**MASTER PROFESSIONAL SERVICES AGREEMENT**

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| Parties |
| **Between:** | *<If Company:* [Company A],having its registered offices at [Insert registered offices]> <*if Individual* [Insert Full Name], residing at [Insert residential address]>, (“Client”); |
| **And:** | *<If Company:* [Company B],having its registered offices at [Insert registered offices]> <*if Individual* [Insert Full Name], residing at [Insert residential address]>, (“KiwiNet Partner”). |

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| Background: |
| **A.** The Client wishes the KiwiNet Partner to undertake the provision of various goods or services for the Client from time to time.**B.** The KiwiNet Partner has agreed to provide Work to the Client on the terms below and the Client has accepted those terms |

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| Specific terms |
| **Start date** | [*should not predate the signing date*] |
| **End date** | [*if known or if any*] |
| **Payment to the KiwiNet Partner** | Fees and Expenses shall be paid in New Zealand dollars electronically to the [insert bank name] account number [insert account number] in the name of Kiwi Innovation Network Limited |
| **Liability** |  [*maximum amount of the KiwiNet Partner’s liability if different to the total fees payable by the KiwiNet Partner under a relevant Work Order*] |
| **KiwiNet Partner contact person** | [*name, email address and phone number of the KiwiNet Partner staff member* *dealing with the Client*] |
|  **KiwiNet Partner address for notices** |  C/- WaikatoLink Limited, Level One, Core Facilities Building, Waikato Innovation Park, Hamilton, New Zealand  |
| **Client contact person** | [*name, email address and phone number of Client contact person*] |
| **Client address for notices** | [*street address and or fax number – not PO Box*] |
| **Variations** | The General Terms below are varied as follows: [*Any amendments to the General Terms must be identified in this section, not in the body of the General Terms*] |

**GENERAL TERMS AND CONDITIONS**

**(**Except as varied by the Specific Terms above, the following General Terms apply to the Work provided by the KiwiNet Partner to the Client under this contract):

**1 DEFINITIONS AND INTERPRETATION**

1.1 In this contract the following terms have the following meanings:

WORK ORDER means the Work being undertaken by the KiwiNet Partner for the Client as described in each schedule as attached from time to time.

WORKING DAY means any day other than a Saturday, Sunday, public holiday in Wellington, Auckland or Christchurch, New Zealand, and any day from 24 December to 5 January inclusive in any year.

1.2In this contract:

1. in addition to the definitions in clause 1.1, unless the context otherwise requires:
2. terms given a meaning in the Specific Terms shall have that meaning;
3. terms given a meaning in each schedule shall have that meaning in relation to the Work Order that is the subject of that schedule; and
4. terms given a meaning within the General Terms shall have that meaning.
5. This contract shall include the schedules as attached from time to time;
6. a reference to a person includes any other entity or association recognised by law and the reverse.
7. words referring to the singular include the plural and the reverse.
8. a reference to a paragraph, section, clause, schedule or a party is a reference to that paragraph, section, clause or party in this contract.
9. where two or more persons are listed as a party to this contract, their liability is joint and several.
10. all monetary amounts are in New Zealand dollars unless stated otherwise.
11. clause headings are for reference purposes only.
12. time is of the essence.

 **2 WORK**

2.1 From time to time the Client will request the KiwiNet Partner to perform various pieces of Work.

* 1. For each requested piece of Work, the KiwiNet Partner and the Client shall agree the important details of the Work Order in a schedule to be attached to and form part of this contract. Each Work Order shall include:
1. A description of the Work;
2. the Deliverables and due dates for the Deliverables;
3. Start Date and End Date;
4. Fees; and
5. any other matters agreed by the parties in relation to the Work.
	1. If there is any conflict between the Specific Terms or General Terms and a schedule, the provisions of the schedule shall prevail with respect to the Work that is the subject of that Work Order.
	2. The KiwiNet Partner will (subject to the Client meeting its obligations under this contract):

### start the Work on the Start Date;

### exercise reasonable care and skill in carrying out the Work, consistent with standards generally accepted in the scientific and engineering professions in New Zealand; and

### use reasonable endeavours to complete the Work, or any part of the Work, in accordance with the Deliverable dates.

### Tthe KiwiNet Partner does not warrant that the objectives of the Work can be achieved or that the Work or any Deliverable will be of any benefit to the Client or any other person.

* 1. The parties acknowledge that the nature of the Work is such that changes in the Work may be necessary and that any such changes may require amendments to the Fees, Deliverables and/or timetable for the Deliverables. The parties will act in good faith to discuss any such changes and amendments requested by a party provided that such changes and amendments will not be binding unless agreed expressly, in writing.
	2. The Work or each part of the Work will be deemed to have been completed upon delivery of the applicable Deliverables (or where Deliverables are not defined, on delivery by the KiwiNet Partner, of a report summarising the Work).
	3. Tthe KiwiNet Partner may subcontract any part of the Work it thinks fit.
1. **RESOURCES TO BE PROVIDED**
	1. The Client will provide the KiwiNet Partner with:
2. such access to its own facilities and personnel, and such access to other facilities and personnel which it is within its power to facilitate, as the KiwiNet Partner reasonably requires for the purposes of carrying out the Work; and
3. the Client Contribution at such times and at the required standard (if any) as per the schedule or as reasonably required by the KiwiNet Partner to complete the Work or any part of the Work.
	1. the KiwiNet Partner will not be responsible or liable to the Client or to any person for any delay in performing, or failure to perform, the Work (or any part of the Work) to the extent that such delay or failure is due to the Client failing to meet its obligations under clause 3.1.
4. **GOODS**
	1. This clause 4 applies if any of the Work comprises the making and/or supplying of goods by the KiwiNet Partner to the Client.
	2. The Client assumes all risk in the goods either (a) once they are delivered to the Client or (b) once the Client has been notified that the goods are ready for collection. If the goods are to be delivered to the Client, the costs of delivery, and insurance of the goods while in transit, will be met by the Client.
	3. If the Client fails to take delivery of the goods within 7 Working Days of receiving written notification of their readiness for collection, the KiwiNet Partner may charge the Client for any costs incurred in storing the goods. the KiwiNet Partner will be entitled to sell or otherwise dispose of the goods after giving the Client a further 7 Working Days’ notice. Any surplus upon a sale of goods pursuant to this clause after deducting the KiwiNet Partner's storage costs and all of its costs incurred in selling the goods will be offset against moneys owing from the Client to the KiwiNet Partner Any balance will be refunded to the Client. If the price received by the KiwiNet Partner is insufficient to cover all moneys owing to the KiwiNet Partner by the Client, including storage and selling costs, the Client will immediately pay the shortfall to the KiwiNet Partner.
	4. Legal and equitable title in any goods supplied by the KiwiNet Partner pursuant to this contract will be retained by the KiwiNet Partner until all amounts payable to the KiwiNet Partner under this contract have been paid. If the goods have not been paid for in full within 20 Working Days of the date on which payment was due the KiwiNet Partner may enter the Client's premises at any reasonable time and seize the goods.
	5. The KiwiNet Partner warrants that clear title to any goods provided to the Client pursuant to this contract will pass to the Client when title passes pursuant to clause 4.4. To the extent allowed by law every other warranty or guarantee implied by custom or law in relation to the goods or Work provided by the KiwiNet Partner under this contract is excluded including, without limitation, any warranty that the goods or Work provided are fit for their intended purpose. The Client agrees that the Work and goods (if any) provided by the KiwiNet Partner are supplied for business purposes.
5. **PAYMENT**
	1. The KiwiNet Partner shall invoice in arrears on a monthly basis (in equal instalments if the price is fixed) for Fees (plus GST, if any) and Expenses (plus GST, if any).
	2. The Client will pay Fees (plus GST, if any) and Expenses (plus GST, if any) specified on an invoice by the 20th day of the month following the date of invoice. On termination of this contract all outstanding amounts will be payable immediately. The KiwiNet Partner may set-off any amount payable by it to the Client against any amount payable by the Client to the KiwiNet Partner under the terms of this contract. The KiwiNet Partner has the right to require payment by letter of credit or such other method of payment acceptable to the KiwiNet Partner.
	3. Interest will be payable on overdue amounts at a rate equal to 3 percent above the base lending rate of the National Bank of New Zealand from time to time from the due date until the date payment is received. Such interest will accrue on a daily basis.
	4. Without limiting any of the KiwiNet Partner's other rights and remedies under this contract, if any payment under this contract is not made on the due date the KiwiNet Partner may suspend the Work or suspend the supply of Deliverables upon any Work Order (whether the overdue payment relates to that Work Order or not) until such overdue payment and any interest due on it is received.
6. **LIABILITY**
	1. The KiwiNet Partner will not be liable to the Client for:
7. any loss or damage arising out of or in connection with any delay in completion of the Work;
8. any loss of profits or any consequential, indirect or special loss or damage of any kind whatsoever;
9. any loss suffered by the Client due to a claim against the Client by a third party; or
10. any claim made by the Client against the KiwiNet Partner where notice of the claim is not made within a period of 12 months commencing on the date of completion of the Work relating to the particular Work Order in question or, if the Work is not completed, on the earlier of the date of termination of that Work Order or this contract.
	1. Notwithstanding any other provision in this contract, the liability of the KiwiNet Partner (whether in contract, tort including negligence, or otherwise) to the Client for any loss or damage suffered by the Client (howsoever arising) will not, in aggregate, exceed the total amount of the Fees (exclusive of GST) paid by the Client to the KiwiNet Partner under the Work Order from which the liability arises, or such other amount specified in the Specific Terms (if any).
	2. The Client indemnifies the KiwiNet Partner, its subsidiaries, officers, employees and subcontractors against any claim, proceeding, loss, cost (including legal costs on a solicitor/own client basis), damage or expense (Loss) incurred by the KiwiNet Partner arising from a breach of this contract by the Client or the Client's use of any Deliverable or any output of the Work, any product or process developed therefrom or incorporating the same, other than where such Loss arises directly from a breach of this contract by the KiwiNet Partner.
11. **INTELLECTUAL PROPERTY RIGHTS**
	1. Intellectual Property Rights means all intellectual and industrial property rights of any nature whether conferred by statute, common law or equity, including without limitation, all rights in any patent, copyright, trade mark, design, database, circuit lay-out, know-how, trade secret, Confidential Information, or right of confidence including all such rights or similar rights in any invention, device, material, data, drawing, sample, method, process, text, algorithm, schematic, software, hardware, firmware, get-up, any other original works or materials, or any component of the same, and any application to register the same, whether or not registered or capable of registration.
	2. All Intellectual Property Rights existing in a party prior to this contract (Existing Intellectual Property Rights) will remain with that party. Except to the extent necessary to complete the Work or expressly stated otherwise, neither party grants any rights in its Existing Intellectual Property Rights to the other party.
	3. Unless otherwise specified in the Specific Terms and/or in a schedule and subject to clause 7.4, all Intellectual Property Rights arising directly from the Work (Work Intellectual Property Rights) will, upon completion of the Work, vest in the Client, provided that the Client has complied with all of its obligations under this contract.
	4. Notwithstanding clause 7.3, where the KiwiNet Partner makes any improvement to its Existing Intellectual Property Rights while undertaking the Work and that improvement:
12. relates to the KiwiNet Partner’s tools of trade, meaning without limitation, any technical information, machine, device, method, process, technique, ingredient, recipe, manufacture, design, specification, composition of matter, formula, algorithm, pattern or programme that the KiwiNet Partner uses in the ordinary course of its business; and
13. was incidental to the purpose of the Work,

###  the KiwiNet Partner will retain ownership of any Intellectual Property Rights in that improvement provided that the KiwiNet Partner grants the Client a non-exclusive royalty free license to use such Intellectual Property Rights to the extent necessary to make use of the Client’s Work Intellectual Property Rights.

1. **CONFIDENTIALITY**
	1. Confidential Information means:
2. all information and materials relating to or arising from the Work in any form whatsoever, and
3. information which is by its nature confidential or which the discloser advises the recipient is confidential and includes the terms of this contract, and
4. includes anything disclosed before the date of this contract that relates to paragraph (a) or (b).
	1. Confidential Information does not include:
5. information which at the date of this contract is in the public domain or subsequently enters the public domain without fault on the part of the recipient,
6. information that is received in good faith by the recipient from a third party,
7. information which is at the date of this contract, independently acquired or developed by, or already properly in the possession of, the recipient and which the recipient can demonstrate by written record to be previously known to the recipient.
	1. The recipient of Confidential Information shall:
8. keep it in the recipient’s possession and treat it as confidential regardless of when disclosed,
9. not use any Confidential Information belonging to the other party for any purpose other than as required in terms of this contract,
10. only disclose Confidential Information to employees, officers, approved subcontractors or professional advisers on a need to know basis and shall be liable to the discloser for any breach by those persons of these confidentiality obligations.
	1. The restrictions in this clause 8 do not apply where disclosure is required by law or by a government agency or government authority.
	2. The parties acknowledge that any breach of this confidntiality obligation may result in damages for which monetary compensation would notbe an adequate remedy and that the affected party is entitled to specific performance or injunctive relief in addition to any other remedies at law or in equity.
	3. No party gives any representation or warranty with respect to any information other than that it has the right to disclose such information.
11. **PUBLICATION OF RESULTS AND USE OF THE KIWINET PARTNER NAME**
	1. Where the Client proposes to publish any test results or other information relating to the Work in any academic publication, the Client must make suitable reference to the KiwiNet Partner and/or its employees and seek prior written approval from the KiwiNet Partner as to the publisher and the contents of the publication, such approval not to be unreasonably withheld.
	2. Except with the prior written approval of the KiwiNet Partner the Client will not use the name ‘Kiwi Innovation Network Limited’ or any other similar name or make any other reference to the KiwiNet Partner in conjunction with any proposed manufacture or marketing of goods or services.
12. **TERMINATION**
	1. Subject to any earlier termination in accordance with the terms of this contract, this contract will commence on the Start Date and terminate on the End Date (if any) set out in the Specific Terms.
	2. Subject to any earlier termination in accordance with the terms of this contract, individual Work Orders shall commence on the Start Date and terminate on their End Date (if any) specified in the schedule relating to the Work Order.
	3. Without prejudice to any other right or remedy it may have, a party (Terminating Party) may terminate this contract or a Work Order forthwith by written notice to the other party (Defaulting Party) on the commission of a material breach of this contract by the Defaulting Party provided that, if the breach is capable of remedy, notice of termination will not take effect unless the Defaulting Party has failed to remedy such breach to the reasonable satisfaction of the Terminating Party within 15 Working Days following receipt by the Defaulting Party of notice of termination specifying the breach concerned. For the purposes of this clause, a failure to pay any sum of money on the due date will be deemed to be a material breach of this contract.
	4. Without prejudice to any other right or remedy it may have, the KiwiNet Partner may terminate this contract (including all Work Orders) immediately if the Client ceases trading and/or commences winding up (otherwise than for the purposes of a solvent reconstruction) or a receiver, or similar is appointed over any of the assets of the Client, or any action is taken to have the Client declared insolvent or bankrupt.
	5. The termination of this contract or a Work Order will not relieve the Client of its obligation to make payment to the KiwiNet Partner of any Fees and Expenses due to the KiwiNet Partner.
13. **DISPUTE RESOLUTION**
	1. If any dispute arises as to the terms of this contract, then any party may give notice to the other party of that dispute. The parties will endeavour to resolve it quickly and fairly in good faith.
	2. If the dispute or difference cannot be settled by good faith negotiation between the parties within five Working Days of the dispute or difference arising, such dispute or difference may be referred by either party to the mediation of a single mediator agreed to by both parties, or failing that, appointed by the President for the time being of the New Zealand Law Society or his/her nominee.
	3. If the dispute or difference cannot be settled within 15 Working Days of the dispute or difference being referred to mediation pursuant to clause 11.2, either party may commence court proceedings and shall be entitled to exercise all rights and remedies available to it at law.
	4. Nothing in this clause 11 shall prevent either party from commencing court proceedings for the purposes of seeking urgent interlocutory relief.
14. **GENERAL**
	1. A failure by a party to enforce a provision of this contract will not constitute a waiver of any right to future enforcement of that or any other provision.
	2. If any part of this contract is unenforceable, invalid or illegal, the other terms will remain in force.
	3. No party shall be liable for any default in its obligations under this contract if that default arises from any cause reasonably beyond its control. This clause shall not apply to an obligation to make payment under this contract.
	4. Subject to clause 2.8, neither party will assign or otherwise transfer its rights or obligations under this contract without the prior written consent of the other party (such consent not to be unreasonably withheld).
	5. Nothing in this contract will prevent the KiwiNet Partner from undertaking activities in fields the same as or similar to the Work, whether on its own account or on behalf of any third party.
	6. The Contact Person of each party will have authority to represent it in all matters pertaining to this contract. A party may change its Contact Person by written notice to the other party.
	7. All clauses of this contract that are intended to continue after termination, including clauses 6 (Liability), 7 (Intellectual Property Rights), 8 (Confidentiality), 9 (Publication of results and use of the KiwiNet Partner name), 11 (Dispute Resolution) and 12 (General) will continue in full force and effect
	8. Any notice to a party under this contract will be deemed to have been delivered three working days after posting to the address of that party specified in the Specific Terms of this contract or immediately on receipt by the sender of evidence the notice has been successfully faxed to the number specified in the Specific Terms of this contract.
	9. This contract records the entire understanding and agreement between the parties regarding its subject matter and supersedes and extinguishes all prior agreements, statements, correspondence and undertakings, whether written, oral or both made between the parties relating to the same subject matter. The parties agree that in entering this contract, they have not relied on any representation (including pre-contractual representations) other than those which are set out in this contract.
	10. This contract may be signed in counterparts, including by facsimile or email, all of which, when taken together, will constitute one and the same document.
	11. This contract will be governed by New Zealand law and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.
	12. The date of this contract shall be the date that the last party signed.

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| **AUTHORISED SIGNATORY [Insert name of Client]**  |  | **AUTHORISED SIGNATORY [Insert name of KiwiNet Partner]**  |
| Signature |  | Signature |
| Full Name (Please Print) |  | Full Name (Please Print) |
| Signing on behalf of (Name of Party) |  | Signing on behalf of (Name of Party) |
| Position |  | Position |
| **WITNESS** |  | **WITNESS** |
| Witness Signature |  | Witness Signature |
| Full Name (Please Print) |  | Full Name (Please Print) |
| Occupation |  | Occupation |
| Address |  | Address |
| Date |  | Date |

**Schedule – Work Order**

This schedule is issued pursuant to and shall form part of the Master Professional Services Agreement between the KiwiNet Partner and [*insert name of Client*] dated [*date*].

Work[d*escription of goods or services to be provided by the KiwiNet Partner*]

Deliverables and Deliverable dates [*list of deliverables and due dates*]

Fees ($NZ) [*hourly rate*] plus GST or [*fixed price*] plus GST

Expenses [*eg travel, accommodation, materials*] plus GST

Timetable for payment [*dates for payment to the KiwiNet Partner and amounts due on those dates if different to the General Terms*]

Client Contribution [*eg raw materials, access to facilities, information – specify also when to be provided*]

Start date [*should not predate the signing date of this Work Order*]

End date [*if known or if any*]

Variations The General Terms of the contract are varied as follows: [*details of any variations to the General Terms of the contract*]

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| Signed by [*full legal name of Client*] |  | Signed byKiwi Innovation Network Limited  |
| Signature |  | Signature |
| Name of authorised signatory |  | Name of authorised signatory |
| Position |  | Position |
| Date |  | Date |