

OneBlink Pty Ltd

Service Subscription Agreement

Agreement details:	
Commencement Date:	
Service Level selected:	
Fees:	
Any Additional Managed Services, Third Party Products (or special conditions):	tba
Customer details & address for notices:	
Name:	
ABN:	
Customer contact name and title:	
Customer contact email address:	
Website:	
Street address:	
Postal address:	
Telephone:	
Service Provider details:	
Service Provider:	OneBlink Pty Ltd ABN 29 114 830 723
Website:	www.oneblink.io
Street address:	102 / 159 Mann Street, GOSFORD NSW 2250
Email address:	accounts@oneblink.io
Telephone:	+61 2 4322 1355

SIGNED for OneBlink Pty Ltd

SIGNED for "CUSTOMER"

Signature of Officer: Signature of Officer:

Name (print): Name (print):

Office held (print): Office held (print):

Date: Date:

1. Definitions

1.1 Terms used in this document have the following meanings:

- a. "Agreement" means this document which describes the Service/s to be provided by OneBlink to the Customer.
- b. "Customer" means the customer named on the cover sheet of this Agreement. The definition of Customer (and the associated Fees) applies to each independent operating division of the customer (whether or not having a separate ACN, company number or other unique identifier).
- c. "Data Breach" means the loss of, or unauthorised access to, or unauthorised disclosure of, Personal or Sensitive Information (as defined in the Privacy Act).
- d. "External Managed Service" means any service offered by any person other than OneBlink.
- e. "External User" means any person who is not the Customer (or the Customer's employee, contractor or agent).
- f. "Fair Use Policy" means the policy that governs the Customers' usage of certain variable metrics within the Service.
- g. "Fees" are the fees charged to the Customer for the Service Level subscription (and where applicable any Additional Managed Services or Third-Party Services).
- h. "OneBlink" means OneBlink Pty Ltd ACN 114 830 723.
- i. "Personal or Sensitive Information" means personal information (as that term is defined in the Privacy Act) and sensitive information (as that term is defined in the Privacy Act), or any equivalent definition in any Privacy Laws as the case requires.
- j. "Pricing Schedule" means the pricing schedule attached to this Agreement, whether recorded in any quotation or Customer Purchase Order or otherwise accepted by the Customer, which details the subscription Service Level and the agreed Fees.
- k. "Privacy Act" means the *Privacy Act 1988* (Cth).
- l. "Privacy Laws" means the Privacy Act and any equivalent legislation that applies to the supply of the services in the Customer's agreed location.
- m. "Security Statement" means the security statement published by OneBlink from time to time, including on its website.
- n. "Service" means the services offered by OneBlink detailed in the [Product Specification](#) for the OneBlink Low-code Suite (LcS) and made available to the Customer under a managed 'as-a-Service' model, but excluding any External Managed Services or Third Party Products.
- o. "Service Level" means that level of service selected by the Customer, which has the features and usage thresholds specified in the Pricing Schedule.
- p. "Third Party Product" means any product offered by any person other than OneBlink.

2. Introduction

- 2.1 Customer can select from the below OneBlink Service Levels that Customer considers most

suitable and appropriate for its business need or budget:

- a. OneBlink 'Form Builder' Service (extension service for Freshworks customers only),
 - b. OneBlink 'Starter' Service,
 - c. OneBlink 'Business' Service,
 - d. OneBlink 'Enterprise' Service,
 - e. OneBlink 'Unlimited' Service (by negotiation).
- 2.2 This Agreement sets out the terms and conditions under which OneBlink will supply either the 'Form Builder' or 'Starter' Service for the Customer to build and manage its own forms or custom applications.
 - 2.3 Customers can upgrade to a higher Service Level at any time on payment of the revised Fees and as agreed by OneBlink.
 - 2.4 Customer acknowledges there will be an addendum of expanded terms and conditions governing the upgrade from either the Freshworks 'Form Builder' or 'Starter' Services.
 - 2.5 A Fair Use Policy applies to Customers' usage of the Service across each of the Service Levels. For details see [Fair Use](#).

3. Key dates

- 3.1 This Agreement commences on the Commencement Date noted on the details page of this Agreement.

4. Fees & Service Provision

- 4.1 Unless otherwise agreed, OneBlink's standard payment processes are for the Customer to establish a monthly direct debit via OneBlink's nominated bank.
- 4.2 Unless specified in this Agreement, other than each of the Service Level Fees there are no separate OneBlink support and maintenance charges, hosting, data charges or 'per user' charges. There may be charges for External Managed Services, or Third-Party Products.
- 4.3 OneBlink is under no obligation to provide the Service or maintain Customer data, information or other material after this Agreement is terminated or if Fees are past due and unpaid.
- 4.4 Any warranties, indemnities or guarantees provided by OneBlink under this Agreement, any liability of OneBlink under this Agreement become null and void and of no further force or effect if Fees are past due and unpaid.
- 4.5 OneBlink may terminate the Customer's Service at any time on 5 working days' notice once Fees are past due and unpaid. Such termination does not affect the Customer's obligations to pay the Fees.

5. Support

- 5.1 If as a part of diagnosis for a support issue escalated by a Customer or OneBlink discovers the fault is due to an issue within the Customer's (or the External User's) devices, network, users or destination system connectivity (or generally any other fault outside of the Service) OneBlink may charge the Customer appropriate time and materials costs for diagnosing the fault.

6. Prices exclude applicable GST

- 6.1 Any prices quoted by OneBlink are exclusive of any applicable GST. "GST" has the same meaning as that term does in the *A New Tax*

System (Goods and Services Tax) Act 1999 (Cth) in Australia, and means any equivalent value added tax or goods and services tax that applies to the supply of the Services in the Customer's agreed location.

7. Warranties

7.1 OneBlink warrants and agrees as follows:

- a. it and its employees, agents, contractors and subcontractors have the training, skills and experience to deliver the Service.
- b. it will perform the Services with reasonable care and skill and will reasonably require its employees, agents, contractors or subcontractors to perform the Services in a proper and professional manner;
- c. it and its employees, agents, contractors and subcontractors have the licences, rights, permissions, consents and authorities required to carry out the Services;
- d. it is engaged as an independent contractor only and no employment relationship exists between the Customer and OneBlink or any of OneBlink's employees, agents, contractors or subcontractors;
- e. it will comply with all relevant Commonwealth, State, Territory and local government laws and regulations (or where applicable to the Services any equivalent laws in the Customer's agreed location).

7.2 The warranties in clause **7.1** do not apply to the extent of matters which are dependent on factors outside of OneBlink's control.

7.3 The warranties given in clause **7.1** do not apply to or cover any External Managed Services or Third-Party Products, and those External Managed Services or Third-Party Products are subject to the warranty given by the supplier of those services or products.

8. Intellectual Property

8.1 OneBlink is the owner of all right, title and interest in all Intellectual Property in the Service and all of its trademarks and logos.

8.2 This Agreement does not convey any interest in the Intellectual Property in the Service to the Customer, and the Customer must not access or use any of the Intellectual Property in the Service except as contemplated by this agreement. This clause continues to apply after this Agreement ceases for any reason.

8.3 For the purpose of this clause, "Intellectual Property" includes any:

- a. copyright;
- b. designs (as embodied in but not limited to drawings, computer software, solid models and algorithms), patents, trademark, semiconductor, circuit layout or plant breeder rights (whether registered, unregistered or applied for);
- c. trade, business, company or domain name;
- d. know-how, inventions, processes and Confidential Information (whether in writing or recorded in any form); and
- e. any other proprietary, licence or personal rights arising from intellectual activity in the business, industrial, scientific or artistic fields, whether registrable or not and that presently exists or may arise in the future.

8.4 The Customer represents that it has all intellectual property rights in any Customer information and data, and where the Customer is unsure it must seek the permission of the content owner.

8.5 OneBlink and its employees, agents, contractors and subcontractors must not use any Intellectual Property licensed or otherwise supplied by the Customer to OneBlink or its employees, agents, contractors and subcontractors, for any purpose other than providing the Service.

8.6 The Customer retains all rights and ownership over any Customer data that passes through the Service.

9. Confidentiality

9.1 Each party must not directly or indirectly make use of, copy or disclose to any third party any of the other party's Confidential Information without the other party's prior written consent or as required by law.

9.2 Each party must immediately notify the other party if it becomes aware of any suspected or actual unauthorised use, copying or disclosure of the other party's Confidential Information and provide such reasonable assistance as required by the other party to deal with such an event, including such assistance as may reasonably be required by the other party in relation to any proceedings the other party may take against any person or entity for unauthorised use, copying or disclosure of other party's Confidential Information.

9.3 Each party and its employees, agents, contractors and subcontractors must not disclose the terms of this Agreement or any other activity of the other party to any third party without the other party's prior written approval (except where necessary to obtain legal, financial or any other form of professional advice, or as required by law).

9.4 This clause continues to apply after this Agreement ceases for any reason.

9.5 For the purpose of this clause in respect of each party's "Confidential Information" includes but is not limited to:

- a. information which is specifically designated as confidential by the person providing the information on behalf of the other party;
- b. information which by its nature may be reasonably understood to be confidential;
- c. the other party's trade secrets and Intellectual Property;
- d. information regarding the other party's financial or business affairs;
- e. the other party's marketing plans, and marketing and sales techniques;
- f. the other party's employee and contractor information;
- g. the other party's business systems, and operating procedures or manuals; and
- h. any note, calculation, conclusion, summary or other material incorporating or derived or produced partly or wholly from the information in (a) to (g) above,

excluding information which is in the public domain other than as a result of a breach of confidentiality by the first mentioned party or its employees, agents, contractors and subcontractors.

10. Password, Account Security and Hosting

- 10.1 The Customer is responsible at all times for maintaining the confidentiality for any password to the OneBlink Service.
- 10.2 OneBlink is not liable for any loss or damage where the Customer breaches or fails to comply with its password obligations as set out in this Agreement.
- 10.3 The Customer must immediately notify OneBlink of any unauthorised use of its password or OneBlink account, or any breach of security.

11. Exclusion of certain liability

- 11.1 The Customer relies on its own skill and judgment in selecting the appropriate Service and Service Level and acknowledges that it has received no promise, guarantee, representation, warranty or undertaking regarding profitability or any consequence or benefit to be obtained from the Service.
- 11.2 OneBlink acknowledges that the *Competition and Consumer Act 2010* (Cth) and other legislation (including where applicable equivalent legislation that applies to the supply of the Service in the Customer's agreed location) implies certain statutory guarantees, conditions and warranties into contracts for the supply of goods or services to consumers in relation to the provision of the Service that cannot be excluded, restricted or modified (**Non-Excludable Terms**). Nothing in this Agreement is intended to exclude or restrict the application of the Non-Excludable Terms.
- 11.3 To the full extent permitted by law, OneBlink excludes all other representations, warranties, guarantees, conditions or other terms and liability (by whatever legal theory, whether contract, tort or otherwise) both express and implied (including warranties implied by statute or otherwise) including as to the description, quality, performance or fitness for its purpose of the Service, other than the Non-Excludable Terms.
- 11.4 In no event will OneBlink or any of its directors, officers, employees or related bodies corporate be liable for any claim for damage or any special incidental, indirect or consequential loss, (including damages for loss of profits, business interruption, or loss of reputation, data or computer programs whether foreseeable or unforeseeable, whether based on contract, tort or any other legal theory).

12. Indemnity

- 12.1 OneBlink agrees to indemnify and keep indemnified the Customer, its related bodies corporate, officers, employees and agents, against all damage, liability and/or costs (including but not limited to GST and reasonable legal fees and costs of defence) in respect of any third party claim against the Customer resulting from OneBlink failing to have adequate right, title and interest in all Intellectual Property in the Service (**Infringement Claim**), provided that the Customer notifies OneBlink promptly in writing of any such Infringement Claim, grants OneBlink sole control over the defence and settlement of the Infringement Claim, and reasonably cooperates with OneBlink in response to a request for assistance. OneBlink will have the exclusive right of defending and

settling any Infringement Claim at its own discretion, and Customer must not settle or compromise any Infringement Claim without the prior written approval of OneBlink.

13. Privacy

- 13.1 OneBlink its affiliates, subsidiaries and partners, respect and are committed to protecting the privacy of the Customer and any External Users.
- 13.2 If the Customer uses the OneBlink Service to build solutions or in any way that collects, stores or accesses External Users' Personal or Sensitive Information, including but not limited to names, phone numbers, and email contact details, the Customer represents and warrants to OneBlink that:
- the Customer complies with the Privacy Laws in relation to the collection, storage and access of that Personal or Sensitive Information;
 - the Customer provided all disclosures required under the Privacy Act in relation to the collection of the Personal or Sensitive Information, including identifying all parties that will be handling that Personal or Sensitive Information; and
 - such Personal or Sensitive Information is collected solely for the purpose disclosed by the customer, including for the operation of their business solutions.
- 13.3 OneBlink will not store any data that Customer solutions collect beyond a minimum 24-hour period unless the Customer specifically chooses and agrees to the terms to activate a longer retention period in the OneBlink Service.
- 13.4 OneBlink agrees that it will comply with the Privacy Laws, and will ensure that its employees, agents, contractors and subcontractors agree to comply with the Privacy Laws regarding OneBlink's collection, use and disclosure of any Personal or Sensitive information which OneBlink and/or its employees, agents, contractors and subcontractors collect during the term of this Agreement.
- 13.5 The Customer may collect, use, store or disclose Personal or Sensitive Information by use of the Services, and this may occur without OneBlink's knowledge. The Customer is solely responsible for complying with all Privacy Laws in respect of all Personal or Sensitive Information collected, used, stored or disclosed by the Customer. OneBlink has no liability or responsibility in respect of such Personal or Sensitive Information.
- 13.6 OneBlink will use its reasonable endeavours to prevent unauthorised access to External User Personal or Sensitive Information which comes into its possession by operating in accordance with its Security Statement and OneBlink will not release any External User information to any organisation or individual other than the Customer (except if compelled by law).
- 13.7 OneBlink is bound by the Privacy Act and will ensure compliance with the Privacy Act in respect of any Personal or Sensitive Information of which OneBlink is aware.
- 13.8 If a party becomes aware there has been a Data Breach, then that party:
- must notify the other party as soon as practicable of the Data Breach;

- b. take all steps to comply with all applicable laws (including the Privacy Act) in relation to the Data Breach;
 - c. promptly disclose to the other all information relevant to the Data Breach; and
 - d. co-operate with the other in investigating the circumstances surrounding the Data Breach, including assessing whether or not an eligible data breach (as defined in the Privacy Act) has occurred. If applicable, the parties must jointly agree on the notification process and wording to notify any Australian government agency and the External Users whose Personal or Sensitive Information was subject to the Data Breach.
- 13.9 Where an eligible Data Breach has occurred so that information relating to that Data Breach must be disclosed to any Australian government agency, the parties must use all reasonable endeavours to agree on the process for disclosure of that Data Breach to the relevant Australian government agency. In the absence of agreement within a reasonable time, OneBlink is authorised to disclose that eligible Data Breach to the relevant Australian government agency on behalf of the parties.
- 14. Termination**
- 14.1 If the Customer is in breach of this Agreement, OneBlink may terminate this Agreement if, 10 days after it has notified the breach to the Customer in writing, the breach has not been rectified. This is in addition to (and does not limit) OneBlink's rights under clause 4 in relation to non-payment of Fees.
- 14.2 If OneBlink is in breach of this Agreement, the Customer may terminate this Agreement if, 10 days after it has notified the breach to OneBlink in writing, the breach has not been rectified.
- 14.3 The Customer may terminate this Agreement at any time by giving OneBlink at least 30 days' notice in writing.
- 14.4 If, having terminated this Agreement in accordance with this clause, the Customer continues to use the Service by accessing, using or uploading material to the Components, this Agreement will be construed as having been renewed and the Customer will continue to be liable for the Fees.
- 14.5 In the event of termination of the Service for any reason, the Customer may request that any data belonging to the Customer is delivered to the Customer prior to its removal or deletion.
- 15. Activity data retention**
- 15.1 OneBlink will on request provide activity logs relevant to Customer's use of the Service while this Agreement is in place. Any charges to access any archived data will be quoted in advance for Customer to approve, where such archived data is still available (noting that OneBlink has no obligation to keep any data after this Agreement is at an end).
- 16. Liability**
- 16.1 To the extent permitted by law, OneBlink's liability to the Customer for any loss arising from the delivery or non-delivery of the Service and the indemnity given by OneBlink in clause 12 is limited to the cost of supplying the relevant Service again.
- 16.2 Other than the liability OneBlink accepts under clauses 11.2 and 16.1, OneBlink excludes all other liability to the Customer (and any third party) whether for breach of contract, negligence, breach of law or otherwise.
- 16.3 In all cases, OneBlink's liability will be reduced to the extent any loss or damage is caused by the Customer or its employees or agents.
- 16.4 To the extent that OneBlink has any liability relating to any External Managed Services or Third Party Products and the limitation of liability in respect of those services or products is more restrictive than that set out in this clause 16, any liability of OneBlink is further reduced to the limit of liability specified in the relevant terms and conditions relating to the External Managed Services or Third Party Products.
- 17. Dispute Resolution**
- a. A party may not commence any court or arbitration proceedings relating to a dispute that has arisen under or in relation to this Agreement unless it complies with this clause, except where the party seeks urgent interlocutory relief.
 - b. A party claiming that a dispute has arisen under or in relation to this Agreement must give written notice to the other party specifying the nature of the dispute.
 - c. On receipt of the notice by the other party, the parties must endeavour in good faith to resolve the dispute expeditiously by discussion between OneBlink's CEO and the CEO of the Customer (or any other suitably senior representative of the Customer with authority to resolve the dispute).
 - d. If the dispute has not been resolved by the parties in 30 days from delivery of notice, either party may take whatever steps are available to them under this Agreement.
- 18. General**
- 18.1 This Agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, proposals, offers, representations, arrangements, understandings, covenants, terms, conditions, warranties or provisions of all types relating to this Agreement's subject matter, whether express or implied and whether written or oral. This Agreement or any part may be varied, modified, amended or added to only as agreed by the parties.
- 18.2 This Agreement must be interpreted and governed by the law of the state of New South Wales and the Commonwealth of Australia as applicable. If a dispute arises in relation to this Agreement, it must be subject to the exclusive jurisdiction of the courts of New South Wales and the Commonwealth of Australia. In the event that any provision of the Agreement is held to be invalid, unenforceable or illegal, that provision must be ignored to the extent of its invalidity, unenforceability or illegality, and all other provisions of this Agreement will remain in full force and effect.
- 18.3 A failure or delay by a party to enforce a provision of this Agreement will not be construed as a waiver of the party's rights under this Agreement.