

My Business Workplace Professional Terms

1 The Terms

1.1 What the Terms cover

These **Terms** are the terms on which we sell access to the 'My Business Workplace Professional' subscription product (**Workplace Professional**) which is hosted on the domain mybusiness.com.au (**Platform**).

Please refer to clause 13 for definitions of all capitalised terms not otherwise defined in the other clauses of these Terms.

1.2 Why you should read these Terms and when they become binding

Please read these Terms carefully before you purchase Workplace Professional. These Terms tell you the terms and conditions on which we sell you the Workplace Professional subscription, what to do if there is a problem as well as other important information about your use of Workplace Professional.

These Terms will become binding on you upon You or an 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.

Breach of any of the Terms may, in our absolute discretion, result in your use of the Platform and/or Workplace Professional (including your licence to use such) ceasing.

1.3 Changes to these Terms

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

1.4 Other Terms applicable to you

By accessing the Platform, Purchasing or using Workplace Professional you also agree to the Website Terms of Use, which are accessible at <https://www.mybusiness.com.au/website-terms-of-use>, whether or not you purchase Workplace Professional or any other products.

Also, as per clauses 3.3, 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 an Order by email at onlinesupport@mybusiness.com.au or by writing to us at:

Attention: My Business, Level 7, 8 Chifley Square 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 1.2.

3 Purchasing and accessing Workplace Professional

3.1 The steps to follow to purchase and access Workplace Professional

Set out below are the steps you need to follow to purchase and access Workplace Professional:

Step 1: We will email you a link to the webpage where you can agree to these Terms.

Step 2: Agree to these Terms via the link to the webpage we send you in the email referred to in Step 1.

Step 3: Unless already a Member, become a Member for free in accordance with clause 3.3.

Step 4: Following your admission as a Member, we will email you onboarding instructions that explain how you and your Authorised Users can access your Workplace Professional account.

Please contact us by email at onlinesupport@mybusiness.com.au if you have not received any email or other communication from us in accordance with the above steps.

3.2 Accessing the benefits and functionality of the Workplace Professional solution

You must be admitted as, and remain, a Member (in a membership class other than the Honorary Member membership class) to access the benefits or functionality of Workplace Professional.

3.3 Becoming a Member

You can apply to become a Member and open a Member Account by visiting <https://www.mybusiness.com.au> and clicking 'Join for Free' at the top of the page and then following the prompts to complete the membership application process. 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 purchase Workplace Professional.

3.4 Logging into Workplace Professional

To access Workplace Professional 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 'Login Name' and then selecting 'Workplace' from the drop down menu.

4 Your use of Workplace Professional

4.1 Licence of Workplace Professional

When you purchase Workplace Professional you acquire a revocable, non-exclusive, non-transferable Licence for the duration of the Licence Term to:

- (a) access to a library of template workplace contracts, documents and policies created by workplace lawyers and experts (**Templates**) and ability to complete required 'details' or other variable fields for an individual to create a finalised document for that individual for a single Internal Use (**Finalised Document**);
- (b) engage with functionality that allows you to download the Templates and create a bespoke/tailored workplace document from the library of Templates for a

specific individual to create a finalised document for that individual and for a single Internal Use (**Bespoke Documents**);

- (c) use the Finalised Documents and Bespoke Documents for single Internal Use for the Licence Term and use, distribute and/or sell Finalised Documents and/or Bespoke Documents for the purpose and individual those documents were created for. However, you may not:
- i. after the expiry of the Licence Term, use any of the Templates, Finalised Documents or Bespoke Documents or any part of them for any purpose other than that for the individual who and purpose which it was initially created or otherwise sell, transform or modify any of them for any other use or purpose; or
 - ii. copy, distribute and/or sell any Templates, Finalised Documents or Bespoke Documents or any part of them after the expiry of the Licence Term;

however, for the avoidance of doubt, you and your clients may retain a copy of the Finalised Document and/or Bespoke Document executed by the parties (including by Employees or the employees of your clients) for the sole purposes of retaining it as a record of the contract or amending that document to reflect a change in the contract between the same parties.

- (d) access a repository for your (and your clients') Finalised Documents; and
- (e) access to toolkits to help you manage the employment relationship with your employees and your clients' employees.

4.2 Licence Term

The Licence and the rights granted to you under the Licence continue for the Licence Term. For the avoidance of doubt, all of your rights under the Licence (except as expressly stated in the Terms) end at the end of the Licence Term.

4.3 Changes to Workplace Professional

At any time we may make minor changes to Workplace Professional, the benefits associated with Workplace Professional and/or the Licence:

- (a) to improve Workplace Professional to be more useful to customers in general; or
- (b) to update Workplace Professional so it continues to accurately reflect relevant laws and regulatory requirements, which may change over time.

However, we will not remove the Licence inclusions set out in clause 4.1 from Workplace Professional without:

- (a) a reasonable corresponding adjustment in your favour (e.g. lowered pricing); or
- (b) giving you at least fourteen days' notice of the removal.

4.4 Usage statistics

We collect de-identified statistical information based on your and other customers' use of Workplace Professional.

4.5 Account support

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

4.6 We are not responsible for delays outside our control

Some benefits or services of Workplace Professional 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. Provided we do this we will not be liable for delays or failure to deliver caused by the event but, if there is a risk of failure to deliver or substantial delay, you may contact us to cancel your purchase of Workplace Professional and receive a refund of the value of the benefit or service you have paid for but not yet received.

4.7 Cancellation of your Workplace Professional subscription by us without cause

We may cancel your subscription to Workplace Professional and therefore the Licence without cause and at any time by giving not less than 30 days' notice. In such event, your subscription and Licence will end at the end of the notice period. Where we cancel your subscription in accordance with this clause 4.7, you will receive a refund of that portion of any payment you have made that relates to the period after the end of the notice period.

4.8 Cancellation of your Workplace Professional subscription by you

Your Workplace Professional subscription subsists for a minimum term of one year, unless otherwise cancelled or terminated in accordance with the Terms. While you can cancel your subscription and elect to withdraw your access to Workplace Professional at any time by providing at least 30 days notice by way of email to onlinesupport@mybusiness.com.au. Your access to and the Licence will cease on and from the end of your notice period. You will not be entitled to any refund in respect of any unexpired portion of the Initial Term or your then current Subscription Period.

4.9 Cancellation of your Workplace Profession subscription by us with cause

Should we develop a reasonable suspicion that you are engaging in any prohibited activities outlined in clause 7.2 below or are otherwise in breach of the Licence, we may in our sole discretion (i) exercise our audit rights as per clause 8 to satisfy ourselves in respect of such suspicions or (ii) immediately terminate your Workplace Professional subscription and the Licence by notice in writing without any refund of your Subscription Fee or other payments made in relation to your use of Workplace Professional.

4.10 What happens to Data on termination of your Workplace Professional subscription

It is your sole responsibility to download, transfer or copy (at your cost) your Data prior to the end of your subscription to Workplace Professional (and regardless of whether we or you cancel your subscription) or termination of the Licence. 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 subscription cancellation or termination.

5 Price and payment

5.1 Annual Subscription

Subject to this clause, Workplace Professional is an annual subscription Product. The initial term of your subscription (**Initial Term**) will commence on the date that you agree to these Terms in accordance with clause 1.2 (**Start Date**) and will end on the anniversary of the Commencement Date that falls immediately after the Start Date (**Initial Term Expiry Date**). Your subscription will automatically renew for the Subscription Period on the Initial Term Expiry Date and thereafter on each anniversary of that date unless we or you have cancelled your subscription in accordance with these Terms.

5.2 Subscription Fee

- a) The annual subscription fee for your Workplace Professional subscription is payable in advance and is equal to the amount of the annual subscription fee you pay for your HR Advance Professional subscription as at the date you agree to these Terms in accordance with clause 1.2 or otherwise specified in the Order Form (**Subscription Fee**). The Subscription Fee may be varied from time to time in accordance with these Terms.
- b) You agree that any subscription fee you have paid in advance for your HR Advance Professional subscription that relates to the period after the Start Date will be credited to your Workplace Professional account and applied in payment of the Subscription Fee for the Initial Term.
- c) If, during the Initial Term or a subsequent Subscription Period (**Relevant Period**):
 - iii. the number of Authorised Users is increased (in accordance with clause 5.5) such that a higher Subscription Fee applies, then:
 1. the Subscription Fee for the remaining portion of the Relevant Period will be increased pro rata based on that higher Subscription Fee; and
 2. the Subscription Fee for subsequent Subscription Periods will be that higher Subscription Fee; or
 - iv. the number of Authorised Users is decreased (in accordance with clause 5.5) such that a lower Subscription Fee applies, the lower Subscription Fee will take effect at the end of the Relevant Period.

5.3 Payment of Subscription Fee

- a) We will issue you with an invoice for the Subscription Fee at the beginning of each Subscription Period and for any increase to the Subscription Fee following any notice given under clause 5.5.
- b) You must pay any invoice for the Subscription Fee, or any increase to the Subscription Fee, by electronic funds transfer or credit card within 30 days of the date of the invoice.

5.4 Price changes

We may change the Subscription Fee or pricing model for Workplace Professional from time to time by giving you at least 60 days notice. Any change in price will take effect at the end of the Initial Term or your current Subscription Period (as applicable) in which notice is given.

5.5 Changing the number of Authorised Users

If you wish to change the number or identity of Authorised Users during the Initial Term or a Subscription Period, you must provide at least 14 days written notice of:

- a) the full name and email address of any new Authorised User that is to be given access to Workplace Professional under your subscription and the date on which their access is to commence; or
- b) the full name and email address of any existing Authorised User who is to no longer have access to Workplace Professional under your subscription and the date on which their access is to terminate.

6 Our responsibility for loss or damage

6.1 Our liability to you

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 breaching the Terms or our failing to

use reasonable care and skill we are liable to you but, subject to clause 6.2, we are not responsible or liable for any loss or damage that (i) is not foreseeable, (ii) is consequential loss or damage, (iii) arises from your use of Workplace Professional outside the terms of the Licence or (iv) is for any use in respect of Bespoke Documents. 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.

Where we are liable under the Terms, our total aggregate liability to you under these Terms, in negligence and/or otherwise, is limited to the fees or charges paid by you for Workplace Professional.

6.2 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 Orders 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.

7 Rules about your use of Workplace Professional

7.1 Internal business and client use only

Unless otherwise specifically agreed and expressly stated in the Order Form, you may only use Workplace Professional for single Internal Uses and strictly in accordance with the Licence.

You must not permit individuals other than your Authorised User(s) and Employees to access Workplace Professional and then only up to the number specified in the Order Form or permitted for your account.

Wherever you sell, distribute or otherwise provide or make available Finalised Documents or Bespoke Documents to clients, you must oblige in a written agreement with your clients to not re-sell, distribute, re-use or otherwise make available such documents (or any part of them) other than to provide a copy of the relevant document to the individual to whom it relates.

7.2 Prohibited activities

You must not, and must ensure that your Authorised User(s) and Employees that use your Workplace Professional subscription do not attempt to or 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 Professional) unless you are authorised by us in writing to do so. You, Authorised Users and Employees using Workplace Professional must not:

- (a) impersonate another person on Workplace Professional or otherwise use another person's login details to access the Platform or Workplace Professional. Each login is unique to and is only to be used by/assigned to one Authorised User or Employee and sharing of logins is prohibited;
- (b) sell, distribute or otherwise make available to others the Templates;
- (c) provide inaccurate information about your identity on Workplace Professional;
- (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 Professional or any other individual's legitimate use of Workplace Professional;
- (f) use or attempt to use any automated computer program (e.g. a bot or web scraper) to access Workplace Professional including by integrating all or a part of Workplace Professional's functionality through an API;
- (g) enter, upload or post any content to Workplace Professional that is bullying, harassing, defamatory, objectionable or explicit in nature;
- (h) attempt to buy, sell or transfer your access to Workplace Professional or login details to another person;
- (i) post private or confidential information about yourself or any other person; or
- (j) use Workplace Professional to violate any other person's rights, including intellectual property or moral rights.

7.3 Indemnity

You indemnify us against any loss, claim, expense, damage or liability incurred by, or third party claim brought against, us, in either case arising from (i) a Template, Bespoke Document or Finalised Document and (ii) any act or omission of yours or an Authorised User that is in breach of these Terms, negligent, unlawful or misleading or deceptive. You further indemnify us on such basis should your use of Workplace Professional breach the terms of the Licence or extend beyond the Licence Term.

8 Audit Rights

On written request from us you must:

- (a) verify to us in writing that your use of Workplace Professional has been in accordance with the Licence;
- (b) permit us (or an agent on our behalf) access to inspect your files, computer processors, equipment and facilities under your control, wherever situated, and grant us right of access as necessary or appropriate so that we (or our agent) may ensure your compliance with these Terms and the Licence; and
- (c) at your cost, provide us with all reasonable assistance in connection with any audit.

9 Availability and downtime

We will use our reasonable endeavours to ensure that Workplace Professional is accessible, accurate and uninterrupted at all times. However, from time to time either or both of the Platform or Workplace Professional 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.

10 Content and intellectual property

10.1 Content on Workplace Professional is not professional advice

Content on or available in Workplace Professional including the Templates, Finalised Documents, Bespoke Documents and/or other Products, 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' or clients' circumstances.

10.2 Who owns the intellectual property?

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

- (a) our property; or
- (b) the property of our licensors.

Beyond the express rights granted to you under the Licence for the Licence Term, you agree not to reproduce, transmit, distribute, disseminate, sell or re-sell, publish, broadcast or circulate materials comprising of any of the Workplace Professional content or any of the Platform including any of our intellectual property or the intellectual property of our licensors without our express prior written consent.

10.3 Intellectual property rights in content

For Workplace Professional (and all documents generated using Workplace Professional and Products on the Platform), except as expressly granted in the Licence for the Licence Term, we and/or, as applicable, our licensors reserve all intellectual property rights in such including in relation to the content.

10.4 Third party websites

Workplace Professional 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.

11 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://mybusiness.com.au/privacy-policy>.

By accessing Workplace Professional 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 Professional) 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 Professional 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/>.

12 Other terms

12.1 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.

12.2 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 or the Licence, 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.

12.3 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 12.3 prevents either you or us from seeking urgent equitable relief before an appropriate court.

12.4 Entire agreement

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

12.5 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.

13 Definitions

In these Terms, unless the context otherwise requires:

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

Authorised User means an Employee of yours who you have nominated as being authorised to operate your Member / Workplace Professional Account on your behalf.

Bespoke Document has the meaning given to that term in clause 4.1.

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.

Commencement Date means the commencement date of your subscription to the HR Advance Professional product.

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, contractor or representative of yours.

Finalised Document has the meaning given to that term in clause 4.1.

Initial Term has the meaning given in clause 5.1.

Internal Use refers to a use permitted by the Licence for the purpose of using a Template to create a Finalised Document or Bespoke Document for a specified individual which document is intended to be executed by that individual whether for an Employee or the employee of a client but does not include the re-use, re-sale or distribution of those documents or any part of them for another individual.

Licence refers to the licence associated with your subscription to Workplace Professional to do those things outlined in clause 4.1 for the Licence Term.

Licence Term refers to the period commencing on the date you agree to these Terms in accordance with clause 1.2 and ending on the date on which your subscription and Licence of Workplace Professional expires or is otherwise cancelled in accordance with these Terms.

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/membership-terms-and-conditions> 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 your Membership.

Membership means the status of being a Member.

Order Form means the order form (if any) we have issued to you that sets out the particular details relating to your subscription and Licence of Workplace Professional (eg number of Authorised Users, Subscription Fee and any special terms or conditions) (as may be varied by the parties' agreement).

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 Professional.

Subscription Fee has the meaning given in clause 5.2.

Subscription Period means the period of 12 months commencing on the Initial Term Expiry Date and each anniversary of that date.

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

You means you as the licensee under the Licence (ie the purchaser of the Workplace Professional subscription) and your Authorised Users, as the case may be.

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