

General Terms & Conditions - ICT Managed Service Agreement (MSA)

Document Purpose

This document outlines the standard Terms and Conditions relating to the provision of ICT Managed Services (Support Services), referred to as an ICT Managed Service Agreement (MSA) by CloudBlu Pty Ltd Pty Ltd (ABN:81 666 412 693).

These terms and conditions are specific to the following services:

- Windstil ICT Managed Service Agreements (MSA's)
 - Service Desk Services
 - Level 1, 2 & 3 Support and Problem Management Services
 - Service Level Management
 - Monitoring & Reporting
 - Service Reviews

In addition to the General Terms, this document utilises the MSA to explain in detail the Windstil ICT Managed Services. Should you have any questions regarding our terms and conditions please do not hesitate to contact us on **1300 312 330**.

MSA Document Hierarchy

The following outlines how these general terms underpin the relevant services of the CloudBlu Pty Ltd Pty Ltd Managed Service Agreement.

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| 1. General Terms and Conditions <i>(this document)</i> | Contained within this document – Foundation or underpinning general terms & conditions of a Managed Service Agreement (MSA) |
| 2. MSA Contract Services | Contained within the MSA Document – Details the methods Windstil use to deliver ICT managed services under a contract structure (Contract Services) |
| 3. MSA Monitoring & Reporting | Contained within the MSA Document – Details the methods Windstil use to provide Systems Monitoring and Reporting Services. |
| 4. MSA Service Level Management | Contained within the MSA Document – Details the method Windstil uses to provide service level management and KPI reporting. |
| 5. MSA Service Reviews | Contained within the MSA Document - Details the method Windstil uses to perform service reviews. |
| 6. MSA Contract Initiation | Contained within the MSA Document - Details the specific services, their pricing and related support arrangement as applied to a specific customer engagement. The execution of a MSA Proposal (sales contract) between Windstil and a customer executes a MSA and the general terms and related service schedules. |
| 7. Letter of Variation | A document used to vary the general terms and conditions, and/or related services and commercial terms to meet specific (non-standard) customer requirement under the framework of an MSA. |

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1 General Terms & Conditions – ICT Managed Service Agreement

1.1 Definitions

In this Agreement:

Agreement - means this information and communications technology managed services agreement including all of its annexures, schedules and recitals;

Commencement Date - means the date at which the contract was signed;

Contract Services - means the services outlined in the MSA, section 2 “Contracted Services” which are required to be provided at the levels outlined in section 4 (Service Level Management);

Corporation Law - means the Corporations Act 2001 (Cth), its regulations and any amendments;

Device - means any PCs, printers, scanners, servers, specified in the MSA, Section 2.14, connected to the Network;

Extra Service Fees - means fees set out at in the MSA which are in addition to the Monthly Fee which apply to Windstil’s provision of services beyond the Contract Services for a specific customer engagement;

GST - means the Goods & Services Tax Act under the 'A New Tax System' (Goods and Services Tax) Act 1999 (Cth);

Hosted (or Cloud) Service – means a service that is provided and hosted by a 3rd party and delivered to the Customers locations and devices via the Internet or Wide Area Network (WAN) service;

ICT Delegate - means the delegate(s) nominated by the Customer from time to time for the purposes of this Agreement;

Incident – means an unplanned interruption to an ICT Service or reduction in the quality of an ICT service;

Job - means a task of servicing an Incident created by an Incident;

LAN - means the Customer's local area network;

MAC - means a physical move or change to any Device, (moves, additions or changes);

Major Version Upgrade - means an upgrade that requires the removal of a previous version of a systems application or server operating system and replaces with a new version. (E.g. Windows Server 2008 to Windows Server 2012, MS Exchange 2007 to MS Exchange 2013, etc.);

MSA – means the Windstil ICT Managed Service Agreement;

Monthly Fee - means the monthly fee for the Contract Services set out in the MSA contract;

Network - means the Customer's communication network (LAN, WAN, Telco);

Operating System - means the current Microsoft, Linux or another platform operating the relevant Customer devices;

Privacy Laws - means the Privacy Act 1988 (Cth) and any State, Federal or other applicable laws relating to personal information or financial information;

Problem - means the unknown underlying cause of one or more Incidents;

Service Desk - means the service comprising of the items outlined in Section 2.1 of the MSA and provides the functions outlined;

Service Level or SLA - means the Service Levels outlined in the MSA, section 4;

Server (s) - means the servers specified in section 2.14 of MSA connected to the Customer Network (if applicable)

1.2 Contract Services

- 1.2.1.1 CloudBlu Pty Ltd Pty Ltd (Windstil) shall, subject to the terms of this Agreement, provide the Contract Services as specified in the MSA, Section 3 (Contract Services) to the Customer.
- 1.2.1.2 Should the Customer request that Windstil provides services additional to the Contract Services from time to time, and Windstil agrees to provide those additional services, Windstil shall invoice the Customer for those additional services on its usual terms and the Customer shall pay according to those terms (as outlined in the MSA, section 6).

1.3 Contract Price

From the Commencement Date Windstil shall be entitled to payment for the provision of the Contract Services as set out in MSA and in accordance with the terms of this Agreement.

Each month:

- 1.3.1.1 Windstil shall render to the Customer a tax invoice for the amount to which it is entitled under this Agreement; and
- 1.3.1.2 the Customer shall pay the amount of the invoice, without deduction, to Windstil within thirty (30) days of the date of the invoice unless the Customer has given Windstil notice of dispute as to the sum of the invoice or the service to which the invoice relates does not satisfy the Terms of this in accordance with clause 1.23.
- 1.3.1.3 The amounts specified in the MSA (the Price) are exclusive of GST unless otherwise specified.
- 1.3.1.4 In addition to the amounts set out in the MSA (the Price) the Customer shall reimburse to Windstil all reasonable costs incurred by Windstil in providing the Contract Services including, but not limited to travel expenses, accommodation expenses, parts and other consumables. If, in any one instance, such cost exceeds the sum of Two Hundred Dollars (\$200.00) then Windstil shall first obtain the written consent of the Customer to incur that cost.
- 1.3.1.5 In the event that the Customer implements or fails to implement any changes to the Network hardware/infrastructure/capacity in accordance with section 3.11 of MSA, (Customer Responsibilities). Windstil may, upon giving reasonable notice (in no event less than thirty (30) days), increase the fees specified in the MSA (Price) to the extent reasonably necessary to allow Windstil to provide the Contract Services.
- 1.3.1.6 In the event that the Customer fails to fulfil its obligations under section 3.11 of the MSA, (Customer Responsibilities) and does not agree to an increase of the fees outlined in accordance with clause 1.3.1.3 then the Customer may upon thirty (30) days written notice terminate the Agreement and shall be liable only for the Monthly Fee specified in the Sales Contract, and any Extra Service Fees incurred up to the date of termination.
- 1.3.1.7 Windstil reserves the right to perform an annual recalculation of the pricing, prior to renewing this Agreement in accordance with the Consumer Price Index (6401 All Groups Index) issued by the Australian Bureau of Statistics for the state in which services are performed. Windstil shall recalculate the fees outlined in the MSA (Price) and provide notice of the same to the Customer, and the Customer agrees to pay recalculated fees from the effective date on the notice (and in any event no earlier than the commencement of the new term) unless the Customer disputes the computation of the new fees.

1.4 Reporting

- 1.4.1.1 Windstil shall provide to the Customer the report set out in the MSA, Section 4 (Reporting) on the dates and at the times set out in that schedule. This is presented via our Service Management Systems Customer Portal.
- 1.4.1.2 The Customer shall from time to time notify Windstil in writing, the nominated representatives (not exceeding 2 in number per supported location) and their appropriate contact details for delivery of the contractual reports as required (Customer Portal Access).

1.5 Service Levels

- 1.5.1.1 In providing the Contract Services, Windstil acknowledges that it is required under this Agreement to achieve the Service Levels specified the MSA, Section 5 (Service Level Management)

1.6 Review

- 1.6.1.1 Windstil reserves the right to review the service and pricing annually from the commencement date of this Agreement.
- 1.6.1.2 Any such service reviews shall be undertaken in accordance with the MSA Document Service Reviews shall be undertaken in accordance with clause 1.6.1.1 above.

1.7 Term

- 1.7.1.1 This Agreement will commence on the Commencement Date stated in the MSA Documents Contract Initiation Section and will continue for the period outlined in the MSA Document Agreement Term, unless terminated earlier by either party in accordance with a provision of this Agreement.
- 1.7.1.2 This Agreement will not automatically be rolled over (refresh or sunset) at the end of a period as service assessment by the Customer is required. This is to ensure that a continuation of services into a subsequent period remains aligned with the broader Customer business service requirements.
- 1.7.1.3 This Agreement may be extended for a further term at the Customer's sole discretion by providing no less than one (1) months' notice prior to the expiration of the initial term to Windstil and agreement by both parties of the new pricing for the Contract Services adjusted according to clause 1.6.

1.8 Intellectual Property/Confidentiality

- 1.8.1.1 All intellectual property owned by either of the parties at the date of this Agreement remains the property of that party.
- 1.8.1.2 All intellectual property developed by Windstil in providing the Contract Services shall become and remain the property of Windstil, unless otherwise negotiated and agreed in writing between the parties.
- 1.8.1.3 Windstil, its personnel, employees, agents, contractors or subcontractors will ensure that all confidential information of the Customer is not disclosed to any person other than as permitted by the Customer in writing or required by law.
- 1.8.1.4 The Customer, its personnel, employees or agents shall not disclose or permit to be disclosed to any third party any confidential information of Windstil, except as permitted by Windstil in writing or as required by law.
- 1.8.1.5 Neither of the parties shall, without the written approval of the other, disclose to any third party (other than their own legal advisers, (or otherwise as required by law) any of the terms of this Agreement.
- 1.8.1.6 Windstil undertakes to comply with its obligations to ensure compliance by its contractors, subcontractors and agents and provide reasonable assistance to the Customer in complying with the Customers' obligations under the Privacy Laws and any privacy policy of the Customer irrespective of whether Windstil is bound by the Privacy Laws.
- 1.8.1.7 Windstil acknowledges that damages are not adequate remedy if Windstil breaches any provision of clause 1.8 of this Agreement and the Customer may apply for injunctive relief if Windstil breaches or threatens to breach any provision of clause 1.8.
- 1.8.1.8 This clause 1.8 survives termination of this Agreement.

1.9 Employees

- 1.9.1.1 Neither Windstil nor the Customer shall, during the term of this Agreement or any extension of it, or for a period of six (6) months after the termination of this Agreement, solicit or attempt to solicit any employee of the other to leave his or her employment with that other party.

1.10 Subcontractors

- 1.10.1.1 Upon written consent from the Customer, Windstil shall be at liberty to subcontract any of the Contract Services to any reasonably competent person.
- 1.10.1.2 Windstil shall ensure that its contractors and subcontractors appointed with respect to the Contract Services enter into contracts with similar provisions as this Agreement and Windstil shall remain liable for reasonable loss, damage costs or other expenses incurred by the Customer as a result of any actions or inactions by Windstil's contractors and/or subcontractors.

1.11 Assignment

- 1.11.1.1 Neither party shall, without the prior written consent of the other, which may not be unreasonably withheld, assign or attempt to assign its rights or obligations under this Agreement.

1.12 Limitation of Liability

- 1.12.1.1 The liability of Windstil arising out of any defective, tardy or (partial or whole) failure to supply the Contract Services during the transition period or the provision of the Contract Services (whether arising through the negligence of Windstil, its servants or agents or otherwise) is limited to:
 - I. the supplying of the Contract Services again at Windstil's cost, or the cost of supplying the Services again, or

- II. providing the materials again at Windstil's cost or paying the cost of providing replacement materials.

1.12.1.2 The Customer shall not be liable for any compensation, reward, damages, cost or any other payment arising from any Incident (including an injury to an employee, agent, contractor or subcontractor of Windstil) where the Customer did not directly cause the incident (e.g. injury) to occur.

1.13 Insurance

1.13.1.1 Windstil shall at all times maintain all proper and adequate insurance with respect of normal industry business risks including product liability, cover for its property (moveable and immoveable) and against liabilities to its employees, third parties, contractors and injury.

1.14 Warranties

1.14.1.1 The Customer shall receive the benefit of all warranties and conditions which are implied by law and which Windstil may not lawfully exclude.

1.14.1.2 Subject to clause 1.14.1.1, but to the fullest extent permitted by law, Windstil excludes all other warranties and conditions in relation to the functionality of the Contract Services and limits its liabilities for a breach of an expressed or implied term, condition or warranty of this Agreement to one of the following at the option of Windstil:

- I. In the case of products, to the:
 - a) replacement of the products; or
 - b) repair of the products; or
 - c) cost of replacing the products; or
 - d) cost of repairing the products; and
- II. In the case of services, to the:
 - e) supplying of the services again; or
 - f) cost of supplying the services again.

1.15 Force Majeure

1.15.1.1 Either party may terminate this Agreement by providing fourteen (14) days written notice to the other in the event that it is unable to satisfy its obligations under this Agreement as a result of any cause beyond its control, including but not limited to industrial strikes, riots, fire, acts of god, acts of terrorism, changes in the law or regulations or orders of any court of competent jurisdiction.

1.16 Representatives/Notices

1.16.1.1 Either party may at any time notify the other in writing of the names of one or more nominated representatives of that party and of an address for service of notices which are permitted or required to be served under this Agreement. Thereafter, service of such notice on one or more of those persons shall be deemed to be good service upon that party.

1.16.1.2 If a party fails or neglects to notify the other in writing of the name of one or more nominated persons then service may be affected on that party, if a corporation, in accordance with the Corporations Law, but otherwise may be served on an individual by ordinary post at his or her last known address.

1.17 Variation of Agreement

This Agreement:

- I. constitutes the entire agreement between the parties.
- II. supersedes any prior understanding or agreement between the parties and any prior condition, warranty, indemnity or representation imposed, given or made by a party; and
- III. may only be amended in writing and signed by the parties via a letter of variation,

1.18 No Waiver

1.18.1.1 No waiver of any obligation or right under this Agreement shall be effective unless made in writing and signed by both parties. No waiver of any breach of any obligation under this Agreement shall constitute a waiver of any subsequent breach of the same or any other obligation.

1.19 Survival

1.19.1.1 The following provision shall survive the expiry or earlier termination of this Agreement: clauses 1.8 (Intellectual Property/Confidentiality), 1.12 (Limitation of Liability), 1.14 (Warranties), 1.23 (Dispute Resolution and Mediation), and 1.24 (Default/Termination).

1.20 Governing Law

- 1.20.1.1 This Agreement shall be interpreted in accordance with the laws of Victoria in the Commonwealth of Australia and the parties agree to submit to the exclusive jurisdiction of the courts of Victoria in the Commonwealth of Australia.

1.21 Severability

- 1.21.1.1 If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, then both parties shall be relieved of all rights and obligations arising under such provision but only to the extent that such provision is invalid, illegal or unenforceable; such provision shall be modified to the extent necessary to make it valid, legal and enforceable whilst preserving the intent of the parties. All other provisions of this Agreement shall be regarded as fully valid and enforceable unless otherwise proved.

1.22 Disengagement

- 1.22.1.1 Upon termination of this Agreement, whether by effluxion of time or otherwise, Windstil shall co-operate with the Customer to assist in handing over the conduct of the Contract Services to the Customer's new service provider and shall deliver all information on the Customer's systems and take all other steps reasonably likely to assist the new service provider.
- 1.22.1.2 Any assistance rendered by Windstil which goes beyond the Contract Services set out in section 3 of the MSA, or clause 1.21 of these General Terms, whether performed before or after the termination of this Agreement, shall be invoiced by Windstil on a 'do and charge' basis at Windstil's usual rates and the Customer shall pay those invoices within thirty (30) days of the date of the invoice. For the avoidance of doubt, the parties intend that the obligations in this clause survive the termination of this Agreement.

1.23 Dispute Resolution and Mediation

- 1.23.1.1 The party claiming that a dispute has arisen must notify the other party to the dispute giving details of the dispute.
- 1.23.1.2 During the ten (10) working day period or other such time period as agreed between the parties ('negotiation period') after a notice is given the parties must use their best efforts to resolve the dispute. In the event that the parties are unable to resolve the dispute within the negotiation period, the dispute shall be dealt with in the following manner:
- 1.23.1.3 The parties may agree to either:
- I. refer the dispute to the Australian Commercial Disputes Centre for mediation or any other agreed venue which conducts mediation; or
 - II. terminate this Agreement in accordance with clause 1.24.
- 1.23.1.4 If the parties refer the dispute for mediation, then:
- I. the parties will by agreement appoint a mediator to mediate the dispute in this forum. If the parties cannot agree to a mediator, then the mediator will be nominated by the then current President of the Law Institute of Victoria;
 - II. any documents produced for the mediation are to be kept confidential and cannot be used except for the purpose of settling the dispute;
 - III. each party must bear its own costs of resolving a dispute under this clause, and unless the parties otherwise agree, the parties to the dispute must bear equally the costs of the mediator; and
 - IV. in the event that the dispute is not settled at mediation within 28 days (or such other period as the parties agree in writing) after the appointment of the mediator, or if no mediator is appointed, then within 28 days of the referral of the dispute to mediation, then the parties are free to pursue any other procedures available at law for the resolution of the dispute.

1.24 Default/Termination

- 1.24.1.1 Windstil may terminate this Agreement forthwith by notice in writing to the Customer if:
- I. The Customer has failed to pay a Windstil invoice in full by the time specified in this Agreement; and
 - II. Windstil has given a notice in writing to the Customer specifying the default in payment and requiring that it be remedied within seven (7) days of the date of that notice; and
 - III. The Customer has failed to make the payment necessary to remedy the default within that seven (7) day period; and
 - IV. The Customer has not notified Windstil of a dispute under clause 1.23 in relation to the invoice.
- 1.24.1.2 Either party may, by written notice to the other, terminate this Agreement forthwith if:

- I. the first gives notice in writing to the other specifying an alleged default under this Agreement and requiring that the default be remedied within fourteen (14) days, and that default is not remedied within the time so specified;
- II. pursuant to clause 1.3, the parties are unable to resolve a dispute under clause 1.23 after thirty (30) days' notice of commencement of mediation;
- III. where a force majeure event has occurred under clause 1.15.

1.24.1.3 Upon termination of this Agreement the Monthly Fee payable for the month in which the termination occurs shall be adjusted to reflect the number of days the Contract Services shall be supplied to the Customer on the last month of the term of this Agreement.

Should you have any questions regarding our terms and conditions please do not hesitate to contact us on **1300 312 330**.