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# MYOB Essentials

## Terms of Use

March 2019

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## 1. ABOUT THESE TERMS

These are the terms and conditions for our supply of MYOB Essentials to you, including our obligations to each other (**Terms**).

These Terms apply to all MYOB Essentials modules except for Essentials Cashbook. If you are subscribed to Essentials Cashbook, please refer to the Essentials Cashbook Terms of Use.

If you accept these Terms in Australia, these terms do not exclude, restrict or modify:

- a. the application of any provision of the Australian Consumer Law (whether applied as a law of the Commonwealth or any State or Territory of Australia) (**ACL**);
- b. the exercise of any right or remedy conferred by the ACL; or
- c. the liability of MYOB for a failure to comply with any applicable consumer guarantees where to do so would:
  1. contravene the ACL; or
  2. cause any part of these Terms to be void.

### Definitions

Some words in these Terms have particular meanings:

**ATO** means the Australian Taxation Office.

**Bank Feeds** means MYOB BankFeeds, the service which enables you to electronically receive daily or monthly updates of transaction details for nominated Business accounts, including bank accounts and credit cards.

**Bank Feeds Data** means the transaction information relating to any account linked to Bank Feeds, which is available for you to access as part of MYOB Essentials.

**Business** means the business for which the application is made and accepted for MYOB Essentials. This would include, but is not limited to, sole traders, partnerships, companies and trusts.

**Data Supplier** means the organisation(s) that you have authorised to supply us with Bank Feeds Data, including your bank and other nominated financial institutions.

**Employees** means employees of the Business.

**ER Laws** means New Zealand employment relations legislation, which will apply to you if you are a user of Essentials Payroll, including but not limited to the Parental Leave and Employment Protection Act 1987, the Employment Relations Act 2000, The Holidays Act 2003, The Wages Protection Act 1983, and the Health and Safety in Employment Act 1992, as updated, replaced or amended from time to time.

**Fair Use Policy** means the MYOB BankFeeds Fair Use Policy for Australia and New Zealand, respectively.

**Fees** means the fees and charges relating to the provision of MYOB Essentials, as notified to you from time to time and published on our website at [myob.com.au/essentials](http://myob.com.au/essentials) (Australia) or [myob.co.nz/essentials](http://myob.co.nz/essentials) (New Zealand). This includes any fees charged under the Fair Use Policy for Australia and New Zealand, respectively.

**Inland Revenue** means the Inland Revenue Department of New Zealand.

**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.

**MYOB Essentials** means any of the services, features or functionality which form part of MYOB Essentials and which we make available to you from time to time. This includes the specific MYOB Essentials product module purchased by you, the MYOB YourPay app and Bank Feeds.

**Other Application** means an application or service developed by a third party to integrate and be used in conjunction with MYOB Essentials.

**Payroll Data** means the Business payroll information that you input into MYOB Essentials if you are a user of an Essentials payroll module.

**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.

**Professional Partner** means a person who provides bookkeeping, accounting or similar services to the Business, and who may be appointed as a User.

**Tax Laws** means the Taxation Administration Act 1953 (Cth) (if you accept these Terms in Australia) and Tax Administration Act 1994 (if you accept these Terms in New Zealand) as updated, amended or replaced from time to time, and any binding regulation, ruling or direction issued by the ATO or Inland Revenue (as applicable) from time to time.

**Third Party** means any person we have contracted with to help us provide MYOB Essentials. This includes any other service providers engaged by us for the delivery, maintenance and administration of MYOB Essentials. In the case of Bank Feeds, any Data Supplier that you authorise to provide Bank Feeds Data to us is also a Third Party under these Terms.

**User** means a person authorised to use MYOB Essentials (including a Professional Partner). MYOB Essentials is a multi-user system.

**We, us and our** 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).

**You** means the Business, including each User.

## 2. GENERAL TERMS

### 2.1 Services

We agree to supply, and you agree to use, MYOB Essentials on the terms and conditions set out in these Terms.

### 2.2 Protecting your username and password

a. Unless you take adequate security precautions, it could be possible for an unauthorised person to gain access to your MYOB Essentials data. It is important to take all reasonable precautions to ensure that your username and password are not misused, and remain secure and confidential. In particular:

1. you must not tell anyone your username or password, including any member of your family;
2. you must not let anyone else, whether acting as your agent or not, access MYOB Essentials using your username and password; and
3. you must be extra careful when accessing MYOB Essentials from public computers.

b. If you think anyone else might know your password you should reset your password from within MYOB Essentials, or contact us as soon as possible to arrange a new password.

c. You agree to be liable if your login details are used by an unauthorised person.

### 2.3 Other responsibilities you have as a User

a. **No interference with MYOB Essentials** – You will not:

1. interfere with the operation of MYOB Essentials or overload the system;
2. reverse-engineer, reverse-assemble, decompile, or otherwise attempt to discover source code, formulas or processes in respect of the software behind MYOB Essentials;
3. copy, reproduce, alter, modify, create derivative works, or publicly display, any part of any content from MYOB Essentials except where we have given you permission;
4. use MYOB Essentials in way that is prohibited by law, regulation or government order in any relevant jurisdiction, or in a way that violates a third party's legal rights;
5. use MYOB Essentials in a way that could harm or impair anyone else's use of it;
6. use MYOB Essentials to gain unauthorised access to any service, data, account or network by any means;
7. falsify any protocol or email header information (e.g. spoofing);
8. upload any material (including pdf. files) into MYOB Essentials which:
  - i. is harmful, threatening, abusive, vulgar, obscene or otherwise objectionable;

- ii. contains Personal Information of any other person, without that person's express or implied consent;
  - iii. infringes on the intellectual property rights of any other party; or
  - iv. contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software, hardware or telecommunications equipment;
9. use MYOB Essentials to send "spam" or otherwise make available any offering designed to violate these Terms; or
10. remove, modify, tamper with any regulatory or legal notice or link that is incorporated into MYOB Essentials.

b. **Cooperation and limited authority in relation to Third Parties** – You:

1. must do all things we consider reasonable and appropriate to enable us to fulfil our obligations to Third Parties in relation to MYOB Essentials, including, in the case of Bank Feeds, giving your Data Supplier the necessary authority to provide Bank Feeds Data to us; and
2. authorise us to give a Third Party or other person any authority, consent or instruction in respect of MYOB Essentials, as reasonably required to enable us to provide MYOB Essentials to you.

c. **Compliance with Laws** – It is your responsibility to retain your Business records for Tax Law and ER Law compliance purposes (as applicable). We are not liable for your failure to meet your legal obligations for record retention, in relation to any data that you input into MYOB Essentials. If you decide to terminate MYOB Essentials we strongly advise you to extract your data in its entirety as soon as possible following termination.

Please see section 7.3 for further details. For specific advice regarding your compliance obligations under the Tax Laws or the ER Laws, please consult the [ATO](#), [Inland Revenue](#) or your professional advisor, as appropriate.

d. **Giving access to other Users** – If you are listed as the owner of the Business or the authorised administrator for your subscription, you can authorise other people (including Professional Partners) to have access to your MYOB Essentials data as Users. Subject to the access rights you grant, they will be able to view and modify your MYOB Essentials data.

Their use of MYOB Essentials is subject to these Terms, so we suggest that you provide them with a copy. You are responsible for their use of MYOB Essentials. You can stop their access by removing them from your User list within MYOB Essentials or by contacting us.

e. **Change of details** – You must let us know of any changes to the details that you have provided to us in relation to MYOB Essentials, and provide any proof of the change we require.

f. **Accuracy of Payroll Data (Essentials payroll module users only)** – You are responsible for verifying the Payroll Data that you input into MYOB Essentials and ensuring that it is accurate and complete.

## 2.4 Use of MYOB Essentials and our intellectual property

- a. What you can do – Until your use of MYOB Essentials is terminated, you have a non-exclusive and non-transferable licence to use MYOB Essentials in the way that we authorise from time to time.
- b. We retain our intellectual property rights – Except where specifically set out in these Terms, these Terms do not give you any intellectual property or other rights in any of our:
  1. software, documents, templates, marketing material, trademarks, business names, logos, trading styles, get-up, processes or methodologies; or
  2. other intellectual property, and you (including your staff, agents or contractors) must not otherwise use, reproduce or modify these intellectual property rights.
- c. Intellectual property rights deriving from your use of MYOB Essentials – You agree that any intellectual property rights in any systems, processes or methodologies developed by you which derive from your use of MYOB Essentials become our intellectual property.

## 2.5 Trial User

- a. If you are a trial User, you will be able to use MYOB Essentials free of charge for 30 days. At the end of this period, you have the option of subscribing to MYOB Essentials for a fee. If you do not subscribe, your access to MYOB Essentials will be restricted. This means that you will have read-only access to reports for an additional 60 days. After this time, you will no longer be able to log in to MYOB Essentials or access your data.
- b. If you choose not to subscribe to MYOB Essentials following your trial, we strongly recommend that you extract your data for compliance and archive purposes as soon as possible within the 60 day read-only period after your trial ends. Failure to extract and retain your data following the end of your trial may result in you being unable to comply with your record retention obligations under the Tax Laws and ER Laws.

## 2.6 Payment of Fees and credit card authority

This section applies to you if you are responsible for paying the Fees for your MYOB Essentials subscription. If another person (for example, a Professional Partner) is responsible for paying the Fees in relation to your use of MYOB Essentials, and they stop paying us, then you will need to pay the Fees to continue your use of MYOB Essentials, in compliance with this section.

- a. **Payment of Fees** – You must pay all Fees due to us in relation to your use of MYOB Essentials, on the due date. Fees will be published on the MYOB website ([myob.com.au](http://myob.com.au) or [myob.co.nz](http://myob.co.nz)).
- b. **Changes to Fees** – By giving you at least 20 days' notice before the change takes effect, we may:
  1. change the amount of any Fee and introduce a new Fee; and
  2. change the circumstances in which, or frequency with which, a Fee is payable.

Section 9 tells you about the ways in which we can give you notice.

- c. **Termination rights** – If we make a change under section 2.6.b above, then you have the option to terminate your MYOB Essentials subscription under section 7.1.
- d. **Credit card/payment authorisation** – You authorise us to deduct monthly instalments and any other Fees payable to us in respect of your use of MYOB Essentials (including any Fees payable under the Fair Use Policy). You give us this authority by providing us with your credit card or other payment details.
- e. **Processing Fee payments** –
  1. Debiting of Fees will ordinarily occur on the 1st Business Day of each month (but may occur at other times as required or permitted under these Terms) and can be in advance or in arrears as we determine. We will provide a monthly statement/ tax invoice detailing the Fees that have been debited.
  2. The first payment will be pro-rated according to the end of the trial period for the appropriate number of days till the end of that month.
  3. It is your responsibility to ensure you have sufficient credit available on your nominated credit card to cover your monthly payment and that your card details are current and correct.
- f. **If the debit to your card is declined** –
  1. If your Fees are debited from your credit card, we will attempt to re-draw 3 times. If these attempts fail, we will advise you and you will be allowed 14 days to respond; or
  2. If your Fees are debited from your bank account, we will advise you of the decline and you will be given until the date of your next invoice to respond.

A dishonour fee may also be charged by both us and your financial institution to cover reasonable administrative and processing costs. If the Fees remain unpaid, we may suspend or terminate your use of MYOB Essentials.
- g. **If there is a problem** – If you believe there has been an error in debiting your credit card, you should notify us immediately at [info@myobessentials.com](mailto:info@myobessentials.com) so that we can resolve your query promptly. If we conclude that your credit card has been incorrectly debited, we will arrange a refund of the incorrect debit.

## 2.7 Goods and services tax (GST) and duties

- a. All payments due to us (eg. Fees, reimbursement by you to us of any amounts or payments under indemnities), unless already stated to be GST inclusive, are to be increased by the amount of any GST liability we have in relation to supplies we make to which those payments relate.
- b. You must pay all duties (eg. stamp duty, other government charges or financial institution account fees, if applicable) payable in relation to your use of MYOB Essentials. If we have paid them, they must be reimbursed by you on our request.

### 3. OTHER APPLICATIONS

- 3.1** From time to time we may offer Other Applications for MYOB Essentials.
- 3.2** We make no warranties in relation to any Other Application offered in relation to MYOB Essentials, regardless of whether an Other Application is provided by a Professional Partner or is otherwise recommended by us.
- 3.3** If you install or enable an Other Application for use with MYOB Essentials, you consent to us allowing the Other Application to access your data as required to enable MYOB Essentials and the Other Application to operate together. Any exchange of data or other interaction between you and an Other Application provider is solely between you and them. We are not responsible or liable for any disclosure, modification or deletion of your data as a result of any access to MYOB Essentials by an Other Application provider.

### 4. BANK FEEDS

Bank Feeds work by you authorising your Data Supplier to provide us (and your Professional Partner if applicable) with Bank Feeds Data from your nominated transaction accounts. The following terms and conditions in this section 4 apply only to the use of Bank Feeds.

#### 4.1 Access to Bank Feeds Data

By registering for Bank Feeds you are giving your Data Supplier permission to provide us with Bank Feeds Data, for all nominated transaction accounts that you have linked to Bank Feeds. You may also be required to provide your Data Supplier with a hard copy authority form as additional evidence of your consent, depending on your Data Supplier's practices.

#### 4.2 Transaction accounts

You may only use Bank Feeds for transaction accounts attached to the Business.

#### 4.3 Important points about your Data Supplier

Your Data Supplier:

- a. may be paid a commission by us for providing your Bank Feeds Data to us;
- b. is under no obligation to provide us with the Bank Feeds Data. It can stop doing so at any time without notice to you or us; and
- c. is not a party to any agency, partnership, joint venture or other type of similar relationship with us, and is not responsible for the actions of us or any other Third Party.

#### 4.4 How you can end your use of Bank Feeds

If you wish to cancel your Bank Feeds but continue to use MYOB Essentials, you must advise your Data Supplier in writing. Please allow a minimum of 14 days for your Data Supplier to give effect to your request for cancellation.

#### 4.5 When your Data Supplier can terminate your Bank Feeds

- a. Your Data Supplier can terminate your authority to give us Bank Feeds Data at any time, for any reason, by giving you no less than 7 days' notice.
- b. Your Bank Feeds will be automatically cancelled when your MYOB Essentials subscription ends. See section 7 for more information on ending your MYOB Essentials subscription.

#### 4.6 Bank Feeds fees

If your Data Supplier charges you directly for transaction fees in connection with your account and your use of the Bank Feeds in relation to that account, you are responsible for and must pay those fees. If you don't do this, we may not be able to provide the Bank Feeds to you.

#### 4.7 Fair Use Policy

In addition to your monthly subscription fee for MYOB Essentials, you may be charged a Fee for excess bank feeds transactions under the Fair Use Policy for [Australia](#) and [New Zealand](#), respectively. You will be charged in the currency of the country where you accept these Terms.

### 5. MYOB YOURPAY

This section applies to you if you make the MYOB YourPay app available to your Employees.

#### 5.1 Giving access to Employees

- a. You can invite your Employees to access MYOB YourPay, where they can view their payslip and add their timesheet information. You can do this by adding the email address of the Employee that you wish to invite where indicated on the 'Employee Details' screen within MYOB Essentials.  
  
The Employee will then receive an email linking them to the MYOB YourPay webpage where they will be prompted to create a username and password to access MYOB YourPay.
- b. You are responsible for:
  1. ensuring that you enter the correct email address(es) of your Employee(s) to the 'Employee Details' screen;
  2. making sure that your Employees protect their MYOB YourPay usernames and passwords;
  3. checking the accuracy of any data entered into MYOB YourPay by your Employees, from within MYOB Essentials; and
  4. regulating your Employees' access to the MYOB YourPay (for example, by restricting an Employee's access once they are no longer employed by the Business – see section 5.2 below).

#### 5.2 When an Employee leaves the Business

- a. When an Employee leaves the Business you can restrict their access to MYOB YourPay so that they can only access their payslips.

- b. We strongly recommend that you arrange for departing Employees to download their payslips prior to leaving the Business, to ensure that they are not affected by any subsequent changes to your MYOB Essentials subscription.

### 5.3 MYOB YourPay support

- a. If you or your Employees experience a problem or have a concern regarding MYOB YourPay, our support team will be available to assist you between 8:30am and 5pm Monday to Friday, excluding public holidays. Please contact us using the following methods:
  1. **Australia**  
phone 1300 555 123, or  
email [payrollteam@myob.com](mailto:payrollteam@myob.com)
  2. **New Zealand**  
phone 0800 60 96 62, or  
email [payrollteam@myob.co.nz](mailto:payrollteam@myob.co.nz)
- b. Please note that our support team will only respond to communications from you or the nominated contact person for your MYOB Essentials subscription. Our support team won't respond to direct communications from your Employees in relation to MYOB YourPay.

## 6. AVAILABILITY OF MYOB ESSENTIALS

- 6.1 MYOB Essentials could be disrupted if systems failure occurs due to technology used by either us or Third Parties involved in providing MYOB Essentials. Delayed receipt of Bank Feeds Data could result in transactions not being available on a particular day.
- 6.2 MYOB Essentials may also be unavailable for short periods because of necessary or desirable system maintenance or upgrades. If this is needed, we will try to inform you beforehand.
- 6.3 Subject to the terms of section 8 below, we are not responsible or liable to you or the Business for any Loss or Claim arising from MYOB Essentials or any part of it being delayed, disrupted or unavailable.
- 6.4 In order to maximise your business continuity and make it easier to comply with your record retention obligations, we encourage you to take steps to archive your business and financial records. This includes your invoices and receipts, and your business reports.

## 7. TERMINATION

### 7.1 How can you end your MYOB Essentials subscription?

- a. You can terminate your MYOB Essentials subscription by phoning us at least 10 days before the end of the current period of your monthly or annual subscription. To action your termination, please call our Customer Service team directly on 1300 555 151 (Australia) or 0800 60 69 62 (New Zealand) and select "Billing Enquiries" when prompted. The effective date of termination will be the last day of the current month of your subscription.

- b. Your MYOB Essentials subscription will cease on the effective date of termination. However, during the notice period, you are still liable for any Fees in relation to your use of MYOB Essentials up to the effective date of termination. Refer also to section 7.3 below for other important content about what happens on the effective date of termination.
- c. You may also terminate your MYOB Essentials subscription if we fail to remedy a material breach of these Terms within 7 days of you giving us notice of the breach in writing.

### 7.2 When we can terminate your MYOB Essentials subscription without prior notice

- a. **Circumstances** – These are the situations in which we can terminate your MYOB Essentials subscription without prior notice. We will notify you of your suspension or termination as soon as possible. The situations are:
  1. A breach occurs:
    - i. you fail to remedy a material breach of these Terms within 7 days after we give you notice of the breach.
  2. Something threatens MYOB Essentials:
    - i. in our opinion, a change to any Third Party arrangement necessary for MYOB Essentials renders the ongoing operation of MYOB Essentials substantially unworkable or non-functional.
    - ii. in our opinion, the actions of a regulator or a change in law or regulation makes the ongoing operation of MYOB Essentials substantially unworkable or non-functional; or
    - iii. we believe this is necessary either to protect the security, integrity or reputation of MYOB Essentials or any MYOB Essentials function, service or facility, or to otherwise protect our interests.
  3. We have concerns about the Business:
    - i. we receive notification of a dispute from one or more of the directors or principals of the Business;
    - ii. 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
    - iii. there is a change in who owns or controls the Business.
- b. **Notification** –
  1. We will make notify you in writing (which includes by email) of the termination.
  2. We can reinstate a 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.
  3. If you become aware that a circumstance which would permit us to terminate your MYOB Essentials subscription under section 7.2.a.iii. has arisen or may arise, you must advise us in writing as soon as possible.

### 7.3 What happens on the effective date of termination?

- a. **Limited period for data extraction** –
  1. You will have 60 days from the effective date of termination to extract your data from MYOB Essentials, after which time you and other Users (including your Professional Partner) will have no further access to MYOB Essentials or your data. We may take steps to delete your data from our servers at any time after 60 days following the effective date of termination, whether or not you have extracted your data.
  2. We strongly recommend that you extract your data for compliance and archive purposes as soon as possible following termination of MYOB Essentials. Failure to extract and retain your data following termination may result in you being unable to comply with your record retention obligations under the Tax Laws and ER Laws.
- b. **If you use MYOB YourPay** –
  1. Your Employees will no longer be able to submit their timesheet data to you or access their payslips using MYOB YourPay from the effective date of termination.
  2. You will be able to access a report on your Employees' timesheet data and their pay slips for a period of 60 days following the termination of your MYOB Essentials subscription.
  3. We strongly recommend that you arrange for your Employees to download their payslips from MYOB YourPay prior to terminating your MYOB Essentials subscription.
- c. **Continuation of limitations on liability** – any limitations on liability which you have given under these Terms continue after termination in relation to your use of MYOB Essentials.

## 8. LIABILITY, WARRANTIES, REPRESENTATIONS AND INDEMNITIES

### 8.1 No warranty that MYOB Essentials is suitable for your needs

- a. MYOB Essentials is a generic service and its capabilities are likely to change over time. This means that MYOB Essentials may not be, or may not remain, suitable for your needs.
- b. You must assess the ongoing suitability of MYOB Essentials for you and your Business. We are not aware of your individual business needs and cannot provide any specific recommendations regarding your use of MYOB Essentials.

### 8.2 Liability for other conditions or warranties

- a. To the extent permitted by law (and subject to section 1 if you accept these Terms in Australia), we provide no warranty and make no claim in relation to our performance, the performance of MYOB Essentials, or any service associated with MYOB Essentials.

- b. 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:
  1. the resupply of MYOB Essentials or the service (as applicable); or
  2. the cost of resupply of MYOB Essentials or the service (as applicable), and in any event will be limited to the fullest extent permitted by law.
- c. 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).
- d. If you accept these Terms in Australia, sections 8.2.b and 8.2.c above are not intended to have the effect of excluding, restricting or modifying:
  1. the application of all or any of the provisions of the ACL; or
  2. the exercise of a right conferred by such a provision; or
  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.

### 8.3 When we and Third Parties will not be liable to you

We and Third Parties (including, in the case of Bank Feeds, your Data Supplier) are not responsible or liable to you or the Business for:

- a. any Loss or Claim relating to the provision of the Bank Feeds Data, Payroll Data or system data made available through MYOB Essentials, including delays, disruptions, inaccuracies or the loss of data;
- b. any Loss or Claim relating to your use of, or reliance upon, the Bank Feeds Data, Payroll Data or system data provided to you through MYOB Essentials;
- c. the actions or inaction of Third Parties, Other Application providers or other persons (including those which may be negligent or unauthorised) relating to MYOB Essentials;
- d. 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;
- e. any Loss or Claim arising from a failure by you or the Business to maintain archive records of your data; or
- f. If you are a user of MYOB YourPay, any Loss or Claim incurred by you in connection with the submission of inaccurate or incomplete timesheet information by your Employees.

## 8.4 Indemnity to us and Third Parties

- a. You indemnify us, our staff, and Third Parties (including, in the case of Bank Feeds, your Data Supplier) (**Indemnified Parties**) against any Loss or Claim suffered or incurred by the Indemnified Parties or any of them arising from your negligence, misrepresentation, fraud, breach of law or breach of these Terms. You indemnify the Indemnified Parties for any Loss or Claim suffered or incurred from the unauthorised use of your Username or a Password.
- b. If the Indemnified Party caused or contributed to a Loss or Claim, then your liability under section 8.4.a above is limited to the amount of the Loss or Claim which is directly attributable to your conduct.

## 9. CHANGES TO TERMS

### 9.1 What can we do?

We may change any of these Terms (including the Fees, which are specifically dealt with in section 2.6.b. above).

### 9.2 Prior notice

We'll give you at least 10 days' prior notice (longer if required by legislation or any other code of conduct we subscribe to) of any change that is likely to materially affect or disrupt the manner in which you use MYOB Essentials.

### 9.3 Urgent changes

However if we need to restore or maintain the security of MYOB Essentials immediately, we may change your use and access to MYOB Essentials without advance notice.

### 9.4 Right of termination

If we make a change to MYOB Essentials or these Terms under sections 9.1 or 9.2 above, then you have the option to terminate your MYOB Essentials subscription under section 7.1.

## 10. NOTICES

- 10.1 You will agree that all communications between you and us in relation to MYOB Essentials will be by email, by in-product notification, or by us posting a notification on the MYOB website ([myob.com.au](http://myob.com.au) or [myob.co.nz](http://myob.co.nz)), unless another method is agreed to by the addressee.
- 10.2 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).
- 10.3 If the delivery or receipt is after 5.00pm (addressee's time) it is regarded as received at 9.00am on the following day.
- 10.4 We may provide a notice or other communication to you by a posting to the MYOB website ([myob.com.au](http://myob.com.au) or [myob.co.nz](http://myob.co.nz)) or within your product. That notice or other communication is regarded as being given by us and received by you when the posting is made. We recommend that you regularly check the MYOB website and your product for notices or other communications.

## 11. LEGAL

You should note a few things about these Terms:

### 11.1 This is our complete agreement

These Terms and the documents incorporated by reference, including your application for MYOB Essentials and any price increase notifications provided to you by email, letter or phone from time to time, contain the whole of the agreement between us and you in relation to MYOB Essentials.

Any representations or warranties made by our staff before you are accepted for your MYOB Essentials subscription are not effective unless expressly set out in these Terms. Any waiver of our rights or powers under these Terms may only be given in writing signed by our authorised officer

### 11.2 What happens if some of these Terms can't operate?

If any part or provision of these Terms are void, unenforceable or illegal in a jurisdiction, that part or provision does not apply in that jurisdiction. However, the remainder of the Terms continue in operation in that jurisdiction unless this would alter the basic agreement between you and us, in which case we can terminate your use of MYOB Essentials at our election.

### 11.3 No waiver by us

If we do not insist upon strict performance of any part or provision of these Terms, that waiver will not be deemed to be a waiver of a subsequent breach or default of these Terms.

### 11.4 Assignment

You cannot assign or otherwise transfer the benefit of the agreement between us and you without our prior written consent. We can assign or otherwise transfer the benefit of the agreement between us and you.

### 11.5 Which laws apply to the Terms?

If you accept these Terms in Australia, these Terms are governed by the laws of Victoria and the courts of Victoria have jurisdiction over the parties to these Terms (being you and us). If you accept these Terms in New Zealand, these terms are governed by the laws of New Zealand and the courts of New Zealand have jurisdiction over the parties to these Terms (being you and us).

## 12. YOUR PRIVACY

- 12.1 We collect, disclose and use your Personal Information to provide 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 websites, and from Third Parties that provide us with marketing leads.
- 12.2 To do these things, we may provide your Personal Information to our related companies, Third Parties and to people to whom we outsource functions. Some of the 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, it may affect our ability to do business with you.

**12.3** You consent to us collecting, using and disclosing your Personal Information for the purposes set out in section 12.1 above.

#### **12.4 If you accept these Terms in Australia**

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 for Australia](#).

The MYOB Group Privacy Policy ([Australia](#)) 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.com.au](mailto:privacy_officer@myob.com.au)

or by post at:

**Privacy Officer**

MYOB Australia Pty Ltd  
PO Box 371, Blackburn, Victoria 3130.

#### **12.5 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 using the details outlined below.

You can contact us about your privacy by email at:

[privacy\\_officer@myob.co.nz](mailto:privacy_officer@myob.co.nz)

or by post at:

**Privacy Officer**

MYOB NZ Limited,  
C/- Quigg Partners  
Level 7, 36 Brandon, Street Wellington 6011.

**12.6** Notwithstanding the Group Privacy Policy, we may observe your use of MYOB Essentials and access all information you input or can access through MYOB Essentials. This will enable us to assist you with problems and make improvements for future versions of MYOB Essentials and other products and services.

**12.7** You must ensure that all Users read this 'Your privacy' section and the policies described above before using MYOB Essentials or providing their Personal Information to us.

**12.8** If you provide any Personal Information about third party individuals to us, you must take reasonable steps to ensure that those individuals are aware of the matters in this 'Your Privacy' section and that we may collect, use and disclose their information to provide you with MYOB Essentials.

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