

Master IT Services Agreement (MSA)

Parties

CloudBlue	Party	CLOUDBLUE MANAGED SERVICES PTY LTD
	ACN	686 960 323
	Address for service of notices	1708/915 Collins Street Docklands VIC 3008
	Tel	03 9969 7766
	Email	accounts@cloudblue.com.au

Background

- A. The Customer wishes to obtain information technology and related services from time to time.
- B. CloudBlue is willing to supply Services and Deliverables under this Agreement where the parties have executed one or more Work Orders.

1. Definitions and interpretation

1.1 Definitions

In this Agreement, unless the context indicates otherwise:

Agreement means this Master IT Services Agreement and any Work Order, schedule, annexure, exhibit, statement of work, policy or attachment forming part of it.

Analytics Data has the meaning given in clause 12.4.

Business Day means a day other than a Saturday, Sunday or public holiday in the capital city of the State or Territory in Australia where the Customer’s registered office is located (or, if none, its principal place of business).

Change means any variation to a Work Order or this Agreement, including a change to:
(a) scope, inclusions, exclusions or Deliverables;
(b) timing, milestones, resourcing or effort;
(c) Fees or charging model; or
(d) assumptions, dependencies, or technical requirements.

Change Proposal means a written proposal describing a Change, including (as applicable) implementation steps, impact on service levels and timeframes, any amended terms, and the Fees payable.

Claim means any claim, demand, action, suit, proceeding or investigation.

Commencement Date means the date the last party signs this Agreement (or another date stated in the first Work Order).

Confidential Information means any information disclosed by one party (Discloser) to the other (Recipient) which is

confidential by its nature or marked or identified as confidential, including the terms of this Agreement and Work Orders, technical information, security practices, pricing, and business information. Confidential Information does not include information that the Recipient can prove:
(a) is or becomes public other than through breach of this Agreement;
(b) was lawfully known to the Recipient prior to disclosure;
(c) is lawfully received from a third party without restriction; or
(d) is independently developed without reference to the Discloser’s Confidential Information.

Customer Data means all data and information provided to CloudBlue by or on behalf of the Customer, or accessed by CloudBlue in the course of providing the Services, including any Personal Information.

Customer Environment means the Customer’s systems, networks, cloud tenants, software, devices, infrastructure, credentials, and third-party services used to access or integrate with the Services.

Data means any data (including Personal Information) that is collected, generated, processed, stored, transmitted or accessed in connection with the Services.

Data Breach means:
(a) for Customer Data that is not Personal Information: loss of integrity, deletion, corruption, unauthorised modification, or unavailability; and/or
(b) for Personal Information: unauthorised access, disclosure, misuse, interference, loss, or circumstances that trigger obligations under Privacy Laws.

Delay means any event that prevents CloudBlue meeting a Time Requirement, including delay caused by Customer Dependencies.

Deliverables means the outputs CloudBlue agrees to provide under a Work Order (including documentation, configurations, reports, or supplied items).

Developed IP means Intellectual Property Rights created by CloudBlue (or its subcontractors) in performing the Services or producing Deliverables, excluding Customer Pre-existing IP.

Discloser and **Recipient** have the meanings set out above.

Dispute has the meaning in clause 17.1.

End Date means 12 months after the Commencement Date unless a Work Order specifies:
(a) a different end date; or
(b) a term expressed in months, in which case the End Date is calculated accordingly.

Equipment means any equipment/tools provided by CloudBlue for use in delivering Services that remains CloudBlue’s property unless expressly sold as Hardware under a Work Order.

Extension Period means 12 months.

Fees means the fees and charges described in a Work Order, including any recurring charges, pass-through charges, and approved time-and-materials charges.

Force Majeure Event means an event outside a party’s reasonable control (including natural disasters, war, terrorism, civil disturbance, epidemic/pandemic, utility or telco failures, and government restrictions) that prevents or materially delays performance.

GST, GST Act, Tax Invoice have their meanings under A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Hardware means items sold to the Customer by CloudBlue under a Work Order (including devices, components or appliances) where title transfers on payment as stated in clause 11.

Insolvency Event includes administration, liquidation, receivership, inability to pay debts, statutory demand non-compliance, or analogous events.

Invoicing Terms and **Payment Terms** mean the invoicing and payment terms stated in the Work Order.

IP Claim means a third-party allegation that the Services or Deliverables supplied by CloudBlue infringe that party’s Intellectual Property Rights.

Key Personnel means any personnel named as key in a Work Order.

Liability means any liability, loss, cost, expense, damage, penalty or claim (including legal costs on a full indemnity basis).

Location means the site(s) identified in the Work Order (or, if remote, the Customer Environment).

Loss means any loss or damage arising in connection with this Agreement, whether in contract, tort (including negligence), statute or otherwise.

Personal Information has the meaning in the Privacy Act 1988 (Cth).

Pre-existing IP means IP owned or developed independently by a party before or outside this Agreement, excluding Developed IP.

Privacy Laws means the Privacy Act 1988 (Cth), the Australian Privacy Principles, and any other applicable privacy or data protection laws.

Representative means each party’s nominated representative in a Work Order (or otherwise notified).

Review Date means 1 July each year (unless a Work Order states otherwise).

Services means the services CloudBlue agrees to deliver under a Work Order, including activities reasonably incidental to providing those services except where expressly excluded.

Services Schedule means any schedule attached to this Agreement that sets service-specific terms (including Managed Services and Project Services schedules).

Software means software supplied by CloudBlue as part of Services (excluding Third-Party Software).

Third-Party Supplier means any third party whose products or services the Customer uses or CloudBlue procures/resells, including cloud providers, carriers and software vendors.

Third-Party Software / Third-Party Services means software/services licensed or provided under third-party terms (whether procured by the Customer directly or via CloudBlue).

Time Requirements means timeframes/milestones in a Work Order (including service levels where applicable).

Work Order means a written proposal/quote/statement of work executed by both parties describing the Services, Deliverables, fees, term, and the applicable Services Schedule(s).

Work Order Term means the duration stated in a Work Order.

1.2 Interpretation

- a) Headings are for convenience only.
- b) Singular includes plural and vice versa.
- c) A reference to a person includes a body corporate and vice versa.
- d) “Including” means “including without limitation”.
- e) References to laws include amendments and replacements.
- f) If a due date falls on a non-Business Day, it moves to the immediately preceding Business Day (unless a Work Order states otherwise).

1.3 Order of precedence

If there is inconsistency, the following prevails in order:

- a) the Work Order;
- b) the relevant Services Schedule(s);
- c) this Agreement;
- d) other attachments.

2. Term

2.1 Term

This Agreement begins on the Commencement Date and continues until the End Date unless terminated earlier under clause 18 or 19.

2.2 Extension Periods

Unless either party gives at least **90 days' written notice** before the End Date that it will not renew, the Agreement renews automatically for each Extension Period.

3. Work Order

3.1 Engagement model

The Customer may request Services. CloudBlue may accept by issuing and executing a Work Order.

3.2 Work Order formation

- a) The Customer may request a draft Work Order by providing requirements.
- b) The Customer may accept, reject, or request reasonable negotiations.

3.3 Execution required

- a) A Work Order is binding only when signed by both parties.
 - b) CloudBlue is not required to commence Services or deliver Deliverables until a Work Order is executed (and any prerequisites such as deposits or onboarding are satisfied).
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4. Change Control

4.1 Change request

Either party may propose a Change by written notice describing what is requested and why.

4.2 Change proposal and approval

- a) CloudBlue will provide a Change Proposal within a reasonable period (or within 14 days unless otherwise agreed).
 - b) The parties' Representatives will meet if needed and act reasonably and in good faith.
 - c) A Change takes effect only when the Change Proposal is accepted in writing (including via email acceptance) or incorporated into a revised Work Order.
 - d) CloudBlue may decline a Change (including where it impacts security, feasibility, resourcing, or risk).
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5. Performance standards

5.1 Standard of care

CloudBlue will provide Services with due care and skill consistent with a competent managed services provider in Australia.

5.2 Compliance with laws and safety

CloudBlue will comply with applicable laws and maintain appropriate workplace health and safety practices when performing on-site work.

6. Personnel and Subcontracting

6.1 Key personnel (if nominated)

CloudBlue will use reasonable efforts to allocate Key Personnel where named. If unavailable, CloudBlue may replace them with suitably qualified personnel.

6.2 Subcontractors

CloudBlue may use subcontractors. CloudBlue remains responsible for subcontractor performance as if it were CloudBlue's own.

7. Customer obligations

7.1 Cooperation and access

The Customer must, at its cost:

- a) provide timely access to the Customer Environment, premises, systems, accounts and required credentials;
- b) provide accurate and complete information;
- c) maintain suitable power, connectivity and physical conditions for on-site work; and
- d) promptly review and respond to CloudBlue requests necessary to deliver Services.

7.2 Customer Environment and security responsibilities

- a) The Customer is responsible for maintaining the baseline security and operability of its Customer Environment unless a Work Order expressly allocates this to CloudBlue.
- b) The Customer must implement security measures appropriate to its risk profile, including patching, MFA, backups, and access controls.
- c) The Customer must notify CloudBlue promptly of:
 - i) suspected compromise, ransomware, or unauthorised access;
 - ii) lost credentials or devices; and

- iii) any material change to the Customer Environment that could affect the Services.

- (ii) material increases in delivery costs (e.g., labour, insurance, compliance), where reasonably justified.

7.3 Recommendations and dependencies

- a) Where CloudBlue issues written recommendations (including security remediation), the Customer must either implement them within a reasonable time or formally decline in writing.
- b) If the Customer declines or delays recommendations, CloudBlue may:
 - (i) exclude resulting incidents from service levels;
 - (ii) treat additional work as billable; and/or
 - (iii) suspend affected Services where continuation presents unacceptable risk.

7.4 Acceptable use

The Customer must not use the Services to:

- a) breach laws, regulations or third-party rights;
- b) distribute unlawful or harmful content;
- c) interfere with systems, monitoring, or service operations; or
- d) attempt unauthorised access or privilege escalation.

8. Time Requirements

8.1 Time requirements

CloudBlue will use commercially reasonable efforts to meet Time Requirements.

8.2 Customer-caused delays

Where Delay is caused or contributed to by Customer actions/omissions (including missing approvals, access, information, or readiness):

- a) CloudBlue is not liable for the Delay; and
- b) CloudBlue may charge reasonable additional fees (time and materials) and extend timeframes accordingly.

9. Fees, invoicing and payment

9.1 Fees

Fees are as stated in each Work Order.

9.2 Annual review and fee adjustments

- (a) On each Review Date, CloudBlue may adjust recurring Fees by CPI (All Groups CPI, weighted average of eight capital cities) or another index stated in a Work Order.
- (b) CloudBlue may also adjust Fees on written notice for:
 - (i) third-party supplier price increases (pass-through); and/or

9.3 Invoicing and payment

- a) CloudBlue will issue Tax Invoices per the Work Order.
- b) The Customer must pay undisputed invoices within **30 Business Days** (or as stated in the Work Order).

9.4 Disputed invoices

- a) The Customer must notify CloudBlue promptly with details of any dispute.
- b) The undisputed portion must still be paid when due.
- c) The parties will resolve disputes under clause 17.

9.5 Overdue amounts

If payment is overdue, CloudBlue may:

- a) charge interest at **5% p.a. above** the NAB overdraft indicator rate (or the closest equivalent);
 - b) suspend Services on notice; and/or
 - c) terminate affected Work Orders (or this Agreement) in accordance with clause 18.
- The Customer remains liable for charges accrued during any suspension.

10. Confidentiality

10.1 Confidentiality obligations

The Recipient must:

- a) keep Confidential Information secure and confidential;
- b) use it only to perform or receive Services;
- c) disclose it only to personnel/advisers who need it and are bound by confidentiality; and
- d) promptly notify the Discloser of any unauthorised disclosure.

10.2 Remedies

Each party acknowledges a breach may cause irreparable harm and injunctive relief may be available.

10.3 Required disclosure

A party may disclose Confidential Information if required by law, provided it gives prior notice where lawful and reasonably limits disclosure.

10.4 Publicity

CloudBlue may list the Customer as a client and describe non-confidential, high-level engagement details unless the Customer opts out in writing.

11. Intellectual property

11.1 Pre-existing IP

Each party retains its Pre-existing IP. Each grants the other a non-exclusive, royalty-free licence to use Pre-existing IP only as required to perform obligations or obtain the benefit of Services.

11.2 Developed IP

- a) Unless a Work Order states otherwise, CloudBlue owns Developed IP upon creation.
- b) The Customer assigns any rights it may have in Developed IP to CloudBlue (to the extent necessary).
- c) CloudBlue grants the Customer a non-exclusive licence to use the Developed IP internally for its business purposes, subject to payment of all Fees and compliance with this Agreement.

12. Customer data, backups, data loss, and analytics

12.1 Customer responsibility for data

The Customer is responsible for the legality, accuracy, and completeness of Customer Data and for ensuring it can be processed by the Services.

12.2 Access and use

CloudBlue may access and use Customer Data to deliver the Services, provide reporting, support, and security monitoring, and to meet legal obligations.

12.3 Data security (CloudBlue controls)

CloudBlue will take commercially reasonable measures within its control to protect Customer Data against unauthorised access, disclosure, or modification in accordance with industry practice.

12.4 Analytics

CloudBlue may generate and use de-identified, aggregated analytics derived from service delivery and usage patterns (Analytics Data). CloudBlue owns Analytics Data. Analytics Data will not identify the Customer or individuals.

12.5 Backups and data loss (critical)

- a) **Backups are only included** where expressly stated in a Work Order or Services Schedule.
- b) Where CloudBlue provides backup Services, CloudBlue's obligation in the event of data loss is limited to using reasonable efforts to restore from the **most recent available successful backup** within the scope of the backup service.
- c) The Customer acknowledges that data loss can occur due to factors outside CloudBlue's control, including Hardware failure, cloud provider incidents, malicious activity, user error, software defects, and third-party vulnerabilities.
- d) CloudBlue is not responsible for data loss to the extent caused or contributed to by:
 - (i) Customer actions/omissions;
 - (ii) failure to maintain supported systems or apply updates/patches;
 - (iii) third-party service outages or vulnerabilities; or
 - (iv) Hardware failure outside warranty/support coverage, unless a Work Order provides otherwise.

13. Privacy

13.1 Compliance

Each party must comply with Privacy Laws when handling Personal Information.

13.2 Customer obligations

The Customer warrants it has provided required notices and obtained consents to disclose Personal Information to CloudBlue and (where relevant) offshore providers.

13.3 Assistance and breach notifications

- a) CloudBlue will provide reasonable assistance to the Customer to meet Privacy Law obligations, including data breach notifications, **on a time-and-materials basis** unless included in a Work Order.
- b) The Customer remains responsible for determining whether notifications are required and for making any required notifications unless a Work Order expressly allocates that role to CloudBlue.

14. PPSA (security interests)

14.1 Security interest

To the extent CloudBlue supplies Equipment on a retention-of-title or similar basis, the Customer acknowledges CloudBlue may have a security interest under the PPSA.

14.2 Registration and cooperation

The Customer consents to CloudBlue registering its security interest and must do what is reasonably required to perfect that interest. To the extent permitted by law, the Customer may waive certain notices under the PPSA.

15. Warranties

15.1 Mutual warranties

Each party warrants it has authority to enter into and perform this Agreement, and that its obligations are enforceable.

15.2 CloudBlue service warranty

CloudBlue warrants that it will provide Services with due care and skill and in a professional manner. Any additional warranties must be expressly stated in a Work Order.

15.3 Hardware failure and third-party vulnerabilities (clarity)

- a) Except where a Work Order expressly includes Hardware support/warranty management, Hardware may fail due to manufacturing defects, age, misuse, power events, or environmental conditions.
- b) Third-party software and cloud services may contain vulnerabilities or defects; patching and vendor remediation timelines are outside CloudBlue's control.
- c) CloudBlue does not warrant that Services will be uninterrupted, error-free, or immune from cyber incidents or third-party vulnerabilities.

15.4 Australian Consumer Law

Nothing in this Agreement excludes non-excludable rights under the ACL. Where permitted, remedies are limited to re-supply or rectification (or the cost of doing so).

16. Indemnities and limitation of liability

16.1 IP indemnity by CloudBlue

CloudBlue will defend and indemnify the Customer for a successful IP Claim relating to CloudBlue-supplied Services/Deliverables, provided the Customer:

- a) uses them as authorised;
- b) notifies CloudBlue promptly;
- c) gives CloudBlue control of the defence/settlement; and
- d) provides reasonable cooperation.

CloudBlue may, at its option: procure a right to continue use, modify to be non-infringing, or substitute equivalent functionality. If none is commercially reasonable, CloudBlue may require cessation of the affected component and refund prepaid Fees for the unusable portion on a pro-rata basis.

This indemnity does not apply where the claim arises from Customer Data, Customer modifications, unsupported combinations, or failure to implement updates where the update would have avoided the claim.

16.2 Customer indemnity

The Customer indemnifies CloudBlue against Claims arising from:

- a) Customer misuse of Services;
- b) Customer breach of law, privacy obligations, or third-party rights;
- c) Customer Data content or collection; and
- d) security failures in the Customer Environment not caused by CloudBlue's breach of this Agreement.

16.3 Proportionate liability

Liability is reduced proportionately to the extent caused or contributed to by the other party (to the extent permitted by law).

16.4 Liability cap

To the maximum extent permitted by law, CloudBlue's aggregate liability arising in connection with this Agreement is capped at the lower of:

- a) Fees paid under the Agreement in the 12 months preceding the event giving rise to liability; or
- b) AUD \$50,000, unless a Work Order specifies a different cap.

16.5 Exclusions (data loss, cyber, third parties)

To the extent permitted by law, CloudBlue is not liable for:

- a) indirect or consequential losses (including loss of profit, revenue, goodwill, business interruption);
- b) data loss, corruption or unavailability except to the extent directly caused by CloudBlue's breach and subject to clause 12.5;
- c) third-party service failures, outages, vulnerabilities or security incidents;
- d) Hardware failure outside the scope of a Work Order or outside manufacturer warranty/support arrangements;
- e) impacts arising from the Customer failing to implement CloudBlue recommendations or maintain supported configurations.

16.6 Duty to mitigate

Each party must take reasonable steps to mitigate Loss.

- c) Customer must return CloudBlue Equipment within 30 Business Days;
- d) each party must return/destroy Confidential Information as directed; and
- e) CloudBlue will provide reasonable transition assistance if requested under clause 20.

17. Dispute resolution

17.1 Notice

A party must notify the other of any dispute, describing the issues and desired outcome.

17.2 Escalation

- a) Representatives meet and attempt resolution within 7 days.
- b) If unresolved, escalate to senior management within 7 further days.

17.3 Mediation then litigation

If unresolved, the parties must attempt mediation in Melbourne through an agreed mediator (or the Australian Disputes Centre) before commencing proceedings, except for urgent injunctive relief.

17.4 Continued performance

The parties must continue performing obligations during a dispute, except the Customer is not required to pay the disputed portion (but must pay undisputed amounts).

18. Termination

18.1 For convenience

Either party may terminate this Agreement or a Work Order on **90 days' written notice**.

18.2 For cause

A party may terminate immediately if the other party:

- a) commits a material breach and fails to remedy within 20 Business Days of notice;
- b) becomes subject to an Insolvency Event; or
- c) cannot lawfully perform due to a change in law.

CloudBlue may suspend or terminate for non-payment if not remedied within 7 Business Days of notice.

18.3 Consequences

On termination/expiry:

- a) all accrued fees become immediately payable;
- b) the Customer must pay unavoidable committed costs (e.g., prepaid subscriptions, licences, Hardware orders) where termination is for convenience;

18.4 Non-solicitation

During the term and for [3/6/12] months after termination/expiry, neither party will solicit for employment the other party's personnel who were materially involved in the Services, except via general advertising not targeted at the other party. An introduction fee may apply if stated in a Work Order.

18.5 Survival

Clauses intended to survive (including confidentiality, IP, privacy, liability, disputes, transition) survive expiry/termination.

19. Force majeure

19.1 Relief

A party is not liable for failure to perform (other than payment obligations) due to Force Majeure, provided it acts reasonably to reduce impact.

19.2 Termination for extended force majeure

If Force Majeure substantially prevents performance for more than 60 Business Days, either party may terminate on written notice.

20. Transition-out (disengagement)

20.1 Transition assistance

At the Customer's request, CloudBlue will provide reasonable assistance to transition services to the Customer or a replacement provider for up to 6 months (or as agreed), subject to a Work Order for transition.

20.2 Fees during transition

Transition services are charged on a time-and-materials basis unless otherwise agreed. The Customer remains responsible for ongoing recurring charges during transition.

21. General

21.1 Costs

Each party bears its own costs of negotiating and entering this Agreement unless stated otherwise.

21.2 GST

GST applies as required by law; GST amounts are payable in addition to Fees.

21.3 Assignment

The Customer may not assign without CloudBlue's written consent (not to be unreasonably withheld). CloudBlue may assign/novate to an affiliate or purchaser of its business on notice.

21.4 Notices

Notices must be in writing and delivered by hand, post or email to the address in the Work Order (or last notified). Receipt rules apply as stated in this clause.

21.5 Governing law

Victoria, Australia. Courts of Victoria have non-exclusive jurisdiction.

21.6 Amendments

CloudBlue may update the Agreement on at least 30 days' notice. If the Customer objects, it may terminate on 30 days' notice (without affecting accrued charges or committed third-party costs). Continued use after the notice period constitutes acceptance.

21.7 Entire agreement

This Agreement supersedes prior discussions and constitutes the entire agreement.

21.8 Further assurances

Each party must do what is reasonably necessary to give effect to this Agreement.

21.9 No waiver

Failure to enforce a right is not a waiver.

21.10 Severability

Invalid provisions are severed to the minimum extent necessary; the remainder continues.

21.11 Counterparts and e-signing

This Agreement may be executed in counterparts and electronically.

Schedules (attached)

- **Schedule 1 – Managed Services Terms and Conditions**
- **Schedule 2 – Project Services Terms and Conditions**