Kilimanjaro Consulting
An Enprise Group Company

Master Service Agreement

Kilimanjaro Consulting Pty Ltd

Version Number 2025.13

Table of Contents

Change Register

Version Number	Start Date	End Date	Changes made	By Whom
V2025.10	01/01/2025	01/04/2025	Approved Version	R.B.
V2025.11	01/04/2025	17/04/2025	Company Details Page now in a separate document (if required)	R.B.
V2025.12	17/04/2025	28/07/2025	Clause 6.4 (sp)	R.B.
V2025.13	28/07/2025		Comments creating Reference errors on PDF deleted	R.B.

Master Services Agreement

1 Contract details

See Separate Document: Contract Details.

If the Master Services Agreement has been accepted on-line, the contract details will be saved in the electronic copy, and completion of Contract Details is not required.

2 Agreed Terms & Interpretation

Unless the context requires otherwise, the following words bear the meaning set out below:

2.1 **Acceptance** means acceptance of a Deliverable in accordance with clause 6.5(a) or 6.6 as the case may be, and **Accepted** has a corresponding meaning.

2.2 **Acceptance Criteria** means the criteria that is to be met for Acceptance, as agreed between the parties, or as set out in a Statement of Work, or if no such criteria are agreed or set out, then that which is set out in the Specifications.

2.3 **Acceptance Tests** means any tests set out in a Statement of Work for the purpose of Acceptance.

2.4 **Affiliate**, in relation to a party, means any other entity referred to as such in this Agreement, or any entity that is under the effective control of the party, or that is under effective control of an entity that has effective control of the party, as well as that controlling entity.

2.5 **Agreement** means the Contract Details, these Terms and Conditions, all and any schedules and attachments and, where the context requires, the relevant Statement of Work, any Project Plan and any agreed Change Request.

2.6 **Business Day** means any weekday, excluding any public holiday in the location where an event is to take place or to where a communication is to be sent.

2.7 **Change** means a change, variation, amendment, addition, deletion or correction to a Statement of Work or Project Plan.

2.8 **Change Request** means a written request by a party for a Change and which is marked by the requesting Party as a 'Change Request' and sets out the particulars of the Changes requested.

2.9 **Confidential Information** means any information of a party or an Affiliate of that party, however recorded, preserved, disclosed or communicated (whether directly, indirectly, orally or by writing), that is designated as confidential or which, by its nature, may reasonably be considered to be confidential, including, without limitation, any information in respect of this Agreement, with respect to that party's, or that party's Affiliate's, products, intellectual property, business plans, personnel, customers, pricing, costs, financial matters and business affairs.

2.10 **Consequential Loss** means any losses suffered by a party that is not the natural and reasonably foreseeable loss or damage arising from or in connection with a breach of this Agreement, and the term specifically includes, without limitation, any loss of profits, or of revenue, or of goodwill or of any business opportunity.

2.11 **CPI (Consumer Price Index)** means, in relation to an Australian entity Customer, the rate published by the Australian Bureau of Statistics for all groups, seasonally adjusted for the capital city of the State or Territory in which the work is principally to be performed, or if that cannot be determined, Sydney. In relation to a New Zealand entity Customer, it means the rate published by Stats NZ

2.12 **Customer Business Process** means the methodology and processes utilised by the Customer in the operation of its business but excluding all Deliverables.

2.13 **Customer Data** means data and information relating to the Customer and its operations (including Personal Information), in whatever form that data and information exists, along with any data, information or other materials in any format that are generated, stored, processed, retrieved, printed or produced by any Deliverable, but excludes System Data.

2.14 **Customer IP** means any Material (including the Intellectual Property Rights that exist within that Material), that the Customer makes available to Kilimanjaro for the purpose of this Agreement, or that relates to the affairs of the Customer and any of its employees, agents, contractors or clients and is obtained by Kilimanjaro under, or in contemplation of or as a result of, the Agreement.

2.15 **Customer Representative** means the person specified as such in the Contract Details appearing at the commencement of this Agreement.

2.16 **Deliverable** means any Materials and Services that Kilimanjaro is to provide to the Customer pursuant to this Agreement, including any agreed Change Request.

2.17 **Discloser** means the party that discloses or is the proprietor of any Confidential Information.

2.18 **Effective Date** means the date when the last party signs this Agreement.

2.19 **Employment Benefits** means all wages, salaries, superannuation contributions, **commissions,** bonuses, penalties, loadings, allowances, leave (of any sort, including annual leave, public holidays, personal/carer's (including sick) leave and long service leave), termination or related benefits, redundancy and other service-related benefits, and all other benefits required under any statute or any award or any other industrial instrument.

2.20 **GST** means the Goods and Services Tax as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) where the Customer is an Australian entity, and means the Goods and Services Tax as defined in the New Zealand *Goods and Services Tax Act 1985* where the Customer is a New Zealand entity.

2.21 **Intellectual Property Rights** means all rights in relation to patents, copyright, registered designs, registered and unregistered trademarks, trade secrets, know-how and other intellectual property as defined in Article 2 of the 1967 Convention establishing the World Intellectual Property Organization, including any right to register those rights, whether created before or after the date of this Agreement, and wherever and in all cases for the duration of those rights.

2.22 **Kilimanjaro IP** includes:

(a) the reference architecture and other Material (including the Intellectual Property Rights that exist within that Material) that Kilimanjaro owns or validly licenses, and provides and uses to provide the Deliverables and Services, whether existing at the date when the relevant Statement of Work is signed or whether developed further under this Agreement or independently;

(b) all software, tools (including installation, configuration, provisioning and testing tools), object codes, libraries, methodologies, routines and other similar items that Kilimanjaro owns or validly licences and provides, whether existing at the Effective Date or whether developed under this Agreement or independently; and

(c) any modifications, enhancements, adaptations, translations or derivatives or any of the items specified in (a) and (b) above.

The term Kilimanjaro IP expressly excludes any Customer IP.

2.23 **Kilimanjaro Representative** means the person specified as such in the Contract Details appearing at the commencement of tis Agreement.

2.24 **Material** means any documentation, documented methodology or process, software, data or other items, in whatever form, including, without limitation, reports, specifications, business rules and requirements, user manuals, user guides, operations manuals, training materials and instructions.

2.25 **Notice of Confirmation** means a written notice that is signed by an authorised representative of the Customer and provided to Kilimanjaro confirming that the Customer has reviewed and tested the Deliverable and that the Customer is satisfied that the Deliverable is Accepted.

2.26 **Personal Information** has the meaning set out in section 6 of the Australian *Privacy Act 1988* and/or the meaning set out in section 7 of the New Zealand Privacy *Act 2020*, where either or both are applicable.

2.27 **Project** means the provision of the Deliverables pursuant to this Agreement, including pursuant to any agreed Change Request.

2.28 **Project Plan** means the writing that sets out any timelines, milestones and other details for the Project, and may be included in a Statement of Work.

2.29 **Price** means the amounts payable by the Customer to Kilimanjaro for all and any Deliverables.

2.30 Privacy Law means the Australian *Privacy Act 1988* and/or the New Zealand Privacy *Act 2020*, whichever is applicable.

2.31 **Proposal** means any document provided by Kilimanjaro to the Customer prior to the Effective Date and which sets out the Project.

2.32 **Rate Card** means Schedule 1 to this Agreement.

2.33 **Recipient** means the party that receives or is not the proprietor of the Confidential Information.

2.34 **Representatives** of a party means that party's, or that party's Affiliate's, employees, agents, third party contractors and professional advisers or consultants.

2.35 **Services** means the services to be provided to the Customer under this Agreement and any Statement of Work, including as provided for in any agreed Change Request..

2.36 **Specifications** means the specified functionality or requirements of a Deliverable as set out in the Proposal or in any other document provided by Kilimanjaro to the Customer.

2.37 **Statement of Work** means a statement of work agreed between the parties setting out or detailing the Services and Deliverables to be provided under this Agreement.

2.38 **System Data** means tracking data, generated by the software used to provide the Services, such as performance monitoring, audit trail and other log file information.

2.39 **Support** means support services provided to the Customer by Kilimanjaro as specified in this Agreement or any Statement of Work.

2.40 **Support Plan** means the applicable plan that sets out the details of the Support, which details may be set out in a Statement of Work.

2.41 **Tax Invoice** means an invoice that is in a form that complies with *A New Tax System (Goods and Services Tax) Act 1999* (Cth) where the Customer is an Australian entity, and means an invoice that complies with the New Zealand *Goods and Services Tax Act 1985* where the Customer is a New Zealand entity.

2.42 **Terms and Conditions** means the terms and conditions of this Agreement.

3 Scope of Contract [Master Services Agreement]

3.1 This Agreement is a master services agreement specifying the general terms and conditions under which the Customer may obtain one or more Deliverables or Services from Kilimanjaro as set out in the Proposal or any Statement of Work.

3.2 Subject to clause 3.3, the term of this Agreement shall commence on the Effective Date and shall continue until a party gives the other party 60 days' written notice of termination, or termination is otherwise effected in accordance with this Agreement or by operation of law.

3.3 If this Agreement is terminated, all Statements of Work which became effective before the effective date of termination (**Existing SOWs**) will continue, unless otherwise terminated by mutual agreement or in accordance with their terms, and this Agreement will continue for the purposes of the Existing SOWs until the termination, expiry or completion of all Existing SOWs.

4 Formation of Contract

Quotations

4.1 Prior to or after the Effective Date, the Customer may request, and Kilimanjaro may then provide, a quotation for one or more Deliverables by completing a Proposal or a draft Statement of Work and providing it to the Customer (**Quotation**).

4.2 If Kilimanjaro provides a Proposal prior to the Effective Date, the Customer will be deemed to have accepted the Quotation if the Customer enters into this Agreement. If Kilimanjaro provides a Quotation after the Effective Date, the Customer may accept the Quotation by signing the Proposal or Statement of Work (as applicable), or the Customer may seek changes to the Quotation. If the Customer seeks changes, then Kilimanjaro may accept some or all of such changes, failing which the parties must, acting reasonably and in good faith, seek to agree on a final Quotation. If the parties agree on the Quotation, they must each sign the changed Quotation, in which event this Agreement will apply to the provision of the agreed Deliverables in accordance with the signed Proposal or Statement of Work and any Project Plan.

Priority

4.3 To the extent that there is any conflict between this Agreement and any Proposal or Statement of Work, the Statement of Work or Proposal (as applicable) shall apply to the extent of that inconsistency.

5 Deliverables [Project Delivery]

5.1 Subject to the Customer complying with its obligations under clause 5.21, 5.23, 5.24, 5.26 and 5.27, Kilimanjaro will provide the Deliverables for the Prices in accordance with this Agreement and any Proposal, any Statements of Work, any Project Plan and any agreed Change Request.

5.2 Kilimanjaro, acting reasonably, may exercise its discretion to provide the Project in the most reasonably appropriate and effective manner.

5.3 The Kilimanjaro Representative or his proxy will deal with all Customer queries, issues and any other matters relating to the Project.

5.4 Any additional Deliverables requested by the Customer must be incorporated in a Change Request or Statement of Work.

5.5 In the event that:

(a) the provision of the Project (or any part thereof) is, or is expected to be, delayed by reason of any factors beyond Kilimanjaro's reasonable control, or by reason of any Changes or by any act or omission of the Customer

then:

(b) Kilimanjaro must provide the Customer with prompt written notice of such delay and use best efforts to mitigate the impact of it on the provision of the Project; and

(c) the time for delivery of the Project shall be extended by the period of delay as notified by Kilimanjaro.

5.6 Where any delay to Project delivery arises from any circumstance not specified in 5.5(a) above, then unless the relevant timeframe was said to be an estimate, the parties, acting reasonably and in good faith will seek to negotiate a reasonable credit on the Price in favour of the Customer, and failing any agreement, the provisions of clause 16 (Dispute Resolution) shall apply.

Support Services

5.7 Where the Statement of Work identifies that Kilimanjaro will provide Support, Kilimanjaro shall provide Support in accordance with the Statement of Work and Support Plan which is to specify the priority of responding to and resolving the Customer's Support requests ("**Service Levels**").

5.8 The Service Levels will not apply and Kilimanjaro will not be liable for any failure to provide Support, where incident or fault arises from or is in connection with any third-party application or deliverable or services or any modification to any Deliverable, which has not previously been approved in writing by Kilimanjaro.

5.9 The Price in relation to the Support Services are payable by the Customer as and when required for the relevant Support to be maintained or renewed, or as otherwise set out in the Statement of Work or Support Plan. The Customer shall be solely responsible for ensuring the Support Charges are paid in accordance with this Agreement.

5.10 Where Support Services continue in excess of one year, Kilimanjaro reserves the right to increase fees annually for CPI (consumer price index) in accordance with clause 5.11.

5.11 Kilimanjaro's Price for Support Services are subject to annual change to reflect CPI with sixty (60) days' written notice to the Customer (no more than once per calendar year unless the Customer agrees otherwise). The Customer may, at its sole discretion at any time after such change, terminate the Support Services upon giving Kilimanjaro not less than thirty (30) days written notice of such termination.

5.12 The amount of any contracted monthly Support hours may be increased by either party with thirty (30) days' notice for a minimum of three (3) months and decreased by either party with at least sixty (60) days' notice. Where Support Services are provided on an unlimited basis, Services are subject to review by either party every six (6) months.

5.13 Kilimanjaro's "Plain English Guide to Support" is its standard document that is included in Part B of Schedule 2 of this Agreement (subject to any changes agreed in a Statement of Work) to describe the Support Services.

5.14 Further guidance on the provision of Support Services may be obtained from "Understanding the Support Process" which is available upon request.

Hosting Services

5.15 MYOB Exo Hosting Services are provided subject to the Terms and Conditions documented within the Kilimanjaro "ExoHosted Terms and Conditions" document appended to this agreement, if applicable.

Consulting Services

5.16 Kilimanjaro may provide consulting services under the direction and control of the Customer. If the Services are provided under the supervision of the Customer then the Customer must:

(a) direct the individual as to the Services required in accordance with the Statement of Work and any Change Request; and

(b) provide Kilimanjaro feedback on the performance of the individual if requested by Kilimanjaro.

Statement of Work

5.17 Wherever necessary or desirable to detail a Project, the parties will enter a Statement of Work which sets out:

(a) a description of the Deliverables;

(b) Acceptance Criteria (if applicable);

(c) Acceptance Tests (if applicable);

(d) the timeframes for the provision of the Services; and

(e) the pricing for the Services which, unless otherwise agreed, must be based on the Rate Card.

5.18 If the parties do not enter into a Statement of Work for any Services, then (subject to the Customer's written approval for the Services to be provided) the Prices for Services will be calculated on a time and materials basis in accordance with the Rate Card.

5.19 A Statement of Work may only be amended by a Change Request to which each party has consented in writing. Change Requests submitted by either party must be responded to within a reasonable time by the other party (and, unless otherwise agreed, within 10 Business Days) and must not be unreasonably rejected where the Changes set out in the Change

Request are reasonably required or necessary to achieve Project Completion. Change Requests may be agreed in writing between the parties' respective Representatives.

5.20 As part of providing, or promptly after receiving a Change Request, Kilimanjaro will provide the Customer a written proposal detailing the impact on Price relating to the Change Request. All Price changes in relation to a Change Request are contingent on the consent of all Parties to the Change Request.

Customer's Obligation to Assist

5.21 The Customer must:

(a) provide Kilimanjaro with any specific facilities, equipment and resources that the Customer is required to provide under a Statement of Work or pursuant to a reasonable request from Kilimanjaro to enable Kilimanjaro to perform the Services;

(b) provide Kilimanjaro access to any specific third party software, operating systems and hardware on which they are run that the Customer is required to provide under a Statement of Work or pursuant to a reasonable request from Kilimanjaro, to enable Kilimanjaro to perform the Services;

(c) provide Kilimanjaro with complete and accurate information in a timely manner as may be needed to facilitate Kilimanjaro performing the Services;

(d) ensure that where there are multiple stakeholders within the Customer who have an interest in the Services, the Customer Representative is authorised to represent the views of all the Customer's stakeholders and that the representative has obtained those views prior to providing information or instructions to Kilimanjaro, so that the information or instructions are the single authorised position of the Customer;

(e) make available appropriately trained personnel in a timely manner who are able to answer any Kilimanjaro questions that are necessary to enable Kilimanjaro to perform the Services; and

(f) promptly make any decisions required by Kilimanjaro in order to perform the Services.

5.22 The Customer acknowledges that a failure to meet any of its obligations under any of clauses 5.21 5.23, 5.24, 5.26 and 5.27 may result in delays in the provision of the Services and that Kilimanjaro will not be responsible for any delays arising from or contributed to any breach of the Customer's obligations in Agreement. Kilimanjaro is entitled to charge the Customer for any time or expenses incurred as a result of the failure of the Customer to comply with its obligations under any of clauses 5.21 5.23, 5.24, 5.26 and 5.27, provided that Kilimanjaro uses reasonable efforts to mitigate such expenses.

5.23 The Customer must provide Kilimanjaro with any information reasonably requested relating to Kilimanjaro's personnel's performance and any other matter that Kilimanjaro reasonably requires in order to monitor the quality of the Services.

5.24 If the Services are performed at the Customer's offices, the Customer must provide office space and facilities to Kilimanjaro's personnel reasonably commensurate with those provided to the Customer's own employees of similar standing.

5.25 The Customer warrants that it has the authority to allow Kilimanjaro or its contractors to use any facilities, equipment, resources and/or Intellectual Property Rights that the Customer provides to Kilimanjaro or its contractors for use in connection with performing the Services.

5.26 The Customer must provide a safe place to work for any of Kilimanjaro's personnel that are working at the Customer's site. Where Kilimanjaro personnel are working at the Customer's site, Kilimanjaro must, and must ensure that its personnel, complete at their own cost any required induction or work health and safety training required by the Customer, and at all times comply with the reasonable policies, processes and directions of the Customer that apply to working on the site.

5.27 The Customer agrees to maintain an adequate data recovery system in order to facilitate the efficient restoration of data. The Customer is responsible for making effective back-ups of data, and for ensuring that it has duplicate copies of all data that is provided to and by Kilimanjaro.

Independent Contractors

5.28 Kilimanjaro may use the services of independent contractors to provide some or all of the Services. Kilimanjaro will remain liable for the independent contractors' performance and their acts and omissions as if they were Kilimanjaro's own acts or omissions.

6 Warranties

6.1 Kilimanjaro warrants that it will provide the Deliverables:

(a) in accordance with this Agreement, any Statement of Work, any Project Plan and compliant with any applicable Specifications;

(b) using suitably competent and trained personnel;

(c) with due skill and care and in a timely manner;

(d) in compliance with all applicable laws that may govern the provision of the Deliverables; and

(e) in a professional manner consistent with industry standards.

6.2 If the Customer disputes any time or expense, or believes that any Deliverable was not provided in accordance with this Agreement, then the Customer must promptly provide Kilimanjaro' s Representative with written details of the issue and any other details as may be reasonably requested by Kilimanjaro.

6.3 To the fullest extent permitted by law, Kilimanjaro excludes all warranties that are not expressly included in this Agreement, including, without limitation, warranties of merchantability and fitness for any purpose of any Deliverable. The parties agree that if any Deliverable is supplied in breach of any law or statutory guarantee that cannot be excluded, Kilimanjaro's liability in respect of any such breach is limited to one or more of the following remedies, at Kilimanjaro's option:

(a) the replacement of the Deliverable or the supply of an equivalent Deliverable;

(b) the repair of the Deliverable;

(c) the payment of the cost of replacing the Deliverable or of acquiring an equivalent Deliverable; or

(d) the payment of the cost of having the Deliverable repaired.

6.4 Within ten Business Days of the provision of a Deliverable, other than a Service, the Customer must conduct Acceptance Tests on the Deliverable for the purpose of determining if the Deliverable satisfies the Acceptance Criteria. Kilimanjaro must provide the Customer with such assistance as is reasonably required to conduct the Acceptance Tests.

6.5 The Customer must within five Business Days of the end of Acceptance Tests provide Kilimanjaro with:

(a) a Notice of Confirmation when the Customer is satisfied the Deliverable meets the Acceptance Criteria; or

(b) if the Customer reasonably believes the Deliverable does not meet the Acceptance Criteria, a written notice specifying the nature of the failure.

6.6 If, within the time specified in clause 6.5, the Customer has not provided the Notice of Confirmation and has not notified Kilimanjaro of any failure of a Deliverable to meet the Acceptance Criteria, then the Customer will be deemed to have Accepted the Deliverable.

6.7 If the Customer provides Kilimanjaro with a notice under clause 6.5(b), Kilimanjaro must use reasonable endeavours to either send the Customer a rejection of the notice, specifying the grounds for such rejection, or rectify the failure within a reasonable time, having regard to the nature of the failure, and notify the Customer when rectification is completed. Kilimanjaro must then resubmit the Deliverable for Acceptance Tests. Unless otherwise agreed, any rectification work will be conducted at Kilimanjaro's cost. Kilimanjaro shall have three attempts to rectify the Deliverable so that meets the Acceptance Criteria, failing which the Customer shall be entitled to reject the Deliverable and terminate the Statement of Work and receive a refund of any Price prepaid in respect of that Deliverable.

6.8 Kilimanjaro does not warrant that any Deliverable will be error-free or will operate without interruption.

6.9 Each party agrees to comply with all laws which are relevant to the Customer or Kilimanjaro (as applicable) performing its obligations under the Agreement. Kilimanjaro is solely responsible for ensuring it provides the Deliverables in accordance with all laws. The

Customer is solely responsible for ensuring it utilises all Deliverables in accordance with all laws.

7 Payment and Invoicing [Basis of Payment]

7.1 The Customer must pay the Price for all Deliverables in accordance with the payment obligations specified in the Quotation or in accordance with clause 7.7.

7.2 Kilimanjaro does not guarantee any estimates for any Deliverables to be provided on a time and materials basis will be accurate, but Kilimanjaro will notify the Customer as soon as practicable when it becomes aware that an estimate is likely to be exceeded by more than 20 percent, in which event the Customer may, within 5 Business Days of receipt of such notification, elect to terminate the applicable Services. In the event of such termination, the Customer must pay all the Prices for the Services that have been provided up to and including the date of termination.

7.3 Unless stated otherwise in the Statement of Work, payment for Services must be made in accordance with clause 7.7. Kilimanjaro will issue a Tax Invoice within 7 days of the beginning of each month following the month in which the Services were performed.

7.4 Each Tax Invoice, issued on a times and materials basis, will be accompanied by a duly completed time sheet. Expenses not included in any agreed Price must be approved in writing by the Customer prior to Kilimanjaro incurring such expenses and if approved, may be invoiced as part of the Price in the month following the month in which they incurred.

Payment

7.5 The Prices must be paid in accordance with this Agreement without any set-off or deduction.

Customer Deposit and Invoicing

7.6 The Customer must pay any deposit specified in the Quotation in full prior to the commencement of any Services.

7.7 The Customer must pay Kilimanjaro the undisputed Prices within 30 days from the date of Tax Invoice, unless stated otherwise in the Quotation.

Late Payment

7.8 Kilimanjaro may charge the Customer a late charge for any failure to make any payment of undisputed Prices by the date required under the Agreement, calculated daily using a rate that is 4% over the Reserve Bank of Australia's then applicable Cash Rate, calculated from the date that the payment first becomes overdue, to the date that the payment is received by Kilimanjaro, both dates inclusive.

7.9 If any amount of the Price that is payable and undisputed is not received within 14 days of the due date, then Kilimanjaro may, after giving the Customer not less than 7 days' notice of its intention to do so, suspend the provision of the Services to which the Price relates until the outstanding amount, plus applicable late charge interest is paid.

8 Taxes

8.1 In addition to the Prices payable in accordance with this Agreement, the Customer must pay to Kilimanjaro an additional amount equal to the GST that is payable on the supply (**GST Amount**), such GST amount must be paid at the same time as the relevant Tax Invoice.

8.2 If a party is obliged to reimburse or indemnify the other party for a loss, cost or expense, the amount to be reimbursed or indemnified is to be increased in accordance with clause 8.1.

8.3 If the GST payable by the Customer on any supply arising out of or in connection with the Agreement varies from the GST Amount paid or payable by the Customer under clause 8.1, such that a further amount of GST is payable in relation to the supply, or a refund or credit of GST is obtained in relation to the supply, then the Customer must pay the additional amount or Kilimanjaro will provide a corresponding refund or credit, whichever is applicable.

8.4 Any payment, credit or refund under clause 8.3 is deemed to be a payment, credit or refund of the GST Amount payable under clause 8.1.

9 Intellectual Property Rights

Customer IP and Customer Business Process

9.1 Any Intellectual Property Rights in any Customer IP or Customer Business Process that is provided to Kilimanjaro for the purposes of this Agreement are and will remain vested in the Customer.

9.2 Where a Deliverable includes modifications to Customer IP or any Customer Business Process, then all Intellectual Property Rights in and to such modifications shall vest in, and is hereby assigned to, the Customer immediately on creation.

9.3 It is acknowledged and agreed that the Customer IP and Customer Business Process is the Confidential Information of the Customer, and is subject to the provisions of clause 10.

9.4 The Customer grants Kilimanjaro and its contractors a non-exclusive, non-transferable, royalty free right to use, copy and adapt any Customer IP and Customer Business Process solely for the purpose of providing the agreed Deliverables, which licence will terminate upon Acceptance of the relevant Deliverable.

Kilimanjaro Intellectual Property

9.5 Unless provided otherwise in any Proposal or Statement of Work, all Intellectual Property Rights in and to all Kilimanjaro IP incorporated in any Deliverable, vest and remain vested in Kilimanjaro which hereby grants the Customer a non-exclusive, non-transferrable right to use, copy, adapt and translate (and to allow the Customer's employees, agents and contractors to use, copy, adapt and translate) the Deliverable for its own internal business purposes.

The Customer must not sub-license, or commercialise the Kilimanjaro IP incorporated in any Deliverable without Kilimanjaro's prior written consent, which may be withheld or granted on such conditions as Kilimanjaro, in its absolute discretion, deems appropriate.

Methodologies

9.6 If Kilimanjaro provides the Customer with a copy of any methodologies (including as set out in Part C of Schedule 2, or as otherwise made available to the Customer), the Customer is licensed to use that methodology solely for the purposes of the Customer complying with its obligations in this Agreement and/or any Statement of Work, and such licence will terminate upon the completion of the provision of the Services for which such methodologies were supplied, whereupon the Customer must return all copies of such methodology to Kilimanjaro.

9.7 The Customer acknowledges and agrees the methodologies are Kilimanjaro's Confidential Information and Kilimanjaro IP and that the unauthorised disclosure, use or copying of the methodologies may cause Kilimanjaro serious financial loss that may not be adequately compensated by monetary damages. Accordingly, in the event of any actual or anticipated unauthorised disclosure, use or copying of methodology, Kilimanjaro will have the right to seek injunctive relief to preclude any further or any anticipated disclosure.

Marketing

9.8 Neither party may use the other party's name, trademarks, logos, or other branding without the other party's prior written consent.

10 Confidentiality

10.1 The Recipient must not use any of the Discloser's Confidential Information except for the purposes of this Agreement.

10.2 The Recipient must not disclose the Discloser's Confidential Information to any third party without obtaining the Discloser's prior written consent, provided that the Recipient may disclose the Discloser's Confidential Information:

(a) to its employees, agents and contractors, and those of any of its Affiliates, who have a need to know the information and who have entered into a written agreement with the Recipient that is no less protective of the Discloser's Confidential Information than this Agreement;

(b) to its lawyers, bankers, auditors, accountants and insurers, provided those persons have a need to know the information in order to provide professional advice to the

Discloser relating to this Agreement and are under obligations to protect and maintain the confidentiality of the information;

(c) which is required to be disclosed under an order or requirement of a court, administrative agency, or other governmental body (but only to the minimum extent required), provided that the Recipient provides prompt notice to the Discloser of any such requirement and uses reasonable efforts to maintain the confidentiality of the information.

10.3 The Recipient must use, and must ensure that any person to whom it discloses the Discloser's Confidential Information, uses, the same measures to protect the Discloser's Confidential Information as it uses to protect its own confidential information, but in no event less than reasonable measures.

10.4 The restrictions clauses 10.1 and 10.2 shall not apply to information that:

(a) can be shown to have been independently developed by the Recipient without any access to the Confidential Information of the Discloser;

(b) can be shown to have become known to the Recipient without restriction, from a third party who, was not bound by an obligation of confidentiality, or otherwise prohibited from disclosing the information to the Recipient, or had the right to disclose it;

(c) is in the public domain or enters the public domain otherwise through any breach of any of the Recipient's confidentiality obligations; or

(d) the parties agree in writing is not confidential or may be disclosed.

10.5 On demand being made by the Discloser, the Recipient must return to the Discloser or destroy:

(a) all copies of the Discloser's Confidential Information in the Recipient's possession or control;

(b) any copies of the Confidential Information made by the Recipient; and

(c) any copies of the Confidential Information made by the persons to whom the Recipient has disclosed the Confidential Information;

except to the extent the Recipient must retain the Confidential Information as required by law or governance obligations, or in the Customer's case to receive the benefit of the Deliverables provided under this Agreement.

10.6 The Recipient acknowledges:

(a) that the Confidential Information is the absolute property of the Discloser and will at all times remain the absolute property of the Discloser;

(b) the value of the Confidential Information to the Discloser's competitors; and

(c) that a breach of this Agreement by the Recipient may cause irreparable damage to the Discloser who is entitled to seek injunctive or other equitable relief without regard to the balance of convenience between the Discloser and the Recipient.

10.7 This clause 10 will survive the termination of this Agreement.

11 Privacy

11.1 In dealing with Personal Information when exercising their respective rights and obligations under this Agreement and in respect of any Deliverable, each party must comply with the Privacy Law and all other laws applicable to either party in the handling of Personal Information.

11.2 The Customer will obtain appropriate consents from each individual whose Personal Information is provided to Kilimanjaro for the purpose of Kilimanjaro performing its obligations under this Agreement and the Customer hereby indemnifies Kilimanjaro and Kilimanjaro's Representatives in respect of all and any loss, liability and damages suffered or incurred by Kilimanjaro arising from or in connection with any breach by the Customer of its obligations in this clause 11.2.

12 Liability

12.1 Subject to clause 12.4, and save for any indemnity given by a party, and save for any breach by a party of any law, or of any of clauses 10 (Confidentiality) or 11 (Privacy), or of a party's or any third party's Intellectual Property Rights, neither party shall be liable to the other party, however and whenever arising, whether in contract, tort (including negligence), or breach of statutory duty or otherwise in respect of any Consequential Loss, even if the claimant has been advised of, knows of, or should have known of the possibility of any such loss.

12.2 Subject to clause 12.4, and save for any indemnity given by a party, and save for any breach by a party of any law, or of any of clauses 10 (Confidentiality) or 11 (Privacy), or of a party's or any third party's Intellectual Property Rights, the liability of either party in connection with this Agreement to the other party, however arising, whether in contract, tort (including negligence), or breach of statutory duty or otherwise, is limited to a maximum amount equal to whichever is the lesser of:

(a) the Price paid or payable by the Customer under this Agreement; and

(b) $250,000.

12.3 Subject to clause 13.1, Kilimanjaro indemnifies the Customer for any and all claims taken or made by any third party against the Customer in respect of:

(a) any wilful misconduct of Kilimanjaro, its employees, agents or subcontractors;

(b) any breach by Kilimanjaro of any third party's Intellectual Property Rights ("**Infringement Claim**"); and

(c) all Employment Benefits and all claims for Employment Benefits with respect to Kilimanjaro, its employees, agents or contractors;

each of the above hereafter referred to as "**Third Party Claim**".

12.4 The limitations in clauses 12.1 and 12.2 do not apply in respect of either party's liability for:

(a) death or bodily injury (including sickness);

(b) loss of, or damage to, tangible property;

(c) from gross negligence or wilful misconduct of the party, its employees, agents or subcontractors, where "**gross negligence**" means conduct undertaken with complete disregard of what is an obvious risk; and

(d) Employment Benefits.

Mitigation

12.5 Each party must make every effort to mitigate any loss, damage or expense that it may suffer arising out of or in connection with this Agreement or its performance.

13 Indemnity

Intellectual Property Rights Indemnity

13.1 The indemnity given by Kilimanjaro in clause 12.3 is subject to:

(a) the Customer promptly notifying Kilimanjaro of the Third Party Claim in writing, specifying the nature of the claim in reasonable detail and providing appropriate access to, and copies of, documents, software any other material, that are relevant to the claim, as well as providing prompt access to any Representative who may be relevant to Kilimanjaro's defence of the Third Party Claim;

(b) the Customer not making any admission of liability, agreement or compromise in relation to the Third Party Claim without the prior written consent of Kilimanjaro;

(c) the Customer granting Kilimanjaro the sole right to defend, negotiate and settle the Third Party Claim, at Kilimanjaro's expense, or where this is not possible by reason of any law, Kilimanjaro will permit the Customer to defend the Third Party Claim in which case:

(i) Kilimanjaro will pay all reasonable costs associated with the Customer's defence; and

(ii) the Customer must follow any reasonable request from Kilimanjaro to avoid, dispute, defend and/or compromise the Infringement Claim;

(d) the Customer providing Kilimanjaro with reasonable assistance, at Kilimanjaro's expense, to defend, negotiate and settle the Third Party Claim.

13.2 Kilimanjaro will have no liability for any Infringement Claim to the extent that the Infringement Claim arises from or is in connection with:

(a) Any use of the Deliverable not in accordance with this Agreement, any written direction given by Kilimanjaro, or any documentation provided by Kilimanjaro;

(b) the combination, operation or use of the Deliverable with any third party product, equipment, business method, software or data (other than as permitted by Kilimanjaro, or as expressed under this Agreement or a Statement of Work);

(c) any modification of the Deliverable by any person other than Kilimanjaro or its authorised agents or contractors unless previously authorised in writing by Kilimanjaro; or

(d) any use of the Deliverable after Kilimanjaro has provided the Customer a new version, patch or correction that would have overcome the infringement.

13.3 If any Infringement Claim is made, or in Kilimanjaro's opinion is likely to be made, then Kilimanjaro may (at its sole option and expense) either:

(a) procure for the Customer the right to continue using the affected Deliverable, or substantially similar software that does not substantially affect the functionality of the Deliverable as provided in the Specifications;

(b) replace or modify the affected Deliverable so that it becomes non-infringing but complies substantially with the Specifications; or

(c) if neither (a) or (b) is commercially reasonable, as determined in Kilimanjaro's absolute discretion, then Kilimanjaro may terminate the Customer's rights to use the affected Deliverable and, without limiting its indemnification obligations under clause 12.3, pay to the Customer an amount equal to the Price paid for the Deliverable.

14 Termination

14.1 Either party may immediately terminate the Agreement, and/or some or all of any Statements of Works, by giving the other party written notice if the other party, as applicable:

(a) breaches any of the provisions of clauses, 10 (Confidentiality), 11 (Privacy) or infringes a party's, or any third party's Intellectual Property Rights;

(b) ceases to carry on business, is unable to pay its debts as they fall due, enters into liquidation, has a controller, managing controller, liquidator or administrator appointed; or

(c) without the other party's prior written consent, which must not be unreasonably withheld, transfers, assigns or novates the whole or any part of this Agreement, or merges with another entity, sells all or substantially all of its assets, or is subject to a change of control. A "**change of control**" is deemed to occur when an entity acquires 50% or more of the voting shares or equity interest in the party, or 50% or more of the assets of the party, or in the event of a change of a majority of the Board of Directors (or majority of the partners if a partnership) of the party or if there is otherwise a change of effective control of the party; or

(d) if a party otherwise breaches this Agreement or the relevant Statement of Work and does not remedy the breach within 10 Business Days of receipt of a written notice to remedy the breach.

Consequences of Termination

14.2 Termination of the Agreement or any Statement of Work for any reason does not:

(a) release the Customer from the obligation to pay any monies to Kilimanjaro whether due before or after such termination for Deliverables provided prior to and including the date of termination; or

(b) discharge either party from any liability which has been incurred by that party prior to the termination.

14.3 Upon termination of this Agreement each party must immediately return to the other Party or certify in writing to the other Party that it has destroyed, all copies and partial copies of the other party's Confidential Information or any material that includes the other party's Intellectual Property Rights.

14.4 Each of clauses 3.3 (pertaining to Existing SOWs), 5.28 (Independent Contractors), 7.8 (Late Payment), 9 (Intellectual Property Rights), 10 (Confidentiality), 11 (Privacy), 12 (Liability), 13 (Intellectual Property Rights Indemnity), 15 (Force Majeure) 16 (Dispute Resolution), 17 (General) and any other provision that for full force and benefit reasonably ought survive termination of this Agreement, survives termination of this Agreement.

15 Force Majeure

15.1 Neither party will be considered in default of performance under this Agreement or a Statement of Work to the extent that performance of such obligation is delayed or prevented by any events or circumstances (other than lack of financial resources) beyond that party's control, including, without limitation, fire, flood, earthquake or similar natural disasters, other fire, riot, war, terrorism, civil strife, general labour disputes or disturbances, industry-wide material shortages, pandemic disease, governmental regulations, communication or utility failures (**Force Majeure Event**), but only to the extent that the affected party could not have prevented the event or circumstance by reasonably precautions. The affected party must provide prompt written notice to the extent that its performance is prevented (in whole or part) by a Force Majeure Event, and take reasonable steps to mitigate the effect of the event..

15.2 Either party may terminate a Statement of Work or this Agreement upon a Force Majeure Event subsisting for more than 30 days from the receipt of written notice under clause 15.1..

16 Dispute Resolution

16.1 Each party must act reasonably and in good faith to try to resolve any disputes that arise under or about this Agreement. Neither party can commence legal action (except interlocutory or urgent relief where such action is reasonably necessary to protect the party's rights from irreparable damage) unless and until the parties have complied with clause 16.2.

16.2 If a party believes there is a dispute, controversy or claim arising out of, relating to or in connection with this Agreement, including any question regarding its existence, validity, performance or termination ("**Dispute**"), then that party must notify the other that a Dispute exists, and give reasonable details of the nature of the Dispute. The parties must then meet at a time and place identified by the party issuing the notice (which can include a meeting via Internet), within 7 days of notification of the Dispute, to attempt to resolve the Dispute. Each party must nominate a representative in writing to represent that party at that discussion and must ensure that person has authority to settle the Dispute on that party's behalf.

16.3 If the parties cannot resolve the Dispute within 14 days of the issue of the notice of Dispute (or such longer period as is agreed by the parties), any party may commence legal action.

17 General

Notices

17.1 Any notice that is to be given under the Agreement or a Statement of Work must be in writing and signed by the person giving the notice.

17.2 Any notice must be hand delivered to the address or sent by prepaid post or email to the address of the recipient as set out in clause 1 (Contract Details).

17.3 Each party must promptly notify the other of any change of address or contact details, and such details shall be deemed incorporated into the Agreement as a variation effective from the date following the date of receipt of such notification.

17.4 Any notice sent in accordance with the Agreement is deemed to have been received:

(a) if hand delivered, on the date of delivery;

(b) if posted, 5 Business Days after the date of posting; or

(c) if sent by email, at the time of transmission, provided no notice of failure is later received by the sender, and further provided that if sent on a non-Business Day or after 5.00pm on a Business Day, then it shall be deemed received at 9.00am on the next Business Day.

Non-Solicitation

17.5 During the term of this Agreement, and for a period of 6 months after termination of this Agreement, neither party may solicit the employment or engagement of any employee of the other party where that employee has been engaged in the performance of this Agreement or any Statement of Work unless that employee responds to a general advertisement seeking employees. A party in breach of this clause 17.5 shall, within 7 days of the employment of the employee, pay the other party 25% any such employee's annual salary as a contribution towards recruitment and training of a replacement ("**Conditional Amount**"). Upon completion of the recruitment and training of the replacement employee, the non-defaulting party will provide the other party with an accurate calculation of the costs of such recruitment and training ("**Actual Amount**"), whereupon the defaulting party must pay the other party, within 7 days of receipt of such calculation, an amount equivalent to the amount by which the Actual Amount exceeds the Conditional Amount, or the non-defaulting party must pay the defaulting party the amount by which the Actual Amount is less than the Conditional Amount. Payment of the Conditional Amount shall not prejudice the non-defaulting party's rights to seek injunctive relief and/or damages where the breach of this clause 17.5 is likely to cause the non-defaulting party irreparable harm or substantial loss.

Variation

17.6 Save for clause 17.3, the terms and conditions of the Agreement may only be varied in writing signed by both parties.

17.7 The provisions of a Statement of Work may be varied by a Change Request, or a written document that has been signed by both parties.

Assignment and Novation

17.8 Neiter party may transfer, assign or novate the whole or any part of this Agreement without the prior written consent of the other party, which consent must not be unreasonably withheld or delayed.

Waiver

17.9 No part of the Agreement shall be deemed waived, amended or modified, unless the waiver, amendment or modification is in writing and signed by both parties.

Severability

17.10 If any part of the Agreement is for any reason declared invalid or unenforceable, that part shall be amended so as to render it enforceable, provided that such amendment does not materially affect either party's rights or obligations, and, irrespective of whether any amendment is possible, the validity of the remaining portion of the Agreement will remain with full force and effect.

Rights are Cumulative

17.11 Except as expressly provided otherwise in the Agreement, the parties' rights and remedies under the Agreement are cumulative and there is no obligation to exercise a particular remedy. If a party is in breach of the Agreement, the non-breaching Party may avail itself of all other rights, remedies and causes of action available at law, in equity or otherwise.

Entire Agreement

17.12 This Agreement records the entire agreement between the parties in relation to its subject matter and supersedes all previous negotiations, understandings or agreements in relation to the subject matter.

Counterparts

17.13 The Agreement may be signed in any number of counterparts, each of which shall be deemed to be the one instrument, and any one of which shall be deemed to be validly executed if evidenced by a scanned and emailed copy of the executing party's signature.

Relationship of Parties

17.14 Nothing in the Agreement constitutes or is deemed to constitute a partnership, joint venture, or any fiduciary relationship between the parties.

Applicable Law

17.15 The Agreement is governed by the laws applicable in New South Wales, Australia. The parties submit to the non-exclusive jurisdiction of the State and federal courts sitting in Sydney, New South Wales, Australia.

Schedule 1 – Rate Card

[To be inserted as agreed]

Schedule 2 – Attachments

To be inserted as agreed

SIGNED AS AN AGREEMENT

If the Master Services Agreement has been accepted on-line, the electronic acceptance will be saved in the electronic copy, and signature here is not required.

Signed for and on behalf of **Kilimanjaro**

Signature:	
Print Name:	
Print Title:	
Date:	

Signed for and on behalf of the **Customer**

Signature:	
Print Name:	
Print Title:	
Date:	

Australia

Call us 1300 857 464

Head Office Level 2, 100 Arthur Street, North Sydney, NSW 2060

Locations Sydney | Parramatta | Melbourne | Canberra | Perth | Brisbane

New Zealand

Call us 0800 436 774

Head Office 16 Hugo Johnston Drive, Penrose Auckland 1061

Locations Auckland | Christchurch | Hamilton | Wellington

www.kilimanjaro-consulting.com

myob | Diamond Partner | ANZ Partner of the Year | ANZ Consultant of the Year