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Documentation Help and Support Terms of Service

Professional Services Terms and Conditions

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THESE PROFESSIONAL SERVICES TERMS AND CONDITIONS (these "**Terms and Conditions**") GOVERN CUSTOMER'S PURCHASE AND RECEIPT OF CLOUDBLUE PROFESSIONAL SERVICES. CAPITALIZED TERMS USED HEREIN HAVE THE DEFINITIONS SET FORTH BELOW.

BY (1) EXECUTING A STATEMENT OF WORK ("**SOW**") OR (2) AN ORDER FORM THAT REFERENCES THESE TERMS AND CONDITIONS ("**Order Form**"), CUSTOMER ACCEPTS AND AGREES TO THESE TERMS AND CONDITIONS. IF THE INDIVIDUAL ACCEPTING THESE TERMS AND CONDITIONS IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH INDIVIDUAL REPRESENTS THAT SUCH INDIVIDUAL HAS THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM "**Customer**" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF THE INDIVIDUAL ACCEPTING THESE TERMS AND CONDITIONS DOES NOT HAVE SUCH AUTHORITY, OR DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, SUCH INDIVIDUAL MUST NOT ACCEPT THESE TERMS AND CONDITIONS AND MAY NOT RECEIVE THE PROFESSIONAL SERVICES.

Translations of these Terms and Conditions are provided as a courtesy. Some things as written in English may not translate easily into other languages. Should there be any differences or discrepancies between the English version and any translations, the English version of these Terms and Conditions takes precedence.

1. **Services – Statement of Work**. SOW's or Order Forms (the "**Documents**") will state prices and other terms and conditions applicable to Services to be rendered. CloudBlue agrees to perform services ("**Services**") pursuant to the Professional Terms and Conditions, and CloudBlue and Customer will use commercially reasonable efforts to perform all tasks defined in the Documents ("**Deliverables**") as specified therein. Each Party will contribute the personnel and other resources to enable CloudBlue to perform the Services as described therein. Any Document executed may contain specific terms agreed upon in writing by CloudBlue and Customer; i.e., the "**Parties**." In the event of a conflict between these Terms and Conditions and the Document-specific terms, the Document-specific terms shall govern as to the work performed under that Document. Customer agrees to cooperate with CloudBlue in the performance of the Services and development, including, but not limited to, providing access (whether onsite or remotely as specified in the Document) as reasonably requested by CloudBlue to Customer's personnel, systems, equipment, and communications facilities. Customer acknowledges that delays caused by Customer's failure to reasonably cooperate in a timely manner (for example, platform availability, remote access, quick turn around on answers to questions and issues, decisions, access to facilities, and the like) may result in delays in CloudBlue's performance of the Services for which CloudBlue will not be held responsible. If such delays occur, CloudBlue will be entitled to an extension of time for completion of the Services and to recover from Customer additional costs CloudBlue may incur. CloudBlue will perform the Services remotely or onsite at a location as mutually agreed by the Parties as specified in the Document. Customer's failure to perform its contractual obligations and/or delays caused by Customer, or its vendors will relieve CloudBlue of any obligation for the payment of damages or penalties associated with project delays and it will cause a shift in the delivery accordingly. If reasonably possible, CloudBlue will notify the Customer's designated project leader via e-mail of any issues that CloudBlue believes will hinder, impact, and/or delay CloudBlue's performance of the Services. Unless otherwise specified in the applicable Document, all Deliverables are non-exclusive, and CloudBlue may provide the same or similar Deliverables to any or all of CloudBlue's other customers in its sole and absolute discretion.
2. **Exclusions**. Customer acknowledges and agrees that CloudBlue will perform the specific Services set forth in the applicable Document(s) only. CloudBlue's obligation to perform any Services not expressly provided under these Terms and Conditions and/or a Document is subject to the execution of one (1) or more additional Document. No post-delivery maintenance or support is provided under these Terms and Conditions unless specified in an applicable Document. Therefore, Customer acknowledges and agrees that Customer may need to purchase additional Services to maintain,

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support, and obtain upgrades after completion. The Parties agree that they may use electronic means, including email, PDF, and fax, to enter into valid and legal obligations relating to the Services performed under these Terms and Conditions.

3. **Payment and Credit**. All Fees are in United States dollars (USD) unless otherwise stated and have a payment term of net thirty (30) days from the date of invoice unless stated otherwise in the applicable Addenda or Exhibits. In order for CloudBlue to establish trade credit for Customer, CloudBlue must rely on the information provided by Customer as being correct and Customer hereby represents and warrants that the information it provides to include CloudBlue to extend credit and sell products or services to Customer, including without limitation any financial statements, is true and correct. Customer will immediately notify CloudBlue of any adverse changes to its financial condition. Customer agrees to notify CloudBlue in writing within five (5) days of name, identity, ownership, address, telephone, authorized purchasing agents, banks, transfer or listed assets or other facts previously provided. Customer agrees that any such changes will not affect liabilities to CloudBlue and will not be recognized until CloudBlue receives actual notice of the change by certified mail or an email from a validated officer of the Customer. CloudBlue reserves the right to decline or revoke credit at any time. Customer agrees that amounts due, as stated on CloudBlue's statements, are correct, conclusive, and binding on Customer unless Customer notifies CloudBlue in writing within thirty (30) days from the date a particular charge is first assessed, that Customer disputes such charge, acting in good faith. Customer's payment of the Fees is not subject to any setoff claims of any kind. If Customer fails to pay as required herein, CloudBlue will be, ([1] a) charging a late fee of 1.5% per month (or less, as per the maximum amount allowed by applicable law) for all amounts past due; and, ([2] b) charging Customer for all costs and expenses reasonably incurred by CloudBlue relating to collection of past due amounts (including reasonable collection agency fees, attorneys' fees, and the like). Customer agrees to pay and reimburse CloudBlue for all such amounts and Fees.
4. **Taxes**. All Fees are stated in a Document, and are exclusive of sales, use, excise, property, and all applicable export and import fees, customs duties, and similar charges or any other taxes or assessments of the like (collectively "Taxes"). Notwithstanding anything in these Terms and Conditions to the contrary, if any amounts (including without limitation any Taxes) are required to be withheld by Customer from any amount otherwise payable by Customer to or for the benefit of CloudBlue under these Terms and Conditions, Customer will: (a) pay an additional amount such that the net amount actually received by CloudBlue will, after all such withholdings (including any withholdings to be made in respect of any additional amount payable pursuant to this sentence), equals the full amount of the payment then due; (b) pay, or cause to be paid, to the relevant taxation authority the full amount of such withholdings (including the full amount of any withholdings in respect of any additional payment required to be paid pursuant to this sentence) in accordance with applicable law; and (c) furnish CloudBlue as soon as practicable (in any event, within thirty (30) days) with an official receipt (or a certified copy thereof) or such other documentation as is reasonably acceptable to CloudBlue evidencing payment of such withholdings to the relevant taxation authority. CloudBlue is responsible for the payment of all other taxes imposed by any governmental authority in connection with its performance under these Terms and Conditions. If Customer is a tax-exempt entity or claims exemption from any Taxes hereunder, Customer will provide a certificate of exemption upon agreement to these Terms and Conditions and, after receipt of valid evidence of exemption, CloudBlue will not charge Customer any Taxes from which Customer is exempt.
5. **Intellectual Property Rights**.

   a. **No Assignment or Transfer**. CloudBlue is not transferring or assigning to Customer or any other party any patent, copyright, trademark, or any other intellectual property rights, license, title, discovery, direct or indirect in relation to the performance of any Service or provision of a Deliverable, or otherwise. All data, copyrights, registrations, reports, or any works of authorship developed in accordance with any Document, or any related documents or understandings, or in direct or indirect relation to performance of any Services or provision of any Deliverable, or otherwise will be the sole property of CloudBlue or its licensors. For the avoidance of doubt, all intellectual property rights associated with any and all aspects of any SoW will remain the sole property of CloudBlue or its licensors without exception.

   b. **License to Documentation**. Unless otherwise agreed to by CloudBlue and Customer in writing, the Parties agree that

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any documentation provided in the Deliverables are licensed to Customer under, and are subject to, the same terms and conditions as the license governing the documentation under these Terms and Conditions and the applicable Documents.

c. **Third Party Materials**. Any third-party material ("Third Party Material") in the Deliverables including, without limitation, any third-party software, services, systems, documentation, or components, are not licensed by CloudBlue and CloudBlue takes no responsibility for any such Third Party Material. Customer will license Third Party Material directly from the owners and/or licensors of such material prior to using any Deliverables. If Customer orders Third Party Material from CloudBlue, such orders will be governed by separate written agreements between CloudBlue and Customer.

6. **Warranty, Indemnity, and Limitation of Liability**.

a. **Warranty**. CloudBlue warrants that the Services will conform to the representations by CloudBlue set forth in a Document and all such Services shall be performed in a professional and workmanlike manner. Within ten (10) business days of CloudBlue's completion of the milestones and/or Deliverable specified in the Document, Customer will provide CloudBlue with written notice of its acceptance or rejection of the Deliverable(s). Customer agrees that it will not reject any Deliverable so long as it substantially complies with the specifications or requirements set out in the Document. Customer's failure to respond within such ten (10) business day period will constitute acceptance of the Deliverable. Customer will then have ten (10) business days (or such other period mutually agreed in writing) to retest the Deliverables after CloudBlue has notified Customer that it has completed the corrections. Customer's failure to respond within such ten (10) business day period will constitute acceptance. This process will continue for no more than a commercially reasonable number of times as determined by CloudBlue or until Customer notifies CloudBlue of its acceptance of the Deliverable. If there is no acceptance after such efforts of CloudBlue noted above, the Parties agree to negotiate in good faith to agree on a solution which is mutually acceptable to both Parties. In any event, if Customer uses a Deliverable in a production or commercial environment, then Customer will be deemed to have accepted the Deliverable. Except as provided above, all express or implied conditions, representations, and warranties, including without limitation, any implied warranties or conditions of merchantability, fitness for a particular purpose, satisfactory quality, infringement, course of dealing, usage or trade practice are hereby excluded to the extent allowed by applicable law..

b. **Indemnity** Each Party will indemnify, defend, and hold the other Party and its officers, directors and employees harmless from and against any and all liabilities (including costs of defense, settlement, and reasonable attorney fees) that arise from third party claims to the extent attributable to bodily injury or damage to tangible personal property (not including data) caused by negligent, gross negligent, reckless, or willful misconduct of the Party or its employees or agents associated with Services performed hereunder.

c. **Limitation of Liability**. IN NO EVENT SHALL CLOUDBLUE BE LIABLE TO CUSTOMER OR ANY OTHER PARTY FOR INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO LOSS OF GOOD WILL, LOSS OF ANTICIPATED PROFITS, OR OTHER ECONOMIC LOSS ARISING OUT OF OR IN CONNECTION WITH CLOUDBLUE'S BREACH OF, OR FAILURE TO PERFORM IN ACCORDANCE WITH ANY OF THESE TERMS, OR THE FURNISHING, INSTALLATION, SERVICING, USE OR PERFORMANCE OF ANY SERVICES, OR INFORMATION CLOUDBLUE SHALL PROVIDE HEREUNDER, EVEN IF NOTIFICATION HAS BEEN GIVEN AS TO THE POSSIBILITY OF SUCH DAMAGES. CUSTOMER HEREBY EXPRESSLY WAIVES ANY AND ALL CLAIMS FOR SUCH DAMAGES.

Notwithstanding anything else herein, all liability of CloudBlue, its suppliers and its subcontractors for direct damages shall be limited to the amount paid by Customer to CloudBlue for Services under these Terms and Conditions during the six (6) month period immediately preceding the event or circumstances giving rise to such liability. The limitation of liability of CloudBlue and its suppliers under these Terms and Conditions shall be cumulative and not per incident.

7. **Subcontractors**. CloudBlue is authorized to subcontract Services hereunder and in doing so will have exclusive control and management over such subcontractors for ensuring that the Services are performed according to the terms of these Terms and Conditions and any applicable SOW. CloudBlue shall remain primarily liable for the acts and omissions of its subcontractors acting within the scope of Services set forth in any applicable Document.

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8. **Governing Law; Jurisdiction and Venue; Disputes; Time Limitation**. These Terms and Conditions and Document(s), the interpretation thereof and any disputes arising between the Parties thereto shall be governed by the laws of the State of New York, excluding its conflicts or choice of law provisions. The United Nations Convention on Contracts for the International Sale of Goods shall not apply. In the event of any dispute, claim, question, or disagreement arising from or relating to this agreement or the breach thereof, the Parties hereto shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both Parties. If they do not reach such solution within a period of 60 days, then, upon notice by either Party to the other, then the dispute shall be referred to arbitration administered by the American Arbitration Association in accordance with the provisions of its Commercial Arbitration Rules.

   Notwithstanding anything to the contrary set forth in these Terms and Conditions or in a Document, no dispute, action, suit or other proceeding, regardless of form, arising out of or relating to the transactions covered by these Terms and Conditions may be brought by either party against the other party more than twelve (12) months after the cause of action arose.
9. **Term and Termination**. Either party may terminate the Services immediately in the event of material breach of the obligations set forth in these Terms and Conditions or in a Document wherein the non-breaching party has provided the breaching party with written notice of five (5) days to cure and the breaching party has failed to cure. Either party may terminate Services for any reason and without penalty, in whole or part, upon ten (10) days prior written notice, provided, however, that Customer shall pay CloudBlue for all work completed by CloudBlue on such Services up through the effective date of such termination. If Customer terminates Services prior to completion of work on any project, CloudBlue shall take reasonable actions to mitigate expenses incurred with respect to that portion of the project not performed and Customer will reimburse CloudBlue for any such project expenses that CloudBlue cannot reasonably avoid in connection with that termination.
10. **Force Majeure**. Neither party shall be responsible for unforeseen circumstances beyond its reasonable control that make performance impossible or delay performance under these Terms and Conditions. To the extent that a party is prevented or delayed by such causes, the time to perform will be extended; provided, however, that payment obligations for sums payable at the time of the events shall not be extended.
11. **Waiver**. Failure by either party, on a per-incident basis, to insist upon performance by the other party or failure to act in the event of a breach shall not be construed as consent to or waiver of any subsequent failure to perform or breach of the same or of any other term or condition contained herein.
12. **Successors and Assigns**. These Terms and Conditions are binding upon and shall benefit each party, their respective successors and assigns.
13. **Severability**. If any provision of these Terms and Conditions or the application of any provision shall, by a court of competent jurisdiction, be declared invalid, unenforceable or void, such decision shall not have the effect of invalidating or voiding any other portion hereof. The parties intend and agree that these Terms and Conditions shall be deemed amended by modifying such provision to the extent necessary to render it valid, legal and enforceable while preserving its intent or, if such modification is not possible, by substituting another provision that is valid, legal and enforceable and that substantially achieves the same objective.
14. **Captions**. The captions and paragraph numbers appearing in these Terms and Conditions are inserted as a matter of convenience only and shall not in any way limit, amplify, or otherwise affect the terms and provisions hereof.
15. **Counterparts**. These Terms and Conditions may be executed in counterparts (including by email, PDF, or facsimile transmission), each of which shall constitute an original and all of which, when taken together, shall constitute one and the same agreement.
16. **Entire Agreement**. These Terms and Conditions, together with the applicable Documents, contain the entire understanding of the parties hereto with respect to the matters contained herein. There are no promises, covenants, or

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undertakings (oral or written) other than those expressly set forth herein. These Terms and Conditions supersedes and replaces in its entirety any and all other prior and contemporaneous agreements and understandings, whether oral, written or implied, if any, between the parties hereto with respect to the subject matter hereof.

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