

MYOB Partner Program Terms and Conditions

November 2017





MYOB Partner Program Terms and Conditions

WHAT DO THESE TERMS COVER?

These are the terms and conditions (**Terms**) for the following benefits provided by MYOB Australia Pty Ltd (in Australia) and MYOB NZ Limited (in New Zealand), as applicable (**MYOB**) to its Partners:

- The MYOB Partner Program (**Partner Program**) – *see Section A*
- The MYOB Connected Accounting Program (**CAP**) – *see Section B*
- The MYOB Bookkeeper Program (**BKP**) – *see Section C*
- The MYOB Certified Consultant Program (**CCP**) – *see Section D*

There are also general terms that apply to all the above programs, including definitions for some capitalised terms - *see Section E*

Please read this document carefully. If you participate in any of the programs, then you agree to be bound by these Terms and any changes we make to these Terms from time to time.

Unless expressly stated otherwise, any clause references within the document are references to clauses within that same Section.



SECTION A – MYOB PARTNER PROGRAM ('PARTNER PROGRAM')

1 Partner Program Benefits

- 1.1 The Partner Program is free to join and provides program members with a range of benefits. These benefits are summarised online for Australian members ([here](#)) and New Zealand members ([here](#)) (each being a **Program Website**). All benefits are determined by MYOB in its sole discretion and may be amended at any time by providing notice to you.
- 1.2 The Partner Program benefits can be broadly categorised as:
- 1.2.1 benefits for all members, regardless of Membership Status; or
 - 1.2.2 benefits for members that vary according to Membership Status (known as **Rewards** – see clause 6).
- 1.3 A full list and details of Eligible Activities, Rewards, the Membership Status Table and the Status Points Earn Table is available on the Program Websites. You should regularly check these pages as the information may change from time to time.

2 Interaction with other MYOB reward programs

Unless otherwise specified by us, you cannot participate in this Program in addition to other similar rewards programs previously offered by MYOB (such as the MYOB Referral Program and the MYOB Reseller Program). If you elect to participate in this Program, you will not be able to benefit from other such rewards programs.

3 Membership Status

- 3.1 Each member of the Program receives a **Membership Status**, which determines the Rewards you can access (i.e. a higher Membership Status means greater Rewards).
- 3.2 Membership Status is determined by the number of Status Points earned. The Membership Status Table on the relevant Program Website sets out the number of Status Points needed to achieve a certain Membership Status.
- 3.3 When you first join the Program, you will automatically receive Status Points for each Online Business Relationship and for each Certified Consultant employed or otherwise engaged in your business, as at the date you join the Program.
- 3.4 To either maintain or upgrade your Membership Status, you must earn the number of Status Points as set out in the Membership Status Table.
- 3.5 MYOB reserves the right to upgrade, downgrade or maintain your Membership Status in our sole discretion. For example, MYOB may downgrade your Membership Status if there is a reduction in the number of Online Business Relationships you have or if you do not meet the criteria in the Membership Status Table to maintain your current Membership Status. In respect of any adjustment to a lower Membership Status, MYOB will give you prior written notice before any such adjustment takes effect (**Notice Period**). If you earn the required number of Status Points during the Notice Period, then your Membership Status will not be downgraded.
- 3.6 You may check your Membership Status at any time by logging onto the Partner Central Dashboard, "MySuccess". Your Membership Status is assessed regularly based on your Status Points to determine if you are eligible to upgrade to the next tier.

4 Status Points

- 4.1 Each time you engage in an Eligible Activity, you may earn Status Points. Status Points are allocated in accordance with the Status Points Earn Table set out on the relevant Program Website.



- 4.2 Status Points are allocated to your account as soon as reasonably practicable after the date of an Eligible Activity.
- 4.3 MYOB may remove Status Points from your account if they have been allocated to you in error, or in respect of any Eligible Activity which is the subject of a cancellation, return or refund or which MYOB believes has been conducted in breach of these Terms.
- 4.4 You are responsible for regularly checking your account to confirm that Status Points have been properly allocated to your account. You must notify us of any discrepancies in relation to your account as soon as possible and in any event no later than 30 days after the date of the relevant Eligible Activity giving rise to that Status Point.
- 4.5 Status Points:
- 4.5.1 can only be earned by members of the Program;
 - 4.5.2 cannot be sold, transferred or assigned;
 - 4.5.3 do not have any cash or monetary value and are not convertible to cash;
 - 4.5.4 are not any form of contractual right or property;
 - 4.5.5 can only be earned on Eligible Activities; and
 - 4.5.6 may expire over time in certain situations (please refer to the relevant Program Website for further details).
- 4.6 You may check the number of Status Points that you have accrued at any time by logging onto the Partner Central Dashboard, "MySuccess".

5 Membership Status Logos

- 5.1 MYOB will provide Program members with access to a range of MYOB logos which members can use to designate their Membership Status (**Membership Status Logo**).
- 5.2 MYOB grants you a non-exclusive, royalty free, personal, non-transferable and revocable licence for the term of the Program to use the Membership Status Logo corresponding with your Membership Status (**Licensed Logo**) in Australia and New Zealand solely for the purpose of designating your Membership Status in accordance with these Terms.
- 5.3 In the event you change your Membership Status, you:
- 5.3.1 must cease use of the Membership Status Logo that corresponded with your previous Membership Status and may begin use of the Membership Status Logo that corresponds with your new Membership Status, if any; and
 - 5.3.2 agree to use all reasonable efforts to transition to the Membership Status Logo associated with your new Membership Status. MYOB will allow you 3 months to cease use of the Membership Status Logo associated with your prior Membership Status.
- 5.4 When using the Licensed Logo, you must comply with all requirements notified by MYOB from time to time in relation to use of the Licensed Logo and use the Licensed Logo only in the manner prescribed by MYOB.

6 Rewards

6.1 *Commission & Wholesale Discounts*

Rewards can be classified as either:

- 6.1.1 commission on successful referrals of certain MYOB products and services (**Commission**); or
- 6.1.2 access to discounted prices for certain MYOB products and services (**Wholesale Discount**).

You cannot receive both a Commission and a Wholesale Discount in relation to a transaction.



6.2 *What products and services attract Commission / Wholesale Discounts?*

The current list of product and services that attract Commission or Wholesale Discounts can be obtained by emailing us email us [here](#). Please be aware that MYOB can update this list at any time with notice to you.

6.3 *What Wholesale Discount can I receive?*

Wholesale Discounts are calculated as a percentage discount to the ordinary price of the MYOB product or service (exclusive of GST). Unless otherwise specified by us, the discount percentage received depends on your Membership Status (a higher Membership Status means a higher discount percentage).

The percentage discount for each Membership Status is set out on the relevant Program Website.

6.4 *What is a 'successful referral' for Commission?*

6.4.1 To be eligible for a Commission, you must make a 'successful referral'. This means that a client must pay for an eligible MYOB product or service using a quote generated by you as the referring Partner.

6.4.2 A successful referral may entitle you to both a Commission and Status Point(s).

6.5 *How do I make a referral?*

6.5.1 Referrals should be made online via the Dashboard or your my.MYOB profile at the time your client purchases the MYOB product or service.

6.5.2 If it is not possible to make the referral online, you may make the referral and related purchase by contacting your partner manager.

6.6 *Types of Commission*

Depending on the MYOB product or service purchased by the referred client, MYOB will grant you one of the following at MYOB's election:

- a) A Once-off Commission; or
- b) An Ongoing Commission.

6.6.1 *A Once-off Commission*

- (a) A Once-off Commission is calculated as a percentage of the amount paid by the referred client to initially acquire the MYOB product or service (exclusive of GST).
- (b) A Once-off Commission will be paid within 30 days after the end of the month in which the referred client has paid for the particular product or service.
- (c) You are eligible for a Once-off Commission only after MYOB has received full payment from the client for the product or service purchased;
- (d) The percentage of Commission depends on your Membership Status, unless otherwise stated. Please see the relevant Program Website.

6.6.2 *An Ongoing Commission*

- (a) An Ongoing Commission is calculated as a percentage of each subscription payment paid by the referred client to MYOB in relation to a particular product or service (exclusive of GST).
- (b) An Ongoing Commission will be calculated on a monthly or yearly basis (as advised by MYOB) and will be paid within 30 days after the end of the calculation period. You will not be eligible for an Ongoing



Commission if the client's subscription is in arrears for the period in question.

- (c) An Ongoing Commission is payable for a maximum period of five years, which starts from the date that MYOB receives the referred client's first subscription payment.
- (d) The percentage of Commission depends on your Membership Status, unless otherwise stated. Please see the relevant Program Website.

6.7 *How can I receive my Commission?*

You may elect to have your Commission amount:

- 6.7.1 paid directly to you by electronic funds transfer;
- 6.7.2 credited to your MYOB account (e.g. as a rebate on software maintenance costs);
or
- 6.7.3 passed on to your client(s) in the form of a discount to the regular price for certain MYOB products or services.

However, if your account with MYOB is in arrears, you will only be entitled to a credit to your MYOB account.

7 Overpayment of Rewards

- 7.1 If MYOB provides you with a Reward and subsequently determines that you were not entitled to receive that Reward, then MYOB can elect to either:
 - 7.1.1 offset that Reward from one or more future Rewards that become due to you; or
 - 7.1.2 require you to repay that Reward to MYOB.



SECTION B – MYOB CONNECTED ACCOUNTING PROGRAM ('CAP')

1 Benefits of CAP Membership

By joining CAP, you will be entitled to the benefits described here:

<https://www.myob.com/au/accountants-and-partners/partner-program/connected-accountant>.

2 Conditions of CAP Membership

By applying to become a CAP member, and during your CAP membership, you agree to the following terms and conditions:

- 2.1.1 You warrant that (a) you are currently an accountant in public practice in Australia or New Zealand; and (b) you have the appropriate skills and knowledge to provide services to purchasers of MYOB products and services.
- 2.1.2 You agree to undertake further training and professional development as may be deemed appropriate by MYOB.
- 2.1.3 If you fail to attain or maintain the standard of skill or undertake the prescribed professional development required by MYOB, you must not hold yourself out as a CAP member.
- 2.1.4 As a CAP member, you may be granted a license to use MYOB Reference Software which enables you to open your clients' company files with the product for which they are currently licensed. Such software is granted to you for reference purposes only.
- 2.1.5 MYOB Reference Software is provided to you on the following conditions:
 - (a) The Reference Software may only be installed and used at a single place of business registered by you.
 - (b) The Reference Software is not for retail sale and may not be transferred, assigned or given to any other party.
- 2.1.6 In the event of termination of your Program membership, you must delete all copies of the Reference Software and immediately return all relevant DVDs / USBs to MYOB.
- 2.1.7 When upgrades to the MYOB Reference Software are provided, the licence for the original software will immediately lapse and you will promptly return the original to MYOB or destroy it (if applicable).
- 2.1.8 You will take all reasonable steps to safeguard the MYOB Reference Software to ensure that there is no unauthorised copying or distribution of the software.
- 2.1.9 Any prior licence in respect of Reference Software (or other 'not for retail sale' products) registered to you will lapse upon commencement of your Program membership, with the exception of MYOB Premier.
- 2.1.10 Any MYOB AccountRight Live entitlements provided or purchased by you against your partner serial number are intended for use internally, within your business, and access by clients is strictly prohibited.
- 2.1.11 If you want to use an MYOB product to run your clients' datafiles, a product subscription will need to be purchased by the client(s). In the case of AccountRight Live, you also have an option to purchase product subscriptions under the MYOB Bureau Model, which allows you to purchase AccountRight Live subscriptions against individual serial numbers and be billed to your existing MYOB invoice. You may grant your clients access to these subscriptions.



2.1.12 Subject to your compliance with these Terms (including the payment of fees specified by MYOB), your membership:

- (a) shall continue until the end of the financial year in which it was first issued; and
- (b) may be renewed on an annual basis thereafter.

2.1.13 You undertake to:

- (a) pay any fees specified by MYOB to maintain your membership;
- (b) do the following immediately following termination of your membership for any reason: (i) return all MYOB property and materials to MYOB; and (ii) cease holding yourself out as a member of CAP.



SECTION C – MYOB BOOKKEEPER PROGRAM ('BKP')

1 Benefits of BKP Membership

By joining the BKP, you will be entitled to the benefits described here:
<https://www.myob.com/au/accountants-and-partners/partner-program/bookkeepers>

2 Conditions of BKP Membership

By applying to become a BKP member, and during your BKP membership, you agree to the following terms and conditions:

- 2.1.1 You warrant that you have the appropriate skills and knowledge to provide bookkeeping services to purchasers of MYOB products and services.
- 2.1.2 You agree to undertake further training and professional development as may be deemed appropriate by MYOB.
- 2.1.3 If you fail to attain or maintain the standard of skill or undertake the prescribed professional development required by MYOB, you must not hold yourself out as a BKP member.
- 2.1.4 Your BKP membership is granted to you personally. You understand that:
 - (a) no other person, whether in the employ or contracted by you, may represent themselves as a BKP member unless they are endorsed separately by MYOB and comply with these Terms; and
 - (b) if you wish to involve others in providing services, then all service providers must be endorsed separately by MYOB and comply with these Terms.
- 2.1.5 You may nominate one additional support person to access MYOB Technical Support. Any changes to your nominated additional support person will only be completed by MYOB upon receipt of either an email, or written notification on registered company letterhead and signed by you.
- 2.1.6 If you are provided with a Professional Partner CD or any other reference software, you understand and agree that it:
 - (a) is intended solely for your own use when working with your clients' data;
 - (b) must not be installed on a client's computer under any circumstances;
 - (c) must not be sold, given away, transferred or otherwise disposed of to any third party; and
 - (d) remains the property of MYOB.
- 2.1.7 Subject to your compliance with these Terms (including the payment of fees specified by MYOB), your membership:
 - (a) shall continue until the end of the financial year in which it was first issued; and
 - (b) may be renewed on an annual basis thereafter.
- 2.1.8 You undertake to:
 - (a) pay any fees specified by MYOB to maintain your membership;
 - (b) do the following immediately following termination of your membership for any reason: (i) return all MYOB property and materials to MYOB; and (ii) cease holding yourself out as a member of BKP.



SECTION D – MYOB CERTIFIED CONSULTANT PROGRAM ('CCP')

By applying to be an MYOB Certified Consultant and continuing to use that title, you agree to the following terms and conditions:

- 1 You warrant that you have the appropriate skill and knowledge to provide installation services, training and on-going consulting advice to the purchasers of MYOB products and services.
- 2 You agree to:
 - 2.1.1 undergo an assessment of your skills prior to becoming an MYOB Certified Consultant; and
 - 2.1.2 undertake further training and professional development as may be deemed appropriate by MYOB.
- 3 If you fail to attain or maintain the standard of skill or undertake the prescribed professional development required by MYOB, you must not hold yourself out as an MYOB Certified Consultant.
- 4 Your "MYOB Certified Consultant" designation is granted to you personally. You understand that:
 - 4.1.1 no other person, whether in the employ or contracted by you, may represent themselves as an MYOB Certified Consultant unless they are endorsed separately by MYOB and comply with these Terms; and
 - 4.1.2 if you wish to involve others in providing services, then all service providers must be endorsed separately by MYOB and comply with these Terms.
- 5 MYOB will provide assistance to MYOB Certified Consultants by:
 - 5.1.1 convening meetings and seminars from time to time;
 - 5.1.2 distributing appropriate information concerning new product or updates of existing products;
 - 5.1.3 permitting MYOB Certified Consultants to utilise such product trademarks as shall be required to hold themselves out as an "MYOB Certified Consultant" and to publicise the services they provide;
 - 5.1.4 providing details of the services that they provide to purchasers of MYOB products.
- 6 Subject to your compliance with these Terms (including the payment of fees specified by MYOB), your certification:
 - 6.1.1 shall continue until the end of the financial year in which it was first issued; and
 - 6.1.2 may be renewed on an annual basis thereafter.
- 7 You undertake to:
 - a. pay any fees specified by MYOB to maintain your certification;
 - b. do the following immediately following termination of your certification for any reason:
 - i. return all MYOB property and materials to MYOB; and
 - ii. cease holding yourself out as an MYOB Certified Consultant.
- 8 You must only use marketing collateral specifically produced and supplied by MYOB in respect of a product or service and must not make any other representation concerning the function or operation of that product or service.



SECTION E – GENERAL PROVISIONS APPLYING TO ALL PROGRAMS

1 Eligibility criteria and program membership

- 1.1 Unless otherwise permitted by MYOB, interested persons must apply for program membership by completing the form provided. All decisions regarding membership are determined by MYOB in its sole discretion.
- 1.2 MYOB may specify eligibility criteria for program membership. Such criteria will be made available to applicants (e.g. specified on the program application form). MYOB reserves the right to waive or amend these criteria as it sees fit. Current members will be notified if they must take further action to meet revised eligibility criteria to continue their membership in the program.
- 1.3 Your membership in a program and any associated benefits (including any certification, Status Points, Rewards or other benefits granted) are not transferrable.
- 1.4 You must immediately notify MYOB in writing of any change to the details that you provided in applying for a program membership.

2 Undertakings of all MYOB partners

- 2.1 As a partner of MYOB, you undertake to:
 - 2.1.1 provide the services required by MYOB purchasers in accordance with best practice;
 - 2.1.2 use your best endeavours to completely satisfy all reasonable customer requirements;
 - 2.1.3 conduct yourself at all times in a manner which does not demean or damage the reputation of MYOB, its products or services;
 - 2.1.4 provide a positive contribution to MYOB sponsored activities (as applicable); and
 - 2.1.5 provide satisfactory answers within 14 days to any complaints made to MYOB concerning the provision of your services and, in the event that MYOB considers the complaint justified, take such action or make such restitution reasonably requested by MYOB.

3 Confidentiality

- 3.1 For the purpose of this clause, **Confidential Information** means any information, data, practices, systems (including computer systems), know-how, techniques and intellectual property relating to a party's business and its customers, suppliers and competitors which is supplied or disclosed by a party ("supplier") to the other party ("recipient") other than information, data, practices and techniques:
 - 3.1.1 in the possession of the recipient prior to the date of its disclosure to the recipient by the supplier;
 - 3.1.2 in the public domain prior to the date of its disclosure to the recipient by the supplier;
 - 3.1.3 which has entered the public domain other than as a result of breach of confidence by the recipient; or
 - 3.1.4 supplied to the recipient without restriction by a third party who is under no obligation to the supplier to maintain that information in confidence.



- 3.2 All Confidential Information disclosed by the supplier to the recipient or its directors, employees, officers, agents, advisers or contractors ("associates") is disclosed on terms of strict confidence, prohibiting any further disclosure or use not authorised by these Terms.
- 3.3 The recipient must:
- 3.3.1 use the same degree of care (not less than a reasonable degree of care) that it would use with respect to its own information of a like nature;
 - 3.3.2 take all practicable steps to ensure that Confidential Information is not disclosed to or obtained from it or from its associates by anyone other than persons employed by it or acting on its behalf who are required to have access to the Confidential Information for the performance under these Terms; and
 - 3.3.3 not permit unauthorised persons to have access to places where Confidential Information is reproduced or stored.
- 3.4 The recipient must use reasonable care to ensure that each of its associates to whom Confidential Information is or has been disclosed ("disclosee") does not disclose or use or assist others to disclose or use any of that Confidential Information contrary to the requirements of this clause either during or after the termination of the employment, office or agency of the disclosee.
- 3.5 If any disclosee breaches its obligations of confidence, the recipient must use its best endeavours to enforce or procure the enforcement of the obligations of non-disclosure against the disclosee.
- 3.6 A party may not at any time make or assist any other person to make any unauthorised disclosure or use of any Confidential Information.
- 3.7 Nothing in this clause prohibits the disclosure of Confidential Information:
- 3.7.1 to a legal adviser or other person or body acting for a recipient under similar obligations as mentioned in this clause, to the extent necessary to enable it to protect or advise upon the rights of a recipient in relation to the business of that recipient or the obligations of that recipient under these Terms;
 - 3.7.2 by operation of law or rule of an applicable securities exchange, if the recipient has taken practicable legal steps to prevent the disclosure; or
 - 3.7.3 where the Confidential Information is the records or any other personal information of a Customer within the meaning of relevant Privacy Act in respect of which the recipient holds a valid and subsisting customer consent to disclose.

4 Inappropriate activity

- 4.1 Without limiting any other clause in these Terms, if MYOB determines (acting reasonably) that you have engaged, or attempted to engage, in any inappropriate activity, MYOB may terminate your participation in any program and take any action it considers necessary.
- 4.2 Without limitation, the following conduct may be considered inappropriate activity:
- 4.2.1 applying what could be considered unreasonable pressure on a client or potential client to complete a purchase, in order for you to secure a benefit;
 - 4.2.2 encouraging MYOB clients to cancel and then reapply for a product or service (so called 'churning');
 - 4.2.3 any other inappropriate method of collecting Status Points, Rewards or any other benefit.



5 Tax provisions

- 5.1 All Rewards and other benefits are quoted exclusive of any GST, unless expressly stated otherwise. Where applicable, GST will be added at the current rate.
- 5.2 If you are registered for GST and provide MYOB with a taxable supply, you ('supplier') and MYOB ('recipient') agree the following in relation to tax invoices:
 - 5.2.1 The recipient can issue tax invoices in respect of these supplies.
 - 5.2.2 The supplier will not issue tax invoices in respect of these supplies.
 - 5.2.3 The supplier acknowledges that it is registered for GST when it enters into this agreement.
 - 5.2.4 The supplier will notify the recipient if it ceases to be registered for GST.
 - 5.2.5 The recipient acknowledges that it is registered for GST when it enters into this agreement.
 - 5.2.6 The recipient will notify the supplier if it ceases to be registered for GST.
 - 5.2.7 The recipient will issue the original or a copy of the tax invoice to the supplier within 28 days of making, or determining, the value of the taxable supply.

6 Termination and suspension

- 6.1 MYOB does not guarantee that any program will continue indefinitely or for any particular period of time. Without limiting any other rights MYOB may have, MYOB reserves the right to discontinue these benefits at any time upon 30 days' notice to you.
- 6.2 If we make a change to these Terms under clause 8.2, then you have the option to terminate the relevant program membership.
- 6.3 You can terminate a program membership by contacting us at least 10 days before the end of the current period of your membership subscription. If the relevant membership runs indefinitely, you may contact us at any time to request the termination, which will occur 10 days after this contact.
- 6.4 During the notice period, you will still liable for any fees (if any) in relation to your membership up to the effective date of termination.
- 6.5 You may also terminate your program membership if we fail to remedy a material breach of these Terms within 30 days of you giving us written notice of the breach.
- 6.6 Below are the situations in which we can suspend or terminate your program membership without prior notice. We will notify you of your suspension or termination as soon as possible.
 - 6.6.1 **A breach occurs:** you fail to remedy a material breach of these Terms within 7 days of us giving you notice of the breach.
 - 6.6.2 **Unforeseen event:** in our opinion, something occurs that renders the ongoing operation of the program substantially unworkable.
 - 6.6.3 **Regulator / Legal:** in our opinion, the actions of a regulator or a change in law or regulation makes the ongoing operation of the program substantially unworkable.
 - 6.6.4 **Protect MYOB:** we believe this is necessary either to protect the security, integrity or reputation of the program or MYOB.
 - 6.6.5 **Material change to your business:**
 - (a) we receive notification of a dispute from one or more of the directors or principals of your business;



- (b) 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; or
- (c) there is a change in who owns or controls your business.

6.7 Notification

- 6.7.1 We will notify you in writing (which includes by email) of the suspension or termination.
- 6.7.2 We can reinstate a suspension or 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.

6.8 If you have breached any of these Terms, then MYOB may by notice to you:

- 6.8.1 terminate or suspend your membership in a program;
- 6.8.2 deduct any program benefit from your account;
- 6.8.3 refuse to allocate a program benefit to you;
- 6.8.4 refuse to honor or reclaim any program benefit; or
- 6.8.5 take any other action MYOB considers to be appropriate in the circumstances (acting reasonably).

6.9 On termination of your membership in a program for any reason, all benefits associated with that program will immediately lapse, unless otherwise agreed by us.

6.10 Termination or expiry of these Terms for any reason will not of itself give rise to any liability on the part of MYOB to pay any compensation to you or others, including for loss of profits or goodwill.

7 Liability, warranties, representations and indemnities

7.1 To the extent permitted by law, our liability to you for any non-compliance with a statutory guarantee or Loss or Claim arising out of or in connection with the supply of goods or services under these Terms or any breach by us of these Terms however arising (whether for breach of these Terms, tort (including negligence), statute, custom, law or on any other basis) is limited to the resupply of product or service; or the payment of the cost of resupply of product or service.

7.2 All representations, conditions, warranties and terms that would otherwise be expressed or implied in these Terms by general law, statute or custom are expressly excluded (to the extent that such representations, conditions, warranties and terms can be excluded at law).

7.3 We are not responsible or liable to you or your business for 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.

7.4 You indemnify us against any Loss or Claim suffered or incurred arising from your negligence, misrepresentation, fraud, breach of law or breach of these Terms.

7.5 If we caused or contributed to a Loss or Claim, then your liability under clause 7.4 above is limited to the amount of the Loss or Claim which is directly attributable to your conduct.

7.6 If you accept these Terms in Australia, this clause 7 is not intended to have the effect of excluding, restricting or modifying:

- 7.6.1 the application of all or any of the provisions of the Australian Consumer Law (ACL); or
- 7.6.2 the exercise of a right conferred by such a provision; or



- 7.6.3 any liability of us in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL to a supply of goods or services.

8 Changes to these Terms

- 8.1 MYOB may make change to any aspect of these Terms at any time including, without limitation, changes to the list of Eligible Activities, Rewards, the Membership Status Table and the Status Points Earn Table.
- 8.2 If we make a change to a program or these Terms that is likely to adversely affect your position (including increasing any fees payable under a program):
 - 8.2.1 we will give you at least 30 days' prior notice (longer if required by legislation or any other code of conduct we subscribe to) of such change; and
 - 8.2.2 you have the option to terminate your membership before such change takes effect by giving us written notice.

9 Privacy

- 9.1 We collect, disclose and use your Personal Information to provide you with 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 sites or from third parties that provide us with marketing leads.
- 9.2 To do those things, we may provide your Personal Information to our related companies, third parties and to service providers that we outsource functions to. Some of the entities may be located in Australia, New Zealand, Singapore, India, the Philippines, the United States or other countries (see clause 9.3.2 below for information that relates specifically to our relationship with Microsoft). If you do not provide your Personal Information, it may affect our ability to do business with you.
- 9.3 You consent to:
 - 9.3.1 us collecting, using and disclosing your Personal Information for the purposes set out in clauses 9.1 and 9.2 above; and
 - 9.3.2 the sharing of information including your Personal Information between us and Microsoft in relation to your use of our products and services. You acknowledge and consent that MYOB, Microsoft and its agents may, in providing part of our products and services, transfer, host and process your information, including your Personal Information and any information entered into MYOB products and services, which may include the Personal Information of third parties (such as your employees, suppliers or contractors), in Singapore, the United States and other countries.
- 9.4 If you accept these Terms in Australia, you can ask us not to use your information to promote our 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:
 - 9.4.1 update your preferences about the marketing and promotional material we send to you;
 - 9.4.2 request access to and seek correction of the Personal Information we hold about you;
 - 9.4.3 make a privacy complaint; and
 - 9.4.4 how we will deal with your complaint.You can contact us 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, 3130
Victoria

- 9.5 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 to promote products and services by contacting the Privacy Officer. You can contact us about your privacy by email at privacy_officer@myob.co.nz or by post at:

Privacy Officer
MYOB NZ Limited,
c/o Quigg Partners
Level 7, 36 Brandon Street,
Wellington, 6011

10 Information about your clients

- 10.1 You confirm to MYOB that you have, and will maintain at all relevant times, the authority of your clients:
- 10.1.1 to provide information (including Personal Information) about them to MYOB; and
 - 10.1.2 for MYOB to provide information about those clients to you.
- 10.2 You confirm that you have recorded your clients' consent to be contacted by MYOB on an ongoing basis (until they opt out) for the purposes of direct marketing by telephone, electronic message (including email) and other means.

11 Communication

- 11.1 You will agree that all communications between you and us in relation to the programs will be by email, by in-product notification, or by us posting a notification on the MYOB website (myob.com.au or myob.co.nz).
- 11.2 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).
- 11.3 If the delivery or receipt is after 5.00pm (addressee's time) it is regarded as received at 9.00am on the following day.
- 11.4 MYOB may provide a notice or other communication to you by a posting to the MYOB website. That notice or other communication is regarded as being given by MYOB and received by you when the posting is made to the MYOB website. MYOB recommends that you bookmark and regularly check the MYOB website for notices or other communications.

12 General

- 12.1 Nothing in these Terms shall constitute any appointments of employment or agency by MYOB and save for the specific rights conferred under the Terms, no further special rights or legal relationship shall be bestowed upon either party.
- 12.2 Any development, discovery, commercial advantage or intellectual property that arises from your participation in the programs shall remain the property MYOB.
- 12.3 If you accept these Terms in Australia then these Terms are governed by the laws of Victoria and the courts of Victoria have jurisdiction over the parties to these Terms. If you accept



these Terms in New Zealand, then these Terms are governed by the laws of New Zealand and the courts of New Zealand have jurisdiction over the parties to these Terms.

- 12.4 If any part of these Terms is void, unenforceable or illegal in a certain jurisdiction, that part does not apply in that jurisdiction. However, the remainder of these Terms will continue in operation in that jurisdiction unless to do so would alter the basic agreement between you and MYOB, in which case either party can terminate your participation in the Program at its election.

13 Definitions

In these Terms, the following definitions apply:

Certified Consultants means a consultant that has met the certification requirements of MYOB's Certified Consultant Program – see Section D.

Eligible Activities means the activities published on the relevant Program Website, as varied or updated from time to time.

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.

Membership Status has the meaning given in Section A, clause 3.1

Membership Status Table means the table published on the relevant Program Website setting out the number of Status Points which determine your Membership Status, as varied or updated from time to time.

MYOB 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).

Online Business Relationship means a service relationship with a client – the client invites you into their MYOB subscription.

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.

Program Website has the definition given in Section A, clause 1.1.

Rewards has the definition given in Section A, clause 1.2.

Status Points means the points you earn for engaging in an Eligibility Activity and which determine your Membership Status.

Status Points Earn Table means the table published on the relevant Program Website setting out the number of Status Points you could earn by engaging in Eligible Activities, as varied or updated from time to time.