

The Success Plan Details and Agreement Details below comprise the entire agreement between BusinessHub Pty Ltd ABN 31 106 092 068 of Suite 203, 838 Collins Street, Docklands, Vic (**BusinessHub, we, us, our**) and the other party referred to in our Success Plan Invoice or SoW (**Client, you, your, yours**).

This agreement supersedes all prior representations and understandings between you and us in relation to the Services we provide after your Software implementation has been completed. This agreement covers our Success Plans and provides a framework for you to request Additional Support, Consulting Services and Customisation Services from us.

## Success Plan Details

<b>Success Plan:</b>	As at the date of this agreement, BusinessHub offers the following types of Success Plans: Premium, Standard, Basic and Exo ES. Your Success Plan is as set out in your most recent Success Plan Invoice.
<b>Support:</b>	<p>Subject to the Support Limit for your Success Plan:</p> <ol style="list-style-type: none"> <li><b>KnowledgeHub:</b> Providing you with access to our online KnowledgeHub of 'how to' articles in relation to the Software and (for Advanced only) release readiness tips.</li> <li><b>Licence Administration:</b> Administering changes in your Software Licence with the Software Owner.</li> <li><b>Software Error Escalation:</b> Escalating proven Software errors to the Software Owner.</li> <li><b>Support Services:</b> Assisting you by phone, email or remote/internet connection with: how to use Software functions, trouble-shooting the cause of Software issues and replicating/proving Software errors for escalation to the Software Owner.</li> <li><b>Release Readiness:</b> Testing the Advanced customisations (excluding add-ons) listed on your Advanced login screen that were prepared and published by BusinessHub in order to determine whether they are adversely impacted by a major annual upgrade of Advanced, and if required, unpublishing and re-publishing (but not maintaining or varying) those customisations.</li> <li><b>System Review:</b> Spending a maximum total of 3 hours meeting with you, reviewing your current use of Advanced and preparing a plan for how it can be improved.</li> <li><b>Support Requests:</b> You can request Support during Business Hours by phone, our customer portal or emailing <a href="mailto:support@businesshub.com.au">support@businesshub.com.au</a>.</li> </ol> <p>Support excludes Consulting Services and Customisation Services. We may limit each Support call to 30 minutes. We may limit the Support we provide if your requests are abusive, fraudulent or excessive and repetitive. Expect response delays from 14 June to 14 July each year due to high call volumes.</p>
<b>Support Limit:</b>	<p><u>Where your Success Plan is Basic or Standard:</u></p> <ol style="list-style-type: none"> <li>Excludes Support for Exo ES.</li> <li>Excludes Support items 4, 5 and 6.</li> <li>For Support item 3, Support excludes our time spent in replicating/proving the Software error, which is a prerequisite for escalation to the Software Owner.</li> <li>For Support item 7, you can only request Support for Critical Cases by phone. All other Support must be requested by email to <a href="mailto:support@businesshub.com.au">support@businesshub.com.au</a> or using our customer portal.</li> </ol> <p><u>Where your Success Plan is Premium:</u></p> <ol style="list-style-type: none"> <li>Excludes Support for Exo ES and Advanced People only Software.</li> <li>For Support item 4, limit 30 minutes of our time spent per issue or series of related issues.</li> <li>For Support item 5, limit 1 per each successive year starting on the Start Date. Excludes maintaining, varying or updating customisations, which are Consulting Services.</li> <li>For Support item 6, limit 1 per each successive 6-month period starting on the Start Date. System reviews do not carry forward / accumulate if not booked in by you during each 6-month period.</li> </ol> <p><u>Where your Success Plan is Exo ES:</u></p> <ol style="list-style-type: none"> <li>Excludes Support for Advanced.</li> <li>For Support item 4 above, limit 30 minutes of our time spent per issue or series of related issues.</li> <li>Excludes Support items 5 and 6.</li> </ol>
<b>Term:</b>	<p>Where your Success Plan is:</p> <ol style="list-style-type: none"> <li><u>Premium or Standard</u>, the initial term is 6 months from the Start Date; or</li> <li><u>Basic or Exo ES</u>, the initial term is 12 months from the Start Date,</li> </ol> <p><b>(Initial Term).</b> The Initial Term is automatically extended for successive terms equal to the Initial Term (each an <b>Extension</b>), unless at least 14 days before the next Extension, one party notifies the other that the agreement will terminate immediately before the next Extension.</p>
<b>Success Plan Fee:</b>	<p>Where your Success Plan is:</p> <ol style="list-style-type: none"> <li><u>Premium or Standard</u>, the monthly fee in your most recent Success Plan Invoice plus GST; or</li> <li><u>Basic or Exo ES</u>, the annual fee in your most recent Success Plan Invoice plus GST.</li> </ol>

<b>Rates:</b>	<p>For Customisation Services: \$230 per hour plus GST.          For Additional Support and Consulting Services:</p> <ul style="list-style-type: none"> <li>• \$160 plus GST per hour for Premium and Standard Success Plan Clients</li> <li>• \$195 plus GST per hour for Basic Success Plan Clients</li> <li>• \$185 plus GST per hour for Exo ES Success Plan Clients</li> </ul> <p>Rates are charged according to our time spent in providing the Services in 15 minute increments.          We may increase the Rates from time to time by giving you at least 3 weeks' notice.</p>
<b>Travel Charge:</b>	<ul style="list-style-type: none"> <li>• On-site attendances in the Melbourne metropolitan area: \$60 plus GST per attendance.</li> <li>• On-site attendances outside the Melbourne metropolitan area: cost plus GST, with the approximate cost to be agreed in advance by you and us (each acting reasonably).</li> </ul> <p>We may increase the metropolitan Melbourne Travel Charges by giving you at least 3 weeks' notice.</p>
<b>Payment Schedule:</b>	<p>Where your Success Plan is:</p> <ul style="list-style-type: none"> <li>• <u>Premium or Standard</u>, the Success Plan Fee payment schedule is calendar monthly in advance payable by monthly direct debit from your nominated bank account on and from the Start Date.</li> <li>• <u>Basic or Exo ES</u>, the Success Plan Fee payment schedule is annually in advance payable on or before the Start Date and on each anniversary of the Start Date during the Term.</li> </ul> <p>The payment schedule for all other Charges within 14 days of invoice, unless otherwise specified in the relevant SoW.</p>

## Agreement Details

### 1. Services

- (a) Subject to the terms of this agreement and you complying with your obligations under each Software Licence, during the Term we will provide you with the following Services:
- Support within your Support Limit;
  - the Additional Support and Consulting Services you reasonably request and we agree to provide; and
  - the Customisation Services and Consulting Services set out in a SoW.
- (b) The terms of this agreement apply to each SoW approved by you during the Term, even if the term of the SoW continues beyond the Term of this agreement. Unless specified in writing to be fixed price, all Charges in a SoW are non-binding estimates that are only indicative of our actual Charges, which may be higher than estimated due to changes in your instructions or information, or timing or complexity.
- (c) The Services specifically exclude and we must not be relied on to provide:
- a licence to use any Software or Third Party IP or providing updates, new releases or documentation in respect of the Software or Third Party IP;
  - accounting, financial, taxation, employment or human resource management advice;
  - correction of bugs, errors or defects in the Software or any failure of the Software to perform substantially in accordance with the Software Owner's documentation or representations;
  - the provision or maintenance of accessories, hardware, equipment, supplies, consumables or associated items;
  - Services in relation to Third Party IP or any software other than the Software;
  - data entry, data import, bookkeeping or payroll processing services;
  - Services outside Business Hours;
  - rectifying issues, errors or defects caused wholly or partially or directly or indirectly by:
    - the installation, configuration, modification, revision, variation, translation, API connections to, alteration or use of the Software in a manner not authorised by the Software Owner;
    - API connections or customisations to the Software, other than Customisation Services provided by BusinessHub;
    - the acts or omissions of your employees or contractors, breaches of the Software Licence or you failing to provide suitably trained, qualified and informed staff to use the Software;
    - the information and data you enter or import into the Software being inaccurate, incomplete, incorrect or failing to comply with all applicable laws or accounting standards; or
    - internet connection problems,
 and we accept no liability in connection with any of the matters set out above.
- (d) Within 7 days of us delivering the Services, you must review and test all Services for compliance with your requirements and all applicable laws and standards. You are deemed to have accepted all Services we provide except to the extent that you notify errors or omissions to us in writing within 7 days of such delivery.
- (e) If Services are to be provided at premises other than our premises, then you must provide safe access to that site for our employees and contractors and you must pay us the applicable Travel Charge for each attendance.

### 2. Charges

- (a) You must pay us without set-off or deduction:
- the Success Plan Fee for your Success Plan; plus
  - the applicable Rates for the time we spend providing Customisation Services, Consulting Services and Additional Support requested by you or described in a SoW; plus

- (iii) the Approved Subcontractor Fees and any other fees specified in each SoW; plus
  - (iv) the Travel Charges for each occasion we provide Services off-site at your request,
- (Charges)** in accordance with the Payment Schedule.
- (b) Any failure by us to issue invoices in accordance with the Payment Schedule will not prejudice our right to payment.
  - (c) The Charges are exclusive of GST and, subject to us issuing you with a tax invoice, you must pay us an additional amount equal to GST on our Charges in accordance with the Payment Schedule.
  - (d) We will not be responsible for any loss or damage caused by your wrongful or negligent acts, omissions or delays or you failing to:
    - (i) provide suitably trained, qualified and informed staff to use the Software;
    - (ii) comply with your obligations under this agreement, your Software Licence or any SoW;
    - (iii) provide us with prompt, complete, accurate and legally compliant information or instructions we request or require to perform the Services,
 and you must pay us the additional Charges, costs and / or Approved Subcontractor fees we reasonably charge or incur as a result of any of the above matters.

### 3. Service IP

- (a) Nothing in this agreement is intended to affect the ownership of any party's or third party's Intellectual Property Rights, ideas, concepts, know-how, methodologies, processes, technologies, algorithms, templates, techniques and other Intellectual Property Rights of any kind and nature. BusinessHub and our Approved Subcontractor each retain all Intellectual Property Rights, know-how, templates, reusable and/or generic codes, documentation, training videos and related materials that they discovered, produced, developed, used or created:
  - (i) prior to the date of this agreement; or
  - (ii) for general use in their respective businesses; or
  - (iii) independently of the provision of the Services.
- (b) We retain all right, title and interest in all Intellectual Property Rights that BusinessHub or our Approved Subcontractor owns, discovers, develops or creates in supplying Services and associated deliverables to you during the Term (**Service IP**). Subject to clause 3(a), to the extent we make Service IP (excluding our trade marks and confidential information) available to you in supplying the Services and associated deliverables to you during the Term:
  - (i) you must not disclose Service IP to any third party; and
  - (ii) when you pay us in full for the Services to which the Service IP relates, we provide you with a non-exclusive, non-transferrable licence to use Service IP during the Term.

### 4. Client Agreements, Warranties and Non-Solicitation

- (a) For the sole purpose of us providing the Services and subject to your written instructions from time to time, you authorise us to:
  - (i) use your Intellectual Property Rights (without charge) to the extent you make them available to us for performing the Services;

- (ii) disclose your information (including the Personal Information of your contacts) to the relevant Software Owner and Approved Subcontractor;
  - (iii) request the Software Owner to make changes to your Software Licence;
  - (iv) request the relevant Software Owner and Approved Subcontractor to copy your live Software site to a test / sandbox environment;
  - (v) access, and undertake transactions in, your Software database and test/sandbox versions of your Software site;
  - (vi) in relation to a Software error, issue or customisation, give the relevant Software Owner and Approved Subcontractor permission to access and take a copy of your Software site and data and to run scripts in a live Software environment.
- (b) We do not own the Third Party IP or the Software and you acknowledge and agree that:
    - (i) we are not in partnership or joint venture with the Software Owner but we do receive commissions or rebates from Software Owners;
    - (ii) you are responsible for your own data back-up policies and procedures in relation to your data;
    - (iii) this agreement does not affect the existing ownership rights of third parties, including the Software Owners;
    - (iv) the Software Owner is solely responsible for the resolution of Software errors, bugs, patches, hot fixes, documentation etc;
    - (v) we accept no liability in relation any agreement (including the Software Licence) between you and a Software Owner or any other third party; and
    - (vi) we make no warranty that the Services will be compatible with future versions or releases of the Software.

### (c) You warrant that:

- (i) your internet connection, equipment and operating environment satisfies the minimum and recommended requirements published by each Software Owner;
- (ii) the instructions and information you provide to us in connection with the Services are accurate and compliant with all applicable laws and standards;
- (iii) you own Intellectual Property Rights that you provide to us in connection with the Services and you have the power to authorise us to use them;
- (iv) you will not use the Service IP or Software for an illegal purpose or in a manner that infringes or may infringe the rights of any third party; and
- (v) you have not relied on any representation made by us which has not been stated expressly in this agreement or a SoW.

### 5. Limitation of Liability

- (a) This agreement does not exclude, restrict or modify:
  - (i) the application of any provision of the ACL;
  - (ii) the exercise of any right or remedy conferred by the ACL; or
  - (iii) our liability for a failure to comply with any applicable consumer guarantees,

where to do so would:

- (iv) contravene the ACL; or
- (v) cause any part of this agreement to be void.

- (b) Subject to clause 5(a), to the fullest extent permitted by law:
- (i) all guarantees, conditions or warranties, express or implied, including, but not limited to, any implied guarantees, conditions or warranties of due care and skill or fitness for a particular purpose, are excluded; and
  - (ii) we make no warranty or claim in relation to the Software Owner, the Software, the Software Licence, the Approved Subcontractor or Service IP, including the performance of the Software or whether the Software, the Approved Subcontractor or Service IP is fit for your intended business purpose.
- (c) Our liability for failure to comply with a statutory guarantee (including under the ACL) or any loss or claim in arising out of the Services or our breach of this Agreement is limited, at our option, to:
- (i) the supplying of the Services again; or
  - (ii) the payment of the cost of having the Services supplied again.
- (d) Except in relation to personal injury or death, we are not liable to you for any Consequential Loss suffered or incurred by you in connection with the Services or this agreement, whether arising from or in connection with any breach of contract, tort (including negligence) or any other cause of action.
- (e) To the extent permitted by law, our maximum liability for all loss and damage suffered or incurred by you, whether arising from or in connection with any breach of contract, tort (including negligence), in connection with:
- (i) a SoW is limited in the aggregate to the amount paid by you to us under that SoW; or
  - (ii) this agreement (other than under a SoW) is limited in the aggregate to the amount paid by you to us pursuant to this agreement in the 6 month period immediately preceding the event giving rise to the liability.
- (f) The exclusions and limitations of liability in this clause 5 apply for the benefit of us, our officers, employees, contractors, agents and related bodies corporate.

## 6. Dispute Resolution

- (a) Either party may give a notice in writing to the other giving formal notice and details of a dispute between the parties (**Notice of Dispute**).
- (b) Representatives of the parties having authority to settle the dispute must meet within 7 days of service of the Notice of Dispute to attempt to resolve the dispute. If the representatives do not do so, either party may commence court proceedings in respect of the issues outlined in the Notice of Dispute.
- (c) Nothing in this clause prevents a party from commencing proceedings to seek urgent injunctive or declaratory relief.
- (d) Despite the existence of a dispute, but subject always to clause 7(a), the parties must continue to perform their obligations under this agreement.

## 7. Default and Termination

- (a) If you fail to pay the Charges as they fall due or to undertake any of your other obligations under this agreement or a Software Licence, then in addition to any other rights we have, we may:
  - (i) charge you and you must pay us interest on overdue payments at the penalty interest rate fixed under

section 2 of the Penalty Interest Rates Act 1983 (Vic) plus 2 percentage points; and / or

- (ii) suspend or delay the provision of all or any part of the Services (which will not constitute a breach of this agreement), until the Charges are paid and you have undertaken your obligations to our reasonable satisfaction.
- (b) A party (**Terminating Party**) may terminate this agreement and/or any SoW by written notice to the other party (**Other Party**) if:
- (i) the Other Party is in breach of any term of this agreement and that breach is not remedied within seven (7) days of receiving a notice of default from the Terminating Party;
  - (ii) the Other Party becomes, threatens or resolves to become or is in jeopardy of becoming insolvent or subject to any form of insolvency administration;
  - (iii) the Other Party, being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving;
  - (iv) the Other Party, being a natural person, dies; or
  - (v) the Other Party ceases or threatens to cease conducting their business in the ordinary course;
  - (vi) the Software Licence is terminated due to the default or wrongful act or omission of the Software Owner; or
  - (vii) a Software Owner becomes or threatens to become insolvent or cease carrying on business in the normal manner or, where we are the Terminating Party, a pre-existing agreement between us and a Software Owner is terminated for any reason.
- (c) We may also terminate a SoW if the Approved Subcontractor becomes or threatens to become insolvent or cease carrying on business in the normal manner, or if a pre-existing agreement between us and the Approved Subcontractor is terminated for any reason. If the SoW is terminated, your sole remedy is a refund of any moneys paid by under the SoW.
- (d) If this agreement is terminated:
- (i) the rights and obligations of the parties that accrued prior to such termination are not affected;
  - (ii) you must cease using and (if we request) return all Service IP in your possession or control;
  - (iii) we may retain all moneys paid to us under this agreement, including the Success Plan Fee;
  - (iv) we may invoice you, and you must pay within 14 days of invoice, the Charges for all Services provided by us under this agreement up to the date of termination;
  - (v) we will be regarded as discharged from performing any further obligations under this agreement on and from the date of termination; and
  - (vi) we may pursue any additional or alternative remedies provided by law.

## 8. Definitions

In this agreement, terms defined in the Success Plan Details have that meaning and:

**ACL** means the Australian Consumer Law in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

**Additional Support** means Support in excess of the Support Limit for your Success Plan.

**Advanced** means the software as a service referred to as MYOB Advanced of the edition specified in your most recent

Success Plan Invoice.

**Approved Subcontractor** means Kensium Solutions LLC of 200 S Wacker Drive, Chicago, IL 60606 (Kensium) and such other persons as agreed by you and us from time to time.

**Business Day** means a day on which banks are open for business in Melbourne, Victoria, other than a Saturday, Sunday or public holiday.

**Business Hours** means between 9am and 5:30pm in Melbourne, Victoria on a Business Day.

**Consulting Services** means any services (other than Customisation Services or Support within your Support Limit) that we agree to provide in relation to the Software, including any of matters in sub-clauses 1(c)(vi)-(b)(viii), training, report-writing, generic inquiries, form/screen design and maintaining or varying any of the foregoing.

**Consequential Loss** means indirect or consequential loss, loss, destruction or corruption of data, loss of profits or business, expenses incurred for reconstructing or re-entering data, loss of revenue or loss of opportunity incurred in connection with this agreement.

**Critical Case** means a core Software function fails to work and that failure stops or significantly disrupts your key business processes or causes a risk to your data security, and for which there is no viable workaround.

**Customisation Services** means scoping, preparing, updating, testing, reviewing and maintaining publishable customisations or API connections to the Software.

**Exo ES** means the software referred to as MYOB Exo Employer Services.

**Force Majeure Event** means a circumstance beyond our reasonable control which results in us being unable to observe or perform on time an obligation under this agreement, including:

- (a) acts of God, lightning strikes, earthquakes, floods, storms, inundation, explosions, fires and any natural disaster;
- (b) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution;
- (c) strikes, power or internet outage, disruption to internet connection or the unavailability or scheduled down-time of email servers or services;
- (d) where the Software is provided as a service, us being unable to access or use the Software for reasons outside our reasonable control.

**GST** means GST as defined in the GST Act.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), and in clause 2(c), all expressions defined in the GST Act have the meaning given in the GST Act.

**including or include or includes** are not to be interpreted as limiting the words preceding them.

**Intellectual Property Rights** means any and all intellectual and industrial property rights throughout the world including rights in respect of confidential information, copyright (including future copyright), inventions (including patents), trade marks, service marks, designs and circuit layouts whether or not now existing and whether or not registered or registrable including any right to apply for the registration of such rights.

**MYOB** means MYOB Australia Pty Ltd ABN 13 086 760 198.

**Personal Information** has the meaning in the Privacy Act.

**Privacy Act** means the *Privacy Act 1988* (Cth) as updated, replaced or amended from time to time.

**Services** means Support, Additional Services, Customisation Services and / or Consulting Services, as the context requires or (in relation to an SoW) as specified in an SoW.

**Software** means either Advanced or Exo ES, as specified in the Success Plan Invoice.

**Software Licence** means:

- (a) for Advanced, the MYOB Advanced End User Licence Agreement between MYOB and you; or
- (b) for Exo ES, the MYOB Exo Employer Services Software Licence between MYOB and you,

as varied from time to time.

**Software Owner** means the owner of the relevant Software, which in the case of Advanced and Exo ES, is MYOB.

**SoW** means a quote or statement of work in writing prepared by BusinessHub and approved by the Client during the Term that sets out our Charges for specified Services, and any additional obligations of the parties or Special Conditions in relation to those Services.

**Special Conditions** means any special conditions set out in a Success Plan Invoice or SoW.

**Start Date** means the start date for your Success Plan as specified in your Success Plan Invoice.

**Success Plan Invoice** means any invoice issued by us on or after 10 October 2019 that refers to this agreement.

**Success Plan Fee** means, where your Success Plan is:

- (a) Premium or Standard: the monthly fee plus GST specified in the Success Plan Invoice; or
- (b) Basic or Exo ES: the annual Success Plan fee plus GST specified in the Success Plan Invoice,

which we may increase:

- (c) by giving at least 2 Business Days' notice to you, if the number of your licensed Software users (excluding Advanced employee or executive user licences) exceeds the number of users specified in your last Success Plan Invoice or if your edition of the Software changes; or
- (d) from the start of the next Extension by giving you at least 3 weeks' notice.

**Third Party IP** means any Intellectual Property Rights that are not owned by us, including all Intellectual Property Rights in the Software and associated documentation.

## 9. Miscellaneous

- (a) The Special Conditions override the other clauses of this agreement with respect to the Support Plan or SoW to which they relate to the extent of any inconsistency with the terms of this agreement.
- (b) Notices may be given by email or post to the party at the party's most recent address on a Success Plan Invoice or a register maintained by the Australian Securities and Investments Commission (ASIC) or the Australian Charities and Not-for profits Commission (ACNC). Notices are taken to be given:
  - (i) if sent by email during Business Hours and notice of a delivery failure is not received by the sender: on the day it was sent;

- (ii) if sent by email outside Business Hours and notice of a delivery failure is not received by the sender: on the next Business Day;
  - (iii) if sent by pre-paid post: 3 Business Days after posting.
- (c) To the extent that we cannot perform our obligations under this agreement as a result (directly or indirectly) of an actual or anticipated Force Majeure Event:
- (i) we will use reasonable endeavours to notify you of the event and the likely effect of the event and do all that we reasonably can to perform the obligation as soon as is reasonably practicable (but this does not change the way we would otherwise deal with any disruption); and
  - (ii) the requirement to perform our obligations will be suspended and we will not be liable to you for the failure or delay in performance.
- (d) We may sub-contract the performance of all or part of the Services to the Approved Subcontractor without your consent, but we remain responsible to you for the provision of those Services.
- (e) The relationship between you and us is that of a principal and contractor, and not a partnership, joint venture, agency or employment relationship.
- (f) Nothing in this agreement gives any party authority to bind any other party to any other person or otherwise act in any way as a representative of any other party unless otherwise expressly agreed to in writing and signed by the relevant parties.
- (g) You must not assign the benefit of this agreement without our written consent. We may assign the benefit of this agreement at our sole discretion on notice to you.
- (h) We may vary these terms with effect from the next Extension by providing at least 3 weeks' notice to you. Any other variation to this agreement must be agreed by the parties and recorded in writing.
- (i) Any requirement under this agreement to record or agree on a matter in writing may be done by email.
- (j) If any provision of this agreement is held invalid, unenforceable or illegal for any reason, this agreement shall remain otherwise in full force apart from such provisions which shall be read down to the extent necessary to remove such invalidity, unenforceability or illegality or be deemed deleted.
- (k) This agreement is governed by the laws of Victoria, Australia and the parties irrevocably submit to the exclusive jurisdiction of the courts of that State and their courts of appeal.