
MY BUSINESS KEEPER

CLIENT AGREEMENT

AGREED TERMS

1. DEFINITIONS

1.1. In this Agreement:

- (a) Any terms defined in a Schedule have the same meaning in this Agreement.
- (b) Agreement means this document and any Schedules to this document.
- (c) Authorities means the authorities listed herein, contained in this Agreement and set out in Schedule 4 including the authority for My Business Keeper to reconcile transactions without physical substantiation.
- (d) Business means the business owned and operated by the Client as described in Schedule 1.
- (e) Business Activities means any work or services provided by the Client or Business.
- (f) Work Request means a request by the Client requesting further services, work or the like, beyond the scope of the Services, from My Business Keeper in relation to the Business.
- (g) Claim means any allegation, debt, Liability, proceeding, claims, action, proceedings, notice threatening claim, demands, litigation, judgements, liabilities, suits howsoever arising and whether present or future, fixed or unascertained, actual or contingent, whether at Law, in equity, under statute or otherwise.
- (h) Competitive Business means any business which, during the Term, competes with My Business Keeper within Australia to market, promote or sell the services that are the same or similar to the services provided by My Business Keeper or are functionally the same or similar to the services provided by My Business Keeper.
- (i) Confidential Information includes, but is not limited to:
 - (i) Any information specifically designated as confidential;
 - (ii) Information that, by its very nature, might reasonably be understood to be confidential or to have been disclosed in confidence;
 - (iii) Technical information concerning the products or the materials used in the provision of the Services;
 - (iv) Information that would be of commercial value to a competitor of a party, Related Body Corporate, other entities or other clients;
 - (v) Information relating to any advice or other service My Business Keeper provides, has provided or will provide;
 - (vi) Information about a party's financial performance, financial or business affairs, including performance or profitability reports, fees, proposals and quotes for the Services, and details of any transactions in which My Business Keeper is, has been, or may be involved;
 - (vii) Trade secrets;
 - (viii) Client lists and client information;
 - (ix) Techniques, databases, policies and procedures;
 - (x) Contractual, technical and production information including supplier records;
 - (xi) Plans, including marketing, business projections, business plans and business forecasts concerning performance or likely future activity; and
 - (xii) Notes and developments regarding confidential information,
 - (xiii) Precedents and all other records except for such information that:
 - (xiv) was rightfully in a party's possession and not subject to an obligation of confidentiality before the Engagement Date; or
 - (xv) is, or becomes, in the public domain, other than as a result of a breach of this Agreement or of common law obligations.
- (j) Employment Entitlements means any payment, liability or entitlement which arises out of an employment relationship including without limitation wages, commissions, bonuses, annual leave, long service leave, superannuation contributions, sick leave, termination pay or pay in lieu of notice, accrued annual leave, accrued sick long service leave, accrued sick leave or the like.
- (k) Force Majeure Event means any act of God, pandemic, internet outage, Business breakdown, outbreak or escalation of hostilities (whether or not war has been declared) or any other unlawful act against public order or authority, industrial dispute, governmental restraint, cyber-attack, technological disruption or other event which is not within the reasonable control of the parties.

- (l) Handover Fee means the fee for the work involved in handing over the Client's Information and other matters relating to the Services as calculated by My Business Keeper acting reasonably and notified in writing to the Client.
- (m) Information means any information, records, access, data, log-in details, documents, brief, overview, explanations, instructions and Source Documents.
- (n) Insolvency Event means, in relation to a party:
 - (i) A receiver, receiver and manager, trustee, administrator, other controller (as defined in the *Corporations Act 2001* (Cth)) or similar official is appointed over any of the assets or undertaking of the other party;
 - (ii) The party suspends payment of its debts generally;
 - (iii) The party is or becomes unable to pay its debts when they are due or is or becomes unable to pay its debts or is presumed to be insolvent within the meaning of the *Corporations Act 2001* (Cth);
 - (iv) The party enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
 - (v) The party ceases or threatens to cease to carry on business;
 - (vi) A resolution is passed or any steps are taken to appoint, or to pass a resolution to appoint, an administrator; or
 - (vii) An application or order is made for the winding up or dissolution of the other party, or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of the other party, otherwise than for the purpose of an amalgamation or reconstruction that has the prior written consent of the first party.
- (o) Intellectual Property means without limitation, whether or not now existing and whether or not registered or registrable (including any right to apply for the registration of such rights and including all renewals and extensions):
 - (i) Any documents, including letters, papers and electronic passwords or codes;
 - (ii) All developments, discoveries, innovations, inventions, novel or technical designs, procedures, and trade secrets;
 - (iii) The entire copyright in all works, including but not limited to all works as defined in the *Copyright Act 1968* (Cth) as amended from time to time;
 - (iv) Domain names and websites, Business, algorithms, techniques, methodology, technical information and data; and
 - (v) Any trade or brand name, common law trademark or trademark within the meaning of the *Trademarks Act 1995* (Cth) as amended from time to time.
- (p) Interest means interest capitalised monthly and calculated at the rate of 2.5% per annum above the overdraft reference rate provided by My Business Keeper's principal bankers on the first day of the applicable month.
- (q) Laws mean legislation including regulations, bylaws, and other subordinate legislation; codes of practice; common law; and any authority approval.
- (r) Liability means all liabilities, losses, claims, damages, outgoings, costs and expenses of whatever description and whether present, unascertained, contingent or prospective.
- (s) Licence means to the non-exclusive, irrevocable licence granted by the Client to My Business Keeper to access and use the Client's Information, online platforms, technology, premises and any other relevant Business matter for the Permitted Use during the Term.
- (t) Loss means all loss, damage, expense, costs (including legal fees on a full indemnity basis and expenses of whatsoever nature or description) and debts including any liability for consequential or indirect losses, economic losses or loss of profits.
- (u) Moral Rights means moral rights, rights of integrity, rights of attribution and other rights of an analogous nature which may now exist or may exist in the future under the *Copyright Act 1968* (Cth) or under the law of a country other than Australia.
- (v) Nominated Person means the person listed in Schedule 1 or as nominated from time to time by way of written notice.
- (w) Permitted Use means any use related to the Services, Business or as reasonably required by My Business Keeper from time to time.
- (x) Proposal means a Proposal provided by My Business Keeper outlining the additional fees and other requirements in relation to the Work Request.
- (y) Related Body Corporate has the meaning given to it in the *Corporations Act 2001* (Cth).
- (z) Restricted Area means:

- (i) Australia; or if that is held to be unenforceable
 - (ii) The State of New South Wales; or if that is held to be unenforceable
 - (iii) The city of Orange.
- (aa) Restricted Period means:
- (i) The period of 12 months starting on the Termination Date; or if that is held to be unenforceable
 - (ii) The period of 6 months starting on the Termination Date; or if that is held to be unenforceable
 - (iii) The period of 3 months starting on the Termination Date.
- (bb) Services means the services to be performed by My Business Keeper pursuant to this Agreement, as is more particularly described in Schedule 2.
- (cc) Source Documents means documents and Information that support items and process transactions.
- (dd) Term means period from the Engagement Date to the earlier of Termination Date or the date being 12 months from the Engagement Date.
- (ee) Termination Date means a future date determined in accordance with this Agreement.
- (ff) Termination Event means:
- (i) An Insolvency Event;
 - (ii) A breach of an essential term of this Agreement;
 - (iii) A warranty given in this Agreement was incorrect or misleading when made;
 - (iv) An assignment of a party's obligations occurs without the other party's prior written approval; or
 - (v) A Force Majeure Event continues for more than 28 Business Days.
- 1.2. In this Agreement, unless the contrary intention appears:
- (a) terms defined in the *A New Tax System (Goods and Services Tax) Act 1999* and the *Competition and Consumer Act 2010* have the same meaning;
 - (b) the singular includes the plural and vice versa;
 - (c) a reference to a clause or schedule is a reference to a clause or schedule to this Agreement and a reference to this Agreement includes any schedules;
 - (d) a reference to a document or agreement includes a reference to that document or agreement as novated, altered or replaced from time to time;
 - (e) a reference to \$ is a reference to Australian currency;
 - (f) a reference to any legislation or legislative provision any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision;
 - (g) a reference to an individual, party or person includes a corporation, company, joint venture, Related Body Corporate, association, authority, trust, state or government and vice versa and that individual's, party's or person's executors, administrators, substitutes, successors, agents, representatives, guarantors, employees, Related Body Corporate, permitted assigns, directors, subcontractors and/or consultants;
 - (h) a reference to any gender includes all genders;
 - (i) a reference to writing includes typewriting, printing, photocopying and any other method of representing words, figures or symbols in a permanent visible form;
 - (j) headings are for ease of reference only and do not affect interpretation;
 - (k) a reference to 'including' or 'includes' means 'including/includes without limitation'; and
 - (l) a reference to a 'party' or 'parties' means the party(ies) listed in this Agreement as the context permits.

2. ENGAGEMENT

- 2.1 This Agreement will commence on the Engagement Date and continue for the Term or expire upon the Termination Date, whichever is the earlier.
- 2.2 Each Term shall automatically renew for a subsequent period of the same length as the initial Term unless either party gives the other written notice of termination at least 30 days prior to expiry of the current term. My Business Keeper must provide written notice of the upcoming expiry of the Term, along with any notice under Clause 6.13, at least 30 days prior to expiry of the current term.
- 2.3 The Client hereby engages My Business Keeper as an independent contractor for the Term to provide the Services.
- 2.4 The Client hereby grants My Business Keeper the Licence.
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- 2.5 The Client hereby provides ongoing, revocable Authorities to My Business Keeper.
- 2.6 The Client agrees to provide without delay or fee any Information or anything else reasonably required by My Business Keeper to provide the Services as requested from time to time.
- 2.7 The Client acknowledges and agrees that the Client is not afforded exclusive rights under this Agreement and My Business Keeper reserves its rights to contract to other clients, including other clients operating similar to the Business or in the same industry as the Business, to provide the same or similar Services.
- 2.8 The Client and My Business Keeper agree that their relationship is one of principal and independent contractor and the relationship is not one of employer/employee, or client/agent, or partnership.
- 2.9 Subject to this Agreement, My Business Keeper is not subject to the direction and control of the Client as to the way My Business Keeper completes the Services.
- 2.10 The Client must provide written notice of its Nominated Representative to be My Business Keeper's key contact for the Client for any matters outlined in this Agreement.
- 2.11 Where the Services include template documents, the Client understands and agrees the template documents are provided on an 'as is' basis at the time of the purchase and do not in and of themselves constitute legal, financial or taxation advice.

3.ADDITIONAL SERVICES

- 3.1 Throughout the Term, the Client may from time to time engage My Business Keeper as an independent contractor for additional services.
- 3.2 The Client must submit the Work Request to My Business Keeper for its review and My Business Keeper must provide its Proposal within 5 Business Days of My Business Keeper receiving the Work Request.
- 3.3 The Client must notify My Business Keeper of its acceptance or rejection of the Proposal within 5 Business Days of My Business Keeper providing the Proposal to the Client.
- 3.4 Despite any other clause in this Agreement, any variations, additions, exclusions, or amendments to a Work Request are only enforceable subject to the parties' written agreement.
- 3.5 My Business Keeper is under no obligation to accept the Work Request and will consider each Work Request on a case-by-case basis.
- 3.6 The Client is under no obligation to accept the Proposal and will consider each Proposal on a case-by-case basis.
- 3.7 The Client must provide as much detail and Information in relation to the Work Request as possible.
- 3.8 The Work Request is subject to terms and conditions attached to the Work Request form.
- 3.9 The Client agrees that My Business Keeper will charge additional fees for the additional services required by the Work Request as disclosed on the Proposal.
- 3.10 My Business Keeper may from time to time in any manner whatsoever amend, change or vary the Work Request template, including any terms and conditions attached, by way of written notice to the Client and the Client agrees to use the most up-to-date version of the Work Request.

4. CLIENT'S OBLIGATIONS AND WARRANTIES

- 4.1 The Client is solely responsible for meeting its obligations in relation to Employment Entitlements, payroll responsibilities, taxation, risk management, superannuation obligations and any and all other matters relating to the Business, including outworking the actual payment to institutions, government bodies, employees and other third parties.
- 4.2 The Client warrants and agrees:
 - (a) It owns the Business and has full authority and ability to grant the Licence and Authorities;
 - (b) It holds a current registered Australian Business Number;
 - (c) Not to do anything that is or may be prejudicial or harmful to My Business Keeper's business, finances, reputation or interests;
 - (d) Not to make any false, misleading or deceptive statements with respect to any matter;
 - (e) To provide access to the Business at the hours as My Business Keeper should reasonably require from time to time;
 - (f) To provide at its expense whatever resources are reasonably necessary to complete the Services;
 - (g) To provide Source Documents as requested by My Business Keeper;
 - (h) The Information is true, correct, and meets the requirements of institutions, government bodies and other third parties as may be applicable to the Business;

- (i) To store the Information in compliance with the standards set by institutions, government bodies and any other third party relevant to the Business;
 - (j) To provide suitable equipment and resources for any software, programs, platforms or the like that is part of or required for the Services;
 - (k) To store passwords and personal information in a prudent and businesslike manner to fulfil its privacy and confidentiality obligations;
 - (l) To maintain sufficient cyber security and take all reasonable steps to minimise the risk of hacking;
 - (m) It is solely responsible for its employees, contractors, volunteers, service providers and other workers ('staff'), including ensuring that staff are paid in accordance with relevant payroll awards and FairWork guidelines, the correct PAYG amounts are withheld and paid and the correct statutory rate of superannuation is paid; and
 - (n) To do all things reasonable and/or necessary to meet the requirements of institutions, government bodies and other third parties as may be applicable to the Business.
- 4.3 My Business Keeper may vary any deadlines, timeframes or dates provided by My Business Keeper to the Client in relation to the Services, Business or this Agreement where the Client does not satisfy its obligations in this Agreement (such as not providing requested Information) or as required by an external body.
- 4.4 The Client authorises My Business Keeper to contact, liaise with, give Information to and take Information from, the Client's accountant/tax agent as set out in Schedule 1 or notified in writing from time to time.

5. MY BUSINESS KEEPER'S OBLIGATIONS

- 5.1 My Business Keeper must:
- (a) Perform the Services in a thorough, lawful, professional and efficient manner;
 - (b) Not do anything that is or may be prejudicial or harmful to the Business, finances, reputation or interests of the Client;
 - (c) Not make any false, misleading or deceptive statements with respect to any matter;
 - (d) Provide updates to the Client as requested from time to time on My Business Keeper's activities in the provision of the Services; and
 - (e) Provide representation to authorised government bodies in respect of BAS services, payroll and any services requested.

6. FEE

- 6.1 The Client agrees to pay to My Business Keeper the Fee. This is an Essential Term of this Agreement.
- 6.2 The Client agrees that My Business Keeper may require payment of the Fee upfront prior to the Services being provided or in instalments.
- 6.3 My Business Keeper shall provide a tax invoice to the Client on My Business Keeper's letterhead.
- 6.4 If not otherwise directed by My Business Keeper, the Client shall arrange payment to My Business Keeper to their nominated account via direct debit within 3 days of the invoice due date.
- 6.5 The Client is not liable to provide or pay to My Business Keeper any Employment Entitlements.
- 6.6 My Business Keeper may deduct and offset any amounts owing to it by the Client (howsoever arising) from any money the Client may owe to My Business Keeper.
- 6.7 The Client agrees and understands that My Business Keeper reserves the right to charge additional fees for additional services arising directly or indirectly from the Client's delay in providing Information, the Client providing inaccurate Information, failing to provide instructions in a reasonable timeframe or the Client not meeting any of its obligations or responsibilities at Law or as set out herein.
- 6.8 My Business Keeper may elect to use third-party providers in relation to the process of making payment of the Fee and the Client hereby consents to such third parties storing its information, including credit card details.
- 6.9 My Business Keeper reserves the right to charge Interest on any amounts of money owing by the Client and Interest shall be calculated daily from the date payment of money was due until the date all monies payable to My Business Keeper are paid in full under this Agreement.
- 6.10 The Client acknowledges and agrees My Business Keeper may from time to time receive a benefit or commission from third parties and the Client has no entitlement to such benefit or commission.
- 6.11 Unless stated otherwise, a Proposal shall be valid for a period of 14 days from the date the Proposal was provided to the Client.

6.12 If Clause 2.2 applies, My Business Keeper reserves the right to review the Fee and adjust or change the Fee upon the expiration of the Term and My Business Keeper must provide the Client with notice of any adjustment or change in the Fee at least 30 days before the expiration of the Term.

7. EXPENSES

- 7.1 In addition to the Fee, the Client must pay all expenses which My Business Keeper incurs in the provision of the Services. These expenses include ('Expenses'):
- (a) Any resources or materials necessary to provide the Services;
 - (b) Any cost incurred in complying with its obligations to the Client; and
 - (c) Expenses in complying with all Laws and statutory requirements of operating an incorporated company, including taxes and licences.
- 7.2 My Business Keeper must notify the Client of any Expenses prior to incurring such expenses in relation to the Services.
- 7.3 The Client understands that the Expenses may be necessary in order for My Business Keeper to provide the Services and any refusal by the Client to incur the Expenses may impact the quality and/or scope of the Services.
- 7.4 Any expenses the Client wishes to claim from My Business Keeper are to be separately negotiated between the parties on a case-by-case basis, prior to such expense being incurred, and a receipt evidencing such expense must be provided to My Business Keeper for its consideration in line with My Business Keeper's policies and procedures.

8. INDEMNITY

Release

- 8.1 The Client must perform its obligations under this Agreement and enter into this Agreement at its risk.
- 8.2 The Client is solely responsible for the data, personal information, or Confidential Information in relation to the Business and/or held by the Client and releases My Business Keeper for any Liability in relation to any loss or misuse of such arising from the provision of Services where My Business Keeper has acted in accordance with industry standards.

Indemnity

- 8.3 The Client hereby agrees to indemnify My Business Keeper against the following as elected by My Business Keeper in writing from time to time on a case-by-case basis:
- (a) Against all Claims; or
 - (b) Against all Loss;
- howsoever suffered by My Business Keeper or that My Business Keeper may suffer or potentially suffer arising out of:
- (c) Any negligent act or omission by the Client;
 - (d) Wilful misconduct by the Client;
 - (e) The Client's breach of any obligation under this Agreement; or
 - (f) The Client's breach of any Law (including civil and criminal penalties arising from such breach);
- howsoever caused indirectly or directly to the extent available at law.
- 8.4 My Business Keeper hereby agrees to indemnify the Client against the following as elected by Client in writing from time to time on a case-by-case basis:
- (a) Against all Claims; or
 - (g) Against all Loss;
- howsoever suffered by the Client or that Client may suffer or potentially suffer arising out of:
- (h) Any negligent act or omission by My Business Keeper;
 - (i) Wilful misconduct by My Business Keeper;
 - (j) My Business Keeper's breach of any obligation under this Agreement; or
 - (k) My Business Keeper's breach of any Law (including civil and criminal penalties arising from such breach);
- howsoever caused directly by My Business Keeper to the extent available at law.

Process

- 8.5 The parties agree that either party may call upon the indemnity and/or release contained in this Clause 8 at any time and the other party must immediately make good any demand or request pursuant to this Clause 8 including without limitation payment of legal fees.
- 8.6 The parties agree:

- (a) This Clause 8 shall survive the termination or end of this Agreement; and
- (b) This Clause 8 is an essential term of this Agreement;
- (c) The indemnities provided in Clause 8 do not apply where there are instances of negligence or wilful misconduct by the party seeking to enforce the indemnity.

9. INSURANCE

- 9.1 The Client must take out and keep current at its own expense the insurances specified in the Schedule.
- 9.2 The Client must supply My Business Keeper with a certificate of currency of the policies referred to in this clause immediately upon request by My Business Keeper.

10. GST

- 10.1 If the supply of the Services occurs while a GST or similar tax applies in Australia, then the Client will increase all payments to My Business Keeper by the amount of the GST applicable at the time of supply of the Services, provided:
 - (a) My Business Keeper is registered for GST and holds an Australian Business Number (ABN); and
 - (b) My Business Keeper has advised the Client of its ABN.
- 10.2 Each party agrees to do all things, including providing invoices and other documentation that may be necessary or desirable to enable or assist the other party to claim any credit, set off, rebate or refund in relation to any amount of GST paid or payable in respect of any Supply under this Agreement.

11. TERMINATION

- 11.1 This Agreement shall end upon the expiry of the Term.
- 11.2 Either party may terminate this Agreement by way of 14 days written notice for any reason whatsoever.
- 11.3 Subject to the provisions of this Agreement, either party may terminate this Agreement by giving written notice if:
 - (a) A party breaches any of the provisions of this Agreement and fails to remedy that breach within 15 Business Days after receiving notice requiring it to do so;
 - (b) The other party breaches any of the provisions of this Agreement and any such breach is incapable of being remedied; or
 - (c) A Termination Event occurs in relation to the other party.
- 11.4 On the termination or expiry of this Agreement for any reason:
 - (a) My Business Keeper may elect to stop providing the Services;
 - (b) My Business Keeper must, at the Client's cost as set out in Schedule 1, within 30 days send to the Client (or otherwise dispose of in accordance with the directions of the Client) all Confidential Information, Information, advertising, promotional and sales material, and all other documentation and written correspondence relating to the Services, Intellectual Property, the Business or the Client in the possession of My Business Keeper;
 - (c) No later than 14 days after the termination or expiry of this Agreement, the Client may request My Business Keeper provide a handover of the Services to the Client or a third party sourced, vetted and nominated by the Client in writing and My Business Keeper may in its sole discretion elect to charge the Handover Fee payable by the Client upon demand in advance. For the avoidance of doubt, My Business Keeper is not obligated to assist in the handover in any manner whatsoever nor is My Business Keeper required to find an alternative service provider for the Client; and
 - (d) If the termination is due to the Client's default, breach or Termination Event ('Client's Default'), the following sums shall become immediately due and payable by the Client in addition to any sums of money overdue:
 - (i) Interest calculated daily from the date of the Client's Default until the date all monies payable to My Business Keeper are paid in full; and
 - (ii) Any collection costs incurred by My Business Keeper in collecting any amount outstanding including legal fees.
- 11.5 Termination of this Agreement will not affect the accrued rights or remedies of either party.

- 11.6 Nothing in this clause affects the right of the Client and/or My Business Keeper to terminate this Agreement pursuant to an express term in this Agreement, or to extend this Agreement for such further term/s as the parties may agree in writing.

12. RESTRAINTS DURING AGREEMENT

- 12.1 My Business Keeper will immediately disclose to the Client any possible conflict of interest they may have with the Client, or the delivery of the Services, and shall take all reasonable steps to avoid such a conflict or potential conflict in good faith.
- 12.2 My Business Keeper will not accept any payment, gift, benefit or favour from any person in relation to the delivery of the Services without providing notice to the Client.

13. RESTRAINTS AFTER AGREEMENT

- 13.1 The Client agrees that, during the Restricted Period, they must not without the prior written approval of My Business Keeper:
- (a) Solicit or persuade (or attempt to solicit or persuade) any person who, during the Term, had a contractual, business or other relationship with My Business Keeper including without limitation a client, supplier, agent, employee or contractor of My Business Keeper to:
 - (i) Terminate their contract or relationship with My Business Keeper irrespective of whether or not the person's actions would separately amount to a breach of contract;
 - (ii) Cease doing business with My Business Keeper, or reduce the amount of business which they would normally do with My Business Keeper; or
 - (iii) Commence doing business with or increase their existing business with a Competitive Business.
- 13.2 If these restrictions are void as unreasonable for the protection of My Business Keeper's interests and would be valid if part of the wording was deleted or the period or area was reduced, then the restrictions will apply with the modifications necessary to make them effective.

14. CONFIDENTIAL INFORMATION

- 14.1 At all times Confidential Information of a party remains the property of that party.
- 14.2 The Client agrees that:
- (a) It may obtain Confidential Information during the term of this Agreement, the disclosure of which could materially harm My Business Keeper;
 - (b) The restrictions in this Agreement are reasonable and necessary for the protection of My Business Keeper's Confidential Information and goodwill;
 - (c) It intends the restrictions in this Agreement to operate to the maximum extent;
 - (d) Damages may be inadequate to protect My Business Keeper's interests and My Business Keeper is entitled to seek and obtain injunctive relief, or any other remedy, in any court;
 - (e) The restrictions are separate, distinct and several, so that the unenforceability of any restriction does not affect the enforceability of the other restrictions; and
 - (f) My Business Keeper has provided valuable consideration for the promises made under this clause; and
 - (g) Its obligations under this clause survive the termination of this Agreement.
- 14.3 The parties:
- (a) May use Confidential Information only for the purposes of performing the Services or obligations pursuant to this Agreement; and
 - (b) Must keep confidential all Confidential Information except for disclosure permitted under this clause or by Law.
- 14.4 A party may disclose Confidential Information to persons who have a need to know for the purposes of performing the Services (and only to the extent that each has a need to know). Prior to such disclosure, the party must direct such person/s that the information is Confidential Information and must be kept confidential ('Direction').
- 14.5 The parties must:
- (a) Ensure, so far as it is reasonably able to do so, that each person to whom it discloses Confidential Information complies with its Direction and notify all parties of, and take all steps to prevent or stop, a suspected or actual breach of a Direction; and
 - (l) Provide all assistance reasonably requested in relation to any proceedings a party may take against any person for unauthorised use, copying or disclosure of Confidential Information.

- 14.6 If a party is required by Law to disclose any Confidential Information to a third person (including, but not limited to, the government) the party must, before doing so:
- (a) Notify the other party and give the other party a reasonable opportunity to take any steps that it considers necessary to protect the confidentiality of that information; and
 - (m) Notify the third person that the information is Confidential Information.
- 14.7 If a party has breached this clause, this Agreement may be terminated effective immediately by the non-breaching party without prior notice without prejudice to the non-breaching party's remaining rights at law, equity or contract.

15. INTELLECTUAL PROPERTY

- 15.1 The Client owns all Intellectual Property that My Business Keeper or Client may create as a direct result of the Services provided to the Client and My Business Keeper agrees to do all things necessary to ensure that the Client owns Intellectual Property which My Business Keeper so creates.
- 15.2 If My Business Keeper has Moral Rights in any Intellectual Property owned by the Client, My Business Keeper:
- (a) Irrevocably consents to any act or omission by the Client which infringes those Moral Rights;
 - (b) Agrees that My Business Keeper's consent extends to acts and omissions by the Client's licensees and successors in title; and
 - (c) Agrees that My Business Keeper's consent is a genuine consent given under the *Copyright Act 1968* (Cth) and has not been induced by duress or any false or misleading statement.
- 15.3 Notwithstanding the provisions of this clause and this Agreement which are intended to apply to the maximum extent, My Business Keeper may approach the Client prior to developing any Intellectual Property, and request on a case by case basis only, a separate agreement as to ownership of proposed Intellectual Property be reached between My Business Keeper and the Client and reduced to writing. Any such written agreement shall in that case only supersede the provisions of this clause only, however shall in no way affect or amend any other provision of this Agreement, and to the extent of any inconsistency, this Agreement shall prevail.
- 15.4 The parties understand that this Clause 15 is not intended to apply to Intellectual Property created by My Business Keeper in the usual course of business.

16. PRIVACY

- 16.1 My Business Keeper may, in the course of performing the Services, collect Personal Information in relation to the Business and Client.
- 16.2 My Business Keeper must comply with the *Privacy Act 1988* (Cth) (including the National Privacy Principles) at all times.
- 16.3 My Business Keeper must, at its own expense, provide the Client with access to any Personal Information within 7 days of the Client's written request.

17. AUSTRALIAN CONSUMER LAW

- 17.1 This Clause 17 applies if the *Competition and Consumer Act 2010* (Cth) ('the Act') is deemed to apply.
- 17.2 The parties agree:
- (a) Notwithstanding anything contained in this Agreement, My Business Keeper acknowledges that the agreement and relationship between the Client and My Business Keeper may be subject to the *Competition and Consumer Act 2010* (Cth) ('the Act');
 - (b) The provisions of this Agreement, where in conflict with the Act, shall be read down to the extent required by operation of the provisions of Act;
 - (c) The Services may come with guarantees that cannot be excluded under the Australian Consumer Law and My Business Keeper does not purport to exclude or attempt to exclude such guarantees; and
 - (d) The provisions of the Act, including any statutory obligations applicable to My Business Keeper shall only be enforceable by the Client in relation to Services purchased by the Client as a consumer pursuant to the Act.

18. GENERAL

- 18.1 Remedies: Each party to this Agreement acknowledges and agrees that if any of them breach the warranties, representations, indemnities, covenants, agreements, undertakings and obligations (for the purposes of this clause referred to as the "agreed terms") on each of their parts contained in this

agreement, damages may not be an adequate remedy and the agreed terms will be enforceable by injunction, order for specific performance or such other equitable relief as a court of competent jurisdiction may see fit.

- 18.2 Multiple Party: If a party consists of more than one person, this Agreement binds each of them separately and any two or more of them jointly and an obligation, representation or warranty in favour of more than one person is for the benefit of them separately and jointly.
- 18.3 Statutes: The provisions of any Statute which alters the effect of any provision of this Agreement shall not apply to this Agreement insofar as it can lawfully be done.
- 18.4 Severance: If anything in this Agreement is invalid, unenforceable, illegal or void then it is severed and the rest of this Agreement remains in force to the extent available at law.
- 18.5 No Waiver: A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right. No waiver is effective unless it is in writing. The waiver of a power or right is effective only in that specific instance and for the specific purpose for which it was given.
- 18.6 Amendment: No variation or modification of this Agreement shall be of any effect unless in writing and signed by the parties.
- 18.7 Assignment: This Agreement is personal to the parties and cannot be assigned without the prior written agreement of all parties.
- 18.8 Good Faith: Each party agrees that it will do all things and execute all documents necessary or desirable to give full effect to this Agreement even though not specifically provided for.
- 18.9 Business Days: If anything is required to be done on a day that is not a Business Day, then it must be done instead on the next Business Day where "Business Day" means a week day other than a statewide public holiday.
- 18.10 Counterparts: This Agreement may be executed in any number of counterparts with the same effect as if each counterpart were on the same instrument.
- 18.11 Warranty of Authority: Each person signing this Agreement as an Officer, Attorney, trustee or other representative of a Party, assures each other Party or signatory that he/she possesses unrestricted authority to execute this Agreement in that capacity at the time of signing.
- 18.12 Governing Law: This Agreement is governed by the laws of New South Wales and the parties irrevocably submit to the non-exclusive jurisdiction of New South Wales courts in respect of any action or proceeding concerning this Agreement.
- 18.13 Independent Advice: The parties warrant they separately have had the opportunity to obtain independent legal, financial and taxation advice prior to signing this Agreement.
- 18.14 Costs: Each party is to be responsible to pay their own legal costs in relation to the preparation and entry into the Agreement.
- 18.15 Further assurances: Each party to this Agreement will, at its own expense and without additional consideration, upon receipt of a request by another party promptly do such further acts and will execute, acknowledge, deliver and record such other documents and instruments as may be reasonably necessary or desirable from time to time to give full effect to this agreement and any transaction contemplated by this agreement.
- 18.16 Electronic: Both parties acknowledge and agree that the original of this Agreement may be in digital or email form and agree to accept the digital copy and/or email copy as the original and binding Agreement. Although this Agreement is not conditional upon the subsequent execution of an original and duplicate by the parties, either party may request the other party to execute an original and duplicate of this Agreement in which case the parties agree to do so.
- 18.17 Survival: If this Agreement is terminated for any reason, such termination will not affect any accrued rights or liabilities of either party nor will it affect the coming into force of any provision of this Agreement which is expressly or by implication intended to come into force or continue on after the termination.
- 18.18 Confidentiality: The information in and terms of this Agreement are confidential to the Parties and shall not be disclosed to any third party other than advisers to the Parties or the Nominated Person. Neither party shall do any act or say anything that shall bring the reputation of the other into disrepute.
- 18.19 Retrospective Operations: If the Engagement Date precedes the execution date of this Agreement, then this Agreement will have retrospective operation as from the Engagement Date.
- 18.20 Notices: A party giving notice under this Agreement must do so in writing to the address of the opposite party specified herein. A party may change its address by notifying the other party in writing. Such notice is taken to be received:
 - (a) If hand delivered, on delivery;

- (b) If sent by prepaid post, three days after the date of posting; or
- (c) If sent by email, when the email is stated to be transferred as recorded in the mail envelope properties.

18.21 Dispute Resolution:

- (a) The Client acknowledges receipt of the 'If You Have A Concern' factsheet ("the Factsheet") and the Client agrees the dispute resolution provisions herein are subject to the Client first outworking the processes set out in the Factsheet.
- (b) A party must not start arbitration, court proceedings or any other proceedings, except proceedings seeking interlocutory relief, in respect of any dispute, controversy or claim arising out of or in relation to this Agreement ("Dispute"), unless that party has complied with this clause.
- (c) A party claiming a Dispute has arisen ("Complainant") will notify the other party to the Dispute ("Respondent") of:
 - (i) The nature of the Dispute;
 - (ii) What outcome the Complainant wants; and
 - (iii) What action the Complainant thinks will settle the Dispute ("Dispute Notice").
- (d) Once a Dispute Notice has been given, the parties concerned will use their reasonable endeavours in good faith to resolve the Dispute.
- (e) If the parties concerned cannot agree about how to resolve the Dispute within 10 Business Days of the Dispute Notice being given, each party can take its own advice on the best manner in which the dispute is to be settled.

18.22 Electronic Signing: The parties acknowledge and agree that:

- (a) This Agreement may be executed by electronic means whether in digital form or via email;
- (b) An executed electronic copy of this Agreement will be binding upon the parties and treated as an original;
- (c) Original copies of this Agreement may be executed at a later date but if they are, they will be dated the same date as the executed electronic copy of this Agreement; and
- (d) The parties expressly consent pursuant to the *Electronic Transactions Act 2000* (NSW):
 - (i) For all information required to be given in writing to them;
 - (ii) For all information permitted to be given to them in writing;
 - (iii) For all signatures required to be given by them; and
 - (iv) All documents to be produced by or to them;in respect of this Agreement be given or produced by electronic communication whether by facsimile transmission or email.

18.23 Trustee: Where any party, is a trustee, whether or not that fact is disclosed or known to the other parties to this agreement, ('Trustee') the Trustee warrants and agrees that:

- (a) It has the power to enter into all transactions which the Trustee in fact purports to enter into and that all necessary procedures, if any, have been passed and followed;
- (b) Where any instrument, whether the original or a copy, produced to a party and constituting or purporting to constitute the instrument embodying the terms of a trust of which the Trustee is trustee:
 - (v) That document does constitute the trust document;
 - (iii) It is duly valid and enforceable according to its terms;
 - (iv) There are no undisclosed amendments to the trust document; and
 - (v) Any changes to the trustees have been disclosed in writing;
- (c) Unless expressly disclosed in writing, mere production of a document constituting an instrument or a copy of an instrument of trust does amount to such disclosure:
 - (i) There has been no resettlement or distribution of any part of the corpus of the trust fund; and
 - (ii) There is no provision in the trust instrument or otherwise whereby the Trustee agrees not to be, or it is provided that the Trustee is not, entitled to be indemnified out of the assets of the trust fund in respect of the liabilities of the Trustee under this Agreement.