

MYOB Advanced End User Licence Agreement

Important – Please Read Carefully

This document outlines the terms and conditions of your subscription to MYOB Advanced, a cloud-based business management software. By:

- (a) accessing MYOB Advanced through your initial login email;
 - (b) using MYOB Advanced; or
 - (c) signing a copy of this Agreement,
- you agree to:
- (d) accept and be bound by the terms of this Agreement; and
 - (e) us using any Personal Information you have provided in the ways described in section 13.

You have signed up for a subscription with a **Minimum Term**. At the end of the Minimum Term, your subscription will automatically renew for successive periods of 12 months, unless your subscription is terminated as outlined in section 7.

We may change this Agreement, the Fees, or the features and functionality of MYOB Advanced from time to time. See section 10 for information about when we will tell you of changes, and what rights you have if we make changes.

This Agreement creates a legal agreement between you (as a User and/or on behalf of the Business as applicable) and us. This Agreement supersedes any prior written agreements between you and us in relation to MYOB Advanced.

If your Business is registered in New Zealand, this Agreement is with MYOB NZ Limited and is governed by the laws of New Zealand. If your Business is registered elsewhere, this Agreement is with MYOB Australia Pty Ltd and is governed by the laws of the state of Victoria, Australia.

Definitions

Some of the words in this Agreement have particular meanings. Those words are defined in section 14 (Glossary).

1. General Terms

1.1 Grant of licence

MYOB grants you, from the Initial Activation date until your MYOB Advanced service ceases under section 7 of this Agreement, a non-exclusive and non-transferable licence to use MYOB Advanced in the way that we authorise from time to time,

subject to section 1.7(b) and the level of licencing you purchase. Your use of MYOB Advanced is also subject to payment of your Fees, under section 1.8 below.

1.2 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 Advanced service. It is important that you and the other Users you authorise take all reasonable precautions to ensure that access credentials are not misused, and remain secure and confidential. In particular, you and any other Users:

- (i) must not tell anyone your username or password, including any member of your family;
- (ii) must not let anyone else, whether acting as your agent or not, to access MYOB Advanced using your access credentials; and
- (iii) must be extra careful when accessing MYOB Advanced from public computers.

- (b) If you think anyone else might know your password, you must immediately reset your password from within MYOB Advanced.

1.3 Giving access to other Users

- (a) Each MYOB Advanced User must have unique access credentials.
- (b) Access credentials must not be shared or used by more than one User, although licences can be reassigned to another User as needed.
- (c) You can give other people (such as MYOB Advanced Partners and Related People) access to your MYOB Advanced service as Users, so long as you have enough licences of the right type.
- (d) Each User can have different access rights, which determine what they can see and do with your Customer Data. You are responsible for how they use MYOB Advanced.

- (e) Unless otherwise agreed with us, only Related Entities can be configured within MYOB Advanced. You must provide us with the basic details (such as company names, company/ABN numbers and addresses) of any Related Entities that you wish to configure within MYOB Advanced and update us if any of these details change. We may cross-check this

information from time to time against the company details recorded in MYOB Advanced.

1.4 Other responsibilities you have as a User

- (a) No interference with MYOB Advanced – you must not:
- (i) interfere with the operation of MYOB Advanced;
 - (ii) reverse-engineer, reverse-assemble, decompile, or otherwise attempt to discover source code, formulas or processes in respect of the software behind MYOB Advanced, except as provided for by the customisation features in MYOB Advanced;
 - (iii) copy, reproduce, alter, modify, create derivative works, or publicly display, any part of any content from MYOB Advanced, except where we have given you permission in writing;
 - (iv) use MYOB Advanced in way that is prohibited by law in any relevant jurisdiction, or in a way that violates a third party's legal rights;
 - (v) use MYOB Advanced in a way that could harm or impair anyone else's use of it;
 - (vi) use MYOB Advanced to get unauthorised access to any service, data, account or network by any means;
 - (vii) falsify any protocol or email header information (e.g. spoofing);
 - (viii) use MYOB Advanced to send "spam";
 - (ix) use MYOB Advanced to make available any offering designed to violate this Agreement; or
 - (x) remove, modify, tamper with any regulatory or legal notice or link that is part of MYOB Advanced.
- (b) Accuracy and change of details – you must:
- (i) provide accurate, current and complete contact and direct debit information to us and to your MYOB Advanced Partner; and
 - (ii) notify both us and your MYOB Advanced Partner of any changes to such information.

1.5 Use of MYOB Advanced and our intellectual property

- (a) We retain our intellectual property rights – except where specifically set out in this Agreement, this Agreement does not give you any intellectual property or other rights in any of our:
- (i) software, source code, object code, applications, documents, templates, marketing material, trademarks, business names, logos, trading styles, get-up, processes or methodologies; or
 - (ii) other intellectual property,

and you (including your Users, officers, employees, agents, contractors or Related Entities) must not otherwise use, reproduce or modify these intellectual property rights.

1.6 MYOB Advanced features related to employees

- (a) From time to time, MYOB Advanced may offer "modern award interpretation" or other Industrial Relations Laws related features. Nothing in those features, nor within MYOB Advanced generally, constitutes professional or financial advice. It is your responsibility to ensure that you comply with Industrial Relations Laws.

1.7 Transferability of your MYOB Advanced service

- (b) Except as set out in section 1.7(b) below, you must not sub-licence, lease, rent or lend MYOB Advanced or otherwise transfer any of your rights under this Agreement.
- (c) You may permanently transfer MYOB Advanced provided that you and the transferee sign a change of subscriber form and MYOB activates the transfer. If you want to assign your rights and obligations under this Agreement rather than merely have your MYOB Advanced instance transferred to another MYOB customer, then you must comply with section 12(d) of this Agreement.

1.8 Payment of subscription Fees

- (a) You must pay all Fees due to us in relation to your use of MYOB Advanced under this Agreement.
- (b) If you make payment to us via direct debit, this section applies. You authorise us to deduct periodic instalments of the Fees payable by you to us in accordance with the Direct Debit Authority. We will normally debit the Fees on the due date of the Tax Invoice, but we may do it at other times if the Direct Debit Authority allows. You are responsible for ensuring that you have enough credit or funds available in your credit card or bank account to cover payments that you owe us; and that your credit card or bank account details are up-to-date. If we cannot debit Fees due to us from your credit card or bank account, we will let you know that your account is overdue and we may try to re-draw up to three more times before we consider the direct debit to be dishonoured. You are responsible for paying any dishonour fee(s) charged by your financial institution. If your direct debit authority is cancelled or withdrawn, you must give us a replacement direct debit authority (unless we agree to another payment method).
- (c) Unless otherwise stated in this Agreement, we will invoice you and take payment in advance for any Fees payable under this Agreement, at a frequency and on the payment stated in the applicable MYOB Advanced Quotation or order form or as varied by agreement from time to time.

- (d) Early Termination – if you terminate your subscription for MYOB Advanced before the end of your Minimum Term pursuant to section 7.1, the Minimum Term Amount will be due and payable to us and you authorise us to deduct this amount from your account, unless you tell us otherwise.
- (e) Subject to section 9.2 and unless otherwise stated in this Agreement:
 - (i) payment obligations are non-cancellable and Fees paid are not refundable;
 - (ii) if you authorise an upgrade to your Software Configuration, the difference in Fees between the existing and upgraded Software Configuration will be debited on a pro-rata basis for the remainder of the Monthly Subscription Period. Your subscription Fee will be increased to reflect your upgrade in the next Monthly Subscription Period;
 - (iii) If you choose to downgrade to your Software Configuration, you will still have access to your original Software Configuration until the end of your current billing period, and the changes to Fees will take effect in the next Monthly Subscription Period. Please note that during the Minimum Term, your subscription Fees cannot be decreased below the amount that you agreed to pay at the time of your Initial Activation; and
 - (iv) if you change your Software Configuration to a different Software Configuration of the same value, we will continue to charge you the same Fees, and will adjust the Software Configuration to the new Software Configuration.
- (f) If you exceed the level of inclusions that you've paid for as part of your Software Configuration, we will charge you for that excess at our nominated overuse rate (rate may change from time to time and be viewed on our website: myob.com.au/myob_advanced/charges) in your next Monthly Subscription Period, until you either:
 - (i) elect to upgrade your Software Configuration to increase the level of inclusions that you are entitled to; or
 - (ii) stop exceeding the level of inclusions prescribed under your current Software Configuration.
- (g) By giving you at least 90 days' notice before the change takes effect, we may:
 - (i) following expiry of your Minimum Term, change the amount of any Fee and introduce a new Fee; and
 - (ii) change the circumstances in which, or frequency with which, a Fee is payable.

Section 11 tells you about the rights you have if we make changes to fees and when we will give

you notice. Please also refer to your rights to terminate our agreement set out in sections 7.1 and 10(c).

- (h) If any amount payable to us under this Agreement or any applicable Order Form has not been paid by you by the due date for payment:
 - (i) we may charge interest on the amount outstanding at the penalty interest rate fixed under the Penalty Interest Rate Act 1983 (Vic) as amended or replaced from time to time (if the laws of Victoria, Australia apply to this Agreement) or at an interest rate equal to the official cash rate of the Reserve Bank of New Zealand plus five percent (if the laws of New Zealand apply to this Agreement); and/or
 - (ii) (without prejudicing the other rights we have under this Agreement or the applicable Order Form) we may suspend the provision of the Services if you fail to make payment within 10 Business Days of receiving a reminder notice from us requiring you to do so. We will lift any suspension as soon as we reasonably can after all outstanding amounts have been paid.

1.9 Goods and services tax (GST) and duties

- (a) If GST is payable by a supplier (or by the representative member for a GST group of which the supplier is a member) on any supply made under or in relation to this Agreement or any applicable Order Form, the recipient must pay to the supplier an amount (GST Amount) equal to the GST payable on the supply. The GST Amount is payable by the recipient in addition to and at the same time as the net consideration for the supply.
- (b) If a party is required to make any payment or reimbursement, that payment or reimbursement must be reduced by the amount of any input tax credits or reduced input tax credits to which the other party (or the representative member for a GST group of which it is a member) is entitled for any acquisition relating to that payment or reimbursement.
- (c) This section 1.9 is subject to any other specific agreement regarding the payment of GST on supplies.

2. Availability of MYOB Advanced

- (a) You need internet access to use MYOB Advanced. You are responsible for getting and keeping internet access that is compatible with MYOB Advanced including browser software versions that are compatible with MYOB Advanced as published by us on our website from time to time. We are not responsible for notifying you of any upgrades, fixes or enhancements to any such software, or for any compromise of data transmitted using networks or facilities which are not owned or operated by us.

- (b) MYOB will use reasonable efforts to meet the service levels and availability for MYOB Advanced as set out in:
myob.com.au/myob_advanced/servicelevels
- (c) MYOB Advanced could be disrupted if system(s) failure occurs due to technology used by us in providing MYOB Advanced. Online services are subject to interruption, viruses, delays, interception, interference and other errors involving communications networks, computer systems, servers, providers and computer equipment and software. We aim to provide MYOB Advanced with minimal interruptions, but sometimes they may be affected by factors outside our control. We will do our best to inform you of any disruptions and resume MYOB Advanced as soon as possible.
- (d) MYOB Advanced 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.
- (e) Urgent changes – we may do emergency repairs, modifications or additions to MYOB Advanced without notifying you if they are business critical, outside our reasonable control, and necessary to protect the integrity or security of MYOB Advanced or your Customer Data.

3. Upgrades

- (a) In order for you to get the best out of MYOB Advanced, and to enable us to provide you with the best support and resources possible, it is important that you always operate a current version of MYOB Advanced.
- (b) For more details about the MYOB Advanced upgrade process, please visit:
myob.com.au/myob_advanced/upgradeprocess
which outlines the MYOB Advanced upgrade process as amended by us from time to time.

4. Work performed by MYOB Advanced Partners

- (a) You may, as part of your implementation of MYOB Advanced, separately engage the services of an MYOB Advanced Partner. These services are supplied independently of us.
- (b) We maintain records of your contact, invoice history and subscription details that you've provided as part of your subscription to MYOB Advanced. Your current authorised MYOB Advanced Partner will be given access to these details.

5. Other Applications

- (a) Some applications or services developed by third parties ("**Other Applications**") can be used in conjunction with MYOB Advanced.

- (b) Unless otherwise required by law, we are not responsible for any Other Application that you may obtain or connect to MYOB Advanced. If you install or enable an Other Application for use with MYOB Advanced, you consent to us allowing the Other Application to access your Customer Data as required to enable MYOB Advanced and the Other Application to operate together. Any exchange of data or other interaction between you and a third party provider is solely between you and them.

6. Data and Privacy

6.1 Data security

- (a) We will maintain commercially reasonable administrative, physical and technical safeguards to protect the confidentiality and integrity of your Customer Data. For more information on security for MYOB Advanced visit:
myob.com.au/myob_advanced/datacentre
- (b) We will promptly notify the Business if we become aware of an "eligible data breach" as that term is defined in the Australian Privacy Act or "notifiable privacy breach" as that term is defined in the New Zealand Privacy Act (as applicable) of your Customer Data.
- (c) We recommend that you obtain and maintain up-to-date virus, security and intrusion prevention and scanning software which is specifically designed for all devices, software and systems you use to access MYOB Advanced or receive communications related to MYOB Advanced. Any failure to keep these devices, software and systems secure could jeopardize the security of your MYOB Advanced account and Customer Data.
- (d) You are solely responsible for keeping your access credentials secure and confidential. You must immediately notify us if you suspect or know that access credentials have been compromised. We will not be responsible for any unauthorised access to the Customer Data that is caused or facilitated by your failure to protect access credentials, unless applicable law prohibits us from excluding our liability.

6.2 Compliance with Record Retention Laws

- (a) It is your responsibility to retain your Customer Data for compliance with your legal obligations, including Tax Laws and Industrial Relations Laws. To maximise your business continuity, we encourage you to take steps to back up and archive your Customer Data on a regular basis.
- (b) We are not liable for your failure to meet your retention obligations under law, including Tax Laws and Industrial Relations Laws, in relation to any of your Customer Data.

- (c) If you decide to terminate your subscription for MYOB Advanced, we strongly advise you to extract your Customer Data in its entirety as soon as possible (see section 7.5 for further details).
- (d) For specific advice regarding your compliance with the laws, including Tax Laws and Industrial Relations Laws, consult your professional advisor or the relevant government agency as appropriate.

6.3 Customer Data: ownership and use

- (a) The Business (and, if applicable, the Business's third-party licensors) owns the Customer Data.
- (b) You are responsible for verifying and maintaining the accuracy of your Customer Data.
- (c) We may access and use the Customer Data for our operational purposes including:
 - (i) to enable us to perform our obligations under this Agreement;
 - (ii) to develop and improve our products and services;
 - (iii) to identify, develop and deliver other functionality, products and services that may be of interest to you; and
 - (iv) for other purposes to which you expressly consent from time to time.

This may involve aggregating your Customer Data. Aggregated data is data that does not contain any information specific to a particular individual or business. Aggregated data does not include Personal Information or confidential information. An example of aggregated data is statistical trends in an industry sector. You grant us a permanent, unlimited, non-exclusive, transferable, sublicensable, royalty-free licence to use anonymised or aggregated data that we create or derive from the Customer Data for any purpose, provided that such anonymised or aggregated data does not contain Personal Information or your confidential information.

- (d) You acknowledge that we may be required under law to allow third parties, such as a government agency, to access and inspect information, documents and data including your Customer Data. You agree to us giving such access to the extent that we are required to do so by law.

6.4 Compliance with Privacy Laws

- (a) You are responsible for the collection, use, storage and other dealings with Personal Information related to your Business. You must comply, and ensure that your personnel or Users comply, with Privacy Laws in relation to any Personal Information that you or they handle in connection with this Agreement, including any Personal Information that you or they provide to us under or in connection with this Agreement. This includes, but is not limited

to, obtaining all necessary consents under Privacy Laws.

- (b) If you provide Personal Information about third parties to us, you must ensure that those individuals have given appropriate consents as required by Privacy Law.
- (c) By using MYOB Advanced, you consent to us and our hosting providers transferring and hosting your information. This includes your Personal Information and Customer Data, as well as the Personal Information of any third parties that you provide to us (such as your employees, suppliers or contractors). To learn more about how and where we store your Customer Data, see our data sheet at: myob.com.au/myob_advanced/datacentre.
- (d) MYOB Advanced may offer the ability to store employee records that include Personal Information or Health Records (as defined by the Health Records Act 2001 (Cth)). You acknowledge and agree that in storing any Health Records or Personal Information, you have complied with the applicable laws including that you have obtained consent, if required, from all your employees to the Health Records being collected, accessed, and held by you and by us within MYOB Advanced on your behalf.
- (e) You agree to protect MYOB from any harm or loss that may result from the storage of Health Records by MYOB on your behalf. This includes paying for any costs, liability, damages or expenses (including legal costs) that MYOB may face because of any claim, action or proceeding in direct connection with the storage of Health Records by MYOB on your behalf. Your liability under this section 6.4(e) is subject to the limits of liability in sections 9.5 (mutual liability cap), 9.6 (exclusion of consequential loss) and 9.7 (proportionate liability).

7. Termination and Suspension

7.1 How can you end your subscription for MYOB Advanced?

- (a) You can terminate your subscription for MYOB Advanced by giving us at least 90 days' written notice (including to your MYOB Partner). During the notice period you:
 - (i) will continue to have full access to MYOB Advanced; and
 - (ii) are still liable for any Fees in relation to your use of MYOB Advanced.
- (b) If you terminate your subscription within the Minimum Term under section 7.1(a), the Minimum Term Amount will be payable (see section 1.7(d)).
- (c) We strongly recommend that you extract your Customer Data for tax compliance and archive purposes during your 90 day notice period. You will

not have access to MYOB Advanced following the end of the notice period.

- (d) See section 7.5 for more information on what happens to your Customer Data when you terminate your subscription for MYOB Advanced.

7.2 When we can suspend your access to MYOB Advanced without prior notice

We can suspend User access to MYOB Advanced if in our opinion:

- (i) the ongoing operation of MYOB Advanced is rendered substantially unworkable or non-functional;
- (ii) the actions of a regulator or a change in law or regulation makes ongoing operation of MYOB Advanced substantially unworkable or non-functional; or
- (iii) it is necessary to protect the security, integrity, operations or reputation of MYOB Advanced, or any MYOB Advanced function, service or facility, or otherwise protect our interests.

We will lift the suspension as soon as we reasonably can after resolving the issue(s) that caused it.

7.3 When we can terminate your subscription for MYOB Advanced

We may terminate your subscription for MYOB Advanced in with immediate effect by giving notice if any of the events in section 7.2(i)-(iii) occur. If we terminate the Agreement under this section 7.3, then you will not be required to pay any Fees for the period after the effective date of termination (including Fees for any remaining Minimum Term). You will also be entitled to a refund for any Fees prepaid for the period after the effective date of termination in addition to a refund of any Fees paid for services not rendered prior to the effective date of termination.

7.4 Mutual right to terminate for default

- (a) **“Event of Default”** means, in relation to a party, the occurrence of any one or more of the following events or circumstances:
 - (i) the party commits a material breach of its obligations under this Agreement;
 - (ii) the party ceases to be able to pay its debts as they become due;
 - (iii) the party is subject to any step to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person of the whole or any part of the party’s assets or business; or
 - (iv) a notice of deregistration of the party is given under sections 601AA(5) or 601AB(5) of the

Corporations Act (Au), a request is sent or delivered in accordance with section 318(1)(d) of the Companies Act (NZ), or a notice is issued under section 319 of the Companies Act (NZ).

- (b) If an Event of Default occurs in relation to a party (**“Defaulting Party”**):

- (i) the other party may give a notice (**“Default Notice”**) to the Defaulting Party specifying the Event of Default and requiring the Defaulting Party to remedy the default within 20 days after the Default Notice is given to the Defaulting Party; and
- (ii) if the Defaulting Party does not comply with the notice within the relevant period then the other party, without limiting its other rights and remedies, may terminate this agreement by giving to the Defaulting Party notice with immediate effect.

- (c) If you terminate this Agreement under section 7.4(b), then you will not be required to pay any Fees for the period after the effective date of termination. If you terminate your subscription under this section during the Minimum Term, then the requirement to pay us the Minimum Amount will not apply. You will also be entitled to a refund for any Fees prepaid for the period after the effective date of termination in addition to a refund of any Fees paid for services not rendered prior to the effective date of termination.

7.5 What happens on the effective date of termination – limited period for data extraction

- (a) If you terminate your subscription for MYOB Advanced under section 7.1 –
 - (i) you have until the end of your 90 day notice period to extract your Customer Data from MYOB Advanced;
 - (ii) the effective date of termination will be the day following the end of your 90 day notice period;
 - (iii) following the effective date of termination, you and other Users you have authorised (including your MYOB Advanced Partner) will no longer be able to access MYOB Advanced; and
 - (iv) following the effective date of termination, we may take steps to delete your Customer Data whether or not you have extracted your Customer Data.
- (b) If we terminate your subscription for MYOB Advanced under sections 7.3 or 7.4:
 - (i) you and other Users (including your MYOB Advanced Partner) may still access your data in read-only mode and download it for a period of 90 days following the effective date of termination; and

- (ii) following the effective date of termination, we may take steps to delete your Customer Data whether or not you have extracted your data.
- (c) We strongly recommend that you extract your Customer Data for tax compliance and archive purposes as soon as possible following your termination of MYOB Advanced.
- (d) Continuation on limitations of liability – Any limitations of liability you have given under this Agreement continue after termination in relation to your use of MYOB Advanced.

8. Warranties

8.1 MYOB warranties

We warrant to you that:

- (a) we will use reasonable endeavours to provide MYOB Advanced with due care, skill, and diligence in accordance with good business practice for the industry;
- (b) we will deliver MYOB Advanced in accordance with this Agreement in all material respects; and
- (c) the performance of our obligations under this Agreement and the access and use of the MYOB Advanced in accordance with this Agreement will not infringe the intellectual property rights of any third party.

8.2 Your warranties

You warrant that:

- (a) to the best of your knowledge and belief, your use of MYOB Advanced will not infringe any applicable laws or infringe any intellectual property rights; and
- (b) you have obtained any necessary consents and have all necessary rights to transfer Personal Information to us in accordance with this Agreement.

9. Limitation of Liability

9.1 Limits to our liability

- (a) 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 this agreement, or any breach by us of this agreement however arising (whether in contract, tort, negligence, statute or otherwise), is limited to:
 - (i) the resupply of MYOB Advanced or related services; or
 - (ii) the cost of re-supplying MYOB Advanced or related services,
 - (iii) and in any event will be limited to the fullest extent permitted by applicable law.

9.2 Where the Australian Consumer Law (“ACL”) applies

- (a) Our goods and services come with guarantees that cannot be excluded under the ACL. For major failures with the service, you are entitled:
 - (i) to cancel your service contract with us; and
 - (ii) to a refund for the unused portion, or to compensation for its reduced value.
- (b) You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done, you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.
- (c) This agreement does not exclude, restrict or modify the application of any part of the ACL, or the exercise of any right or remedy conferred by the ACL.

9.3 Where the New Zealand Consumer Guarantee Act (“NZ CGA”) and Fair Trading Act (“NZ FTA”) would otherwise apply

- (a) For the purposes of section 5D of the NZ FTA and section 43 of the NZ CGA:
 - (i) the goods and services provided to you under or in connection with this agreement are being provided and acquired in trade;
 - (ii) if the NZ FTA and/or NZ CGA applies to any goods or services supplied to you under or in connection with this agreement, the parties agree to contract out of the NZ CGA and sections 9, 12A and 13 of the NZ FTA; and
 - (iii) all representations, conditions, warranties and terms that would otherwise be expressed or implied under this agreement by general law, statute or custom are expressly excluded (to the extent that such representations, conditions, warranties and terms can be excluded at law).
- (b) Except as specified in section 9.3(a), this agreement does not exclude, restrict or modify the application of any part of the NZ CGA or NZ FTA, or the exercise of any right or remedy conferred by the NZ CGA or NZ FTA.

9.4 When we will not be liable to you

- (a) We will not be liable to you for any error, problem or defect arising from or in connection with:
 - (i) your or your users using MYOB Advanced in a way that we did not approve in writing such as with hardware, software or other that we did not approve in writing;
 - (ii) changes to MYOB Advanced that we did not make such as enhancements, adaptations, translations or modifications;

- (iii) faults, malfunctions or defects in any Other Applications that we did not supply;
 - (iv) internet or telecommunications issues that affect your use of MYOB Advanced and are outside our control, such as outages, delays, congestion, failures or faults;
 - (v) harmful, negligent or wilful actions or omissions of third parties that affect your use of MYOB Advanced and are outside our control;
 - (vi) third parties doing maintenance or repairs on the systems we use to deliver MYOB Advanced; or
 - (vii) third party services that we use to deliver MYOB Advanced stopping or becoming unavailable.
- (b) We will not be liable to you to the extent that a failure to deliver the Software or related services was caused or contributed to by:
- (i) you, your third party providers, personnel or users;
 - (ii) a breach of obligations under this agreement by you, your third party providers, personnel or users; or
 - (iii) any of the circumstances set out in section 7.2(i)-(iii).

9.5 Mutual liability cap

In no event will either party's aggregate cumulative liability (whether in contract, tort, negligence, statute or otherwise) arising under or in connection with this Agreement, exceed average monthly fees paid by you to us under this Agreement multiplied by twelve (12).

9.6 Mutual exclusion of liability for consequential loss

Except in accordance with sections 9.2 and 9.3, in no event will either party be liable for any indirect loss (not being a loss which arises naturally as a result of a breach of this agreement or other event giving rise to the relevant claim) or any loss which is consequential, special, punitive, exemplary or incidental, and includes loss of reputation, loss of goodwill, lost profits, lost revenue, loss of or damage to data, loss of use (including loss of use by third parties), any failure to realise anticipated savings and loss of opportunities, wasted staff costs, or costs of procurement or substitution of goods and/or services.

9.7 Proportionate liability

Each party's liability under the agreement is reduced proportionately to the extent that such liability is caused or contributed to by the breach of this agreement or the wrongful, unlawful or negligent act or omission of the other party or its personnel.

9.8 Mutual duty to mitigate loss

Each party must use all reasonable endeavours to mitigate its losses.

10. Changes to this Agreement

- (a) What can we do? We may change any of this Agreement (including the Fees, which are specifically dealt with in section 1.8(g) above).
- (b) Prior notice – We will endeavour to give you at least 30 days' prior notice (longer if required by law) of any change that is likely to materially affect or disrupt the way you use MYOB Advanced.
- (c) Right of termination – If we make a change to this Agreement that is detrimental to you (including a change in Fees), you can choose to end this Agreement within a reasonable time after we tell you about the change. To do this, you need to give us 7 day written notice. If you end the Agreement under this section 10(c), you will not have to pay Fees for the period after the effective date of termination. You will also be entitled to a refund for any Fees prepaid for the period after the effective date of termination. If you terminate your subscription under this section 10(c) during the Minimum Term, then the requirement to pay us the Fees for the balance of the Minimum Term does not apply.

11. Notices

- (a) You will agree that all communications between you and us in relation to MYOB Advanced will be:
 - (i) by email;
 - (ii) in-product notification by us through MYOB Advanced; or
 - (iii) through your MYOB Advanced Partner.
- (b) If we send you a notice or other communication by email, it is considered to be given by us and received by you when:
 - (i) we get a confirmation report that shows the time the email was delivered to your email address; and
 - (ii) you do not get a failure notification that shows the email was not delivered to you.
- (c) If the delivery or receipt is on a day which is not a Business Day or is after 5.00pm (addressee's time) it is regarded as received at 9.00am on the following Business Day.

12. Legal

You should note a few things about this Agreement:

- (a) Entire agreement. This Agreement, along with the applicable MYOB Advanced Quotation, constitutes the entire agreement between us and you in relation to its subject matter, and supersedes any prior

written agreement by the parties in relation to that subject matter.

- (b) What happens if this Agreement can't operate? If any part or provision of this Agreement is void, unenforceable or illegal in a jurisdiction, that part or provision does not apply in that jurisdiction. However, the remainder of the Agreement will continue in operation in that jurisdiction unless this would alter the basic agreement between you and us, in which case either party may terminate this Agreement.
- (c) No waiver by us – Any failure by a party to exercise any right under this Agreement does not operate as a waiver and the single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.
- (d) Assignment – You cannot assign or transfer the benefit of this Agreement without our written consent. We will not unreasonably withhold consent. We may ask the proposed assignee to pass our reasonable identity or credit checks before we agree to the assignment. We may assign, novate or otherwise transfer our rights and/or obligations under this agreement to a Related Entity, or any entity that acquires all or most of our business or assets related to MYOB Advanced. We will give you notice if we do this. This Agreement will apply to and benefit the parties and their permitted successors and assignees.

13. Privacy Disclosure Statement

- (a) We collect, disclose and use your Personal Information to provide and support MYOB Advanced, and to promote products and services from us and our partners. We may get Personal Information from you, from public sources like social media, and from third parties that give us marketing leads.
- (b) We may share your Personal Information with our Related Entities and with third parties that we hire to help us. These entities may be in Australia, New Zealand or other countries. If you do not give us your Personal Information, we may not be able to do business with you.
- (c) You agree to let us collect, use and disclose your Personal Information for the reasons above.
- (d) You can access our privacy policies at myob.com/privacy. These policies include additional information on how we handle Personal Information, and how to contact us with privacy questions or complaints.
- (e) If you are in Australia, you can email us at privacy@myob.com or write to us at "Privacy

Officer", MYOB Australia Pty Ltd, PO Box 73, Richmond Victoria 3121.

- (f) If you are in New Zealand, you can email us at privacy@myob.com or write to us at "Privacy Officer", MYOB NZ Limited, Level 5, Eden 5, 12 Normanby Road, Mount Eden, Auckland 1024.

14. Glossary

In this Agreement, the words below have the meanings assigned to them, unless a different meaning is required by the context.

Agreement means this end user licence agreement.

Business means the company, partnership or other legal entity which has subscribed to MYOB Advanced.

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in Auckland, New Zealand (if this Agreement is governed by the laws of New Zealand) or Melbourne, Australia (if this Agreement is governed by the laws of the state of Victoria).

Customer Data means the data owned or supplied by or on behalf of you and your Related Entities and which is uploaded or generated by you and your Users in the course of using MYOB Advanced.

Fees means the fees and charges relating to the provision of MYOB Advanced as described in section 1.8.

Industrial Relations Laws means all applicable Australian and New Zealand Laws, principles, or directions issued by a Government Agency relating to employment relations in Australia or New Zealand (as applicable).

Initial Activation means our activation of your MYOB Advanced service for the first time.

Minimum Term means a period, commencing on the date of Initial Activation. Unless otherwise stated in your MYOB Advanced Quotation, the Minimum Term is 15 months.

Monthly Subscription Period means the period recurring on the monthly anniversary of Initial Activation. Or if that anniversary date is after the 28th day of the month, the first day of the following month. For example, if Initial Activation took place on 15 May, the Monthly Subscription Period will renew on 15 June. If Initial Activation took place on 29 May, the Monthly Subscription Period will renew on 1 July.

MYOB Advanced means the bundle of features, functionality and services (including the source code, object code, interface design, database structures, applications, documentation, training material, procedures and processes) that form part of MYOB Advanced which we make available to you from time to time.

MYOB Advanced Partner means a third party accredited by us to provide implementation and support services for MYOB Advanced.

MYOB Advanced Quotation means your authorised order for MYOB Advanced, which you have submitted to us using MYOB's required format.

Other Application means any software application that is provided by you or a third party and which interoperates with MYOB Advanced.

Personal Information has the same meaning as is given to that term in the Privacy Act.

Privacy Act means:

- the *Privacy Act 1988* (Cth) (as amended or replaced from time to time) if this Agreement is governed by the laws of Victoria, Australia; or
- the *Privacy Act 2020* (as amended or replaced from time to time) if this Agreement is governed by the laws of New Zealand.

Privacy Law means all applicable law, rules, regulations and mandatory codes relating to the collection, use, disclosure, storage or granting of access rights to Personal Information, and includes the Australian or New Zealand Privacy Principles (as applicable) contained within the Privacy Act.

Related Entities has the same meaning as the definitions given to:

- (a) 'Related Companies' under the Companies Act 1993 (as updated, replaced or amended from time to

time) if you make this Agreement in New Zealand; and

- (b) 'Related Corporations' under the Corporations Act 2001 (Cth) (as updated, replaced or amended from time to time) if you make this Agreement in Australia or any other country.

Related People means any employees, officers or agents of a Related Entity.

Software Configuration refers to the specific MYOB Advanced licences that you have subscribed to, based on their type and quantity.

Tax Laws means all applicable laws, rules, or directions from a government body that deal with taxes in Australia or New Zealand. This includes the Taxation Administration Act 1953 (Cth) in Australia and the Tax Administration Act 1994 (NZ) in New Zealand, or any laws that replace them later.

User means a person authorised by you to use MYOB Advanced (including an MYOB Advanced Partner).

We, us and our means MYOB Australia Pty Ltd (ABN 12 086 760 198) of Level 3, 168 Cremorne Street, Cremorne, VIC 3121, Australia or MYOB NZ Limited (Company Number 902338) of Level 5, Eden 5, 12 Normanby Road, Mount Eden, Auckland, 1024, New Zealand (as applicable).

You or your means the Business or its nominated representative, as the context requires.

Signing Schedule

By signing this form, I acknowledge and agree on behalf of the Business that:

- I have read and accept the terms and conditions of the MYOB Advanced Quotation, MYOB Advanced End User Licence Agreement on behalf of the Business

Business Name

ABN or Company Number

Address

Name of Authoriser and Position

Signature

Date

Accepted Jurisdiction Australia New Zealand (check one and strike one out)

The Business will add the following Related Entities within MYOB Advanced:

Company Name _____

ABN or Company Number _____

Address _____

Name of Authoriser _____

Company Name _____

ABN or Company Number _____

Address _____

Name of Authoriser _____

Company Name _____

ABN or Company Number _____

Address _____

Name of Authoriser _____

Company Name _____

ABN or Company Number _____

Address _____

Name of Authoriser _____

MYOB Advanced

Company Name _____

ABN or Company Number _____

Address _____

Name of Authoriser _____

Company Name _____

ABN or Company Number _____

Address _____

Name of Authoriser _____