



Reseller Application

Thank you for your interest in MYOB's Reseller Program.

All information provided is completely confidential, used for the sole purpose of the authorization process.

Fax the completed application and signed reseller agreement (along with your state resale certificate) to 973-586-2229.

Company Information

Company Name

Contact name

Owner name

Address

City

State

ZIP Code

Telephone Number

Fax Number

E-Mail Address (required)

Website

Shipping Address (sorry, no PO boxes)

City

State

ZIP Code

The following payment information will be kept on file to be used on Reseller orders.

VISA/MC/AMEX/Discover

Card #

Expiration Date

Name of Cardholder

Signature



Reseller Application

**Business
Profile:**

- VAR
 Corporation

- Consultant
 Partnership

- CPA Firm
 Sole Proprietor

Years in Business _____

Number of Employees _____

Number of Clients _____

Number of Locations _____

Where did you hear about the MYOB Partner Program?

Signature _____

Date: _____

MYOB US RESELLER AGREEMENT

This Reseller Software Distribution Agreement ("Agreement") is entered into between Acclivity LLC (dba MYOB US), with its principal place of business at 300 Roundhill Drive, Rockaway, NJ 07866 USA ("MYOB") and _____ with its principal place of business at _____ ("Reseller").

WHEREAS MYOB publishes and sells MYOB products; and

WHEREAS Reseller is in the business of reselling computer products to End-Users and Reseller wishes to obtain, and MYOB is willing to grant Reseller, a limited right to market and sell MYOB products, solely to End-Users of computer products located in the United States of America only;

NOW, THEREFORE, MYOB and Reseller agree as follows:

1. DEFINITIONS

- 1.1. "Products" "Products" shall mean the sealed software packages comprised of the computer programs and workstation licenses listed in the **2008 Reseller Pricing Document** and the documentation developed by MYOB for use in connection therewith. Other Products that are now or may in the future be offered for distribution are expressly excluded from this Agreement.
- 1.2. "Reseller Price" shall mean the price MYOB charges Reseller for Products.
- 1.3. "End-User" shall mean any individual or entity obtaining copies of the Products solely to fulfill personal or its own internal data processing needs.
- 1.4. "MYOB License Agreement" shall mean the written license statement contained in each MYOB product or at MYOB's website.
- 1.5. "Confidential Information" shall mean all data and information of a confidential nature, relating to the business, the Products, the development projects or other products or services of MYOB regardless of how communicated.
- 1.6. "Intellectual Property Rights" shall mean and include all patents whether issued or pending, copyrights, trademarks, trade names, service marks and other proprietary

rights or applications therefore which MYOB may at any time own, adopt, use, or register with respect to its products or its business.

2. GRANT OF LIMITED MARKETING LICENSE

- 2.1. License. MYOB hereby grants to Reseller, and Reseller hereby accepts from MYOB, a non-transferable, non-exclusive limited license to sell the Products solely to End-Users located solely in United States of America. MYOB hereby further grants Reseller the limited right to use MYOB's trademarks, solely in connection with and solely to the extent reasonably necessary for, the marketing and sale of the Products. This license is non-exclusive. Reseller agrees that at all times during the term of this Agreement it shall abide by MYOB's guidelines regarding proper use of MYOB's Trade Marks, as included in **Exhibit B** and Guidelines for use of MYOB logos and brand names (February 2003) as supplied to reseller along with reseller agreement and which may be modified and provided to Reseller by MYOB from time to time.
- 2.2. Relationship of the Parties. The relationship of MYOB and Reseller established by this Agreement is of independent contractors, and nothing in this Agreement shall be construed to constitute the parties as principal and agent, employer and employee, franchisor and franchisee, partners, joint ventures, co-owners, or otherwise as participants in a joint undertaking. MYOB and Reseller understand and agree that MYOB does not grant Reseller the power or authority to make or give any commitment for or on behalf of MYOB, or to enter into any contract or otherwise incur any liability or obligation on behalf of MYOB, or to release or assign any interest of MYOB, whether expressly set forth herein, or not.
- 2.3. Reserved Rights. All rights not specifically granted to Reseller hereunder are reserved by MYOB. MYOB does not convey any Intellectual Property Rights to Reseller hereunder, but merely grants a limited marketing license. Reseller shall have no right whatsoever to have access to the source code for Products sold by MYOB hereunder. MYOB reserves the right to (a) discontinue developing, distributing, producing or licensing any of the Products at its discretion at any time; (b) market Products in United States of America directly to or through any third party or entity on any terms; (c) to increase or decrease the number of authorized MYOB distributors, dealers, resellers or remarketers, and others inside the United States of America.

3. OBLIGATIONS OF RESELLER. Reseller represents and warrants to and agrees with MYOB as follows:

- 3.1. Sale to End-Users. Reseller will sell the Products only to End-Users as defined in this Agreement.
- 3.2. Reseller Covenants. Reseller agrees: (a) to conduct business in a manner that reflects favourably on the Products and MYOB; (b) to avoid deceptive, misleading or unethical practices that are or might be detrimental to MYOB, Products, End-Users or the public, including but not limited to disparagement of MYOB or the Products; (c) not to publish or employ or cooperate in the publication or employment of any misleading or deceptive advertising material; (d) to make no representations, warranties or guarantees to End-Users or to the trade with respect to the Products that are inconsistent with the literature supplied by MYOB; and (e) not to sell the Products to any End- User that engages in

illegal or deceptive trade practices such as, but not limited to any practices proscribed under this subparagraph; and (f) to comply with all applicable federal, provincial, and local laws and regulations in performing its duties hereunder and in any of its dealings with respect to the Products.

3.3. MYOB Packaging. Reseller will sell the Products with all packaging, warranties, disclaimers and MYOB License Agreements intact as shipped from MYOB.

3.4. Notification. Reseller will notify MYOB in writing of any claim or proceeding involving the Products no later than ten (10) days after Reseller learns of such claim or proceeding. Reseller shall promptly notify MYOB (a) of any claims or objections to its distribution of the Products by a third party; and (b) of any illegal use, or misuse, of the Products which come to its attention. Reseller will also report promptly to MYOB all claimed or suspected defects in Products.

4. **PRICES AND PAYMENT**

4.1. Prices. MYOB's current Reseller Commissions for the Products are set forth in the attached **2008 Reseller Pricing Document**. MYOB may change the prices of any Products at any time by publishing its new prices. Prices to Reseller do not include taxes of any nature. Reseller will pay such taxes when invoiced by MYOB or will supply appropriate tax exemption certificates in form satisfactory to MYOB.

4.2. Payment. Reseller agrees to pay in full for Products prior to their shipment from MYOB. Product is not returnable, except in the case of defective disks.

4.3. Shipping. Must be prepaid and is the responsibility of Reseller.

4.4. Resale Certificate. Prior to shipment, MYOB must have a valid ResaleTax Certificate from Reseller on file.

5. **RESELLER DETERMINES ITS OWN RESALE PRICES**. Reseller is free unilaterally to determine its own resale prices for the Products.

6. **CHANGES IN PRODUCTS AND SUPPORT**. MYOB reserves the right at any time without liability or prior notice to (i) determine what constitutes each Product, including, but not limited to its features, characteristics, documentation, and related materials; (ii) discontinue its sale of any or all MYOB products which may include, but not be limited to, discontinuation due to the grant to a third party of exclusive sales or marketing rights to one or more Products; (iii) to change or terminate any of the features of the Products, or (iv) change or terminate the level or type of support or service which MYOB makes available for each Product. Changes will be made known to the reseller by MYOB by written letter notification.

7. **INTELLECTUAL PROPERTY RIGHTS**

- 7.1. MYOB's Exclusive Rights. Reseller acknowledges MYOB's exclusive right, title and interest in and to any and all Intellectual Property Rights, and Reseller will not at any time do or cause to be done any act or thing impairing or tending to impair any part of said right, title and interest. Reseller acknowledges and agrees that all of these Intellectual Property Rights shall remain the exclusive property of MYOB. Reseller shall not remove MYOB's copyright notices and/or trademarks from any copy of the Products or market or license the Products under any name, sign or logo other than the trademarks set forth in **Exhibit B** hereto. Reseller's use of any MYOB trademark, logo or designation will be in accordance with MYOB's policies in effect from time to time as provided in the Guidelines for use of MYOB logos and brand names.
- 7.2. Prohibited Actions; Assistance. Reseller shall refrain from: (a) Copying, reproducing, reverse engineering, disassembling, decompiling, customizing or otherwise modifying the Products; (b) Translating or otherwise adapting the Products in any way whatsoever; (c) Advertising the Products or soliciting orders therefore, and establishing or maintaining a branch sales office or distribution depot, outside United States America; (d) Entering into agreements with other Persons which grant such Persons the right to reproduce copies of the Products. Reseller shall render MYOB all reasonable assistance in connection with any matter pertaining to the protection of the Intellectual Property Rights, whether in the courts, administrative agencies, or otherwise.

8. **NONDISCLOSURE OF CONFIDENTIAL INFORMATION**

- 8.1. Obligations. During the course of performance of this Agreement, MYOB may disclose certain Confidential Information to the Reseller solely to permit Reseller to perform its obligations under this Agreement. Reseller shall refrain from using Confidential Information for any purposes or activities other than those specifically authorized by MYOB. Reseller agrees that such Confidential Information shall be kept secret by Reseller and not disclosed to any third party during the term of this Agreement or after the expiration hereof without MYOB's prior written consent. All Confidential Information shall be promptly returned upon MYOB's reasonable request or upon termination of this Agreement, whichever is earlier.
- 8.2. Exceptions. The provisions of this Section 8 shall not apply, or cease to apply, to data and information supplied by MYOB if they (1) were already known to Reseller; (2) have come into the public domain without breach of confidence by Reseller or any other Person; (3) were received properly and legally by Reseller from a third party without restrictions on their use; or (4) are required to be disclosed pursuant to any statutory or regulatory provision or court order; provided that Reseller shall have the burden of establishing any of the foregoing exceptions by conclusive evidence.

9. **DURATION AND TERMINATION OF AGREEMENT**. This agreement shall terminate immediately upon Reseller no longer being an active member of the MYOB Reseller Group or MYOB Certified Consultants Partner Program. Otherwise, the term of this Agreement shall be for a period of one (1) year from the Effective Date as defined below. Thereafter, this Agreement shall be renewed for successive one (1) year terms without further notice, unless terminated sooner as follows: (a) Reseller or MYOB may terminate this Agreement at will, at

any time after the initial term of this Agreement, with or without cause, by written notice given to the other party not less than thirty (30) days prior to the effective date of agreement renewal. (b) MYOB may terminate this Agreement at any time, effective immediately, by giving written notice upon the occurrence of any of the following events: (i) Upon any breach by Reseller of its duties and obligations of the Agreement; (ii) Upon the enactment of any law, decree, or regulation by any governmental unit which would impair the right of MYOB to terminate this Agreement as herein provided; or, (iii) Upon the acquisition of direct or indirect control of Reseller by any individual or entity which manufactures or markets products competing or likely to compete with any MYOB product (iv) violation of any of the terms of the agreement including but not limited to Sections 3, 7 and 8.

10. INDEMNIFICATION OF MYOB. Reseller will defend and indemnify MYOB (including reasonable legal fees and costs of litigation or other dispute resolution process, including arbitration) against and hold MYOB harmless from, any and all claims by any other party resulting from Reseller 's acts (other than the mere marketing of the Products), omissions or misrepresentations, regardless of the form of action.

11. DISCLAIMER OF WARRANTY

11.1. Warranties. MYOB makes no warranties or representations as to the performance of the Products or as to service to Reseller or to any other person, except as set forth in MYOB's License Agreement accompanying delivery of the Products. MYOB reserves the right to change the warranty and service policy set forth in such License Agreement, or otherwise, at any time, without further notice and without liability to Reseller or any other person. MYOB does not warrant the output of the Products to meet the standards or requirements, which may be applicable to any End-User's business. MYOB does not make or give any representation or warranty with respect to the usefulness or the efficiency of the Products, it being understood that the degree of success with which equipment, software programs and materials can be applied to data processing is dependent upon many factors, many of which are not under MYOB's control.

TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW, ALL CONDITIONS, WARRANTIES, REPRESENTATIONS, LIABILITIES AND OBLIGATIONS WHETHER EXPRESS OR IMPLIED ARISING FROM NEGLIGENCE OR IMPOSED BY STATUTE OR OTHERWISE, IN RESPECT OF THE SUPPLY AND OPERATION OF THE PRODUCTS OR ANY RELATED SERVICES, INCLUDING ANY CONDITIONS OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR AS TO CORRESPONDENCE WITH DESCRIPTION, ARE HEREBY DISCLAIMED.

THE LIABILITY OF MYOB, IF ANY, FOR DAMAGES RELATING TO ANY MYOB PRODUCTS SHALL BE LIMITED TO THE ACTUAL AMOUNTS PAID BY RESELLER FOR SUCH PRODUCTS AND SHALL IN NO EVENT INCLUDE INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, EVEN IF MYOB HAS BEEN ADVISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING.

FURTHERMORE, ANY CAUSE OF ACTION ON ANY MATTER FOR WHICH MYOB IS LIABLE HEREUNDER MUST BE BROUGHT BY RESELLER WITHIN TWELVE (12)

MONTHS AFTER THE DATE HEREOF, RESELLER HEREBY WAIVING ANY OTHER STATUT OF LIMITATIONS WHICH MAY BE APPLICABLE

11.2. Reseller Warranty. Reseller agrees that it shall not make any warranty, guarantee, or representations, express or implied, greater in scope or duration than that as set forth in this Section 11.

12. GENERAL PROVISIONS

12.1. Modifications and Amendments. This Agreement shall not be modified, amended, cancelled or in any way altered, nor may it be modified by custom and usage of trade or course of dealing, except by an instrument in writing and signed by duly authorized officers of both of the parties hereto.

12.2. Waiver. The waiver by either party hereto of a breach of any provision of this Agreement by the other shall not operate or be construed as a waiver of any subsequent breach of the same provision or any other provision of this Agreement. All waivers must be in writing.

12.3. Severability. In the event that any provision hereof is found invalid or unenforceable pursuant to judicial decree or decision, the remainder of this Agreement shall remain valid and enforceable according to its terms. **WITHOUT LIMITING THE FOREGOING, IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT EVERY PROVISION OF THIS AGREEMENT WHICH PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES OR EXCLUSION OF DAMAGES IS INTENDED BY THE PARTIES TO BE SEVERABLE AND INDEPENDENT OF ANY OTHER PROVISION AND TO BE ENFORCED AS SUCH. FURTHER, IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT IN THE EVENT ANY REMEDY HEREUNDER IS DETERMINED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, ALL LIMITATIONS OF LIABILITY AND EXCLUSION OF DAMAGES SET FORTH HEREIN SHALL REMAIN IN FULL FORCE AND EFFECT.**

12.4. Assignment. Reseller may not assign this Agreement or any of its rights or obligations hereunder to any third party or entity, and this Agreement may not be involuntarily assigned or assigned by operation of law or change of control, without the prior written consent of MYOB, which consent shall be given or withheld by MYOB in the exercise of its sole discretion. MYOB shall have the right to assign this Agreement in its sole discretion. This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and, except as otherwise provided herein, their respective legal successors and permitted assigns.

12.5. Paragraph Heading and Language Interpretation. The paragraph headings contained herein are for reference only and shall not be considered substantive parts of this Agreement. The use of the singular or plural form shall include the other form.

- 12.6. Legal Fees. In the event any litigation is brought by either party in connection with this Agreement, the prevailing party in such litigation shall be entitled to recover from the other party all the costs, legal fees and other expenses incurred by such prevailing party in the litigation.
- 12.7. Governing Law and Forum. This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey applicable thereto. If any provision of this Agreement is deemed invalid by a court of competent jurisdiction, such provision shall be enforced to the maximum extent permitted and the remainder will remain in full force. A failure to reach an adjustment of any difference, or to settle any dispute or claim that may arise, except as otherwise provided in this agreement, shall thereupon make the same a matter for arbitration hereunder, upon the written request of any one party to the other. Such arbitration shall be in accordance with the Commercial Arbitration Rules, then in effect, of the American Arbitration Association. It is understood that a judgment on an award rendered, which may include an award of damages, may be entered in any court of competent jurisdiction. This agreement is the entire agreement between you and MYOB In respect of the software. The standard terms and conditions of your purchase order, if any, are null and void.
- 12.8. Release of Claims. Any and all claims against MYOB arising under prior agreements, whether oral or in writing, between MYOB and Reseller are waived and released by Reseller by acceptance of this Agreement.
- 12.9. Force Majeure. MYOB shall not be responsible for any failure to perform due to unforeseen circumstances or to causes beyond MYOB's reasonable control.
- 12.10. Equitable Relief. Reseller acknowledges that any breach of its obligations under this Agreement with respect to the Intellectual Property Rights or Confidential Information of MYOB will cause MYOB irreparable injury for which there are inadequate remedies at law, and therefore MYOB will be entitled to equitable relief in addition to all other remedies provided by this Agreement or available at law. Except as specifically provided herein, no remedy made to MYOB hereunder is intended to be exclusive of any other remedy provided hereunder or available at law or in equity.
- 12.11. Notices. All notices and other communications from a party shall be in writing and transmitted by either overnight mail or certified mail addressed to the respective address of the intended recipient set forth on the first page thereof. Such notices shall be effective upon receipt by the intended recipient party.
- 12.12. Authority to Execute. Each of the parties to this Agreement represents and warrants that it has full power to enter into this Agreement.
- 12.13. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.
- 12.14. Effective Date. This Agreement shall become effective only after it has been signed by Reseller and has been accepted by MYOB and its effective date shall be the date on which it is signed by MYOB.

12.15. Entire Agreement. This Agreement constitutes the entire understanding and contract between the parties and supersedes any and all prior and contemporaneous, oral or written representations, communications, understandings and agreements between the parties with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date specified below.

RESELLER: _____

MYOB US, Inc.

By _____

By _____

Print Name _____

Print Name: Glenn Elliott

Title _____

Title: Customer Acquisition Manager

Date _____

Date _____

(Effective Date of Agreement)

Required to fulfill claim

***NAME** _____

*Business Name _____

*Phone _____ *Fax _____

*Email Address _____

*Street Address _____

*City _____ *State _____ *Zip _____

*Total Advertising Costs Submitted _____

* Must be valid Street Address. No P.O. boxes will be accepted due to shipping delivery requirement with carrier.