

# Terms & Conditions of Use of Website

## Please Read Carefully

This is a legal agreement between **You** and Fiducian Business Services Pty Ltd (**'Fiducian'**), and any other entity affiliated with Fiducian providing Accountancy Resourcing Services ( hereafter called the **'Service'**) stating the terms that govern your use of the website located at [www.fiducianbpo.com.au](http://www.fiducianbpo.com.au).

By registering and using the Service at [www.fiducianbpo.com.au](http://www.fiducianbpo.com.au), You are indicating that You agree to be bound by these Terms and Conditions of Use of Website ('Terms of Use' or 'Agreement'). Fiducian reserve the right to change, modify, add, or remove portions of this Agreement at any time without further notice and to change price and availability of the Service. It is your responsibility to check the Agreement each time before using the website, and your continued use of the Service or the Site will constitute your acceptance of any changes. This Agreement is effective from the time You load your first Job.

### 1. Description of Service

Fiducian provides the Service on its website for your use as an End User for your professional commercial use. By entering into this Agreement, You are permitted to use the Service. The Service consists of the processing of financial data provided by You by way of Upload to your Account on the website, and the delivery to You by way of Download of the Finished Product, which is the processed financial data.

You are obliged to check all work returned and ensure that it meets the requirements of your Clients and the professional bodies to which you are a member. You agree that you will not rely on the information provided by Fiducian and that you remain responsible in ascertaining the tax liabilities, obligations or entitlements of your Client.

You are responsible for any hardware, systems and/or software program(s) You use and any associated fees and expenses (a) to connect to, browse or otherwise use the Internet, and/or (b) to access the website on which the Service is offered, and/or (c) to browse, stream, download, or transfer the data accessible through the Service. The Service is not part of any other offering or product, and as such, use shall not be construed to represent or guarantee Your access to the Service. From time to time, You may have to install hardware and/or software to aid accessibility of the Service.

### 2. Registration Data & Accounts

To use the Service You must register and provide information (i.e. a user name, password, billing information, and valid email address) ('Practice Details') to Fiducian for the purposes of creating an Account with Fiducian on the website in the name of You or your practice, called for the purposes of this Agreement 'Account.' You must provide current, complete, and accurate Practice Details at the time You register and You must regularly update the Practice Details to keep them current, complete and accurate. Fiducian may terminate your Account and any or all rights to the Service if any information You provide is inaccurate, false, or incomplete. You agree that Fiducian may store and use the Practice Details for use in billing fees to your credit card and maintaining your Account.

### 3. Security of Account

You are solely responsible for maintaining the confidentiality and security of your Account. You agree to keep your password confidential. It is your sole responsibility to protect your

password and You agree to notify Fiducian immediately of any unauthorised use of your password . You acknowledge that anyone who correctly enters your username and password will gain access to your Account and that You will be responsible and liable for the activities of that person whilst they are online and for any material which that person is exposed to. You must not allow access to the Service by unauthorised users, must not leave terminals unattended while logged on to the Site and must log-off from the Site each time your immediate use of the Site has been completed. You agree to notify Fiducian immediately of any unauthorised use of your password and/or account. Fiducian shall not be responsible for any losses arising out of the unauthorised use of your Practice Data or Account, and You agree to hold harmless and to indemnify Fiducian, its parent company, subsidiaries, affiliates and/or licensors for any improper, unauthorised or illegal uses of the same. You may not attempt to gain unauthorised access to the Site. Should You attempt to do so and/or assist others in making such attempts or distributing instructions, software or tools for that purpose, Fiducian will terminate your Account.

#### **4. Consent to our communication with You by E-Mail**

Establishing your Account means that You permit Fiducian to contact You by e-mail. You will be given the opportunity to “opt-out” from e-mail communication in accordance with the Spam Act 2003.

#### **5. Agreement to Pay**

You agree to pay all applicable fees, charges and taxes for use of the Service, even where it appears the Service has been used without your authority or if it appears that your Account was accessed fraudulently. You are responsible for paying any taxes resulting from your use of the Service, including, but not limited to Goods and Services Tax (‘GST’).

Fiducian may charge your credit card accordingly (including any taxes and fees, as applicable) as may be accrued by or in connection with your Account. You authorise Fiducian to invoice You for the abovementioned at Fiducian's convenience and on a Job by Job basis, and You agree to pay the amount invoiced. At its discretion, Fiducian may post charges individually or aggregate your charges with other fees You may incur. If any of your billing information changes, You are responsible for updating the information in the applicable section of your Account. You are responsible for any charges on your Account that are incurred by any person through your Account, and You are solely responsible for keeping your Account secure and confidential.

For invoicing purposes, a Job is deemed completed and will be invoiced on the earlier of your approval that a Job has been completed, or 5 business days after Fiducian has marked the Job Loaded as ‘Complete’ or 10 business days from the day the status has been changed to ‘Under Review’ by You.

#### **6. Job Loaded**

Each request to use the Service is a separate transaction and must contain the data to be processed so as to enable the parties to agree on an appropriate fee. It constitutes a request by You for work to be done at your request and is treated by Fiducian as a separate transaction for the processing of financial data. Such a request is termed for the purposes of this Agreement as a ‘Job Loaded.’

You agree to provide all the relevant information necessary to complete a Job within a suitable time frame. Where further information is needed from You, You agree to respond to the query within a suitable time frame to ensure that the Job Loaded can be completed in a timely manner.

Fiducian may accept, negotiate the fee, or decline a Job Loaded. If accepted You undertake to pay the fee agreed and pay it in the manner set out in this Agreement. Fiducian may refuse a Job Loaded entirely at its discretion, and is under no obligation to give a reason for such a refusal. You are permitted to use the Service for the purposes of Uploading or Downloading material provided to and by You under this Agreement. All approved Jobs Loaded are final for tax invoicing and all resulting charges are non-refundable.

## **7. Methods of Payment and Credit Card Terms**

Fiducian accepts American Express, Visa, or Master Card credit cards. This policy may change at any time. A surcharge of 1.5% of the total fee (including GST) will apply for payments made by Visa or MasterCard. A surcharge of 3% of the total fee (including GST) will apply for payments made by American Express. A fee of \$10 will apply to all dishonoured direct debit transactions.

You agree that Fiducian may store and use the Practice Details for use in invoicing You for fees and debiting your credit card accordingly, or by direct debit, or any other means so as to obtain payment of the amounts invoiced. You, not Fiducian, are responsible for any unauthorised amounts billed to your credit card by a third party. As a cardholder, your card issuer agreement governs your use of the designated card, and as such, You must refer to that agreement, not this Agreement, to determine rights and liabilities as a cardholder. Obligation to pay for accepted Jobs Loaded survives termination of this Agreement.

## **8. Referral Agreement**

Where You request risk insurance or financing for your Clients, You agree that Fiducian may use one of their authorised representatives under Australian Financial Services Licence No. 231103 or people who to the best of Fiducian's knowledge and belief are of good repute and are duly qualified and where required to be licenced or otherwise authorised, are so licenced or authorised to provide the services. The referral fee will be paid to You in respect of a Client and will be credited to your bank account within a reasonable time of Fiducian receiving the Representative Remuneration. The amount will be inclusive of an amount equal to the GST liability on any supply made by You under this agreement.

You agree that the referral fee will be 25% of the Representative Remuneration for risk insurance and 40% of the Representative Remuneration for financing. The Representative Remuneration means initial and ongoing commissions or fees that are payable to Fiducian in respect of a Client. You agree that You have no right to any income derived from a Client other than as provided in this agreement.

If Representative Remuneration on which a referral fee is calculated is later refundable, then that referral fee must be repaid to Fiducian and becomes a debt immediately due and payable by You to Fiducian. This may occur due to a lapse, surrender or cancellation of a policy, write back of any contribution, ongoing or other fees or charges. By way of example, this may occur if an insurance policy lapses within the clawback period and commission paid by the insurance company is refundable. Fiducian has the right to offset any amount owing by You against any amount payable to You.

You acknowledge that You will disclose to a Client details of any referral fee or other payments that may be received in relation to referring the Client to Fiducian, and comply with the provisions of the Privacy Act 1998 as it affects it in relation to information of a Client.

## **9. Electronic Signatures and Contracts**

Your use of Fiducian's Service includes the ability to enter into agreements and/or to incur liabilities electronically. You agree that any liabilities You incur using the Service constitutes your intent and agreement to pay for such purchases. Your agreement and intent to be bound

by electronic submissions applies to all records relating to all transactions You enter into on this site, including notices of cancellation, policies, contracts, and applications.

## **10. Content**

All software, artwork, graphics, video, text, interfaces, Trademarks, logos, images, photographs, and any other element of the Fiducian website (collectively Content), including but not limited to the layout, election, organisation, and coordination of such Content on the website is the property of Fiducian, and is protected by trademark, copyright, and intellectual property laws. Without the prior written consent of Fiducian, and except as provided in this Agreement, no Content may be transmitted/translated, displayed, uploaded, published, recorded, retransmitted, rented, sold, distributed, digitised, marketed, reproduced, altered, or compiled in any way to any other computer, website, or other medium for any commercial purpose.

## **11. Usage Rules**

Fiducian may make and enforce the Usage Rules with or without notice. Your access to and/or use of any portion of the site is limited by the Usage Rules. You may not attempt, nor support attempts, to decrypt, reverse engineer, circumvent, alter or interfere with any software required for use of the Service or any of the Usage Rules. Fiducian reserves the right to refuse the Service for any reason, to any End User.

## **12. Use of Uploads and Downloads**

An 'Upload' or a 'Download' is Digital Material that You can (1) transfer to or from a compatible portable device, (2) save to or from a hard drive, (3) burn to a CD/DVD. Fiducian has no liability for lost, damaged, modified, corrected or destroyed Downloads. Any security technology that is provided with a Download is an inseparable part of the Download. A Download does not limit any rights of copyright owners in Material or any works embodied in them. You are authorised to use the Uploads and Downloads only for your specified use, and by doing so, You are certifying that You are the End-User. Any other use or sharing, is in contravention of copyright and intellectual property laws. You may not reverse engineer, decompile, disassemble, modify or disable any copy protection or use limitation systems associated with the material.

## **13. Community Features / Public Areas**

The Service contains features designed to help You. Fiducian may feature message boards and/or chat rooms that allow for communication and posting of public profiles between users. Fiducian has the right but not the obligation to monitor, edit, or remove any content in public areas or to restrict access to or by other users. Fiducian is not responsible for, and assumes no liability for, any activity, content, messages and the like that You or any other users post to a Public Area or a Public Profile, or send to another user over an instant messenger system.

## **14. Restrictions**

You may not use the Service to upload, post, transmit, display, perform or otherwise make available any messages, content or materials that (i) are illegal, obscene, threatening, of a 'spamming' nature, defamatory, or invasive of privacy; (ii) violate (intentionally or unintentionally) a contractual, fiduciary or confidentiality obligation or duty You have to any third party; (iii) constitute political campaigning or commercial solicitation or that contain software viruses or other computer code designed to interfere with the functionality of any computer system; or (iv) infringe third-party rights or harm minors in any way. You must not

interfere with or disrupt the Service or any networks connected to or by the Service nor use a false email address or mislead users as to your identity or the origin of a message or content.

## **15. Fiducian's Rights**

By posting messages, inputting data, or engaging in any communication through the Service, You agree that Fiducian may copy, sublicense, adapt, transmit, publicly perform or display any such content to respond to any legal requirement, claim or threat. If Fiducian's use of such content exploits any proprietary rights You may have in such material, You agree that Fiducian has an unrestricted, royalty-free, non-exclusive and perpetual worldwide right to do so. You represent and warrant that You own or otherwise control all applicable rights to the content, material, messages and the like that You post, upload, transmit or display; that the content, material, messages and the like are accurate; that use of the content, materials, messages and the like that You supply does not violate third-party rights and will not cause injury to any person or entity; and that You will indemnify Fiducian, its subsidiaries, agents, affiliates and/or licensors, as applicable, for all claims resulting from content, messages, materials and the like that You supply. You agree that any loss or damage of any kind that occurs as a result of the use of any messages, content or material that You upload, post, transmit, display or otherwise make available through use of the Service is solely your responsibility.

Fiducian may use employees, consultants, contractors or sub-contractors to perform its obligations under this Agreement.

## **16. Copyrights**

All copyrights in and to the Service, including but not limited to, the compilation of Content, postings, links to other Internet resources, and descriptions of those resources), and software, are owned by Fiducian. The use of the software or any part of the Service, except for use of the Service as permitted in this Agreement, is prohibited and subject to civil and criminal penalties, including possible monetary damages, for copyright infringement.

## **17. Trademarks**

All trademarks, service marks, trade names, slogans, logos, and other indicia of origin that appear on or in connection with the Service are the property of Fiducian and/or its affiliates, licensors and/or licensees. You may not copy, display or use any of these marks without prior written permission of the mark owner.

## **18. Enforcement of This Agreement**

Fiducian reserves the right to take measures that it believes are reasonably necessary to enforce, or verify compliance with any part of this Agreement (including but not limited to Fiducian's right to cooperate with any legal process relating to your use of the Service, and/or a third party claim that your use of the Service is unlawful and/or infringes such third party's rights). You agree that Fiducian has the right, without liability or notice to You, to disclose any Practice Details/Account information to law enforcement or regulatory officials, as Fiducian believes is reasonably necessary or appropriate to enforce and/or verify compliance with any part of this Agreement (including but not limited to Fiducian's right to cooperate with any legal process relating to your use of the Service, and/or a third party claim that your use of the Service is unlawful and/or infringes such third party's rights).

## **19. No Responsibility for Third-Party Materials or Web Sites**

The Service may include Products, Content, and Services from third parties available via the Fiducian Service. Fiducian may include links to third party websites, which are provided solely as a convenience. Fiducian assumes no liability or responsibility for third-party materials or websites. Fiducian is not responsible for evaluating or examining the content or accuracy of any third-party material or websites.

## **20. Indemnity**

By using this Service You agree to indemnify and hold harmless Fiducian and its agents, employees, directors, contractors, representatives, licensors, affiliates, parents and subsidiaries from and against any and all claims, losses, damages, demand, causes of action and judgments (including legal fees and court costs) arising from or concerning your breach of this Agreement or your use of the Service, and Content and to reimburse Fiducian on demand for any losses, costs or expenses they incur as a result thereof.

## **21. Termination**

- You may terminate this Agreement and/or your Account by notifying us in writing. You remain liable for all amounts due under your Account up to and including the date of termination and no refund of any fees will be granted.
- If You fail, or Fiducian suspects that You have failed, to comply with any provision of this Agreement, including but not limited to the obligation to pay fees due, or failure to provide Fiducian with a valid credit card or with accurate and complete Practice Details, failure to safeguard your Account information, or contravention of the Usage Rules or any license to the software, Fiducian, at its sole discretion, without notice to You may: (i) terminate this Agreement and /or your Account, and You will remain liable for all amounts due under your Account up to and including the date of termination; and/or (ii) preclude access to the Service (or any part thereof).
- Fiducian may, at its discretion, modify, suspend, or discontinue the Service (or any part thereof) at any time with or without notice to You, and Fiducian will not be liable to You or to any third party should it exercise such right.
- If Fiducian receives a notice alleging that You have engaged in behaviour that infringes Fiducian's or other's intellectual property rights or reasonably suspects the same, Fiducian may suspend or terminate your Account without notice to You, and shall have no liability to You, past or present, for such suspension or termination.

## **22. Governing Law & General Compliance with Laws**

The laws of the State of New South Wales govern this Agreement. Your use of the Service may also be subject to other local, state, national, or international laws. You expressly agree that exclusive jurisdiction for any claim or dispute with Fiducian is governed by the Courts of the State of New South Wales. The Service at [www.fiducianbpo.com.au](http://www.fiducianbpo.com.au) is controlled and operated by Fiducian from its offices in Australia. You agree to comply with all local, state, federal, and national laws, statutes, ordinances, and regulations that apply to your use of the Service.

## **23. Disclaimers**

- Fiducian does not guarantee, represent, or warrant that use of the Service will be uninterrupted or error-free, and You agree that from time to time Fiducian may remove the Service for indefinite periods, or cancel the Service at any time, with or without notice to You.
- Fiducian makes no warranty that any particular electronic device will be compatible with the Service or any Content offered by Fiducian.

- Under no circumstance shall any Fiducian entity be liable for any unauthorised use of the Service.
- Under no circumstances shall any Fiducian entity be liable to You for any consequential, incidental or special damages (including damages for loss of business profits, business interruption, loss of business information, and the like) arising out of the use or inability to use the Service even if the Fiducian entity has been advised of the possibility of such damages. To the extent that in a particular circumstance any disclaimer or limitation on damages or liability set forth herein is prohibited by applicable law, then, instead of the provisions hereof in such particular circumstance, the Fiducian entities shall be entitled to the maximum disclaimers and/or limitation on damages and liability available at law or in equity by such applicable law in such particular circumstance. In no event shall damages exceed AUD \$10.
- You expressly agree that your use of, or inability to use, the Service is your sole risk. The Service and all products and services delivered to You through the Service are (except as expressly stated by Fiducian) provided 'as is' and 'as available' for your use, and to the maximum extent allowed by applicable law, the Fiducian entities expressly disclaim all warranties of any kind, either express or implied, including all implied warranties of merchantability, fitness for a particular purpose, title, and non-infringement.
- Fiducian does not audit any information You process on its website, and accordingly Fiducian will not express an opinion on the accuracy or completeness of any financial statements or compilations of accounts produced using the Service. There is no warranty as to the suitability for any purpose of the material processed or produced. It is your obligation to check that all work returned by us to You meets your Clients requirements and any quality control procedures published by any professional body relevant to your needs.

## 24. Privacy Policy

This policy applies to Fiducian and all its affiliates:

### Personal Information

Fiducian only collects information that is necessary to allow You to use the Services. We collect personal information You submit when You are using the Services including payment information. We may use common internet technologies, such as cookies, to collect general statistical information on visitors to our websites. If we need to collect personal information, we will collect the information directly from You.

### Uses

Fiducian will use your personal information for any purpose for which You have consented. Your personal information will be used in ways that You would reasonably expect, in order to provide the Service to You. We may disclose your personal information to third parties such as credit card companies.

Whenever we contact You for marketing purposes we will give You an opportunity to be on a "no marketing" contact list.

Fiducian does not share, trade or sell personal information for marketing purposes.

### Correct Information

You may request access to your personal information by contacting us. Where we have incorrect personal information in our records You may request to have the information corrected.

### Other information

Fiducian abides by the Australian Privacy Principles of the Privacy Act 1988. For more information please read our Privacy Policy. To read the policy please visit <http://www.fiducian.com.au/resources/FiducianGroupPrivacyPolicy.pdf>