

# Standard Terms & Conditions of Business

1. These standard terms and conditions are to be read with our engagement letter to you dated \*\*\*\*\*. They apply to all services that we perform for you that are described in that letter (called “**the Services**”). Together, the letter and these terms are called “**this Agreement**”. If the two documents are inconsistent, the terms in the engagement letter overrule these standard terms - unless the engagement letter specifically says that these terms overrule the letter.

## 2. DEFINITIONS

- a) This “Agreement” these standard terms and conditions and the “Engagement letter”
- b) “ATO” means the Australian Taxation Office;
- c) “BAS” means Business Activity Statement
- d) “Business” means the enterprise, whether for profit or not, operated by You for which the Services are being provided.
- e) “Client Page” means the page on our website set up for you that requires a unique username and password to access the page.
- f) The “Engagement letter” means the letter to you dated \*\*\*\*\*
- g) “Fair Work” means the is the national workplace relations system created by the *Fair Work Act 2009* (Cth)
- h) GST has the meaning given to that term in the A New Tax System (Goods and Services Tax) Act 1999.
- i) “Services” means all services that we perform for you that are described in the Engagement letter;
- j) “You” or “Your” together and severally the entity referred to in the Engagement letter and if the entity is an incorporated entity the directors of that entity;
- k) “Us”, “We” and “Our” means Anytime Anywhere Bookkeeping, a Division of The Business Physician Pty Limited (ABN 40 105 938 225),
- l) words in the singular include the plural meaning and words in the plural include the singular meaning;
- m) use of any gender includes the other genders;
- n) a person includes a firm, partnership unincorporated association, corporation and a government or statutory body or authority;

## 3. OUR OBLIGATIONS

- a) We must use all reasonable commercial efforts to complete the Services described in the engagement letter within the set time. We will perform the Services with due care, competence and diligence, however the quality of our Services will depend on input from you.

- b) We will act ethically and in accordance with all relevant professional codes of conduct at all times during the course of the assignment.
- c) We will keep you informed of progress during the course of undertaking the work and promptly advise you of any issues that could potentially expand the scope of the engagement or the time required to complete it.

#### 4. YOUR OBLIGATIONS

You must instruct us fully and, in a timely fashion, give us each of the following (as they are ordinarily reasonably required to perform the Services):

- a) information – we are entitled to rely on the accuracy of that information without independently verifying it. That is so, whether the information is provided by you, your representatives, or your advisers;
- b) We will not audit or review your financial statements, or any other accounting documents and information you provide, in accordance with generally accepted auditing standards. Accordingly, we ask that you not in any manner refer to this as an audit or review.
- c) access - to files, records and information technology systems, to premises and to people (whether management or staff) with relevant skills and experiences;
- d) resources - you must provide (and designate to the assignment) all resources that are reasonably necessary to ensure timely approval, development and sign-off of all project plans, specifications, accounts and deliverables.
- e) You are responsible for adopting sound accounting policies, for maintaining an adequate and efficient accounting system, for safeguarding assets, for authorizing transactions, for retaining supporting documentation for those transactions, and for complying with a system of internal controls that will, among other things, help assure the preparation of proper financial statements.
- f) In addition, you are responsible for identifying and ensuring that the entity complies with applicable laws and regulations.
- g) It is a requirement that you must hold copies of all relevant documentation in compliance with the ATO standards.
- h) It is a requirement by the ATO that ABNs of suppliers be checked by you at least once a year to ensure that they are valid.
- i) A requirement of law is that you will be provided with an authorisation for all lodgements required by the ATO including BAS lodgement, Payment Summaries and TPAR reports (if applicable). Lodgement of all forms will follow our receipt of that authorisation. Email authorisation is acceptable. Failure to lodge on time can incur a fine and this will be your responsibility to pay if the authorisation has not been received by us.
- j) You authorise us to contact your tax agent via email and phone as required.
- k) All relevant documentation and information required to allow us to prepare and produce financial reporting to comply with legislative requirements must be received 14 days prior to due lodgement dates. We will not be liable for any penalties if documentation and information has not been provided.

- l) You must keep us informed of your current business details including address, phone and email address. We are engaged and authorised to work with your business by the people nominated by you and any changes to your personnel and their respective authorisations that change the performance of our work for you should be advised to us.
- m) The responsibility for reviewing final reports and/or work rests with you. You will not be charged to correct errors which are clearly our fault, but revisions performed at your request may require discussion on any time incurred.

## **5. RESPONSIBILITY FOR BOOKKEEPING RECORDS**

- a) Responsibility for the maintenance of business records rests with you, this includes security of those records and prevention against fraud. It is important to remember that you are personally responsible for the information contained in any statutory return and that you must retain all necessary supporting documentation to substantiate the transactions.
- b) We have discussed and agreed on the requirement for business records, including primary source documents, to be retained by you. We have discussed your expectations as to our involvement in the verification that such records are accurate, correct and being maintained.
- c) It is also important to state that as a BAS Agent/Bookkeeper, if we are advised in writing by yourself that you have copies of the invoices and the GST is applicable, we will process on the basis that you have the correct records.
- d) While we will perform local backups of bookkeeping work for our own records, you should ensure all your business electronic data is backed up securely.

## **6. DELAYS**

We will not be liable for any failure or delay in performing the Services if that failure or delay arises from anything beyond its control - including the untimely performance by you of your obligations. In addition, we are entitled to review our fees and, if the delay is substantial, terminate the agreement.

## **7. FEES & EXPENSES**

- a) We will bill you in arrears on a monthly basis. In addition to our fees you agree to pay:
  - i) all reasonable expenses including (but not limited to) travel, meals and accommodation; and
  - ii) any tax or other charge imposed on us (now or in the future) in relation to any transactions arising in connection with, or as an outcome of, this agreement including (but not limited to) a goods and services tax.
- b) We are entitled to review fees quoted, if you do not proceed with the engagement within 60 days of the engagement letter, also if we are still performing the Services - including any related services - more than 12 months from commencement.

## 8. PAYMENT

- a) You must pay fees and expenses within 14 days of the billing date. We reserve the right to perform no further work for you until all outstanding accounts are paid in full.
- b) If you have any queries relating to our invoice, we ask that you bring this to our attention within 7 days of invoice receipt.
- c) Invoices unpaid 30 days past the billing date may be deemed delinquent, and are subject to an interest charge at a comparison rate of 10% per annum.
- d) We reserve the right to suspend our services or to withdraw from this engagement in the event that any of our invoices are deemed delinquent.
- e) In the event that any collection action is required to collect unpaid balances due us, you agree to reimburse us for our costs of collection, including legal fees.

## 9. RIGHT OF LIEN

We have a right of lien on records and business data, that is, we reserve the right to hold records and data against any outstanding debts. Note this will only apply to records and data that has been worked on but for which payment is outstanding.

## 10. PAYROLL MATTERS

- a) Where we are engaged to establish the payroll systems based on the payroll information provided to us we will implement and maintain the payroll based on this information.
- b) It is agreed, unless expressly agreed in writing otherwise, that we are not engaged to interpret and apply the Fair Work or other legislative provisions to your Business.

## 11. TERMINATION

- a) You and Us are both able to end this agreement by either of us giving to the other 30 days written notice of our respective intention to end the agreement.
- b) If we elect to terminate our services for nonpayment, or for other reason provided for in this letter, our engagement will be deemed to have been completed upon written notification of termination, even if we have not completed our report.
- c) You will be obligated to compensate us for work performed through to the date of termination.

## 12. CONFIDENTIALITY

- a) Both You and Us agree to take reasonable steps to maintain (within our respective organisations) the confidentiality of any proprietary or confidential information of the other.
- b) If you wish to provide a third party with copies of Our reports, letters, information or advice, then We reserves the right to:
  - i) set the terms on which those copies are given or used; or

- ii) require the third party to enter into a direct relationship with us.

### 13. INTELLECTUAL PROPERTY RIGHTS

- a) We will not acquire any ownership rights over any information provided to it by you or your representatives or advisers.
- b) When you have paid all amounts owing to Us in relation to the Services (and related services), We assign to you all copyright (and other intellectual property rights) to all reports, written advice and other deliverables (except software) we have provided. However, you grant to Us a non-exclusive, irrevocable, royalty free licence to use, copy, modify and exploit those deliverables so long as doing so would not disclose any of your confidential information.
- c) We (and our vendors and subcontractors) retain:
  - i) as confidential information the processes, ideas, concepts and techniques developed in the course of providing the Services; and
  - ii) all copyright and other intellectual property rights in:
    - data, designs, models, methodologies, analysis frameworks, leading practices, specifications and other elements of the deliverables which were owned or developed by Us (or our vendors or sub-contractors) before, or independently from, the Services; and
    - all tools (and any enhancement, improvement or other derivative of those tools) including but not limited to software and working papers (whether or not these are supplied to you) used by Us (or our subcontractors) in performing the Services.

### 14. INDEMNITY FOR LIABILITY TO THIRD PARTIES

- a) You agree to indemnify Us against all liabilities, claims, costs or expenses (including legal fees and disbursements) incurred by Us in respect of any third party claim which is related to, arises out of, or is in any way associated with, this Engagement.
- b) However, the indemnity does not apply to any costs, charges and expenses in respect of any matters which are finally determined to have resulted from Our negligent, wrongful or wilful acts or omissions.

### 15. EXCLUSIONS AND LIMITATIONS OF LIABILITY

- a) If the *Competition and Consumer Act 2010 (Cth) The Australian Consumer Law* (or any other legislative provision) prohibits the restriction, modification or exclusion of any statutory condition, warranty, guarantee, right, remedy or other benefit, then this clause does not restrict, modify or exclude it.
- b) You agree that for all loss or damage sustained by you in relation to this agreement (including interest and costs), We is only liable to the extent of its fees rendered for providing the Services.
- c) This
  - i) applies to all liability - whether (without limitation) for negligence or for breach of section 18 of The Australian Consumer Law; and
  - ii) is modified, or expanded on in this clause.

- d) You agree that We may, in our absolute discretion, choose either to re-supply the Services, or to pay you the cost of having the Services re-supplied if:
- iii) the price of the Services is no more than \$40,000; and
  - iv) the Services are not of a kind ordinarily acquired for personal, domestic or household use; and
  - Division 1 of Part 3-2 of *The Australian Consumer Law* applies to this agreement and Anytime Anywhere Bookkeeping breaches any term implied by that Act; and
  - it is fair and reasonable for Anytime Anywhere Bookkeeping to make that choice.
- e) We are not liable:
- i) for any processing deficiency (in any system) that is caused (in whole or in part) by input data that contains any date that is ambiguous as to the year, or is otherwise inaccurate;
  - ii) for any defect or deficiency in any system or service that is not developed or provided by Us under this agreement. That includes (without limitation) your production and legacy systems and systems that receive data from systems produced by Us; and
  - iii) to the extent that you are responsible for an act or omission that contributed to your loss.
- f) Paragraphs (f) and (g) of this Clause only apply to the extent that paragraphs (a), (b) and (c) do not apply. Where the Professional Standards Act 1994 (NSW) and Accountants' Limitation of Liability Scheme apply, if the reasonable cost of the Services Anytime Anywhere Bookkeeping supplies:
- i) is less than \$100,000, the total liability of Anytime Anywhere Bookkeeping partners and employees to you is limited to \$2,000,000; or
  - ii) is \$100,000 or more, the total liability of Anytime Anywhere Bookkeeping partners and employees to you is limited to 10 times that cost up to a maximum of \$20 million.
- Should you require further information on the operation of the Scheme in relation to this agreement, please ask us to provide you with information before completing this contract.
- g) In jurisdictions where the *Professional Standards Act* does not apply then the parties agree that The Business Physician's liability is limited as if the act applied.

## 11. GOVERNING LAW & JURISDICTION

All aspects of the Services and the Agreement are governed by, and construed in accordance with, the laws of the state or territory of the state of New South Wales. Both you and Us irrevocably submit to the exclusive jurisdiction of the Courts of the state of New South Wales.

## 12. SEVERANCE

If any provision of this agreement is found to be illegal, unenforceable or otherwise invalid then, despite that invalidity:

- this agreement will remain in full force and effect: and

- that provision will be deemed to be deleted and substituted by a valid one which in its economic effect comes so close to the invalid provision that it can be reasonably assumed that the parties would have contracted also with this new provision.

**13. VARIATION**

This Agreement may be varied by agreement in writing of the parties.

**14. NON-SOLICITATION OF PERSONNEL**

During this agreement, and for six (6) months after it ends, you agree not to solicit for employment, or to independently contract the services of, any our staff members or sub-contractors who are involved with performing this Engagement.

**15. MISCELLANEOUS**

We will provide the Services as an independent contractor. Nothing shall be construed to create a partnership, joint venture or other relationship. No party has the right, power or authority to oblige or bind the other in any manner.

**16. DISPUTE RESOLUTION**

If there is a dispute relating to the Services or this agreement, the parties will submit to mediation before having recourse to any other dispute resolution process. Written notice of the dispute will be given for it to be submitted to mediation before a mediator chosen by the parties or, where the parties cannot agree, by the Australian Commercial Disputes Centre (ACDC). The parties will use their best endeavours to settle the dispute promptly. The mediation will be conducted in accordance with the ACDC Mediation Guidelines to the extent that they do not conflict with the provisions of this clause. If the dispute is not resolved within 60 days after notice of the dispute, the mediation will terminate.

**17. USE OF ELECTRONIC MAIL (EMAIL)**

- a) As part of our client service we may communicate with you, and with others on your behalf, by email. Email sent without encryption can be intercepted and may be read by a third party. There is also a risk that email may not be delivered or, if delivered, not read by the addressee in good time.
- b) We shall not be responsible to you nor liable to any person for any loss or damage, including special or consequential damage, whether arising in contract or in negligence, which may arise from or in relation to the use of email, including without limitation, any unintended receipt or interception of an email message.
- c) You agree to indemnify and hold harmless us and our successors and assigns from and against any and all liabilities, damages, losses, costs and expenses (including reasonable legal fees) which may arise from the use of email in our communication with you or the communication we undertake in the course of carrying out your instructions.
- d) You agree to co-operate with all reasonable requests we may make to implement secure email communication with us.

## 18. THIRD PARTY DATA PROCESSORS AND CLOUD STORAGE

- a) We will use data processors, e.g. hosting, cloud storage, online accounting, and data management companies, and your data may then be transferred to and stored by third party specialists engaged by Us, who will process your data on Our behalf (i.e. as data processors) and assist in the provision of the content and services you request. These third party providers will be obligated by Us to safeguard the confidentiality of your data and to take adequate technical and organizational measures to protect your data against:
  - i) accidental or unlawful destruction, loss or alteration,
  - ii) unauthorized disclosure or abuse, or
  - iii) other unlawful processing.
- b) We disclaim any liability or responsibility for any loss or damage incidental to the storage or management of your data by data processors.
- c) Various online facilities offer the ability to designate files and file folders “password protected” (i.e., viewable only by those with whom you share a password), We remind you that “password protected” files and file folders are only as secure as you keep them. You are solely responsible for the activity that occurs on your account, whether authorized by you or not, and you must keep your account information secure, including without limitation your account passwords. We expressly disclaims any liability or responsibility for any unauthorized use of or access to your account, files, file folders, or data

## 19. PRIVACY

At all times, We are committed to protecting your privacy and that of your staff. Any personal information held by Us for financial or accounting purposes, free education materials or general mailing purposes will only be used by Us to support your relationship with us and to ensure you receive the most appropriate range of information and services. (Our Privacy Statement is available upon request or on Our website.)

## 20. DOCUMENTATION

- a) It is our policy to retain engagement documentation for a period of seven years, after which time we will commence the process of destroying the contents of our engagement files.
- b) To the extent we accumulate any of your original records during the engagement, those documents will be returned to you promptly upon completion of the engagement, and you will provide us with a receipt for the return of such records.
- c) The balance of our engagement file, other than the compiled financial statement, which we will provide to you at the conclusion of the engagement, is our property, and we will provide copies of such documents at our discretion and if compensated for any time and costs associated with the effort.
- d) Upon our request either during our engagement or following its termination, you must collect your property without delay which will be released to you once our accounts are paid. Should any of your property remain in our possession following our request to collect it, we will hold the property for three months before destroying it in accordance with the *Australian Consumer Law and Fair Trading Act 2012*.



## **21. OTHER COSTS & INDEMNITY**

- a) In the event we are required to respond to a subpoena, court order or other legal process for the production of documents and/or testimony relative to information we obtained and/or prepared during the course of this engagement, you agree to compensate us at our standard hourly rates then existing for the time we expend in connection with such response, and to reimburse us for all of our out-of-pocket costs incurred in that regard.
- b) In the event that we are or may be obligated to pay any cost, settlement, judgment, fine, penalty, or similar award or sanction as a result of a claim, investigation, or other proceeding instituted by any third party, and if such obligation is or may be a direct or indirect result of any inaccurate or incomplete information that you provide to us during the course of this engagement, you agree to indemnify us, defend us, and hold us harmless as against such obligation.

## **22. OCCUPATIONAL HEALTH & SAFETY**

- a) As an employer concerned with the welfare of staff, we ensure that We provide a safe workplace in accordance with occupational health and safety requirements. In the event that Our staff are required to visit your premises, it is on the proviso that you comply with all occupational health and safety standards.
- b) Any visiting staff will be instructed Us to leave your premises if in their assessment, there is a workplace hazard that endangers their well- being and that hazard cannot be remedied immediately.

## **23. QUALITY CONTROL**

Our business processes are certified by an independent organisation as being quality assured. In addition, the Chartered Accountants Australia and New Zealand exercises a quality control program in respect of its members. In the absence of specific direction from you to the contrary, our files relating to the services provided to you may be selected at random for external review either by a nominee of the Chartered Accountants Australia and New Zealand. The same confidentiality requirements that apply to us apply to these external reviews.