wales.

Business Hours means 8.30am to 5.00pm (Sydney time) on a Business Day.

Company, we, us or our means NSW Business Chamber Limited (ABN 63 000 014 504) whether we trade under the trading name 'My Business', 'Business NSW' or another trading name.

Constitution means the constitution of the Company.

Data means any information, contracts, documents or other data You create or store on or through the Platform.

Employee means an employee, officer or partner of You.

End Users means those entities (whether an individual, body corporate or otherwise), including You, for whom the Head User has purchased access to Workplace under the Head User Terms.

Head User means the person specified in Schedule 1 as the Head User.

Head User Terms means the terms governing the use, access to and purchase of Workplace and the Platform by the Head User on behalf of End Users.

Member means an entity (whether an individual, body corporate or otherwise) that, under and in accordance with the terms of our Membership Terms and Conditions accessible at <https://www.mybusiness.com.au/w-advice-line-fair-use-policy> and the Constitution accessible at

<https://www.businessnsw.com/about/Governance/constitution>, is a member of the Company and has a Member Account.

Member Account means the account on the Platform associated with a Membership interest.

Membership means the status of being a Member.

Platform has the meaning given to that term in clause 1.1.

Privacy Act means the *Privacy Act 1988* (Cth).

Product means any product and/or service that we offer to You for purchase on the Platform and includes Workplace.

Subscription Period means the subscription period specified in Schedule 1 commencing on the commencement date of the Head User's subscription to Workplace specified in Schedule 1.

Workplace has the meaning given to that term in clause 1.1.

You means you, the End User that has agreed to these Terms in accordance with clause 1.5.

Schedule 1

My Business Details	My Business (ABN 63 000 014 504) Address: Level 7, 8 Chifley Square, Sydney NSW 2000 Email: onlinesupport@mybusiness.com.au
Head User	Name: Local Government NSW (ABN 49853913882) Address: Level 8, 28 Margaret Street, Sydney NSW 2000 Email: Industrial@lgnsw.org.au
Commencement Date of Head User's Subscription to Workplace	1 August 2023
Head User's Subscription Period	12 months (renewing automatically on each anniversary of the Commencement Date unless cancelled in accordance with the Head User Terms)

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