
MYOB New Zealand
Sales and Services Agreement

June 2016

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PART A – GENERAL TERMS

1. THESE GENERAL TERMS

This Part A sets out the general terms which form part of the Sales and Services Agreement governing the relationship between MYOB NZ Limited (**MYOB, we, us, our**) and the business entering into this agreement or its nominated representative (**you, your, yours**) for the supply by MYOB of all software and services.

2. SEPARATE SUPPLY AGREEMENTS

2.1 Supply Order procedure

You may request software or services from us in any manner agreed with us. We may then send you a supply order form and purchase agreement summary (Supply Order) setting out the additional terms of supply not already set out in the applicable Parts of this agreement. You confirm that you do not rely on any representations made by us which are not set out in the applicable Parts of this agreement or in the Supply Order.

2.2 Making supply agreements

An agreement for the supply of the software or services specified in and incidental to a Supply Order (supply agreement) is made when both you and we have completed the Supply Order by signing it or accepting it online. 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;
- c. the End User Licence; and
- d. 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 or End User Licence, unless such inconsistent terms have been approved in writing by MYOB's Legal Team.

3. INTERPRETATION

In this agreement:

'this agreement' means the Sales and Services Agreement and also means each Supply Agreement entered into by you and us each time a Supply Order is signed;

'Bank Feeds' means bank transactional data and other information automatically passed from a financial institution to us;

'Bank Feeds Data' means bank transaction information and any other information received from a financial institution and processed by us and supplied to you or to your clients for the use of Bank Feeds and/or BankLink Software;

'BankLink Software' means MYOB BankLink Practice, MYOB BankLink Books, MYOB BankLink Notes, MYOB BankLink Notes Online, MYOB BankLink PayablesPlus and MYOB BankLink InvoicePlus products;

'data' means electronic information received by us from you or from someone acting on your behalf, or collected and processed by you or on your behalf using an MYOB product or service;

'deliverables' means the software or services to be supplied by us under a supply agreement;

'End User Licence' means the licence which governs the use of software by you and any of your end user clients; and

'Provisional Account' means functionality within the BankLink Software which allows the manual importation of electronic data files which are not currently available via the automated Bank Feeds process.

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 given to it in section 2(3) of the Companies Act 1993.

4. OUR GENERAL OBLIGATIONS

We must:

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

5. YOUR GENERAL OBLIGATIONS

You must:

- a. provide a safe environment and reasonable access to your premises and equipment in accordance with our reasonable requirements relating to the supply of deliverables;
- b. ensure that we are provided with all information, facilities, assistance and accessories that we reasonably require to enable us to supply the deliverables to you;
- c. make sure all information provided to us is accurate and complete;
- d. appoint a suitably qualified and informed support representative to accompany and assist our personnel to enable us to supply the deliverables, and immediately inform us if your 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 us, in accordance with our reasonable requirements, and on request give us access to the records at all reasonable times;
- g. make sure everyone else who uses the deliverables or for whom you are responsible also meets your obligations under this clause;

- h. make sure an up to date back-up or copy of all important data used in your business exists or is functioning prior to us installing any new software or providing any services;
- i. keep us informed of all changes to contact details. Where we have facilities available to change these details online, you must take reasonable steps to use those facilities;
- j. ensure that any third party service providers are fully qualified, experienced and have a sufficient understanding of our 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 us from time to time, including on our website.

Our website at myob.co.nz is the primary source of information for all MYOB customers about developments and changes to the range of deliverables that we offer. We also provide information regarding system and support requirements via email bulletins. You agree to review this material and monitor our website regularly for announcements or notices about any matters relating to this agreement and ensure that all relevant personnel have access to it.

6. INTELLECTUAL PROPERTY RIGHTS AND OBLIGATIONS

6.1 Our authority to license intellectual property rights

We warrant that we have the right, title and interest in the intellectual property rights reasonably necessary for you to be able to use the software and services (excluding third party software, hardware or services) provided under this agreement. Ownership of the intellectual property rights resident in the software and services provided by us under this agreement shall never pass to you.

6.2 Your confidentiality obligation

Except as permitted by this clause, you must keep confidential all information you obtain from any sources relating to the technology, design, specification and content of any deliverables supplied, supported or maintained by us, anything else in which we claim intellectual property rights and anything else we designate as confidential.

You may disclose such information to any contractor of yours 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 you under this agreement and you inform us, on request, of the contractors to whom such information has been disclosed and of the information disclosed to them.

6.3 Our rights in modifications

If any software that we supply to you is modified in any way by any person, you acknowledge that, as between you and us, we own all intellectual property rights in the modification.

6.4 Dealing with claims of infringement

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

- a. you must inform us of that claim as soon as you become aware of it;
- b. you must cease using the deliverable at our request; and

- c. we indemnify you against all liability under any final judgment in proceedings brought by that person so long as you have met all your obligations under this agreement, give us the option to conduct the defence of the person's claim (including any settlement or compromise negotiations), provide us with reasonable assistance in conducting the defence of the claim and permit us to modify or substitute the deliverable at our expense to avoid continuing infringement.

7. USE OF PERSONAL INFORMATION

We collect, use and disclose your personal information to provide the software and services you have asked for and associated support, respond to your enquiries or feedback and to promote software and services offered by us and associated third parties. We may collect personal information from you, from public sources such as social media websites and from third parties that provide us with marketing leads.

To do these things, we may provide your personal information to our related companies and to third parties that we outsource functions to. These entities may be located in Australia, New Zealand, Singapore, India, the Philippines, the United States or other countries. If you do not provide your personal information to us, it may affect our ability to do business with you.

You consent to us collecting, using and disclosing your personal information for the purposes outlined above. You can ask us not to use your information to promote products and services by following the process outlined in the MYOB Group Privacy Policy, located at myob.co.nz/privacy.

The MYOB Group Privacy Policy contains information on how to:

- a. update your preferences about the marketing and promotional material we send to you;
- b. request access to and seek correction of the personal information we hold about you;
- c. make a privacy complaint; and
- d. how we will deal with your complaint.

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/- Quigg Partners, Level 7, 36 Brandon Street, Wellington, 6011.

8. CHARGES

8.1 Calculating charges

The Supply Order will normally specify the charges payable by you. Where the charge for a deliverable is not specified in a Supply Order or otherwise agreed in writing, you must pay a reasonable charge for that deliverable as reasonably determined by us. All charges are in New Zealand dollars and exclude 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 our personnel travelling to and from your site to supply deliverables (such charges are based on MYOB's current travel policy), cancellation fees and charges for anything reasonably done by us arising from any breach of your obligations under this agreement.

8.2 Cancellation of Supply Orders

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

8.3 Cancellation or Postponement of training or consulting services

You must pay the applicable fee for cancellation or postponements of training or consulting services you have ordered:

- a. less than 2 days prior to the provision of the service:
 1. 100% of the fees payable for the service for cancellation; or
 2. 25% of the fees payable for the service for postponement;
- b. 2-7 days prior to provision of the service – 50% of the fees payable for the service for cancellation; and
- c. 8-14 days prior to provision of the service – 25% of the fees payable for the service for cancellation.

8.4 Changing charges

We may change our charges from time to time. We must use reasonable endeavours to draw your attention to the fact that our charges have changed. We may do this by means of a notice on our website or otherwise. We may change our charges at any time without notice as a result of any introduction of or change in any government taxes. Except where the change results from any introduction of or change in any government taxes, any change we make to our charges for services to be supplied under any supply agreement then in force will not apply to services we supply during the 30 day period following the date we change the charge.

8.5 Goods and Services Tax

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

- a. in this clause the expressions 'credit note', 'consideration', 'GST', 'tax invoice', 'recipient', 'supplier' and 'taxable supply' have the meanings given to them in the Goods and Services Tax Act (1985).
- b. for the avoidance of doubt, 'GST' includes any penalties or additional tax imposed in relation to GST.

8.6 Sums include GST

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

8.7 Responsibility for GST

- a. Despite any other provision in this agreement, 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.
- b. 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.

8.8 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 credit note at or before the time of payment or variation.

8.9 Adjustment

If the amount of GST paid or payable by the supplier on any supply made under this agreement differs from the amount of GST paid by the recipient, because the Inland Revenue Commissioner 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.

9. PAYMENT

9.1 Time for payment

You 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 you must pay those charges within 14 days of the date of the invoice.

9.2 Manner of payment

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

9.3 Correcting invoice errors

You must give us notice within 7 days of receiving an invoice if you believe the invoice contains any errors. Both parties must work together to resolve any claim of error in an invoice. If we agree there is an error, we will credit your account accordingly.

9.4 Late fee for delayed supply at your request

Where you request us to delay the supply of software or implementation services, you 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 we agree otherwise in writing.

9.5 Late fee on overdue payments

You must pay a late fee calculated daily at the Reserve Bank prime business lending rate plus 2% p.a. on any amount overdue for payment, from the due date for payment until payment occurs, unless we agree otherwise in writing.

9.6 Supply agreements conditional on Customer creditworthiness

We may require from you, and obtain from anyone else, information relating to your creditworthiness and may provide that information to, and check it with, credit reporting agencies and our related companies. You are entitled to see and request the correction of any such information held by us or our related companies. All our obligations relating to the supply of any deliverable are conditional on us becoming and remaining satisfied about your creditworthiness.

9.7 Credit Limits, Credit Checks and Security

We may at any time set a credit limit for you and require you to provide or arrange a bond, guarantee or other security for our charges. You authorise us to the full extent permitted by law, including the Privacy Act 1993, to give and obtain from a credit reference organisation or other credit provider, information relating to your creditworthiness and to use that information.

10. RIGHTS FOLLOWING BREACH WITHOUT TERMINATING AGREEMENT

10.1 Adjusting charges, suspending supply and repossessing deliverables

If you do not meet an obligation under this agreement or any other agreement between you and us, we may at any time adjust our charges for any deliverables, impose additional charges, suspend or terminate the supply of any deliverables, or enter your site and take possession of or remove any deliverables not owned by you. These rights apply in addition to any other rights we may have.

10.2 Claiming indemnity

You indemnify us, and the other people who have the benefit of the exclusions and limitation of liability set out in clause A12, against all loss suffered (including reasonable legal costs on a solicitor client basis) and liability incurred by any of us arising from any breach by you of your obligations under this agreement.

11. EXCLUSION OF OTHER OBLIGATIONS

11.1 Matters outside scope of MYOB obligations

We have no obligation to obtain for you anything other than the deliverables (for example, any services or rights you need from anyone else) and have no liability (whether for direct, indirect or consequential loss or damage or otherwise) to you 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 our recommendations;
- c. use of any deliverable, by you or anyone else, other than in accordance with the documentation supplied by us relating to that deliverable;
- d. anything done by us or anyone else at your 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 us;
- g. anyone else's action, inaction, or delay;
- h. breach of your general obligations set out in clause A4;
- i. any changes to statutory, compliance or legislative requirements that impact on your use of the software;
- j. your data not being copied or backed up;
- k. any change to your business structure, such as a restructure, partnership split or merger or acquisition (clause B2 also applies where relevant);
- l. migrating or dealing with your 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.

12. EXCLUSION AND LIMITATIONS OF LIABILITY

To the extent permitted by law:

- a. Our maximum aggregate liability to you:
 1. 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
 2. for loss or damage suffered by you as a result of any other breach of this agreement by us, is limited, at our option in our sole discretion to:
 - i. in the case of software:
 - 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
 - the payment of the cost of replacing the software (or the particular component of the software, which caused the failure) or of acquiring the equivalent software (or particular component of the software); and
 - ii. in the case of services:
 - the supply of the services again; or
 - 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 we nor any of the other beneficiaries of this clause referred to below are liable to you for any other loss or damage of any kind whatsoever (whether direct, indirect or consequential loss or damage or otherwise) suffered by you or liability incurred by you caused by, in connection with, or resulting from anything we do or do not do, or delay in doing, or any negligence, misrepresentation, or other default by us or our officers, employees, contractors or agents, whether or not it is contemplated or authorised by this agreement.

This exclusion applies irrespective of what you are claiming, including:

1. loss of profits or business;
 2. loss of opportunity;
 3. loss, destruction or corruption of data; or
 4. 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 we or any other beneficiaries referred to in the following paragraph are ever liable (whether for direct, indirect or consequential loss or damage or otherwise) to you and, for any reason, cannot rely on any exclusion of liability set out in this clause, the maximum combined liability of us and those other beneficiaries to you is the amount paid by you to us in the six month period up to the date of the event giving rise to the liability.

12.1 Other beneficiaries of this clause

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

12.2 Compatibility of software and equipment

You acknowledge that irrespective of the fact that we may specify minimum or recommended equipment or operating environment requirements in relation to the software, we do not profess to be experts in relation to the 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 we specifically exclude any warranty that the software shall operate on such minimum or recommended equipment or operating environment and therefore exclude any loss, cost, liability or damages suffered as a result of problems related to the compatibility, performance of configuration of particular equipment or operating environment.

13. EVENTS BEYOND REASONABLE CONTROL

We are 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 our reasonable control (including any delay in supply or failure of any goods or services supplied to us). If we fail, or believe we may fail, to meet an obligation because of an event beyond our reasonable control, we must use reasonable endeavours to give notice to you of the event and the likely effect of the event and do all we reasonably can to meet the obligation as soon as is reasonably practicable. This does not require us to change the way we would otherwise deal with any labour disruption.

14. TERMINATION OF SUPPLY AGREEMENTS BY YOU

14.1 Termination for material breach of other obligations

You may give notice terminating a supply agreement if we have breached a material term of this agreement and the breach remains un-remedied 30 days after notice has been given requiring the breach to be remedied.

14.2 Termination for intervening event

If we fail to meet an obligation under a supply agreement continuously for 60 days because of an event beyond our reasonable control, you may give notice terminating that part of the supply agreement affected by the failure.

14.3 Termination at end of invoicing period

You 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 us no less than 30 days' notice before the beginning of any invoicing period for that licence or service.

You are deemed to have repudiated a particular supply agreement if any amount owing by you 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 we give express written notice before that date suspending the operation of this clause on such terms as we may specify.

14.4 Effect on software licence and other supply agreements

If you terminate 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.

14.5 Termination of Bank Feeds

If you have purchased Bank Feeds you have additional termination rights, described in Part D of this agreement.

15. TERMINATION OF SUPPLY AGREEMENTS BY US

15.1 Termination following change in your capacity

We may give notice terminating any supply agreement with immediate effect if we reasonably consider you have ceased or threaten to cease conducting your business, have become or threaten to become subject to any form of insolvency administration, have dissolved or threaten to dissolve, die, or become incapacitated.

15.2 Termination on notice

We 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 you. If the Sales and Services Agreement is terminated, all supply agreements are terminated immediately.

15.3 Effect on other supply agreements

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

15.4 Termination of Bank Feeds

We have additional termination rights if you have purchased Bank Feeds, as described in Part D of this agreement.

16. RIGHTS FOLLOWING TERMINATION

On termination of a supply agreement by either you or us, unless otherwise agreed in writing:

- a. you must return to us, and we may enter your site to remove, any deliverables supplied under the terminated supply agreement which are not owned by you; and
- b. both parties 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, excluding any information that is required to be held for compliance purposes. These rights apply in addition to any other rights either you or we may have.

17. ASSIGNMENT

You may not assign your interest in this agreement or any part of it without our written consent. We may assign any of our rights or obligations under this agreement.

18. SUBCONTRACTING

We may sub-contract any person to perform any of our obligations under this agreement.

19. CHANGES TO THE SALES AND SERVICES AGREEMENT

We may change the terms of any Part of this 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. We must give you at least one month's notice of any changes. The notice must set out the actual changes or explain their general nature. If you make payment for any services covered by this Sales and Services Agreement following expiry of the notice period, such payment will be taken as your acceptance of the changes.

20. 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's Legal Team. 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 parties.

21. RESOLVING DISAGREEMENTS

Any disagreement between the parties relating to the meaning or performance of this agreement must be referred initially to us by email at accountants@myob.co.nz or by calling 0800 94 96 99. The contact people must use their best endeavours to resolve the disagreement promptly.

If the disagreement has not been resolved within 30 days of being referred to the contact people (or any other period agreed between them), either you or we 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.

22. 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 occasions specified in it.

23. SEVERING UNLAWFUL TERMS

If either party considers a term of this agreement is unlawful and unenforceable, 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.

24. MORE THAN ONE CUSTOMER

All businesses entering into this agreement must meet the applicable obligations under this agreement.

25. GOVERNING LAW AND JURISDICTION

This agreement is governed by the laws of New Zealand and the parties submit to the jurisdiction of the New Zealand courts.

26. GIVING NOTICES

Any notice 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 sent to the contact address, or email address specified on the front page of the most recent Supply Order (or to any replacement or additional address, or email address notified in writing by the other party of that purpose).

A notice given by registered mail is deemed delivered 2 business days after it has been posted. A notice given by email 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.

PART B – SOFTWARE LICENCE TERMS

1. GRANT OF LICENCE

Subject to you complying with the terms of this agreement, we licence you 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 us.

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

- d. use the software only at the site specified in the Supply Order or otherwise approved in writing by us;
- e. use the software (other than temporarily in an emergency) only on equipment and operating environments approved by us for that software, as notified on our website and in accordance with operating procedures approved by us; and
- f. copy the software for the purpose of backup and security only. The licence extends to any modification supplied by us under clause B4, and to any service pack, update, enhancement or upgrade supplied by us under Part C, for which you have paid our charges.

2. LICENCING AND SUB-LICENCING

2.1 General Restrictions

You must not modify, adapt, alter, disassemble, decompile or reverse-engineer any code or database structure except to the extent you are permitted to do so by law and must not, without first obtaining our written consent, 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, you must only use the software to modify the data. If the data is accessible using third party tools, you must not use such tools to modify the data yourself or any structures used to store or represent the data for example, database schema, specific data type, tables, columns, triggers, stored procedures or other database objects without our prior written consent. Under no circumstance may you transfer or sub-licence (with the exception of the BankLink Software, as set out in Part B2.b below), in whole or in part, without our express written consent. Also, you may not split software licenses if your business is divided into two or more separate entities or changes as a result of partnership split, insolvency or appointment of administrator.

2.2 Sub-licence of BankLink Software

We permit you to sub-licence the BankLink Software to your clients, provided that you:

- a. ensure that every client to whom you sub-licence the software is bound by the provisions of the End User Licence;
- b. do not provide any representations or warranties in respect of the software on our behalf;
- c. ensure that your clients are aware that we do not support the software directly to them; and
- d. will, to the extent permitted by law, contract out of all conditions, guarantees, warranties and undertakings imposed by law when sub-licencing the software.

3. DELIVERING AND INSTALLING THE SOFTWARE

In addition to your obligations under Part A, you 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 our reasonable directions. So long as you have met your obligations under this agreement, we must deliver the Software to the site specified in the Supply Order. If installation is specified on the Supply Order, we must use reasonable endeavours to install the software on approved equipment and operating environment by the installation date agreed between the parties, and inform you when installation has been completed successfully.

4. MODIFYING THE SOFTWARE

If you request us to modify any third party software and we agree to do so, it is your responsibility to obtain any consent required from that person for us to modify the software and for you to use the modified software and provide a copy of such consent to us, unless we agree otherwise in writing.

5. OUR WARRANTY

5.1 Bank Feeds

Without limiting clause B5.b, we warrant that we will take reasonable care when processing Bank Feeds Data on behalf of you and your clients and will use all reasonable endeavours to correct (at our cost) any errors in the Bank Feeds Data where those errors are caused solely by our actions or inactions.

5.2 General Warranty and exclusions

You acknowledge that we do 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 us. Subject to this limitation, we do warrant for the duration of the supply agreement that the software we develop will operate in a material respect in accordance with any documentation we supply with the software, as long as you:

- a. use the software on equipment and the operating environment approved in writing by us;
- b. use the software in accordance with the documentation provided by us from time to time;
- c. use personnel that have received appropriate training or instruction by attending our related training courses or product events;
- d. maintain a software maintenance service; and
- e. install the latest service pack, update, enhancement or upgrade provided by us from time to time.

If you do not conform to any of the requirements above, we limit our warranty that the software will operate in a material respect in accordance with any documentation we supply with the software, to a period of 30 days from the date of installation.

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

You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are 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 you believe the software cannot be used in accordance with that documentation in a material respect, you must (at your own cost) in order to claim under this warranty, send to us at the address below, a documented example of the error and a listing of output and any other data we require to reproduce the operating conditions in which the error occurred to:

MYOB NZ Limited, PO Box 2864, Christchurch 8140

Phone 0800 94 96 99 or email accountants@myob.co.nz

We must 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:

1. if it is an error which has a material effect on the use of the software, use our reasonable efforts to correct or provide a work around for that error without additional charge to you; or
2. if we determine there is no such error, inform you.

6. OTHER SERVICES OUTSIDE SCOPE OF OUR WARRANTY

We are not obliged under our warranty to investigate or remedy any problem to the extent that it is caused by misuse of the software by you 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, and error in or the use of other software used in conjunction with the software, or any failure by you to meet an obligation under this agreement. We may endeavour to investigate or remedy any such problem for an additional charge.

7. TERMINATION AND FAILURE TO PAY

If the supply agreement under which software has been supplied to you terminates for any reason and/or your licence to the software is revoked, you agree to return the software and delete all copies from your systems. If you fail to return the software and delete all copies from your systems or we reasonably suspect this is the case, then we may withhold any passwords or keys to reactivate the software and you shall permit us to enter your premises (with reasonable notice and at reasonable times) and remove and delete such software.

PART C – SOFTWARE MAINTENANCE TERMS

1. PROVIDING SOFTWARE SUPPORT

We must provide the software maintenance services specified in the Supply Order, during any period for which you have 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 us or any partner with which we have a contractual relationship and we have agreed to provide the software (i.e. not third party software). We will only provide our maintenance services during our Support Centre's advertised hours.

2. SOFTWARE SERVICE SUBSCRIPTION OPTIONS

Where we agree to supply our software maintenance services for any software, you may choose between the different software maintenance services options (if any) specified in the Supply Order.

3. TELEPHONE SUPPORT

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

4. UPDATES AND ENHANCEMENTS

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

- a. service packs, updates, enhancements or upgrades becoming generally available for commercial use;
- b. you 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 us from time to time;
- c. we 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;
- d. if requested by you, subject to an additional charge and availability of consultants, install the service pack, update, enhancement or upgrade;
- e. we 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;
- f. we are not obliged to supply our software maintenance services if you decline to accept and install any service pack, update, enhancement or upgrade offered by us for the supported software; and
- g. we may charge you a reasonable fee where you request a service pack, update, enhancement or upgrade on CD or other media, where such information was available on our website.

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

5. SUPPORT AND OTHER SERVICES

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

6. YOUR OBLIGATION TO DEMONSTRATE THE ERROR

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

7. PERIODIC RENEWAL AND INVOICING

Unless otherwise specified in the Supply Order, you agree to acquire software maintenance services for a period of time of not less than one year which is renewed automatically when you receive an invoice for further software maintenance services, unless terminated earlier under the terms of this agreement.

Unless otherwise specified in the Supply Order, we may invoice you for software maintenance service charges monthly in advance.

8. REINSTATEMENT CHARGES

If you have terminated software maintenance services and subsequently request us to reinstate software maintenance services, then we may charge you 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 us for the period from termination to reinstatement; or
- b. the licence charges for the software for which you require software maintenance services, as we determine in our sole discretion.

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

9. SERVICES OUTSIDE SCOPE OF STANDARD SOFTWARE SUPPORT

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

- a. a misuse of the supported software by you or anyone else;
- b. software maintenance services or work on the software and systems provided by anyone else other than us;

- c. a fault in the equipment on which the software is used or in operating software or equipment other than specified by us;
- 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 us as per our website;
- 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 us), or any failure by you 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 us;
- i. your failure to install the latest service pack update, enhancement or upgrade issued by us from time to time; or
- j. problems caused by customised software or interoperability between the customised/third party software and our software.

We shall not be liable for any losses incurred by you as a result of any such problems or our refusal to rectify any such problems. We may endeavour to remedy any such problem for an additional charge. Examples of other services we may agree to provide for an additional charge, which do not form part of our 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 professional services.

PART D – BANK FEEDS

This Part applies to you if you have purchased Bank Feeds (including BankLink Software) from us.

1. PROVISION OF BANK FEEDS DATA

- a. In each case where we are requested to process and provide Bank Feeds Data on behalf of one of your clients, you will provide us with an authority in a form acceptable to your client's financial institution, authorising that institution to provide us with all necessary information to enable us to process and provide the Bank Feeds Data.
- b. You acknowledge that our ability to provide the Bank Feeds Data is dependent on the relevant client's financial institution providing that Bank Feeds Data to us. We will inform you as soon as possible if the relevant financial institution fails to provide the Bank Feeds Data, but in no event will we face any liability to you or your clients for any such failure or delay.

2. TERMINATION OF BANK FEEDS

- a. In addition to the termination rights set out in clause A14 of this agreement, you may, at any time by giving us not less than 14 days' written notice us:

1. terminate some of the services we provide under the service agreement in respect of Bank Feeds for a particular client of yours; or
 2. if applicable, deactivate access to Bank Feeds for your client(s) .
- b. In addition to the termination rights set out in clause A14 of this agreement, we may at any time by giving you not less than 14 days' prior notice:
1. terminate some of the services we provide under the service agreement in respect of Bank Feeds for a particular client or Bank Feeds Data supply from a particular financial institution; or
 2. if applicable, deactivate your access to Bank Feeds.

PART E – BANKLINK SOFTWARE PROVISIONAL ACCOUNTS

We will provide you with a Provisional Account(s) as requested by you for your use with the BankLink Software, on the terms outlined in this Part E.

- a. The Provisional Account functionality will be enabled as part of your Bank Feeds Data download process within the BankLink Software.
- b. You agree that where we make an automated Bank Feed available in relation to the data that you use the Provisional Account functionality for under this clause, then the Provisional Account will convert as soon as practicable into a standard Bank Feed and the standard processing charges for the Bank Feed will apply to that account.
- c. In consideration for the provision of the Provisional Account functionality, you will pay to us the Provisional Account monthly account charge and account load charge set out in the BankLink Software Schedule for each Provisional Account we supply. These charges will be added to our existing invoice.
- d. If this agreement is terminated for any reason you will no longer have access to the Provisional Account functionality in the BankLink Software.
- e. The parties agree that the Provisional Account will be considered BankLink Software for the purposes of this agreement. This clause does not affect our right to charge for the Provisional Account functionality on the basis set out in this Part.

PART F – THIRD PARTY SOFTWARE SUPPLY TERMS

1. SUPPLYING THE SOFTWARE

We must supply you with 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 F of this agreement. We warrant that we are authorised to sell or lease the third party software to you. Unless otherwise specified in the Supply Order we agree to sell and you agree to buy the third party software. For the avoidance of doubt unless the Supply Order expressly specified the supply of third party software nothing in this agreement creates an obligation for us to supply or support third party software.

2. DELIVERING AND INSTALLING THE SOFTWARE

2.1 Preparing the site

In addition to your obligations under Part A, you 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 our reasonable directions.

2.2 Delivering and installing the software

So long as you have met your obligations under this agreement and the Supply Order expressly specifies the following, we 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. We must inform you when installation has been completed successfully or if any delays have been encountered.

2.3 Additional charges for customer delay or unforeseen, unusual circumstances

You must pay any additional charges arising from delay in delivery or installation because of your non-compliance with your obligations under this agreement, or from circumstances not usually associated with similar deliveries or installations which were not foreseen by us.

3. MANUFACTURER'S WARRANTIES

We are not the manufacturer of any of the third party software we supply and give no warranty regarding 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 us. We are not the manufacturer's agent and any obligations we have as a supplier of the third party software to remedy any failure to comply with an applicable consumer guarantee, is limited to our obligations to replace the third party software with an identical type or by refunding the money paid by you for the third party software, or by refunding the amount that is equal to the value of any other consideration provided by you 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 us, to the extent of any inconsistency.

PART G – TRAINING SERVICES TERMS

We 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 onsite education on the use of deliverables, site specific education and operator training.

PART H – PROFESSIONAL SERVICES TERMS

1. GENERAL PROVISION OF PROFESSIONAL SERVICES

We 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 us. 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 support software) and any other services requested by you which are outside the scope of any of the standard services supplied by us as described in the Supply Order. Provision of professional services does not include items such as operating systems (e.g. Windows Server) and system design.

2. PROFESSIONAL SERVICES PAID FOR IN ADVANCE

If you agree and sign a Supply Order and pay 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 you forfeit any rights to such services and we are not required to refund any corresponding amounts.

PART I – 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 under this agreement are governed by the attached Instruction to Accept Paperless Direct Debit and Credit Card Direct Debt Terms and Conditions.

DIRECT DEBIT FROM BANK ACCOUNTS

1. INSTRUCTION TO ACCEPT PAPERLESS DIRECT DEBIT

These terms and conditions are in addition to the terms and conditions of any existing contract\ s with MYOB NZ Limited or the terms and conditions associated with the products and services that relate to your paperless direct debit authority.

By selecting the Direct Debit from Bank Account payment method either online or by completing a Direct Debit Authority Form you, the Customer, are authorising MYOB NZ Limited to debit funds from the bank account nominated, all amounts which MYOB NZ Limited (hereafter referred to as the Initiator) initiate by Direct Debit.

The Customer and Initiator acknowledge and accept that the Bank accepts this paperless instruction/authorities only upon the conditions listed below.

2. CONDITIONS OF INSTRUCTION TO ACCEPT PAPERLESS DIRECT DEBITS

2.1 The Initiator:

- a. has agreed to send notice of the net amount of each Direct Debit no later than the day the Direct Debit is initiated. This notice will be provided in writing (including by electronic means and SMS where the Customer has provided prior written consent (including by electronic means including SMS) to communicate electronically).
- b. The notice will include the following message: "The amount of \$....., will be direct debited to your Bank account on (initiating date).";
- c. may, upon the relationship which gave rise to this instruction being terminated, give notice to the Bank that no further Direct Debits are to be initiated under the instruction. Upon receipt of such notice the Bank may terminate this instruction as to future payments by notice in writing to me/us; and
- d. may, upon receiving an "authority transfer form" (dated after the date of this request) signed by me/us and addressed to a bank to which we/I have transferred my/our bank account, initiate Direct Debits, in reliance on that transfer form and this instruction, from the account identified in the authority transfer form.

2.2 The Customer may:

- a. at any time, terminate this instruction as to future payments by giving written notice of termination to the Bank and to the Initiator;
- b. stop payment of any Direct Debit to be initiated under this instruction by the Initiator by giving written notice to the Bank prior to the Direct Debit being paid by the Bank;
- c. where a variation to the amount agreed between the Initiator and the Customer from time to time to be direct debited has been made without notice being given in terms of 1.a above, request the Bank to reverse or alter any such Direct Debit initiated by the Initiator by debiting the amount of the reversal or alternation of the Direct Debit back to the Initiator through the Initiator's Banks, PROVIDED such request is made not more than 120 days from the date when the Direct Debit was debited to my/our account; and

- d. request the Bank to reverse any Direct Debits initiated by the Initiator under the Instructions by debiting the amount of the Direct Debits back to the Initiator through the Initiator's Bank where the Initiator cannot produce a copy of the Instructions and/or Confirmation to me/us that I/we are reasonably satisfied demonstrate that I/we have authorised my/our bank to accept Direct Debits from the Initiator against my/our account PROVIDED the request is made not more than 9 months from the date when the first Direct Debit was debited to my/our account by the Initiator under the Instructions.

2.3 The Customer acknowledges that:

- a. this instruction will remain in full force and effect in respect of all Direct Debits passed to my/our account in good faith notwithstanding my/our death, bankruptcy or other revocation of this instruction until actual notice of such event is received by the Bank;
- b. in any event this instruction is subject to any arrangement now or hereafter existing between me/us and the Bank in relation to me/our account;
- c. any dispute as to the correctness or validity of any amount debited to my/our account shall not be the concern of the Bank except in so far as the Direct Debit has not been paid in accordance with this instruction. Any other disputes lie between me/us and the Initiator;
- d. where the Bank has used reasonable care and skill in acting in accordance with this authority, the Bank accepts no responsibility or liability in respect of:
 1. the accuracy of information about Direct Debits on Bank statements; and
 2. any variations between notices given by the Initiator and the amounts of the Direct Debits;
- e. the Bank is not responsible for, or under any liability in respect of the Initiator's failure to give written advanced notice correctly nor for the non-receipt or late receipt by me/us for any reason whatsoever. In any such situation the dispute lies between me/us and the Initiator; and
- f. notice given by the Initiator in terms of clause 1.a to the debtor responsible for the payment shall be effective. Any communication necessary because the debtor responsible for payment is a person other than me/us is a matter between me/us and the debtor concerned.

2.4 The Bank may:

- a. in its absolute discretion conclusively determine the order of priority payment by it of any monies pursuant to this or any other instruction, cheque or draft properly executed by me/us and given to or drawn on the Bank;
- b. at any time terminate this instruction as to future payments by notice in writing to me/us; and
- c. charge its current fees for this service in force from time to time; and
- d. upon receipt of an "authority transfer form" signed by me/us from a bank to which my/our account has been transferred, transfer to that bank this Instruction to Accept Direct Debits.

DIRECT DEBIT FROM CREDIT CARDS

1. 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 NZ Limited (we, us, our) 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 Credit Card payment method either online or by completing a Direct Debit Authority Form you:
1. acknowledge that you are authorised to establish this direct debit authority;
 2. understand and accept your commitments and responsibilities under the credit card direct debit terms and conditions set out below; and
 3. authorise us 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.
- 1.2** We 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.
- 1.3** A tax invoice confirming the amount of the payment will be issued to you within 1-3 working days of:
1. Periodic Payments – the start of a month in which a payment will be made by you.
 2. One Off Payments – your order being accepted and processed.
- 1.4** We will advise you of any changes to the direct debit arrangements at least 14 days in advance.
- 1.5** It is your responsibility to ensure that you have sufficient funds available to cover your payments and that your Credit Card details are correct.
- 1.6** 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.
- 1.7** Should a payment default we will notify you by email, and it is your responsibility to organise an alternative payment which should be received by us within five (5) working days of the original due date.
- 1.8** Should a response not be received within the 5 working days allowed, we 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** We may suspend your account, subscription or membership until any outstanding payments have been made.
- 1.10** You may incur fees or charges imposed by us 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 Credit Card you should immediately contact the MYOB Accounts Department by phone on 03 983 2660 or via email at accounts@myob.com so that we can resolve your query promptly.
- 1.12** If we conclude, as a result of our investigations, that your Credit Card has been incorrectly debited, we will advise you and arrange a refund of the amount due to you. If we conclude that your Credit Card 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 03 983 2660 or via email at accounts@myob.com.
- 1.14** Confidentiality - all information provided to us is confidential and protected by our privacy policy. The policy can be viewed at myob.co.nz/privacy. 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.
- 1.15** This Authority permits us 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 us 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.