

## EARLY ADOPTER PROJECT NON-DISCLOSURE AGREEMENT

### 1. ABOUT THIS NDA

This non-disclosure agreement (**NDA**) contains confidentiality and related obligations for an MYOB early adopter project (**Project**).

If you decide to participate in the Project, you'll be asked to agree to some pilot terms and conditions in addition to the terms of this NDA. Regardless of whether you decide to proceed with the pilot, you'll be bound by this NDA.

This NDA will allow us to share Confidential Information about the Project with you. In the initial stages, this information will help you decide whether you'd like to participate in the pilot. If you decide to go ahead with the pilot, then the obligations in this NDA will continue to apply throughout your participation, in addition to pilot terms and conditions.

In this NDA, you agree to safeguard any of our Confidential Information that we share with you related to the Project.

If you share any of your Confidential Information with us for the Project, we'll safeguard your Confidential Information too.

### 2. DEFINITIONS

Some words in these Terms have particular meanings:

**Confidential Information** of a party means (whether or not in a material form and whether disclosed before or after the date of this agreement):

- (a) the fact that the Project is being undertaken;
- (b) the nature and content of the Project;
- (c) all non-public information of the parties or their related bodies corporate (as defined in section 50 of the *Corporations Act 2001* (Cth)) disclosed by the parties (including, without limitation, all financial information, trade secrets and confidential know-how);
- (d) that part of all notes and other records prepared by the parties and based on or incorporating information of the parties referred to in paragraphs (a) to (c); and
- (e) all copies of the information and those parts of the notes and other records referred to in paragraphs (a) to (d).

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

**You and your** means the business that is a new or existing MYOB client and has been invited to participate in the Project, or has otherwise been presented with the opportunity to participate in the Project. This would

include, but is not limited to, sole traders, partnerships, companies and trusts.

### 3. AUTHORISED USE AND DISCLOSURE

3.1 Each party must:

- (a) keep the other party's Confidential Information confidential;
- (b) not use the other party's Confidential Information except for the Project;
- (c) only disclose the other party's Confidential Information to their officers and employees who have a need to know for the purpose of the Project;
- (d) ensure that its officers and employees keep all the other party's Confidential Information confidential; and
- (e) not copy or record in any other form any part of the other party's Confidential Information except as is strictly necessary for the Project.

3.2 The obligations of confidentiality under this agreement do not extend to information that (whether before or after this agreement is executed):

- (a) is public knowledge (other than as a result of a breach of this agreement); or
- (b) is required by law or rules or a relevant securities exchange to be disclosed.

### 4. SECURITY REQUIREMENTS

4.1 Each party must, at its cost:

- (a) institute effective security measures to prevent the unauthorised access to or use of the other party's Confidential Information;
- (b) keep the other party's Confidential Information under its control and stored in a manner that only it and its authorised officers and employees may access it;
- (c) immediately notify the other party after it becomes aware of any suspected or actual unauthorised use, copying or disclosure of the other party's Confidential Information;
- (d) immediately take all steps, at its own expense, necessary to prevent any suspected or actual unauthorised disclosure of the other party's Confidential Information by any of its officers, employees, agents or contractors;

- (e) comply with any direction of the other party about any suspected or actual breach of this agreement; and
- (f) provide assistance to the other party as it may reasonably request in relation to any action taken by the other party to prevent any suspected or actual unauthorised use, copying or disclosure of the other party's Confidential Information.

## **5. INDEMNITY**

- 5.1 Each party acknowledges that a breach of this agreement will damage the other party.
- 5.2 Each party indemnifies the other party against all claims, actions, damages, losses, costs or expenses as a result, whether directly or indirectly, of any breach by that party of its obligations under this agreement.

## **6. TERMINATION AND RETURN ON DEMAND**

- 6.1 A party may terminate this agreement at any time with immediate effect by giving written notice to the other party if:
  - (a) the Project is completed or terminated; or
  - (b) the other party breaches a provision of this agreement.
- 6.2 If at any time a party considers that, in its reasonable opinion, any of its Confidential Information is no longer required by the other party for the Project it may notify the other party of that fact. On receipt of such a notice a party's right to use the other party's Confidential Information specified in the notice ceases.
- 6.3 On termination of this agreement or on notification in accordance with clause 6.2:
  - (a) each party's right to use the other party's Confidential Information ceases;
  - (b) each party must immediately on request from and at the election of the other party:
    - (i) return to the other;
    - (ii) destroy and certify in writing to the other party the destruction of; or
    - (iii) destroy and permit the other party to witness the destruction of

in the case of termination, all the other party's Confidential Information in its possession or control and in the case of a notice under clause 6.2, such of that information as is specified in that notice.
- 6.4 Termination of this agreement does not affect any accrued rights or remedies the other party may have.
- 6.5 Each party's obligations of confidentiality under this agreement continue to apply after assignment or termination of this agreement.

## **7. RETENTION OF RIGHTS**

The rights, powers and remedies provided in this agreement are cumulative and do not exclude the rights, powers or remedies provided by law and equity independently of this agreement.

## **8. EFFECT OF AGREEMENT**

This agreement does not:

- (a) transfer any interest in any intellectual property of either party to the other party;
- (b) create any licence to use or reproduce any information or material except as strictly necessary to pursue the Project; nor
- (c) oblige either party to disclose any Confidential Information to the other party.

## **9. ASSIGNMENT**

A party may not assign its rights, powers or remedies under this agreement without the consent of the other parties.

## **10. WAIVER AND VARIATION**

A provision or a right under this agreement may not be waived except in writing signed by the party granting the waiver, or varied except in writing signed by the parties.

## **11. GOVERNING LAW AND JURISDICTION**

This agreement is governed by the laws in force in:

- (a) if you signed this agreement in Australia, the State of Victoria.
- (b) if you signed this agreement in New Zealand, New Zealand.

Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the jurisdiction designated in this clause 11.

## **12. GENERAL**

- 12.1 Nothing in this agreement: creates or constitutes a joint venture, partnership or agency between the parties or other form of association in which any party may be liable for the acts or omissions of another party or put a party in a fiduciary relationship with another party; or confers on any party any right, power or authority to create any express or implied obligation, liability or duty on behalf of another party.
- 12.2 This agreement sets out the entire understanding in respect of all matters contained in this agreement and supersedes any previous written or verbal agreement, commitment or understanding made by the parties in relation to its terms.