

OUR CUSTOMER TERMS AMAZON WEB SERVICES (AWS) SERVICES

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1 ABOUT THIS AWS SERVICES SECTION

- 1.1 In addition to this Amazon Web Services (AWS) Services section of Our Customer Terms, unless we agree otherwise, the following terms also apply:
- (a) General Terms of Our Customer Terms (see <http://www.telstra.com.au/customer-terms/business-government/index.htm>); and
 - (b) General Terms of the Cloud Services section (see <https://www.telstra.com.au/customer-terms/business-government#cloud-services>); and
 - (c) other parts of the Cloud Services section, depending on the nature of the products and services that you receive from us.
- 1.2 For an explanation of the interrelationship between the various sections of Our Customer Terms see clause 1 of the General Terms of the Cloud Services section at the link above.

2 AWS BILLING SERVICE

- 2.1 This AWS Services section of Our Customer Terms allows us to invoice you on a Telstra invoice for the:
- (a) AWS Services you receive or access from AWS under your AWS Services Agreement; and
 - (b) AWS Marketplace Purchases you make from a Vendor in the AWS Marketplace under your Vendor Agreement (and AWS Services Agreement to the extent relevant),
- (together, the **AWS Billing Service**).
- 2.2 You must pay us for your AWS Services and AWS Marketplace Purchases under the terms of this Amazon Web Services (AWS) Services section of Our Customer Terms.
- 2.3 Further details regarding acquiring AWS Services and AWS Marketplace Purchases to be invoiced by us on a Telstra invoice under this Amazon Web Services (AWS) Services section of Our Customer Terms are available at: <https://s3-us-west-2.amazonaws.com/solution-provider-program-legal-documents/AWS+Solution+Provider+Program+-+Program+Guide+for+End+Customers.pdf> (and any successor or related locations designated by AWS), as may be updated by AWS from time to time.
- 2.4 This section of Our Customer Terms applies in respect of any AWS Marketplace Purchases made on or after 7 March 2024.

Eligibility and your obligations

- 2.5 Our provision of the AWS Billing Service is subject to you, for the Term:
- (a) having a separate AWS Services Agreement with AWS to receive and access AWS Services directly from AWS;

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- (b) if you make any AWS Marketplace Purchases, having a separate Vendor Agreement with the relevant Vendor;
 - (c) being a registered Australian business for GST purposes; and
 - (d) complying with all applicable laws relating to the AWS Services.
- 2.6 Acquiring AWS Billing Services is not generally available to Public Sector Customers. By ordering the AWS Billing Service, you acknowledge and confirm:
- (a) you are not a Public Sector Customer; or
 - (b) if you are a Public Sector Customer you are located in Australia and before entering this Agreement, you have:
 - (i) entered an AWS Services Agreement directly with AWS; and
 - (ii) received confirmation in writing from us that you comply with clause 2.6(b)(i).
- 2.7 You permit us to disclose any of your information to AWS for the purpose of clause 2.6.
- 2.8 We may terminate, cancel or suspend your AWS Billing Service by notice to you at any time if it is found you are in breach of sections 2.5 or 2.6.

Separate agreement with AWS for AWS Services and Vendors for AWS Marketplace Purchases

- 2.9 You acknowledge and agree that:
- (a) we do not provide you with any AWS Services or any AWS Marketplace Purchases. You receive your:
 - (i) AWS Services from AWS under the terms of your AWS Services Agreement which governs your access to and use of those services (except for any terms relating to billing, payment and taxes which are replaced with the terms in clauses 3 and **Error! Reference source not found.** of this Amazon Web Services (AWS) Services section of Our Customer Terms); and
 - (ii) AWS Marketplace Purchases from the Vendor under the terms of your Vendor Agreement which governs your access to and use of those services (except for any terms relating to billing, payment and taxes which are replaced with the terms in clauses 3 and **Error! Reference source not found.** of this Amazon Web Services (AWS) Services section of Our Customer Terms);
 - (b) you will not prevent AWS exercising any of its rights or performing any of its obligations under your AWS Services Agreement, nor any Vendor from exercising any of its rights or performing any of its obligations under your Vendor Agreement;

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- (c) contractual rights, commitments or obligations between you and AWS under your AWS Services Agreement in respect of the AWS Services, do not apply between us and you;
- (d) contractual rights, commitments or obligations between you and the Vendor under your Vendor Agreement in respect of AWS Marketplace Purchases, do not apply between us and you; and
- (e) you will not pursue us, and we have no liability to you (including your end users) or any third party, for any Losses arising out of, or in connection with, your AWS Services and AWS Services Agreement, or AWS Marketplace Purchases and Vendor Agreement, as applicable.

2.10 Conversely, you acknowledge and agree that AWS provides the AWS Services only, and Vendors provide the AWS Marketplace Purchases only, and they do not provide any of our services (including the AWS Billing Service), and you will not bring any dispute, complaint or claim against AWS or the Vendor in relation to our services (including the AWS Billing Service).

Accessing your AWS account and giving you root access to our management account

2.11 If you do not already have an AWS account, you consent to us, on your behalf:

- (a) creating an AWS account in the legal name of the entity you have nominated in your Application Form; and
- (b) entering and accepting an AWS Customer Agreement (located on the AWS site at <http://aws.amazon.com/agreement>) between you and AWS, the terms of which you acknowledge you have read and accept.

2.12 We will maintain a management account of your AWS organisation under our name to enable us to administer the AWS Billing Services. If we allow you root access to that management account, you must comply (and ensure that your Personnel comply) with the AWS Customer Agreement in connection with your use of our management account.

2.13 If you are granted root access to the management account, you agree not to:

- (a) override, modify or delete any of the rights that enable us to undertake billing activities in the management account; or
- (b) take any action(s) that affects the integrity of the data in the management accounts.

3 PAYMENT AND INVOICING

3.1 We will invoice you and you must pay us the charges and fees for the AWS Services and AWS Marketplace Purchases which have been incurred on your AWS account.

3.2 You agree that:

- (a) AWS Services and AWS Marketplace Purchases are sold globally and are quoted in a single currency – the US dollar;

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- (b) the pricing for your AWS Services and AWS Marketplace Purchases made available in pricing information we provide you, your AWS account or otherwise is displayed in US dollars and does not include GST (unless specified otherwise);
 - (c) your Telstra bill will show prices in Australian dollars and payment is required in Australian dollars, directly to us; and
 - (d) AWS do not add any pre-GST charges to your purchases of AWS Services, and GST will be added on your Telstra bill after the AWS Service and AWS Marketplace Purchases charges are converted into Australian dollars.
- 3.3 The charges for the AWS Services and AWS Marketplace Purchases will ordinarily be billed monthly in arrears, with the exception of the Reserved Instance AWS Service, which will be billed in whole or in part monthly in advance. You must pay all charges within 30 days of the date of invoice.
- 3.4 The charges on your invoice from us are the fees and charges for the AWS Services you have accessed and used, and the AWS Marketplace Purchases you have made under the terms of your AWS Services Agreement. If you genuinely dispute the charges for any of the AWS Services or AWS Marketplace Purchases appearing on an invoice issued by us, you must:
- (a) pay us the charges for all undisputed amounts by the due date; and
 - (b) within 30 days of the date of the invoice notify us in the writing of the disputed amount and:
 - (i) if the disputed amount is due to our requirement to invoice you for your AWS Services or provide the AWS Billing Service, you need not pay the disputed amount until the dispute is resolved; or
 - (ii) if we notify you that the disputed amount relates to provision of your AWS Services by AWS or your AWS Marketplace Purchases or AWS Services Agreement, within 30 days of our notice to you under this clause 3.4(b)(ii), you must make, and attempt to resolve, a claim for the disputed amount directly with AWS under the terms of your AWS Services Agreement (or the Vendor Agreement, as applicable).
- 3.5 If after 30 days of us notifying you under clause 3.4(b)(ii) the disputed amount remains due and payable on your AWS account, you must pay us for the disputed amount (unless AWS directs or we agree otherwise due to a resolution you have reached with AWS or the Vendor in relation to the disputed amount).

4 VARIATIONS

4.1 You acknowledge and agree that:

- (a) subject to clause 4.1(b) and despite any other provision of Our Customer Terms, we may amend the terms of this Amazon Web Services (AWS) Services section of Our Customer Terms from time-to-time by giving you prior notice;

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- (b) if we reasonably consider a change to the terms of this Agreement will cause detriment to you, we can make the change by first giving you at least 30 days' notice of the change. You can cancel your AWS Billing Services under this Agreement within the period of notice we gave you if do not accept the changes, in which case:
 - (i) you will only incur usage fees and charges for the AWS Billing Services up to the cancellation date; and
 - (ii) if you have been billed in whole or part in advance for a Reserved Instance AWS Service, the services will be transitioned to AWS under your AWS Services Agreement.

5 LIABILITY AND INDEMNITY

- 5.1 You indemnify us from and against any Losses relating to any claims made against us by AWS or any Vendor, or any of their respective affiliates, licensors, employees, officers, directors and representatives, arising from or in connection with any breach by you (or your Personnel) of:
 - (a) clauses 2.5(a), 2.5(b) and 2.5(d) (Eligibility and your obligations);
 - (b) clause 2.6 (Eligibility and your obligations);
 - (c) clause 2.10 (Separate agreement with AWS for AWS Services and Vendors for AWS Marketplace Purchases);
 - (d) clause 2.12 (Accessing your AWS account and giving you root access to the management account) in connection with use of our management account (if relevant); and
 - (e) clause 7.1 (Privacy and Confidentiality).
- 5.2 Except for indemnification under clause 5.1 and your payment obligations under this Amazon Web Services (AWS) Services section of Our Customer Terms, neither party (nor any of their affiliates or licensors) will be liable to the other party under any claims, arising out of, or in connection with:
 - (a) loss of profits, revenues, customers, opportunities or goodwill;
 - (b) cost of procurement of substitute goods or substitute services;
 - (c) any indirect, incidental, special, consequential or exemplary damages; or
 - (d) investments, expenditures or commitments by you.
- 5.3 We exclude all liability to you (including to your end users and Personnel) for any claims made by you or a third party for Losses arising out of, or in connection with, your:
 - (a) AWS Services or the terms of your AWS Services Agreement; and
 - (b) AWS Marketplace Purchases or the terms of your Vendor Agreement(s),

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except in relation to any claim by AWS or a Vendor against you alleging non-payment for your AWS Services or AWS Marketplace Purchases, respectively, to the extent such claim is caused by our failure to pay AWS for your AWS Services or the Vendor for your AWS Marketplace Services on your behalf.

- 5.4 Except for indemnification arising under clause 5.1 and your payment obligations under this Amazon Web Services (AWS) Services section of Our Customer Terms, the aggregate liability of either party and any of their respective affiliates or licensors will not exceed the amount paid by you to us under the AWS Billing Service during the 12 months before the liability arose.
- 5.5 The exclusions and limitations in this clause 5 and other parts of this Amazon Web Services (AWS) Services section of Our Customer Terms apply to the greatest extent permitted by law and apply to all liability in connection with Amazon Web Services (AWS) Services section of Our Customer Terms (whether in contract, tort (including negligence), statute or otherwise. For any liability which cannot lawfully be excluded, but can be limited, our liability to you is limited to our choice of re-supplying or paying the cost of re-supplying the AWS Billing Service.
- 5.6 Notwithstanding anything else in this section of Our Customer Terms:
- (a) nothing in this Amazon Web Services (AWS) Services section of Our Customer Terms excludes or limits, or has the effect of excluding or limiting, the operation of the Australian Consumer Law or any right you may have under the Australian Consumer Law which cannot be excluded or limited; and
 - (b) a party's liability for any loss or damage will be reduced to the extent the relevant loss or damage is caused or contributed to by the other party or its Personnel.

6 TERM AND TERMINATION

- 6.1 Your AWS Billing Service begins on the date we accept your Application Form and continues until it is terminated (**Term**).
- 6.2 Either party may terminate the AWS Billing Service on 30 days' notice to the other party.
- 6.3 We may terminate, suspend or cancel the AWS Billing Service immediately if:
- (a) you commit a material breach and do not remedy the breach within 30 days of receiving a notice to do so;
 - (b) you do not pay us any amounts due in accordance with clause 3;
 - (c) AWS terminates or cancels our right to provide the AWS Billing Service in which case, if possible, we will give you reasonable notice;
 - (d) all the AWS Services on your AWS account have been cancelled or terminated for 45 days;
 - (e) you violate an applicable law or it is necessary for us to comply with applicable laws or requests of government entities;

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- (f) your use of the AWS Services expose or threaten to expose us or AWS to any material liability;
 - (g) if the Australian Competition and Consumer Commission (ACCC) issues or we reasonably anticipate that the ACCC may issue a competition notice in relation to a AWS End Customer Service;
 - (h) if you are or become a carrier or carriage service provider (as defined in the Act); and
 - (i) you become bankrupt or insolvent (or appear likely to do so) or an administrator, receiver or scheme administrator is appointed to you, and that administrator, receiver or scheme administrator does not accept personal liability for the ongoing supply of services by us within 3 business days of our request that they do so.
- 6.4 Where provision of the AWS Billing Service has been suspended or cancelled by us we may require you to pay a re-instatement charge if the rebilling service is re-instated.
- 6.5 Any termination, cancellation or suspension of the AWS Billing Service does not terminate, cancel or suspend your AWS Services supplied by AWS, or AWS Marketplace Purchases supplied by a Vendor. If you wish to terminate your AWS Services or AWS Marketplace Purchases, you must do so under the terms of your AWS Services Agreement with AWS and/or Vendor Agreement with the Vendor (as applicable). Nothing in this Amazon Web Services (AWS) Services section of Our Customer Terms limits or prevents any termination rights of you or AWS under your AWS Services Agreement, or you or the relevant Vendor under a Vendor Agreement.
- 6.6 If you or AWS terminate any of your AWS Services under your AWS Services Agreement, or a Vendor terminates any of your AWS Marketplace Purchases under your Vendor Agreement, you must notify us in writing.
- 6.7 If your AWS Billing Service expires or is terminated for any reason:
- (a) you must pay us all outstanding invoices by the due date and within 30 days of a request for payment, all other amounts outstanding as at the date of, or arising as a result of, expiry or termination; and
 - (b) all rights a party has accrued before expiry, termination or cancellation continue.
- 6.8 If your AWS Billing Service expires or terminates for any reason clauses 2.9 (Separate Agreement with AWS for AWS Services and Vendors for AWS Marketplace Purchases), 5 (Liability and indemnity), 6.7 (Termination), 7 (Privacy and confidentiality) and 8 (Dispute Resolution) continue in full force and effect.

7 PRIVACY AND CONFIDENTIALITY

- 7.1 You agree and will ensure that any of your Personnel, related bodies corporate (and their personnel), and any individuals, who receive services or whose information is disclosed to us, in connection with the AWS Billing Service are aware that:

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- (a) we may use and disclose information about you and each of them to AWS who you consent may then collect, process, use and disclose information about you and each of them in accordance with AWS' Privacy statement and Privacy Notice (as amended by AWS from time to time), which is available at: https://aws.amazon.com/privacy/?nc1=f_pr; and
- (b) information about you and each of them that you and each of them disclosed directly to AWS or any Vendor is separate to any information about you and each of them that you disclose to us under or in connection with this Agreement and we are not liable to you or any of them in respect of any such disclosure.

7.2 Despite any other provision of any other agreement, you agree that:

- (a) the details of any private pricing offer you and we agree are confidential between us and you must not disclose them to any third party (including the Vendor);
- (b) we may receive a commission or benefit in connection with any private pricing offer we agree with you;
- (c) to give effect to the AWS Billing Services (and to implement any private pricing offer you and we have agreed), we may disclose to AWS any information reasonably necessary to enable AWS to perform its billing and administrative functions in connection with the AWS Marketplace Purchases (and we will not be able to retrieve or control the handling of that information once disclosed and have no liability for AWS' handling of such information once received); and
- (d) we may also receive information from AWS reasonably necessary for us to provide the AWS Billing Services.

8 DISPUTE RESOLUTION

- 8.1 The parties agree to use best endeavours to resolve in good faith any dispute concerning this Amazon Web Services (AWS) Services section of Our Customer Terms. Each party must follow the procedures in this clause 8 before starting arbitration or court proceedings (except for urgent injunctive or declaratory relief).
- 8.2 If a dispute arises between the parties that cannot be resolved promptly between our contact person and your contact person, either party may notify the other party of a formal dispute. Each party must nominate a senior executive to meet within 7 days of the notice (or another agreed period) to try and resolve the dispute.
- 8.3 If the dispute remains unresolved, the parties must try to resolve it by mediation administered by the Australian Commercial Disputes Centre according to its Mediation Guidelines.

9 EXPORT CONTROL RESTRICTIONS AND ANTI-BRIBERY

- 9.1 You must comply with all applicable import, re-import, sanctions, anti-boycott, export, and re-export control laws and regulations, including all such laws and regulations that apply to a United States company, such as the Export

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Administration Regulations, the International Traffic in Arms Regulations, and economic sanctions programs implemented by the United States Office of Foreign Assets Control. You are responsible for compliance with applicable laws related to the manner in which you or your end users choose to use the AWS Services and AWS Marketplace Purchases.

- 9.2 You represent that you and the entities that own or control you and the financial institutions used to pay us under this section of Our Customer Terms, are not subject to sanctions or otherwise designated on any list of prohibited or restricted parties, including but not limited to the lists maintained by the United Nations Security Council, the U.S. Government (e.g., the U.S. Department of Treasury's Specially Designated Nationals list and Foreign Sanctions Evaders list, and the U.S. Department of Commerce's Entity List), the European Union or its member states, or other applicable government authority.
- 9.3 You acknowledge that AWS' Code of Business Conduct and Ethics (available at <http://phx.corporate-ir.net/phoenix.zhtml?c=97664&p=irol-govConduct>) (the "Code") prohibits the paying of bribes to anyone for any reason, whether in dealings with governments or the private sector. You will not violate or knowingly permit anyone to violate the Code's prohibition on bribery or any applicable anti-corruption laws in performance under this AWS section of Our Customer Terms. We may immediately terminate or suspend performance (in whole or in part) under this section of Our Customer Terms if you breach this clause 9.3.

10 DEFINITIONS

- 10.1 In this section of Our Customer Terms, unless otherwise stated:

Act means the Telecommunications Act 1997 (Cth).

Application Form means an agreed application for AWS Billing Services.

AWS means Amazon Web Services, Inc, and any of its affiliates.

AWS Marketplace means the marketplace operated by or on behalf of AWS and offered to its registered users from time to time pursuant to an agreement between AWS and those users.

AWS Marketplace Purchase means the purchase by you of good(s) or service(s) from a third party vendor, transacted through the AWS Marketplace, whereby a Vendor Agreement is formed between you and the Vendor for the supply of the relevant good(s) or service(s).

AWS Services means each of the AWS services provided and made available to you by AWS or their affiliates under your AWS Services Agreement.

AWS Customer Agreement means AWS's standard user agreement located on the AWS Site at <http://aws.amazon.com/agreement> (and any successor or related locations designated by AWS), as may be updated by AWS from time to time.

AWS Services Agreement means the AWS Customer Agreement or other written agreement, confirmed in writing by AWS, entered between AWS and you to govern your access to and use of the AWS Services.

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Loss means any claims, damages, losses, liabilities, costs and expenses (including legal costs and fees).

Personnel means a person's officers, employees, directors, representatives, agents, contractors and sub-contractors and in our case includes our affiliates.

Public Sector Customer means a customer of AWS Services that is an agency, organization, or other entity that is within (or is substantially owned, funded, managed or controlled by):

- a) any level of any government in Australia or any other country's government at any level;
- b) any quasi-governmental entity (such as the World Bank);
- c) any international governing/regulatory body (such as an EU institution);
- d) any publicly funded institution (such as a college, university, or hospitals);
or
- e) any higher-tier prime contractor, consultant, or other Entity working in support of the foregoing.

Term has the meaning given in clause 6.1.

Taxes means taxes, levies, imposts, duties, excise and charges, deductions or withholdings, however described, imposed by law or a government authority or agency, including any related interest, penalties, fines or other charges or other expenses, other than GST and any tax imposed on or calculated having regard to net income.

Vendor means the entity with whom you contract for the provision of an AWS Marketplace Purchase.

Vendor Agreement means the binding agreement between you and the relevant Vendor for the supply by that Vendor to you of an AWS Marketplace Purchase, formed in accordance with the process set out in, and requirements of, the AWS Marketplace.