

MYOB Sales & Services Agreement  
December 2011



## PART A – GENERAL TERMS

### A1. These General Terms

- a. This Part A sets out the general terms which form part of the Sales and Services Agreement governing the relationship between MYOB and the Customer for the supply by MYOB of all software and services.
- b. This agreement does not exclude, restrict or modify:
  - i 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);
  - ii the exercise of any right or remedy conferred by the ACL; or
  - iii the liability of MYOB for a failure to comply with any applicable consumer guarantees where to do so would:
  - iv contravene the ACL; or
  - v cause any part of these terms to be void.

### A2. Separate Supply Agreements

#### *Customer Order procedure*

The Customer may request software or services from MYOB in any manner agreed with MYOB. MYOB must then send the Customer a supply order form and purchase agreement summary (called a Supply Order in this agreement) setting out all the additional terms of supply not already set out in the applicable Parts of this agreement. The Customer confirms that it does not rely on any representations made by MYOB which are not set out in the applicable Parts of this agreement or in the Supply Order.

#### *Making supply agreements*

An agreement for the supply of the software or services specified in and incidental to a Supply Order (a "supply agreement") is made when both the Customer and MYOB have completed the Supply Order by signing it. The terms of a particular supply agreement will be the terms set out in:

- a. the Supply Order and any attachments;
- b. this Part A; and
- c. the other applicable Parts of this agreement.

The terms set out in Part A and the other applicable Parts of this agreement prevail over any inconsistent terms set out in a Supply Order unless such inconsistent terms have been approved in writing by MYOB's Legal Services.

#### *Interpretation*

A reference to "this agreement" means the Sales and Services Agreement and also means each supply agreement entered into by MYOB and the Customer each time a Supply Order is signed. A reference to "deliverables" means the software or services to be supplied by MYOB under a supply agreement.

### A3. MYOB's General Obligations

MYOB must:

- a. use reasonable care and skill in supplying deliverables;
- b. supply the deliverables within a reasonable time and within any agreed time limit;
- c. take reasonable steps to keep confidential any information about the Customer or the Customer's business which the Customer specifies is confidential or which is by its nature confidential;
- d. if the Customer is a natural person, give the Customer reasonable access to any personal information about the Customer stored by MYOB; and
- e. comply with all the Customer's reasonable security procedures while on the Customer's premises.

### A4. Customer's General Obligations

The Customer must:

- a. provide a safe environment and reasonable access to the Customer's premises and equipment in accordance with MYOB's reasonable requirements relating to the supply of deliverables;
- b. ensure that MYOB is provided with all information, facilities, assistance and accessories reasonably required by MYOB to enable it to supply the deliverables;
- c. make sure all information provided to MYOB is accurate and complete;
- d. appoint a suitably qualified and informed support representative to accompany and assist MYOB personnel to enable MYOB to supply its deliverables and immediately inform MYOB if the Customer's support representative changes;
- e. provide suitably qualified and trained personnel to operate the deliverables;
- f. keep records relating to the use and performance of any deliverable supported or maintained by MYOB, in accordance with MYOB's reasonable requirements, and on request give MYOB access to the records at all reasonable times;
- g. make sure everyone else who uses the deliverables or for whom the Customer is responsible also meets the Customer's obligations under this clause;

- h. make sure an up to date back-up or copy of all important data used in the Customer's business exists or is functioning prior to MYOB installing any software or providing any services;
- i. keep MYOB informed of all changes to contact details and where MYOB has facilities available to change these details online it take reasonable steps to use those facilities;
- j. ensure any third party service providers are fully qualified, experienced and have a sufficient understanding of the MYOB software and its environments; and
- k. install and maintain the equipment and operating environment such that it complies with the specifications and recommendations detailed by MYOB from time to time, including on its website.

The MYOB web site at [myob.com.au](http://myob.com.au) is the primary source of information for all MYOB customers about developments and changes to the range of deliverables offered by MYOB. MYOB also provides information regarding system and support requirements via email bulletins. The Customer agrees to review this material and monitor the MYOB web site regularly for announcements or notices about any matters relating to this agreement and ensure that all relevant personnel have access to it.

### A5. Intellectual Property Rights and Obligations

#### *MYOB's authority to license intellectual property rights*

MYOB warrants that it has the right, title and interest in the intellectual property rights reasonably necessary for the Customer to be able to use the software and services (excluding third party software, hardware or services) provided in accordance with this agreement. Ownership of the intellectual property rights resident in the software and services provided by MYOB under this agreement shall never pass to the Customer.

#### *Customer's confidentiality obligation*

Except as permitted by this clause, the Customer must keep confidential all information it obtains from any source relating to the technology, design, specification and content of any deliverables supplied, supported or maintained by MYOB, anything else in which MYOB claims intellectual property rights and anything else MYOB designates as confidential.

The Customer may disclose such information to any contractor of the Customer so long as the contractor is bound by a written undertaking to keep the information confidential on terms no less stringent than as required of the Customer under this agreement and the Customer informs MYOB, on request, of the contractors to whom such information has been disclosed and of the information disclosed to them.

#### *MYOB's rights in modifications*

If any software supplied by MYOB to the Customer is modified in any way by any person, the Customer acknowledges that, as between the Customer and MYOB, MYOB owns all intellectual property rights in the modification.

#### *Dealing with claims of infringement*

If any person other than MYOB claims that the Customer is in breach of that person's intellectual property rights in any software or services (excluding third party software, hardware or services) supplied by MYOB:

- a. the Customer must inform MYOB of that claim as soon as the Customer becomes aware of it;
- b. the Customer must cease using the deliverable at MYOB's request; and
- c. MYOB indemnifies the Customer against all liability under any final judgment in proceedings brought by that person so long as the Customer has met all its obligations under this agreement, gives MYOB the option to conduct the defence of the person's claim (including any settlement or compromise negotiations), provides MYOB with reasonable assistance in conducting the defence of the claim and permits MYOB to modify or substitute the deliverable at MYOB's expense to avoid continuing infringement.

### A6. Use of Personal Information

MYOB is committed to prompt and open communication with the Customer to achieve the aims of this agreement and to keeping the Customer informed about software and services available to the Customer.

MYOB collects the information it requires to do business with you. The MYOB Limited Group privacy statement can be viewed on the MYOB website at [myob.com.au](http://myob.com.au).

## A7. Charges

### *Calculating charges*

The Supply Order will normally specify the charges payable by the Customer. Where the charge for a deliverable is not specified in a Supply Order or otherwise agreed in writing, the Customer must pay a reasonable charge for that deliverable as reasonably determined by MYOB. All charges are in Australian dollars and include GST and all other taxes or duties which may be applicable, unless the Supply Order specifies otherwise. Examples of charges not normally specified in a Supply Order include the charges for MYOB personnel travelling to and from the Customer's site to supply deliverables (such charges are based on MYOB's current travel policy), cancellation fees and charges for anything reasonably done by MYOB arising from any breach of the Customer's obligations under this agreement.

### *Cancellation of Supply Orders*

MYOB may retain any deposit if the Customer cancels a Supply Order. This right is in addition to any other legal or contractual rights MYOB may have in relation to the cancellation, such as require full payment for the software or any services partially delivered.

### *Cancellation of Training or Consulting Services*

The Customer must pay the applicable cancellation fee for cancellation or postponements of training or consulting services the Customer has ordered:

- 14 days prior to provision of the service – 50% of the fees payable for the service;
- 7 days prior to provision of the service – 75% of the fees payable for the service; and
- less than 7 days prior to provision of the service – 100% of the fees payable for the service.

### *Changing charges*

MYOB may change its charges from time to time and must use reasonable endeavours to draw the Customer's attention to the fact that its charges have changed. It may do this by means of a notice on its web site or otherwise. MYOB may change its charges at any time without notice as a result of any introduction of or change in any State or Federal taxes. Except where the change results from any introduction of or change in any State or Federal taxes, any change made by MYOB to its charges for services to be supplied under any supply agreement then in force will not apply to any such services supplied by MYOB during the 90 day period following the date MYOB changes the charge.

### *Goods and Services Tax*

In addition to any other clauses in this agreement the following terms and conditions apply.

- In this clause the expressions "adjustment note", "consideration", "GST", "supply", "tax invoice", "recipient", "supplier" and "taxable supply" have the meanings given to those expressions in the A New Tax System (Goods and Services Tax) Act 1999.
- For the avoidance of doubt, "GST" includes any penalties or additional tax imposed in relation to the GST.

### *Sums include GST*

Unless otherwise expressly stated, all charges or other sums payable or consideration to be provided under this agreement are inclusive of GST.

### *Responsibility for GST*

- Despite any other provision in this document, if GST is imposed on any supply made under this agreement, the recipient must pay to the supplier an amount equal to the GST payable on the supply.
- The recipient must pay the amount referred to in (a) in addition to and at the same time as payment for the supply is required to be made under this agreement.

### *Tax invoice*

If a supply is made to which GST applies or is varied under this agreement, the supplier must provide the recipient of the supply a valid tax invoice or adjustment note at or before the time of payment or variation.

### *Adjustment*

If the amount of GST paid or payable by the supplier on any supply made under this document differs from the amount of GST paid by the recipient, because the Commissioner of Taxation lawfully adjusts the value of the taxable supply for the purpose of calculating GST, then the amount of GST paid by the recipient will be adjusted accordingly by a further payment by the recipient to the supplier or the supplier to the recipient, as the case requires.

## A8. Payment

### *Time for payment*

The Customer must pay all charges by the due date or dates specified in any invoices relating to a Supply Order. If a time for payment is not specified in an invoice the Customer must pay those charges within 14 days of the date of the invoice.

### *Manner of payment*

The Customer must pay all charges by cheque or electronic funds transfer in cleared funds at the place or to the bank account specified by MYOB, or by direct debit authority (or credit card if such facility is made available by MYOB), and free of any deduction, set-off or withholding.

### *Correcting invoice errors*

The Customer must give MYOB notice within 7 days of receiving an invoice if the Customer believes the invoice contains any errors. MYOB and the Customer must work together to resolve any claim of error in an invoice. If MYOB agrees there is an error, MYOB will credit the Customer's account accordingly.

### *Late fee for delayed supply at the Customer's request*

Where the Customer requests MYOB to delay the supply of software or implementation services, the Customer must pay a late fee calculated daily at 2% per month on the charge for the deliverable for the period from the delivery date originally agreed or specified in the Supply Order to the actual delivery date, unless MYOB and the Customer agree otherwise in writing.

### *Late fee on overdue payments*

The Customer must pay a late fee calculated daily at the Commonwealth Bank prime commercial lending rate plus 2% p.a. on any amount overdue for payment from the due date for payment until payment, unless MYOB and the Customer agree otherwise in writing.

### *Supply agreements conditional on Customer creditworthiness*

MYOB may require from the Customer, and obtain from anyone else, information relating to the Customer's creditworthiness and may provide that information to, and check it with, credit reporting agencies and its related companies. The Customer is entitled to see and request the correction of any such information held by MYOB or its related companies. All MYOB's obligations relating to the supply of any deliverable are conditional on MYOB becoming and remaining satisfied about the Customer's creditworthiness.

### *Credit Limits, Credit Checks and Security*

MYOB may at any time set a credit limit for the Customer and require the Customer to provide or arrange a bond, guarantee or other security for MYOB's charges. The Customer authorises MYOB to the full extent permitted by law, including the Privacy Act 1998 (Cth), to give to and obtain from a credit reference organisation or other credit provider, information relating to the Customer's creditworthiness and to use that information.

## A9. Rights Following Breach Without Terminating Agreement

### *Adjusting charges, suspending supply and repossessing deliverables*

If the Customer does not meet an obligation under this agreement or any other agreement between the Customer and MYOB, MYOB may at any time adjust its charges for any deliverables, impose additional charges, suspend or terminate the supply of any deliverables, or enter the Customer's site and take possession of or remove any deliverables not owned by the Customer. These rights apply in addition to any other rights MYOB may have.

### *Claiming indemnity*

The Customer indemnifies MYOB, and the other people who have the benefit of the exclusions and limitation of liability set out in clause A11, against all loss suffered (including reasonable legal costs on a solicitor client basis) and liability incurred by any of them arising from any breach by the Customer of its obligations under this agreement.

## A10. Exclusion Of Other Obligations

### *Matters outside scope of MYOB obligations*

MYOB has no obligation to obtain for the Customer anything other than the deliverables (for example, any services or rights the Customer needs from anyone else) and has no liability (whether for direct, indirect or consequential loss or damage or otherwise) to the Customer for, nor any obligation to remedy any problem resulting from:

- a. any system design, configuration or integration services supplied by anyone else;
- b. anything being configured otherwise than in accordance with MYOB's recommendations;
- c. use of any deliverable, by the Customer or anyone else, otherwise than in accordance with the documentation supplied by MYOB relating to that deliverable;
- d. anything done by MYOB or anyone else at the Customer's request or direction (other than the supply of the deliverables);
- e. any goods or services (for example, any software maintenance services) supplied by anyone else;
- f. any deliverable being incompatible with any software or equipment not supplied by MYOB;
- g. anyone else's action, inaction, or delay;
- h. breach of the Customer's general obligations set out in clause A4;
- i. any changes to statutory, compliance or legislative requirements that impact on the Customer's use of the software;
- j. Customer data not being copied or backed up;
- k. any change to the Customer's business structure, such as a restructure, partnership split or merger or acquisition (clause B2 also applies as applicable);
- l. migrating or dealing with Customer data which is corrupt prior to migration or conversion; or
- m. dealing with data that is known to contain correctable errors and requires cleansing and correction.

## A11. Exclusion And Limitations of Liability

Subject to clause A1(b) and to the extent permitted by law:

- a. MYOB's maximum aggregate liability to the Customer:
  - i. for failure to comply with a consumer guarantee in respect of the supply of software or services not of a kind ordinarily acquired for personal, domestic or household use or consumption; and
  - ii. for loss or damage suffered by the Customer as a result of any other breach of this agreement by MYOB is limited, at MYOB's option in its sole discretion to:
    - iii. in the case of software:
      - A. the replacement of the software (or the particular component of the software, which caused the failure) or the supply of equivalent software (or particular component of the software); or
      - B. the payment of the cost of replacing the software (or the particular component of the software, which caused the failure) or of acquiring equivalent software (or particular component of the software); and
    - iv. in the case of services:
      - A. the supply of the services again; or
      - B. the payment of the cost of having the services supplied again.
- b. all representations, conditions, warranties and terms that would otherwise be expressed or implied in this agreement by general law, statute or custom are expressly excluded.
- c. except in relation to personal injury or death, neither MYOB nor any of the other beneficiaries of this clause referred to below are liable to the Customer for any other loss or damage of any kind whatsoever (whether direct, indirect or consequential loss or damage or otherwise) suffered by the Customer or liability incurred by the Customer caused by, in connection with, or resulting from anything MYOB does or does not do, or delays in doing, or any negligence, misrepresentation, or other default by MYOB or its officers, employees, contractors or agents, whether or not it is contemplated or authorised by this agreement. This exclusion applies irrespective of what the Customer is claiming, including:
  - i. loss of profits or business;
  - ii. loss of opportunity;
  - iii. loss, destruction or corruption of data; or
  - iv. expenses incurred for reconstructing or rekeying data,  
  
and however liability arises or might arise (whether through tort or contract) if it were not for this clause.
- d. if MYOB or any of the other beneficiaries referred to in the following paragraph is ever liable (whether for direct, indirect or consequential loss or damage or otherwise) to the Customer and, for any reason, cannot rely on any exclusion of liability set out in this clause, the maximum combined

liability of MYOB and those other beneficiaries to the Customer is the amount paid by the Customer to MYOB in the six month period up to the date of the event giving rise to the liability.

### *Other beneficiaries of this clause*

The exclusions and limitation of liability in this clause also apply for the benefit of all related companies of MYOB and all officers, employees, contractors and agents of MYOB and those related companies.

### *Compatibility of Software & equipment*

The Customer acknowledges that irrespective of the fact that MYOB may specify minimum or recommended equipment or operating environment requirements in relation to the software, MYOB does not profess to be an expert in relation to compatibility of the software and any particular equipment or equipment components, operating environment or the correct configuration of such equipment or operating environment to enable the software to operate correctly. Furthermore MYOB specifically excludes any warranty that the software shall operate on such minimum or recommended equipment or operating environment and therefore excludes any loss, cost, liability or damages suffered as a result of problems related to the compatibility, performance or configuration of particular equipment or operating environment.

## A12. Events Beyond Reasonable Control

MYOB is not liable for failing to meet an obligation under this agreement to the extent that, and for as long as, the failure is caused by an event beyond its reasonable control (including any delay in supply or failure of any goods or services supplied to MYOB). If MYOB fails, or believes it may fail, to meet an obligation because of an event beyond its reasonable control, it must use reasonable endeavours to give notice to the Customer of the event and the likely effect of the event and do all it reasonably can to meet the obligation as soon as is reasonably practicable. This does not require MYOB to change the way it would otherwise deal with any labour disruption.

## A13. Termination Of Supply Agreements By The Customer

### *Termination for material breach of other obligations*

The Customer may give notice terminating a supply agreement if MYOB has breached a material term of this agreement and the breach remains unremedied 30 days after notice has been given requiring the breach to be remedied.

### *Termination for intervening event*

If MYOB fails to meet an obligation under a supply agreement continuously for 60 days because of an event beyond its reasonable control, the Customer may give notice terminating that part of that agreement affected by the failure.

### *Termination at end of invoicing period*

The Customer may give notice terminating a supply agreement, in relation to any software licence, software maintenance service or other service which is invoiced on a periodic basis, by giving MYOB no less than 30 days notice before the beginning of any invoicing period for that licence or service.

The Customer is deemed to have repudiated a particular supply agreement if any amount owing by the Customer in relation to any software licence, software maintenance service, or any other ongoing service remains unpaid 30 days after the due date for payment, unless MYOB gives express written notice before that date suspending the operation of this clause on such terms as MYOB may specify.

### *Effect on software licence and other supply agreements*

If the Customer terminates a specified supply agreement in relation to any type of deliverable, all other supply agreements will remain in force until they expire or are terminated in accordance with their terms.

## A14. Termination Of Supply Agreements By MYOB

### *Termination following change in customer's capacity*

MYOB may give notice terminating any supply agreement with immediate effect if MYOB reasonably considers the Customer has ceased or threatens to cease conducting its business, has become or threatens to become subject to any form of insolvency administration, has dissolved or threatens to dissolve, dies, or becomes incapacitated.

### *Termination on notice*

MYOB may give notice terminating the Sales and Services Agreement, or any individual supply agreement or agreements, without needing to give any reason for doing so by giving 30 days notice to the Customer. If the Sales and Services is terminated all supply agreements are terminated immediately.

### *Effect on other supply agreements*

If MYOB terminates a supply agreement under this clause, it may in the same notice terminate any or all other supply agreements with the Customer. Unless MYOB does this, all other supply agreements will remain in force until they expire or are terminated in accordance with their terms.

## A15. Rights following termination

On termination of a supply agreement by either the Customer or MYOB, unless otherwise agreed in writing:

- a. the Customer must return to MYOB, and MYOB may enter the Customer's site to remove, any deliverables supplied under the terminated supply agreement which are not owned by the Customer; and
- b. each of the Customer and MYOB must either destroy (and confirm in writing to the other that it has been done) or return to the other all information relating to the terminated supply agreement which by its nature is confidential or is designated confidential. These rights apply in addition to any other rights either the Customer or MYOB may have.

## A16. Assignment

The Customer may not assign its interest in this agreement or any part of it without written consent from MYOB. MYOB may assign any of its rights or obligations under this agreement.

## A17. Subcontracting

MYOB may sub-contract any person to perform any of its obligations under this agreement.

## A18. Changes To The Sales & Services Agreement

MYOB may change the terms of any Part of the Sales and Services Agreement by changing or removing existing terms, adding new ones, replacing a complete Part of the agreement, or adding a new Part to the agreement. MYOB must give the Customer at least one month's notice of any changes. The notice must set out the actual changes or explain their general nature. The changes will only apply to every supply agreement entered into by the Customer after the end of the notice period, unless the parties agrees otherwise in writing.

## A19. Changes To Supply Agreements

Any change to a term of the Sales and Services Agreement for the purposes of a proposed supply agreement must be recorded in the Supply Order before it is signed and does not become effective unless approved in writing by MYOB Legal Services. Any other change to a supply agreement must be in writing and, except to the extent that there is an express right to change it unilaterally (for example, by virtue of a change under the previous clause to the terms of any Part of the Sales and Services Agreement forming part of that supply agreement), must be signed by both MYOB and the Customer.

## A20. Resolving Disagreements

Any disagreement between the Customer and MYOB relating to the meaning or performance of this agreement must be referred initially to the contact people named either on the front page of the relevant Supply Order. The contact people must use their best endeavours to resolve the disagreement promptly.

If this disagreement has not been resolved within 30 days after being referred to the contact people (or any other period agreed between them), either the Customer or MYOB may give notice escalating the matter for consideration at senior management level. If the senior management personnel do not resolve the disagreement within a further 30 days, they must use their best endeavours to agree on an appropriate dispute resolution procedure.

## A21. No Waiver

Except where a party has signed an express written waiver of a right under this agreement, no delay or failure to exercise a right under this agreement prevents the exercise of that or any other right on that or any other occasion. A written waiver applies only to the right and on the occasion specified in it.

## A22. Severing Unlawful Terms

If either party considers a term of this agreement is unlawful and enforceable, both parties must continue to perform all their obligations under this agreement until a final decision is made by a court or arbitrator on the lawfulness and enforceability of the term, unless both parties agree otherwise. If a court or arbitrator makes a final decision that the term is unlawful and unenforceable, it will be severed from this agreement to the extent that it is unlawful and unenforceable and the rest of the agreement will remain in force.

## A23. More Than One Customer

Every person named as a Customer in this agreement must meet all the Customer's obligations under this agreement.

## A24. Governing Law And Jurisdiction

This agreement is governed by the law of New South Wales and the parties

submit to the non-exclusive jurisdiction of the courts of New South Wales. Neither party may object to New South Wales as the forum for any proceeding.

## A25. Giving Notices

Any notice to be given under this agreement must be in writing except where this agreement expressly permits it to be given orally. To be effective, any notice must be either delivered (personally, by ordinary mail or by registered mail), or faxed, to the contact address or fax number specified on the front page of the most recent Supply Order (or to any replacement or additional address or fax number notified in writing by the other party for that purpose), or by any other electronic means agreed between the parties in writing.

A notice given by registered mail is deemed delivered 2 business days after it has been posted. A notice given by fax or other agreed electronic means is deemed delivered at the time the transmission is completed if that is before 5pm on a business day or, if not, then on the next business day.

## A26. Interpretation

In this agreement, the singular includes the plural and vice versa, reference to a person includes any legal or business entity, the words "including" and "for example" have no limiting effect and the contra proferentem rule does not apply and "related companies" has the same meaning as related body corporates (as per the section 50 of the Corporations Act 2001).

## PART B – SOFTWARE LICENCE TERMS

### B1. Grant Of Licence

Subject to the Customer complying with the terms of this agreement, MYOB licenses the Customer to use the software specified in each signed Supply Order and such licence:

- a. is limited to the number of users, funds, user entities or other limitation as specified in the Supply Order;
- b. is non-transferable and non-exclusive; and
- c. includes the number of copies of any media and printed or electronic documentation specified in the Supply Order or otherwise associated with that software and supplied by MYOB.

For the avoidance of doubt provision of a licence under this agreement does not create any obligations on MYOB (such as provision of service packs, updates, enhancements or upgrades) other than those expressly provided under this agreement and any signed Supply Orders. The Customer must:

- a. use the software only at the site specified in the Supply Order or otherwise approved in writing by MYOB;
- b. use the software (other than temporarily in an emergency) only on equipment and operating environments approved by MYOB for that software, as notified on MYOB's web site, and in accordance with operating procedures approved by MYOB; and
- c. copy the software for the purpose of backup and security only. The licence extends to any modification supplied by MYOB under clause B4, and to any service pack, update, enhancement or upgrade supplied by MYOB under Part C, for which the Customer has paid MYOB's charges.

### B2. Licence Restrictions

The Customer must not modify, adapt, alter, disassemble, decompile or reverse engineer any code or database structure except to the extent it is permitted to do so by law and must not, without first obtaining written consent from MYOB, do anything else with the software which is inconsistent with or beyond the scope of the rights expressly granted in the previous clause. Where the software is used to modify data, the Customer must only use the software to modify the data. If the data is accessible using third party tools, the Customer must not use such tools to modify the data itself or any structures used to store or represent the data for example, database schema, specific data item type, tables, columns, triggers, stored procedures or other database objects without MYOB's prior written consent. Under no circumstance may the Customer transfer or sub-licence, in whole or in part, without MYOB's express written consent. Also, Customers may not split software licenses if the Customer's business is divided into two or more separate entities or changes as a result of partnership split, insolvency or appointment of an administrator.

### B3. Delivering And Installing The Software

In addition to its obligations under Part A, the Customer must prepare the site at which the software is to be installed, and the equipment and operating environment on which it is to be used, in accordance with MYOB's reasonable directions. So long as the Customer has met its obligations under this agreement, MYOB must deliver the software to the site specified in the Supply Order and if installation is specified on the Supply Order MYOB must use reasonable endeavours to install the software on approved equipment and operating environment by the installation date agreed between the parties and inform the Customer when installation has been completed successfully.

## B4. Modifying The Software

If the Customer requests MYOB to modify any third party software and MYOB agrees to do so, it is the Customer's responsibility to obtain any consent required from that person for MYOB to modify the software and for the Customer to use the modified software and provide a copy of such consent to MYOB, unless MYOB agrees otherwise in writing.

## B5. MYOB's Warranty

The Customer acknowledges that MYOB does not make any representations or warranties that the software is bug or error free and that the existence of bugs or errors does not constitute a breach of this agreement by MYOB. Subject to this limitation, MYOB does warrant for the duration of the supply agreement that the software it develops will operate in a material respect in accordance with any documentation supplied by MYOB with the software, as long as the Customer:

- uses the software on equipment and the operating environment approved in writing by MYOB;
- uses the software in accordance with the documentation provided by MYOB from time to time;
- uses personnel that has received appropriate training or instruction by attending related MYOB training courses or product events;
- maintains software maintenance service; and
- installs the latest service pack, update, enhancement or upgrade provided by MYOB from time to time.

If the Customer does not conform to any of the requirements above MYOB limits its warranty that the software will operate in a material respect in accordance with any documentation supplied by MYOB with the software to a period of 30 days from date of installation.

This warranty is provided in addition to other consumer rights and remedies that the Customer may have under law.

MYOB's software comes with guarantees that cannot be excluded under the ACL. The Customer is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have the software repaired or replaced if the software fails to be of acceptable quality and the failure does not amount to a major failure.

If the Customer believes the software cannot be used in accordance with that documentation in a material respect, the Customer must (at its own cost), in order to claim under this warranty, send to MYOB at the address below, a documented example of the error and a listing of output and any other data MYOB requires to reproduce the operating conditions in which the error occurred:

MYOB Australia Pty Ltd, 12 Wesley Court, Burwood East VIC 3151

Phone: 1300 555 666 or email: accountants@myob.com.au

MYOB must then investigate the matter as soon as is reasonably practicable and determine whether or not there is an error in the software having that effect and:

- if it is an error which has a material effect on the use of the software, use its reasonable efforts to correct or provide a work around for that error without additional charge to the Customer; or
- if MYOB determines there is no such error, inform the Customer.

## B6. Other Services Outside Scope of MYOB Warranty

MYOB is not obliged under its warranty to investigate or remedy any problem to the extent that it is caused by misuse of the software by the Customer or anyone else, a fault in the equipment or operating environment on which the software is used, the configuration of such equipment or operating environment, an error in or the use of other software used in conjunction with the software, or any failure by the Customer to meet an obligation under this agreement. MYOB may endeavour to investigate or remedy any such problem for an additional charge.

## B7. Termination and failure to pay

If the supply agreement under which software has been supplied to the Customer terminates for any reason and/or the Customer fails to pay all applicable licence fees then the Customer's license to the software is revoked and the Customer agrees to return the software and delete all copies from its systems. If the Customer fails to return the software and delete all copies from its systems or MYOB reasonably suspects this is the case, then MYOB may withhold any passwords or keys to reactivate the software and the Customer shall permit MYOB to enter the Customer's premises (with reasonable notice and at reasonable times) and remove and delete such software.

## PART C – SOFTWARE MAINTENANCE TERMS

### C1. Providing Software Support

MYOB must provide the software maintenance services specified in the Supply Order, during any period for which the Customer has paid the applicable maintenance service charges, in accordance with the terms set out in the Supply Order, Part A and this Part of this agreement, solely in relation to the software developed by MYOB or any partner with which MYOB has a contractual relationship and MYOB has agreed to provide the software (ie not third party software). MYOB will only provide its maintenance services during advertised hours of the MYOB's Service Centre.

### C2. Software Service Subscription Options

Where MYOB agrees to supply its software maintenance services for any software, the Customer may choose between the different software maintenance services options (if any) specified in the Supply Order.

### C3. Telephone Support

Under all software maintenance services options, MYOB will use reasonable endeavours (depending on current customer demand) to ensure that maintenance personnel are available to the Customer by telephone or internet via the MYOB support centre during MYOB's normal business hours to log calls, and if time permits, assist rectification of errors with the MYOB software and, where possible, help provide a detour or work around the problem.

### C4. Updates And Enhancements

Where the Customer pays the applicable maintenance charges MYOB may supply service packs, updates, enhancements or upgrades of MYOB software subject to the following:

- service packs, updates, enhancements or upgrades becoming generally available for commercial use;
- the Customer must have internet access or computer hardware which is compatible with the media format of the service pack, update, enhancement or upgrade as specified by MYOB from time to time;
- may include any instructions, changes to existing documentation and any information relating to changes to equipment or operating system specifications reasonably necessary to enable the service pack, update, enhancement or upgrade to be installed and used;
- if requested by the Customer subject to an additional charge and availability of consultants, install the service pack, update, enhancement or upgrade;
- MYOB may change the applicable licence fee or software maintenance fee for the supported software from the date the service pack, update, enhancement or upgrade is supplied;
- MYOB is not obliged to supply its software maintenance services if the Customer declines to accept and install any service pack, update, enhancement or upgrade offered by MYOB for the supported software.
- MYOB may charge the Customer a reasonable fee where the Customer requests a service pack, update, enhancement or upgrade on CD, disk or other media where such information was available on MYOB's web site.

A service pack, update, enhancement or upgrade may correct known errors in the software but may from time to time include changes to functionality.

### C5. On-Site Support And Other Services

MYOB may support software either by giving advice to the Customer by telephone, email, online discussion, correcting errors on-line from a remote location, attending at the Customer's site and giving advice, or supplying programming or re-configuration services, as MYOB considers necessary. Except to the extent the Customer's chosen software maintenance services option expressly (and in writing) entitles the Customer to specified on-site or other support without additional charge, the Customer must pay MYOB's additional charges for supplying any such on-site or other software maintenance services.

### C6. Customer's Obligation To Demonstrate The Error

If the Customer requests MYOB to supply a maintenance service that involves devising a workaround or adjustment, correcting an error or modifying software, the Customer must give MYOB a documented example of the error and a listing of output and any other data MYOB requires to reproduce the operating conditions in which the error occurred.

### C7. Periodic Renewal and Invoicing

Unless otherwise specified in the Supply Order, the Customer agrees to acquire software maintenance services for a period of time of not less than one year

which is renewed automatically when the Customer receives an invoice for further software maintenance services unless terminated earlier under the terms of this agreement. Unless otherwise specified in the Supply Order, MYOB may invoice the Customer for software maintenance services charges annually, quarterly or monthly in advance.

## C8. Reinstatement Charges

If a Customer has terminated software maintenance services and subsequently requests MYOB to reinstate software maintenance services then MYOB may charge the Customer a reinstatement fee (in addition to the ongoing software maintenance services charges) of either:

- a. an amount equal to the software maintenance services charges (at current rates) foregone by MYOB for the period from termination to reinstatement; or
- b. the licence charges for the software for which the Customer requires software maintenance services, as determined by MYOB at its sole discretion.

Any reinstatement fee is payable prior to software maintenance services being reinstated, unless MYOB agree otherwise.

## C9. Services Outside Scope of Standard Software Support

MYOB is not obliged to provide any software maintenance service to remedy any problem to the extent that the problem is caused by:

- a. misuse of the supported software by the Customer or anyone else;
- b. software maintenance services or work on the software and systems provided by anyone else except for MYOB;
- c. a fault in the equipment on which the software is used or in operating software or equipment other than specified by MYOB;
- d. configuration problems in relation to any equipment or operating systems used with the software;
- e. employment of equipment or operating environment not expressly approved by MYOB as per the MYOB web site;
- f. insufficiently trained staff;
- g. the use of other software in conjunction with the supported software (including when the other software has been supplied by MYOB), or any failure by the Customer to meet an obligation under this agreement;
- h. routers, firewalls, anti-virus or other software or hardware which prevents or limits the required connectivity and performance of the software supported by MYOB;
- i. failure of the Customer to install the latest service pack, update, enhancement or upgrade issued by MYOB from time to time; or
- j. problems caused by customised software or interoperability between the customised/third party software and MYOB software.

MYOB shall not be liable for any losses incurred by the Customer as a result of any such problems or the refusal of MYOB to rectify any such problems. MYOB may endeavour to remedy any such problem for an additional charge. Examples of other services MYOB may agree to provide for an additional charge which do not form part of MYOB's maintenance services under this part include the supply or maintenance of any equipment, accessories, attachments or consumables, data reconstruction (other than as a result of an error in supported software), consultancy services, education and training services and other professional services.

## PART D – THIRD PARTY SOFTWARE SUPPLY TERMS

### D1. Supplying The Software

MYOB must supply to the Customer the third party software specified in each completed Supply Order in accordance with the terms set out in the Supply Order, Part A and Part D of this agreement. MYOB warrants that it is authorised to sell or lease the third party software to the Customer. Unless otherwise specified in the Supply Order, MYOB agrees to sell and the Customer agrees to buy the third party software. For the avoidance of doubt unless the Supply Order expressly specifies the supply of third party software nothing in this agreement creates an obligation for MYOB to supply or support third party software.

### D2. Delivering And Installing The Software

#### *Preparing the site*

In addition to its obligations under Part A, the Customer must prepare the site at which the third party software or equipment is to be installed, and any other third party software which is to be used in conjunction with the third party software, in accordance with MYOB's reasonable directions.

#### *Delivering and installing the software*

So long as the Customer has met its obligations under this agreement and the Supply Order expressly specifies the following, MYOB must deliver the software

to the site specified in the Supply Order, install and use reasonable endeavours to configure it by an installation date agreed by the parties. MYOB must inform the Customer when installation has been completed successfully or if any delays have been encountered.

#### *Additional charges for Customer delay or unforeseen, unusual circumstances*

The Customer must pay any additional charges arising from delay in delivery or installation because of the Customer not complying with its obligations under this agreement, or from circumstances not usually associated with similar deliveries or installations which were not foreseen by MYOB.

## D3. Manufacturer's Warranties

MYOB is not the manufacturer of any of the third party software it supplies and gives no warranty on the third party software except as set out expressly in this agreement. Any warranty period referred to in the manufacturer's documentation supplied with the third party software refers to the period of the manufacturer's warranty, not a warranty by MYOB. MYOB is not the manufacturer's agent and any obligations it has as supplier of the third party software to remedy any failure to comply with an applicable consumer guarantee, is limited to its obligations under the ACL to replace the third party software with an identical type or by refunding the money paid by the Customer for the third party software, or by refunding the amount that is equal to the value of any other consideration provided by the Customer for the third party software. The terms of this agreement prevail over the terms of any manufacturer's warranty on third party software or equipment supplied by MYOB to the extent of any inconsistency.

## PART E – TRAINING SERVICES TERMS

MYOB must supply any training services specified in a completed Supply Order in accordance with the terms set out in the Supply Order and in Part A of this agreement. Examples of such services include initial classroom or on-site education on the use of deliverables, site specific education and operator training.

## PART F – PROFESSIONAL SERVICES TERMS

### F1. General Provision of Professional Services

MYOB must supply any professional services specified in a completed Supply Order in accordance with the terms set out in the Supply Order and in Part A of this agreement. These professional services relate to components from the software products supplied by MYOB. Examples of such services include general consultancy on the use of Practice Management or compliance modules, configuration or integration services, data recovery and reconstruction (other than as a result of an error in supported software) and any other services requested by the Customer which are outside the scope of any of the standard services supplied by MYOB as described in the Supply Order. Provision of Professional services does not include items such as operating systems (e.g. DOS, Novell, Windows, Windows NT) and system design.

### F2. Professional Services paid for in advance

If the Customer agrees and signs a Supply Order and pays for the provision of services in advance then such services must be used within 12 months of the date of the signed Supply Order. After such time the Customer forfeits any rights to such services and MYOB is not required to refund any corresponding amounts.

## PART G – DIRECT DEBITS FROM BANK ACCOUNTS AND CREDIT CARDS

Direct Debit transactions from Bank Accounts and Credit Cards made in respect of software or services supplied pursuant to this Agreement shall be governed by the attached Direct Debit Request Service Agreement and Credit Card Direct Debit Terms & Conditions.

# Direct Debit From Bank Account and Credit Cards

## 1. Direct Debit Request Service Agreement (DDRSA)

The following terms and conditions relate to your Bank Account direct debit authority and sets out your rights, our commitment to you, your responsibilities to us and where you should go for assistance. These terms and conditions are in addition to the terms and conditions of any existing contract/s with MYOB Australia or the terms and conditions associated with the products and services that relate to your direct debit authority.

- 1.1 By selecting the Direct Debit from bank account payment method either online or by completing a Direct Debit Request Form you:
  - > Acknowledge that you are an authorised signatory of the nominated Bank Account or if debiting a joint account, you confirm all the authorised signatories have authorised the establishment of this direct debit request.
  - > Understand and accept your commitments and responsibilities under the direct debit request service agreement set out below.
  - > Authorise MYOB Australia Pty Ltd (User ID 184111) to debit funds from your nominated Bank Account through BECS for both Periodic Payments for all contracts and/or products and services with recurring charges; and One Off Payments where direct debit has been selected as the payment method.
- 1.2 MYOB Australia Pty Ltd will arrange for funds to be debited from your nominated Bank Account, as authorised by you, on the direct debit date shown on your invoices. If the direct debit date falls on a non-working day or public holiday the payment will be processed on the next working day.
- 1.3 A tax invoice confirming the amount of the payment will be issued to you within 1-3 working days of:
  - > Periodic Payments – the start of a month in which a payment will be made by you.
  - > One Off Payments – your order being accepted and processed.
- 1.4 MYOB will advise of any changes to the debit arrangements at least 14 days in advance.
- 1.5 It is your responsibility to ensure that you have sufficient funds available in your nominated Bank Account to cover your periodic payments and that your Bank Account details are correct.
- 1.6 Direct Debiting through BECS is not available on all bank accounts. If you are paying by direct debit from your Bank Account, it is your responsibility to ensure that your Bank Account can accept direct debits (your financial institution can confirm this). We also advise that you should check your Bank Account details with your financial institution before completing the Direct Debit Request.
- 1.7 Should a payment default MYOB will notify you by email and, it is your responsibility to organise an alternative payment which should be received by MYOB within five (5) working days of the original due date.
- 1.8 Should a response not be received within the 5 working days allowed, MYOB Australia Pty Ltd may list your payment default with Veda Advantage (CRAA). Defaults are listed for a period of five (5) years and may have an adverse effect on your credit rating.
- 1.9 MYOB may suspend your account, subscription or membership until any outstanding payments have been made.
- 1.10 You may incur fees or charges imposed by MYOB to cover administration fees for the collection of any defaulting payment under this agreement.
- 1.11 If you believe that there has been an error in debiting your Bank Account you should immediately contact the MYOB Accounts Department by phone on 03 9222 9782 or via email at [accounts@myob.com](mailto:accounts@myob.com) so that we can resolve your query promptly.
- 1.12 If MYOB concludes, as a result of our investigations, that your Bank Account has been incorrectly debited, MYOB will advise you and arrange a refund of the amount due to you. If MYOB concludes that your account has been debited correctly, we will advise you and provide evidence of our finding.
- 1.13 If you wish to defer or alter any payment arrangements, stop an individual payment item or cancel a payment authority please contact the MYOB Accounts Department by phone on 03 9222 9782 or via email at [accounts@myob.com](mailto:accounts@myob.com).
- 1.14 Confidentiality – all information provided to MYOB is confidential and protected by the MYOB privacy policy. The policy can be viewed at [www.myob.com.au/privacy.html](http://www.myob.com.au/privacy.html). However, you acknowledge and agree that we will need to provide information to our financial institution to initiate or alter payment arrangements from your Bank Account or to investigate an alleged incorrect or wrongful payment.
- 1.15 This Authority permits MYOB to change the amount debited from your Bank Account, with at least 14 days notice, to reflect any change to prices for the products and/or services that relate to your direct debit authority. It also permits MYOB to change the amount debited or charged to cover any increases in amounts payable arising from the purchase of additional products by you from time to time, with at least 14 days notice.

## 2. Credit Card Direct Debit Terms and Conditions

The following terms and conditions relate to your Credit Card direct debit authority and sets out your rights, our commitment to you, your responsibilities to us and where you should go for assistance. These terms and conditions are in addition to the terms and conditions of any existing contract/s with MYOB Australia or the terms and conditions associated with the products and services that relate to your direct debit authority.

- 2.1 By selecting the Direct Debit from Credit Card payment method, either online or by completing a Direct Debit Request Form you:
  - > Acknowledge that you are authorised to establish this direct debit authority.
  - > Understand and accept your commitments and responsibilities under the credit card direct debit terms and conditions set out below.
  - > Authorise MYOB Australia Pty Ltd to charge your nominated Credit Card for both Periodic Payments for all contracts and/or products and services with recurring charges; and One Off Payments where Credit Card has been selected as the payment method.
- 2.2 MYOB Australia Pty Ltd will arrange for funds to be debited from your nominated Credit Card, as authorised by you, on the direct debit date shown on your invoices.
- 2.3 A tax invoice confirming the amount of the payment will be issued to you within 1-3 working days of:
  - > Periodic Payments – the start of a month in which a payment will be made by you.
  - > One Off Payments – your order being accepted and processed.
- 2.4 MYOB will advise of any changes to the direct debit arrangements at least 14 days in advance.
- 2.5 It is your responsibility to ensure that you have sufficient funds available to cover your payments and that your Credit Card details are correct.
- 2.6 In the event that a payment is declined we will make up to two (2) further attempts to process the payment, 3 days after the first or subsequent attempt.
- 2.7 Should a payment default MYOB will notify you by email and, it is your responsibility to organise an alternative payment which should be received by MYOB within five (5) working days of the original due date.
- 2.8 Should a response not be received within the 5 working days allowed, MYOB Australia Pty Ltd may list your payment default with Veda Advantage (CRAA). Defaults are listed for a period of five (5) years and may have an adverse effect on your credit rating.
- 2.9 MYOB may suspend your account, subscription or membership until any outstanding payments have been made.
- 2.10 You may incur fees or charges imposed by MYOB to cover administration fees for the collection of any defaulting payment under this agreement.
- 2.11 If you believe that there has been an error in debiting your Credit Card you should immediately contact the MYOB Accounts Department by phone on 03 9222 9782 or via email at [accounts@myob.com](mailto:accounts@myob.com) so that we can resolve your query promptly.
- 2.12 If MYOB concludes, as a result of our investigations, that your Credit Card has been incorrectly debited, MYOB will advise you and arrange a refund of the amount due to you. If MYOB concludes that your Credit Card has been debited correctly, we will advise you and provide evidence of our finding.
- 2.13 If you wish to defer or alter any payment arrangements, stop an individual payment item or cancel a payment authority please contact the MYOB Accounts Department by phone on 03 9222 9782 or via email at [accounts@myob.com](mailto:accounts@myob.com).
- 2.14 Confidentiality – all information provided to MYOB is confidential and protected by the MYOB privacy policy. The policy can be viewed at [www.myob.com.au/privacy.html](http://www.myob.com.au/privacy.html). However, you acknowledge and agree that we will need to provide information to our financial institution to initiate or alter payment arrangements from your Credit Card or to investigate an alleged incorrect or wrongful payment.
- 2.15 This Authority permits MYOB to change the amount debited from your Credit Card, with at least 14 days notice, to reflect any change to prices for the products and/or services that relate to your direct debit authority. It also permits MYOB to change the amount debited or charged to cover any increases in amounts payable arising from the purchase of additional products by you from time to time, with at least 14 days notice.

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