

MYOB IMS Cloud Payroll Hosted Service Agreement

June 2021

IMPORTANT – READ THIS CAREFULLY BEFORE USE. This document contains the terms and conditions for our supply of MYOB IMS Payroll and Product Support Services to you, including our obligations to each other (“Agreement”).

BETWEEN: (“Customer”)

AND: MYOB NZ Limited, Company Number 902338 (“MYOB”)

1. DEFINITIONS

1.1 In this Agreement:

“IMS Payroll” means the web based cloud software and user documentation comprising the IMS Payroll product. For the avoidance of doubt, IMS Payroll includes any modules or other add-ons to the core payroll product you purchase from us.

“Confidential Information” means any user names and passwords provided by MYOB to the Customer for system access; any information regarding IMS Payroll coming into the Customer’s possession or knowledge as a consequence of system access; and all Customer’s employee payment data, including name, address, pay rate, PAYE bank account reference, and IRD number together with the Customer’s own bank account, financial data and IRD number.

“Customer” means the licence holder or user of IMS Payroll (as applicable).

“Effective Date” means the date on which the attached Order Form for Hosted Services was signed by the “Customer”.

“Hosted Service Fee” means the fees identified in the Order Form for Payroll Services.

“Minimum Period” means three (3) Calendar months.

“MYOB”, “we”, “us” and “our” means MYOB NZ Limited, Company Number 902338.

“Order Form” means the order form for the provision of the Payroll Services.

“Payroll Services” means Customer access to a computer payroll programme written and maintained by MYOB and hosted on the internet whereby the Customer enters the Confidential Information and the programme calculates pays, generates reports, payslips and electronic downloads; together with all necessary programme software maintenance and updates and programme support via helpline or email.

“Renewal Period” means three (3) calendar months.

“Website” means <https://www.myob.co.nz>

2. COMMENCEMENT AND DURATION

- 2.1 This Agreement shall commence on the Effective Date and shall continue for the Minimum Period.
- 2.2 If this Agreement has not been terminated, or notice of termination pursuant to subclause 3.1 has not been given by either party, then this Agreement shall be automatically renewed for a further term equal to the Renewal Period upon such standard terms and conditions as on that date are specified on the Website, including this provision for renewal (“the Website Terms”).
- 2.3 For the avoidance of doubt, in the event that there shall be any difference between the terms of this Agreement and the Website Terms from the commencement of the Renewal Period then the Website Terms shall prevail as the Agreement in force between the parties.

3. TERMINATION

- 3.1 Either party may terminate this Agreement by giving not less than three (3) calendar month’s prior written notice to the other party at any time prior to the expiration of the term of the Agreement. In such event the termination date shall be the last day of the current term of the Agreement, or the end of the three (3) calendar month notice period, whichever is the later. The terms and conditions applying for any period beyond the end of the current term when the notice was given will be those applying as if a renewal had taken place.
- 3.2 No refund will be made for fees which have been paid in advance and covering usage until the next expiration date if that date is after the expiry of the notice period.
- 3.3 Within 30 days of this Agreement terminating, we will delete from our IMS Payroll database all reference to the Customer, its employees and their personal information (Data Extraction Period). In the event that the Customer has provided Confidential Information in written form we will return that written information and retain no copies.
- 3.4 Customer acknowledges and agrees that you will have a maximum of 30 days from the effective date of termination to extract your data from MYOB IMS Payroll. If you need to access your data within the Data Extraction Period, contact us on 0800 600 110 (New Zealand). Access to data may be subject to additional fees and might require that you have an active MYOB subscription to view the records. We can’t guarantee that we’ll always be able to recover your historical data, which is why you should keep your own records and copies of IMS Payroll data.
- 3.5 We strongly recommend that you extract your IMS Payroll data prior to termination of this Agreement for compliance and archive purposes. Failure to extract and retain your IMS Payroll data following termination may result in you being unable to comply with your record retention obligations under law (including Tax Laws and ER Laws).

4. SERVICE CONNECTION

- 4.1 The Customer shall provide connection to the Internet at its own cost in all things.

5. PAYROLL SERVICES

- 5.1 By signing the Order Form, the Customer agrees to pay us the Hosted Service Fee specified in the Order Form and we agree to provide the Payroll Services in accordance with this Agreement.

6. CHARGES

- 6.1 The Customer shall pay the Hosted Service Fee to us one (1) calendar month in advance.
- 6.2 A Direct Debit payment authority must be established to pay the monthly Hosted Service Fees on the first day of each month at the Effective Date. The Hosted Service Fees may be calculated on a pro rata basis for any part month.
- 6.3 We may vary our Hosted Service Fees from time to time by giving at least three (3) months' notice by advice posted on the Website from time to time or otherwise communicated to Customer by us.

7. WARRANTIES AND LIMITATIONS

- 7.1 We warrant that we will use all reasonable skill, care, and diligence in the provision of the Payroll Services.
- 7.2 We shall provide the Payroll Services to the Customer in a good and professional manner and in accordance with all current New Zealand legislation and regulations as amended from time to time.
- 7.3 We shall maintain a robust hardware and software network environment at our premises to enable the provision of Payroll Services to the Customer via the Website.
- 7.4 We shall take all reasonable steps to provide a secure environment to protect the integrity and security of the Website, and of the Customer's and our Confidential Information.
- 7.5 We shall operate our business in compliance with the Privacy Act 1993.
- 7.6 Notwithstanding the provisions of this clause 7, the Customer acknowledges that it has entered into this Agreement relying on our own judgement and not upon any warranty or representation made by us that the Payroll Services are suitable or adequate for the Customer's particular business or purpose.
- 7.7 Apart from warranties contained in this clause 7 of this Agreement or implied by law and which are incapable of exclusion, we make no other warranty, representation or undertaking whatsoever in respect of the Services or any hardware, software or network environment to be used or supplied.

8. INTELLECTUAL PROPERTY AND TITLE

- 8.1 All intellectual property in and title to IMS Payroll, its software, procedures or know how, provided by us or produced to enable the provision of the Payroll Services for the Customer shall be and remain the sole and exclusive intellectual property of MYOB. This provision shall ensure for the benefit of MYOB beyond any termination of this Agreement and shall be enforceable by us by injunctive relief and/or claim for damages for breach.

8.2 Notwithstanding clause 8.1, upon termination the Customer shall ensure the return to MYOB of all intellectual property provided to the Customer by MYOB to enable the provision of the Payroll Services and will if called upon sign a Statutory Declaration to the effect that it has returned all such information and material and does not retain any copies thereof in any form.

9. LIMITATION OF LIABILITY

9.1 Notwithstanding anything in this Agreement or at law or in equity to the contrary:

9.1.1 MYOB (including, without limitation, MYOB's directors, employees, representatives, contractors and/or agents) will not be liable for any direct, indirect, or consequential loss suffered by the Customer arising howsoever from:

9.1.1.1 The Customer's late payroll payment or late pay run;

9.1.1.2 Failure or restriction of the Customer's connection to the internet;

9.1.1.3 The Customer's acts or defaults in relation to errors in data input or statistical misinformation;

9.1.1.4 Any default or malfunction in the systems or services of any third party utilised by the Customer or MYOB in the use of provision of the Payroll Services;

9.1.1.5 Any failure of the Payroll Services provided which relates to their suitability or adequacy for the Customer's particular business in terms of clause 7.6; and /or

9.1.1.6 Any failure of the Payroll Services to operate at all or otherwise to reasonable industry standards for any reason whatsoever (including, without limitation, negligence and/or breach of this Agreement).

9.1.2 Subject to and without limiting clause 9.1.1, MYOB's liability in relation to this Agreement and all related matters (whether arising under contract, tort (including negligence) equity or otherwise) will be limited to the lowest sum of either:

9.1.2.1 The total amount actually paid to MYOB under this Agreement by the Customer in respect of Payroll Services during the then current term of this Agreement; or

9.1.2.2 The cost of remedying MYOB's breach of obligation (whether arising under contract, tort (including negligence) equity or otherwise).

9.2 The Customer indemnifies MYOB against all and any claims by any third party for losses, including costs, (whether arising under tort (including negligence) equity or otherwise) arising from any act of, or omission by, MYOB in its performance of this Agreement.

10. FORCE MAJEURE

10.1 If at any time MYOB is prevented from fulfilling its obligations pursuant to this Agreement then where such event is directly or indirectly caused by or arises from an act of God, fire, flood, earthquake, explosion, sabotage, accident, embargo, riot, civil commotion, computer virus, denial of service attack or other cyber-attack which degrades or terminates the service, breakdown of equipment or failure of electrical supply or telecommunication links, MYOB may at its option:

10.1.1 Terminate this Agreement by giving written notice to the Customer; or

10.1.2 Elect by notice to the Customer to be excused performance of its obligations in terms of this Agreement until such time as the cause of such prevention can be overcome or avoided. But in no event, shall this clause operate to delay or extinguish any obligation to pay money by the Customer to MYOB which may have been completed or partially completed prior to the happening of such event.

11. CONFIDENTIALITY

11.1 MYOB shall keep confidential and shall not during the term of this Agreement or at any time thereafter disclose, publish or in any way disseminate Confidential Information to any person, organisation, company or authority except when under a legal obligation to do so or in the performance of the Customer's instructions.

11.2 The Customer shall keep confidential and shall not during the term of this Agreement or at any time thereafter disclose, publish or at any way reveal Confidential Information to any person, organisation, company or authority except when under a legal obligation to do so or with the consent of MYOB in writing first obtained.

12. SECURITY

12.1 The Customer shall not during the term of this Agreement or at any time following its termination directly or indirectly or through its employees, customers, servants or agents engage, or permit any of them to engage, or participate in any electronic conduct or action of any variety which may or might compromise MYOB security environment for the delivery of Payroll Services or lead directly or indirectly to the release or availability to any unauthorised person or organisation of MYOB or any other customer's Confidential Information, or cause MYOB loss or partial loss or delay in or restriction of its ability to deliver Payroll Services to its customers or to communicate with its customers.

13. LAW

13.1 This Agreement shall be governed by the laws of New Zealand and each party irrevocably submits to the exclusive jurisdiction of the New Zealand Courts.

14. NOTICES

14.1 Any notice required to be given by this Agreement shall be given in writing by email to the email address of the party specified below and in the case of email upon acknowledgment of receipt by reply email and by any other electronic notification on the effective date the notice is received by MYOB. Proof of receipt shall rest with the Customer.

14.2 Legal notices for MYOB may be delivered to MYOB at legal@myob.com and any other notices may be sent by email to imsadmin@myob.com.

14.3 Notices for the Customer delivered by hand, by post or by email to the contact details supplied by the Customer to MYOB in the Order Form or as otherwise advised by the Customer in writing.