

MYOB Essentials Term of Use - Franchisee and Direct Billing

October 2014



1. About these terms

These are the terms and conditions for our supply of MYOB Essentials to you, including our obligations to each other, if you are a user of Essentials Accounting as part of your franchise agreement with a Franchisor (**Terms**).

If you do not have a franchise agreement with a Franchisor, please refer to our standard Terms of Use for Essentials Accounting.

If you are subscribed to any other MYOB Essentials modules, including Essentials Cashbook, please refer to the Terms of Use for those modules.

If you accept these Terms in Australia, these terms do not exclude, restrict or modify:

- (a) the application of any provision of the Australian Consumer Law (whether applied as a law of the Commonwealth or any State or Territory of Australia) (**ACL**);
- (b) the exercise of any right or remedy conferred by the ACL; or
- (c) the liability of MYOB for a failure to comply with any applicable consumer guarantees where to do so would:
 - 1. contravene the ACL; or
 - 2. cause any part of these Terms to be void.

Definitions

Some words in these Terms have particular meanings:

ATO means the Australian Taxation Office.

Bank Feeds means the service which enables you to electronically receive daily or monthly updates of transaction details for your nominated accounts, including your business bank account and credit card.

Bank Feeds Data means the transaction information relating to any account linked to Bank Feeds, which is available for you to access as part of MYOB Essentials.

Business means the business for which the application is made and accepted for MYOB Essentials.

Data Supplier means the organisation(s) that you have authorised to supply us with Bank Feeds Data, including your bank and other nominated financial institutions.

Fees means the fees and charges relating to the provision of MYOB Essentials.

Franchisor means the entity that you have entered into a franchise agreement with. Under that franchise agreement your Franchisor pays the Fees associated with your MYOB Essentials subscription.

Inland Revenue means the Inland Revenue Department of New Zealand.

Loss or Claim means any loss, liability, action, proceeding, damage, cost or expense (including all reasonable legal costs and expenses), including liability in tort and consequential and economic losses.

MYOB Essentials means any of the services, facilities or functionality which form part of MYOB Essentials and which we make available to you from time to time. This includes Bank Feeds.

Other Application means an application or service developed by a third party to integrate and be used in conjunction with MYOB Essentials.

Personal Information means that term as defined in the Privacy Act. Basically, this is information about an identifiable individual.

Privacy Act means the *Privacy Act 1988 (Cth)* (if you accept these Terms in Australia) or the Privacy Act 1993 (if you accept these Terms in New Zealand) as updated, amended or replaced from time to time.

Professional Partner means a person who provides bookkeeping, accounting or similar services to you, and who you appoint as a User.

Tax Laws means the *Taxation Administration Act 1953 (Cth)* (if you accept these Terms in Australia) and Tax Administration Act 1994 (if you accept these Terms in New Zealand) as updated, amended or replaced from time to time, and any binding regulation, ruling or direction issued by the ATO or Inland Revenue (as applicable) from time to time.

Third Party means any person we have contracted with to help us provide MYOB Essentials. This includes any Other Application providers engaged by us for the delivery, maintenance and administration of MYOB Essentials. In the case of Bank Feeds, any Data Supplier that you authorise to provide Bank Feeds Data to us is also a Third Party under these Terms.

User means a person authorised by you to use MYOB Essentials (including a Professional Partner). MYOB Essentials is a multi-user system.

We, us and our means MYOB Australia Pty Ltd ACN 086 760 198 (if you accept these Terms in Australia) and MYOB NZ Limited, Company Number 902338 (if you accept these Terms in New Zealand).

You means the Business, including each User.

2. General terms

2.1 Protecting your username and password

- (a) Unless you take adequate security precautions, it could be possible for an unauthorised person to gain access to your MYOB Essentials data. It is important to take all reasonable precautions to ensure that your username and password are not misused, and remain secure and confidential. In particular:
 - 1. you must not tell anyone your username or password, including any member of your family;
 - 2. you must not let anyone else, whether acting as your agent or not, access MYOB Essentials using your username and password; and
 - 3. you must be extra careful when accessing MYOB Essentials from public computers.
- (b) If you think anyone else might know your password you should reset your password from within MYOB Essentials, or contact us as soon as possible to arrange a new password.
- (c) You agree to be liable if your login details are used by an unauthorised person.

2.2 Other responsibilities you have as a User

- (a) **No interference with MYOB Essentials** – You will not:
 - 1. interfere with the operation of MYOB Essentials or overload the system;
 - 2. reverse-engineer, reverse-assemble, decompile, or otherwise attempt to discover source code, formulas or processes in respect of the software behind MYOB Essentials; or

3. copy, reproduce, alter, modify, create derivative works, or publicly display, any part of any content from MYOB Essentials except where we have given you permission.
 4. use MYOB Essentials in way that is prohibited by law, regulation or government order in any relevant jurisdiction, or in a way that violates a third party's legal rights;
 5. use MYOB Essentials in a way that could harm or impair anyone else's use of it;
 6. use MYOB Essentials to gain unauthorised access to any service, data, account or network by any means;
 7. falsify any protocol or email header information (e.g. spoofing);
 8. upload any material (including pdf. files) into MYOB Essentials which:
 - a. is harmful, threatening, abusive, vulgar, obscene or otherwise objectionable;
 - b. contains Personal Information of any other person, without that person's express or implied consent;
 - c. infringes on intellectual property rights of any other party; or
 - d. contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software, hardware or telecommunications equipment;
 9. use MYOB Essentials to send "spam" or otherwise make available any offering designed to violate these Terms; or
 10. remove, modify, tamper with any regulatory or legal notice or link that is incorporated into MYOB Essentials.
- (b) **Cooperation and limited authority in relation to Third Parties** – You:
1. must do all things we consider appropriate to enable us to fulfil our obligations to Third Parties in relation to MYOB Essentials; and
 2. authorise us to give a Third Party or other person any authority, consent or instruction in respect of MYOB Essentials, to enable us to provide MYOB Essentials to you.
- (c) **Compliance with Tax Laws** – it is your responsibility to retain your business records for tax compliance purposes. We are not liable for your failure to meet your retention obligations under the Tax Laws, in relation to any data that you input into MYOB Essentials. If you decide to terminate MYOB Essentials we strongly advise you to extract your data in its entirety as soon as possible following termination (see section 6.3 for further details). For specific advice regarding your compliance obligations under the Tax Laws, please consult your professional advisor, the ATO or Inland Revenue as appropriate.
- (d) **Giving access to other Users** – You can authorise other people (including Professional Partners) to have access to your MYOB Essentials data as Users. Subject to the access rights you grant, they will be able to view and modify your MYOB Essentials data. Their use of MYOB Essentials is subject to these Terms, so we suggest that you provide them with a copy. You are responsible for their use of MYOB Essentials. You can stop their access by removing them from your User list within MYOB Essentials or by contacting us.
- (e) **Change of details** – You must let us know of any changes to your details which you have provided to us in relation to MYOB Essentials, and provide any proof of the change we require.

2.3 Use of MYOB Essentials and our intellectual property

- (a) **What you can do** – until your use of MYOB Essentials is terminated, you have a non-exclusive and non-transferable licence to use MYOB Essentials in the way that we authorise from time to time.
- (b) **We retain our intellectual property rights** – except where specifically set out in these Terms, these Terms do not give you any intellectual property or other rights in any of our:
1. software, documents, templates, marketing material, trademarks, business names, logos, trading styles, get-up, processes or methodologies; or
 2. other intellectual property.
- and you (including your staff, agents or contractors) must not otherwise use, reproduce or modify these intellectual property rights.
- (c) **Intellectual property rights deriving from your use of MYOB Essentials** – You agree that any intellectual property rights in any systems, processes or methodologies developed by you which derive from your use of MYOB Essentials become our intellectual property.

2.4 Payment of Fees

- (a) It is your Franchisor's responsibility to pay the Fees due to us for your use of MYOB Essentials as part of your franchise agreement, except where sections 2.4(b) applies.
- (b) You are responsible for paying the Fees due to us in relation to your use of MYOB Essentials on the due date and otherwise in accordance with any payment terms you enter with us if your Franchisor stops paying the Fees due to us (for example, if your franchise agreement is terminated). If this happens your continued use of MYOB Essentials will be subject to the terms of this section 2.4 and section 2.5.
- (c) By giving you at least 20 days' notice before the change takes effect, we may:
1. change the amount of any Fee and introduce a new Fee; and
 2. change the circumstances in which, or frequency with which, a Fee is payable.
- Section 9 tells you about the ways in which we can give you notice.
- (d) You authorise us to deduct the periodical instalments and any other Fees payable to us in respect of your use of MYOB Essentials. You give us this authority by providing us with your credit card or other payment details.

2.5 Goods and services tax (GST) and duties

- (a) All payments due to us (eg. Fees, reimbursement by you to us of any amounts or payments under indemnities), unless already stated to be GST inclusive, are to be increased by the amount of any GST liability we have in relation to supplies we make to which those payments relate.
- (b) You must pay all duties (eg. stamp duty, other government charges or financial institution account fees, if applicable) payable in relation to your use of MYOB Essentials. If we have paid them, they must be reimbursed by you on our request.

3. Other Applications

- (a) From time to time we may offer Other Applications for MYOB Essentials.
- (b) We make no warranties in relation to any Other Application offered in relation to MYOB Essentials, regardless of whether an Other Application is provided by a Professional Partner or is otherwise recommended by us.
- (c) If you install or enable an Other Application for use with MYOB Essentials, you consent to use allowing the Other Application to access your data as required to enable MYOB Essentials and the Other Application to operate together. Any exchange of data or other interaction between you and an Other Application provider is solely between you and them. We are not responsible or liable for any disclosure, modification or deletion of your data as a result of any access to MYOB Essentials by an Other Application provider.

4. Bank Feeds

Bank Feeds work by you authorising your Data Supplier to provide us (and your Professional Partner if applicable) with Bank Feeds Data from your nominated transaction accounts. The following terms and conditions apply only to the use of Bank Feeds:

- (a) **Access to Bank Feeds Data** – By registering for Bank Feeds you are giving your Data Supplier permission to provide us with Bank Feeds Data for all nominated transaction accounts that you have linked to Bank Feeds. You may also be required to provide your Data Supplier with a hard copy authority form as additional evidence of your consent, depending on your Data Supplier's practices.
- (b) **Transaction Accounts** – You may only use Bank Feeds for transaction accounts attached to your Business.
- (c) **Important points about your Data Supplier** – Your Data Supplier:
 - 1. may be paid a commission by us for providing your Bank Feeds Data to us;
 - 2. is under no obligation to provide us with the Bank Feeds Data. It can stop doing so at any time without notice to you or us; and
 - 3. is not a party to any agency, partnership, joint venture or other type of similar relationship with us, and is not responsible for the actions of us or any other Third Party.
- (d) **How you can end your participation in Bank Feeds** – If you wish to cancel your Bank Feeds but continue to use MYOB Essentials, you must advise your Data Supplier in writing. Please allow a minimum of 14 days for your Data Supplier to give effect to your request for cancellation.
- (e) **When your Data Supplier can terminate your Bank Feeds** – Your Data Supplier can terminate your authority to give us Bank Feeds Data at any time, for any reason, by giving you no less than 7 days' notice.

Your Bank Feeds will be automatically cancelled at the end of your participation in MYOB Essentials. See section 6 for more information on ending your participation in MYOB Essentials.
- (f) **Fees** – if your Data Supplier charges you directly for transaction fees in connection with your account and your use of the Bank Feeds in relation to that account, you are responsible for and must pay those fees. If you don't do this, we may not be able to provide the Bank Feeds to you.

- (g) **Fair Use Policy for Bank Feeds** – Although we do not currently apply a fee on the number of transactions received through Bank Feeds, you acknowledge and agree that we may, in our sole discretion, apply a fee for excess transactions at any time. Without limiting our rights under this clause, we reserve the right to charge for transactions if the total number of transactions in a month exceeds 100, at a rate not greater than \$0.11 per transaction (including GST) in excess of 100 transactions. You will be charged in the currency of the country where you accept these Terms.

5. Availability of MYOB Essentials

- (a) MYOB Essentials could be disrupted if systems failure occurs due to technology used by either us or Third Parties involved in providing MYOB Essentials. Delayed receipt of Bank Feeds Data could result in transactions not being available on a particular day.
- (b) MYOB Essentials may also be unavailable for short periods because of necessary or desirable system maintenance or upgrades. If this is needed, we will try to inform you beforehand.
- (c) Subject to the terms of section 7 below, we are not responsible or liable to you or the Business for any Loss or Claim arising from MYOB Essentials or any part of it being delayed, disrupted or unavailable.
- (d) In order to maximise your business continuity and make it easier to comply with your record retention obligations, we encourage you to take steps to archive your business and financial records. This includes your invoices and receipts, and your business reports.

6. Termination

6.1 How can you end your participation in MYOB Essentials?

- (a) You can cancel your participation in MYOB Essentials by giving us at least 20 days' written notice. If you are responsible for paying your Fees, you must give us this notice 20 days before the end of the current period of your chosen monthly or annual subscription. The effective date of termination will be the last day of the current period of your subscription.
- (b) Your participation in MYOB Essentials will cease on the effective date of termination. However, during the notice period, you (or your Franchisor as applicable) are still liable for any Fees in relation to your use of MYOB Essentials up to the effective date of termination. Refer also to section 6.3 below for other important content about what happens on the effective date of termination.

6.2 When we can terminate your participation in MYOB Essentials without prior notice

- (a) **Circumstances** – These are the situations in which we can terminate your participation in MYOB Essentials without prior notice. We will notify you of your suspension or termination as soon as possible.

The situations are:

1. **A breach occurs:**
 - > you fail to remedy a material breach of these terms and conditions within 7 days after we notify you of the breach.

2. **Something threatens MYOB Essentials:**

- > in our opinion, a change to any Third Party arrangement necessary for MYOB Essentials renders the ongoing operation of MYOB Essentials substantially unworkable or non-functional;
- > in our opinion, the actions of a regulator or a change in law or regulation makes the ongoing operation of MYOB Essentials substantially unworkable or non-functional; or
- > we believe this is necessary either to protect the security, integrity or reputation of MYOB Essentials or any MYOB Essentials function, service or facility, or to otherwise protect our interests.

3. **There is a material change to your Business:**

- > we receive notification of a dispute from one or more of the directors or principals of your Business;
- > you go into liquidation, administration, insolvency, bankruptcy or such other similar arrangement with creditors, or in our opinion, it is reasonably likely you will do so;
- > there is a change in who owns or controls your Business;
- > your Franchisor notifies us that your franchise agreement has been terminated and you have not made arrangements with us to make payment of your Fees.

(b) **Notification –**

1. We will make reasonable attempts to notify you in writing (which includes by email) of the termination.
2. We can reinstate a termination in our absolute discretion by written notice to you, and this takes effect on receipt or any later time specified in the notice, subject to you meeting any conditions set out in the notice.
3. If you become aware that a circumstance which would permit us to terminate your participation or use under section 6.2(a)3. has arisen or may arise, you must advise us in writing as soon as possible.

6.3 What happens on the effective date of termination?

(a) **Limited period for data extraction –**

1. You will have 60 days from the effective date of termination to extract your data from MYOB Essentials, after which time you and other Users (including your Professional Partner) will have no further access to MYOB Essentials or your data. We may take steps to delete your data from our servers at any time after 60 days following the effective date of termination, whether or not you have extracted your data.
2. We strongly recommend that you extract your data for tax compliance and archive purposes as soon as possible following termination of MYOB Essentials. Failure to extract and retain your data following termination may result in you being unable to comply with your record retention obligations under the Tax Laws.

(b) **Continuation of limitations on liability –** Any limitations on liability which you have given under these Terms continue after termination in relation to your use of MYOB Essentials.

7. Liability, warranties, representations and indemnities

To the extent permitted by law (and subject to section 1 if you accept these Terms in Australia):

(a) **No warranty that MYOB Essentials is suitable for your needs –**

1. MYOB Essentials is a generic service and its capabilities are likely to change over time. This means that MYOB Essentials may not be, or may not remain, suitable for your needs.
2. You must assess the ongoing suitability of MYOB Essentials for you and your Business. We are not aware of your individual business needs and cannot provide any specific recommendations regarding your use of MYOB Essentials.

(b) **Liability for other conditions or warranties –** Apart from any condition or warranty that is expressly required by law, we provide no warranty and make no claim in relation to our performance, the performance of MYOB Essentials, or any service associated with MYOB Essentials. In the event of any breach of a statutory condition or warranty, if the legislation permits, our liability is limited to:

1. the resupply of MYOB Essentials; or
2. the cost of resupply of MYOB Essentials, and in any event will be limited to the fullest extent permitted by law.

(c) **When we and Third Parties will not be liable to you –** We and Third Parties (including, in the case of Bank Feeds, your Data Supplier) are not responsible or liable to you or the Business for:

1. any Loss or Claim relating to the provision of the Bank Feeds Data or system data made available through MYOB Essentials, including delays, disruptions, inaccuracies or the loss of data;
2. any Loss or Claim relating to your use of, or reliance upon, the Bank Feeds Data or system data provided to you through MYOB Essentials;
3. the actions or inaction of Third Parties, Other Application providers or other persons (including those which may be negligent or unauthorised) relating to MYOB Essentials;
4. any Loss or Claim arising from a failure by us to comply with the Terms for any cause which could not reasonably be controlled or prevented by us; or
5. any Loss or Claim arising from a failure by you or the Business to maintain archive records of your data.

(d) **Indemnity to us and Third Parties –**

1. You indemnify us, our staff, and Third Parties (including, in the case of Bank Feeds, your Data Supplier) (**Indemnified Parties**) against any Loss or Claim suffered or incurred by the Indemnified Parties or any of them arising from your actions including negligence, misrepresentation, fraud, breach of law or breach of these Terms. You indemnify the Indemnified Parties for any Loss or Claim suffered or incurred from the unauthorised use of your Username or a Password.
2. If the Indemnified Party caused or contributed to a Loss or Claim, then your liability under section 7(c)1 above is limited to the amount of the Loss or Claim which is directly attributable to your conduct.

8. Changes to Terms

- (a) **What can we do?** We may change any of these Terms (including the Fees, which are specifically dealt with in section 2.4.b. above).
- (b) **Prior notice** – We'll give you at least 10 days' prior notice (longer if required by legislation or any other code of conduct we subscribe to) of any change that is likely to materially affect or disrupt the manner in which you use MYOB Essentials.
- (c) **Urgent changes** – However if we need to restore or maintain the security of MYOB Essentials immediately, we may change your use and access to MYOB Essentials without advance notice.

9. Notices

- (a) You will agree that all communications between you and us in relation to MYOB Essentials will be by email, by in-product notification through MYOB Essentials or by us posting a notification on the MYOB website (myob.com or myob.co.nz), unless another method is agreed to by the addressee.
- (b) Any notice or other communication to or by a party by email is regarded as being given by the sender and received by the addressee when a delivery confirmation report is received by the sender which records the time that the email was delivered to the addressee's email address (unless the sender receives a delivery failure notification indicating that the email has not been delivered to the addressee).
- (c) If the delivery or receipt is after 5.00pm (addressee's time) it is regarded as received at 9.00am on the following day.
- (d) We may provide a notice or other communication to you by a posting to the MYOB website (myob.com or myob.co.nz), or within your product. That notice or other communication is regarded as being given by us and received by you when the posting is made. We recommend that you regularly check the MYOB website and your product for notices or other communications.

10. Legal

You should note a few things about these Terms:

- (a) **This is our complete agreement** – These Terms and the documents incorporated by reference, including your application, contain the whole of the agreement between us and you in relation to MYOB Essentials. Any representations or warranties made by our staff before you are accepted for participation in MYOB Essentials are not effective unless expressly set out in these Terms. Any waiver of our rights or powers under these Terms may only be given in writing signed by our authorised officer.
- (b) **What happens if some of these Terms can't operate?** If any part or provision of these Terms are void, unenforceable or illegal in a jurisdiction, that part or provision does not apply in that jurisdiction. However, the remainder of the Terms continue in operation in that jurisdiction unless this would alter the basic agreement between you and us, in which case we can terminate your use of MYOB Essentials at our election.
- (c) **No waiver by us** – If we do not insist upon strict performance of any part or provision of these Terms, that waiver will not be deemed to be a waiver of a subsequent breach or default of these Terms.

- (d) **Assignment** – You cannot assign or otherwise transfer the benefit of the agreement between us and you without our prior written consent. We can assign or otherwise transfer the benefit of the agreement between us and you.
- (e) **Which laws apply to the Terms?** If you accept these Terms in Australia, these Terms are governed by the laws of Victoria and the courts of Victoria have jurisdiction over the parties to these Terms (being you and us). If you accept these Terms in New Zealand, these terms are governed by the laws of New Zealand and the courts of New Zealand have jurisdiction over the parties to these Terms (being you and us).

11. Your Privacy

- (a) We collect, disclose and use your Personal Information to provide the products and services you have asked for and associated support, respond to your enquiries or feedback and to promote the products and services offered by us and Third Parties. We may collect Personal Information from you, from public sources such as social media websites, and from Third Parties that provide us with marketing leads.
- (b) To do these things, we may provide your Personal Information to our related companies, Third Parties and to people to whom we outsource functions. Some of the entities may be located in Australia, New Zealand, Singapore, India, Malaysia, the Philippines, the United States or other countries. If you do not provide your Personal Information, it may affect our ability to do business with you.
- (c) You consent to us collecting, using and disclosing your Personal Information for the purposes set out in section 11(a) above.
- (d) **If you accept these Terms in Australia**, You can ask us not to use your information to promote products and services by following the process outlined in the MYOB Group Privacy Policy for Australia.

The MYOB Group Privacy Policy (Australia) contains information on how to:

1. update your preferences about the marketing and promotional material we send to you;
2. request access to and seek correction of the Personal Information we hold about you;
3. make a privacy complaint; and
4. how we will deal with your complaint.

You can contact MYOB about your privacy by email at privacy_officer@myob.com.au, or by post at "Privacy Officer", MYOB Australia Pty Ltd, PO Box 371, Blackburn Victoria 3130.

- (e) **If you accept these Terms in New Zealand**, please read the MYOB Group Privacy Policy for New Zealand to understand how we handle your Personal Information. You can also ask us not to use your information not to promote products and services by contacting the Privacy Officer using the details outlined below.

You can ask MYOB not to use your information to promote products and services by contacting the Privacy Officer using the details outlined below. The MYOB Group Privacy Policy for New Zealand is located at myob.co.nz/privacy.

You can contact MYOB about your privacy by email at privacy_officer@myob.co.nz, or by post at "Privacy Officer", MYOB NZ Limited, c/- Quigg Partners, Level 7, 36 Brandon Street, Wellington 6011.

- (f) Notwithstanding the Group Privacy Policy, we may observe your use of MYOB Essentials and access all information you input or can access through MYOB Essentials. This will enable us to assist you with problems and make improvements for future versions of MYOB Essentials and other products and services.
- (g) You must ensure that all Users read this 'Your privacy' section and the policies described above before using MYOB Essentials or providing their Personal Information to us.
- (h) If you provide any Personal Information about third party individuals to us, you must take reasonable steps to ensure that those individuals are aware of the matters in this 'Your Privacy' section and that we may collect, use and disclose their information to provide you with MYOB Essentials.

MYOB Essentials and the MYOB Essentials logo are trade marks of MYOB Technology Pty Ltd