

# OUR CUSTOMER TERMS CLOUD SERVICES – TELSTRA PRIVATE CLOUD

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# OUR CUSTOMER TERMS

## CLOUD SERVICES – TELSTRA PRIVATE CLOUD

Certain words are used with the specific meanings set out in the General Terms part of Our Customer Terms at <http://www.telstra.com.au/customer-terms/business-government/cloud-services/>, or in the General Terms of Our Customer Terms at <http://www.telstra.com.au/customer-terms/business-government/index.htm>

From the 30<sup>th</sup> of June 2023 Telstra Private Cloud (including Telstra Private Cloud Platform and International) is no longer available for purchase by new customers. Existing customers may continue to use the service until further notice.

### 1 APPLICABLE TERMS

- 1.1 In addition to this Telstra Private Cloud 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/cloudservices>); 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 GENERAL

- 2.1 We do not monitor or manage any of your other services, including any of your other services provided under the Cloud Services section as part of your Telstra Private Cloud product.
- 2.2 Your options for configuring your Telstra Private Cloud product are set out on the portal at [Telstra Cloud Sight \(https://tcs.telstra.com/\)](https://tcs.telstra.com/), another Telstra provided cloud portal, or in your application form or other agreement with us. Telstra Cloud Sight is a web based managed cloud portal that enables you to purchase and manage your Telstra Private Cloud, you can review your customer terms for Telstra Cloud Sight here <https://www.telstra.com.au/customer-terms/business-government#cloud-services>
- 2.3 You are responsible for ensuring that you comply with the licence terms of any software (such as application software or operating system) which you install or use in connection with your Telstra Private Cloud product.
- 2.4 You will be given a high degree of control over your Operating System configuration and management. If you configure and manage your Operating System and Applications in such a manner that causes disruption to your Telstra Private Cloud product and/or deletion of any of your data, including impact due to a virus (e.g. ransomware), you will be responsible for any loss that you suffer as a result and you may need to pay us an additional charge to fix any problems.

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### 3 TELSTRA PRIVATE CLOUD

#### What is Telstra Private Cloud?

- 3.1 The Telstra Private Cloud product provides you with a self-managed virtual server environment on dedicated physical server infrastructure. You will have access to the hypervisor management toolset that provides limited access for the purposes of creating and managing your virtual servers and allows you to allocate CPU and RAM resources. For an explanation of these resources, view the VMware documentation according to your vSphere software version [here](#).
- 3.2 You are responsible for ensuring that utilisation of CPU and RAM resources in each of your clusters has sufficient available capacity. You need to manage your cluster so that if you remove a host, the remaining hosts in the cluster can continue to run your virtual servers without exceeding the engineering maximums. View the recommended configuration limits outlined in the VMWare documentation [here](#).
- 3.3 You are responsible for ensuring the version(s) of operating software applied and used on your virtual machines remain up to date and compatible with the version of vSphere software used on the Telstra Private Cloud service. The vSphere version can be found on the vCenter Server.
- 3.4 In the event of an impact to your Telstra Private Cloud product through your use of the hypervisor management toolset, we will attempt to help you reinstate your Telstra Private Cloud product or recover your data, but do not guarantee that we will be able to fully restore your Telstra Private Cloud product or data.
- 3.5 You are responsible for any data that you store on the service and any associated backups of your data that you may require. We will back up the relevant platform configuration for your service according to the Recovery Point Objective defined in 5.1.
- 3.6 You are responsible for sourcing, installing, and configuring all end-point security software which you wish to install on your virtual data centre (including anti-virus and intrusion prevention software).
- 3.7 The hypervisor management toolset is a sophisticated tool and you are responsible for obtaining adequate training and certification in the use of the hypervisor management toolset we provide.
- 3.8 It is your responsibility to review and understand the price of additional resources as set out in the Telstra Private Cloud Pricing Guide, when purchasing additional resources through a Telstra provided cloud portal prior to submitting the order.
- 3.9 You are responsible for providing an IP subnet which does not conflict with your existing network configuration. We may charge you a fee if we must decommission and rebuild a new virtual data centre to fix a conflicting subnet.
- 3.10 If you acquire a Telstra Private Cloud product with a minimum term, after expiry of the minimum term, the charges for the Telstra Private Cloud product default to our then currently monthly charges (as set out on the pricing guide), unless you enter a new minimum term contract with us.

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### Early Termination Charges

- 3.11 You must provide us with at least 30 days prior written notice to cancel your Telstra Private Cloud service. You remain liable for all charges associated with your Telstra Private Cloud product up until it is cancelled.
- 3.12 If you select a Telstra Private Cloud product with a minimum term and it is cancelled before the end of the minimum term for any reason, other than our material breach, we may charge you an early termination fee.
- 3.13 Unless otherwise set out in Your Agreement, the early termination fee will be an amount equal to 50% of your monthly fixed host fees and charges multiplied by the number of remaining months in your minimum term.

## 4 USE OF THIRD-PARTY SERVICE PROVIDERS

- 4.1 You acknowledge and agree that:
  - (a) we may use Licensed Space(s) in data centres operated by third parties ("**Colocation Service Provider(s)**") to provide some aspects of your Telstra Private Cloud Service;
  - (b) you have not been granted any real property interest in or to the Licensed Space;
  - (c) you have no rights as a tenant or otherwise under any real property or landlord/tenant laws, regulations, or ordinances in relation to the Licensed Space; and
  - (d) you have no right of use to access and use the Licensed Space for your own use or the use of others.
- 4.2 To the extent that it is required by law or to demonstrate compliance with a particular regulation or standard, you may access and inspect the Licensed Space which is being used to deliver your Telstra Private Cloud Service, for the sole purpose of an audit in relation to your Telstra Private Cloud Service.
- 4.3 Any audit of the Licensed Space is subject to the following terms:
  - (a) such audit of the Licenced space can only be conducted remotely to the extent agreed by the parties;
  - (b) conducted during regular business hours;
  - (c) no more frequently than once in any consecutive twelve-month period; and
  - (d) on a mutually agreed upon date (which shall be no less than fifteen (15) business days after written notice from you), time, location and duration
- 4.4 You agree that if such audit does not reveal any breach or non-compliance then you will bear the cost of the audit, however if the audit reveals any breach or non-compliance then we will reimburse you for the reasonable costs incurred by you in connection with the audit.

## 5 TERMINATION BY US

- 5.1 We may terminate the applicable and affected part of your Telstra Private Cloud Service by

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written notice to you if we or a third-party provider ceases to have the right to use the Licensed Space or data centre for the purpose of providing any aspect of your Telstra Private Cloud Service, provided the loss of such right is not caused by our or the third-party provider's negligent act or omission.

### 6 COMPUTE

- 6.1 Your Telstra Private Cloud product includes a Virtual Private Network (**VPN**) service, you will be responsible for loading and configuring any VPN software on your device.
- 6.2 We do not provide you with physical access to the server infrastructure.
- 6.3 We do not provide a facility for you to use accessories or peripheral devices with your server infrastructure, such as USB attachments or licence key dongles.

#### Operating Systems

- 6.4 You are responsible for:
  - (a) supplying the operating system for use on your Telstra Private Cloud product; and
  - (b) obtaining and maintaining an appropriate licence to use the operating system on our service platform.

#### Storage

- 6.5 The Storage service provides you with access to storage capacity on our service platform that can be used by you for various purposes including to store your data and applications.
- 6.6 Your Storage service includes:
  - (a) a data repository which may be partitioned into virtual disks for storing application, Operating System and file system data (you may request that we create additional disk partitions and we may charge you a fee); and
  - (b) levels of redundancy within our storage platform.
- 6.7 Once a system disk has been created in your storage repository the storage capacity of the virtual disk cannot be decreased.
- 6.8 You are responsible for ensuring that the utilisation of Storage resources in each of your clusters has sufficient available capacity. This will also include allowing for storage being consumed by swap space whilst the Distributed Resource Scheduler is balancing resources for optimal performance within cluster(s).
- 6.9 Storage which is included with the host may not be automatically provisioned for you and will need to be provisioned through the Telstra provided cloud portal.

### 7 SERVICE LEVELS

- 7.1 The available service levels for Telstra Private Cloud are set out in the table below.

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Service Level	Service Level Grade	
	Bronze	
Service Support Coverage Hours	Telstra Private Cloud	24 x 7 days
Service Availability <sup>1</sup>	99.90%	
Recovery Point Objective (RPO)	24 hours <sup>4</sup>	
<b>Service Activation</b>		
Minor	3 business days <sup>2</sup>	
Standard	10 business days <sup>2</sup>	
Major	On Application	
<b>Service Modification</b>		
Pre-defined Modifications	as set out on the Telstra Private Cloud User Guide or Telstra provided cloud portal	
Projects	on application	
<b>Incident Response Target</b>		
Severity 1	15 minutes	
Severity 2	30 minutes	
Severity 3	45 minutes <sup>3</sup>	
Severity 4	120 minutes <sup>3</sup>	
<b>Incident Restore Target</b>		
Severity 1	2 hours	
Severity 2	6 hours	
Severity 3	8 hours <sup>3</sup>	
Severity 4	24 hours <sup>3</sup>	

<sup>1</sup> Service Availability is calculated and measured on the preceding 1 month bill cycle. Service Availability is expressed by the following ratio (calculated as a percentage): (Total hours in preceding 1 month – Scheduled Maintenance Window Time – Service Outage Time) / (Total hours in preceding 1 month – Scheduled Maintenance Window Time)

<sup>2</sup> Provided that the request is logged before 1pm on a business day. If the request is logged after 1pm, measurement of Service Activation or Service Modification commences at 9am on the following business day.

<sup>3</sup> We only accept responsibility for a failure to meet this service level target if the incident relating to the relevant product occurs between 7am and 7pm on a business day.

<sup>4</sup> Includes recovery of the platform configuration only and not customer data, for example, virtual machines. It is the responsibility of the customer to back up their data.

### Service Level Exclusions

7.2 In addition to the service level exclusions in the General Terms for Cloud Services, we are not responsible for a failure to meet a service level where the failure is caused due to:

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- (a) the corruption of data as part of a backup;
- (b) having insufficient Storage resources in your cluster(s);
- (c) having insufficient CPU and RAM resources in your cluster(s);
- (d) misconfiguration of networking by you (e.g. the virtual router that peers with your private networking is wrongly configured);
- (e) The operating system and/or application on your virtual server being out of support and/or incompatible with the service;
- (f) A Scheduled Maintenance Window Time as communicated by Telstra to you, to the most recent nominated commercial contact provided by you to Telstra for this service.

### Service Level Rebates

7.3 If we fail to meet the Service Availability service level set out in the table above for your Telstra Private Cloud product, you may apply for a rebate in accordance with this clause.

7.4 If:

- (a) your Telstra Private Cloud product is unavailable due to a problem caused by us and outside any nominated Telstra service window; and
- (b) the actual Service Availability of your Telstra Private Cloud product is below that allowed under the Service Availability service level which corresponds to your product,

then in the monthly billing period in which the actual Service Availability is below the allowed Service Availability for your Telstra Private Cloud product, you may apply for a rebate of five percent (5%) of your monthly service fee for each 30 minute block of unavailability exceeding the threshold contemplated under paragraph (b) above, to a maximum of 100% of your monthly service fee.

7.5 You must apply for a rebate within 60 days of the date the Service Availability failure was reported to us.

7.6 Any rebate will be applied to your Telstra bill at the end of the billing cycle.

## 8 PUBLIC NETWORK SERVICES

### Internet

8.1 Internet connectivity is included as a feature of your Telstra Private Cloud product. The service level for your internet connectivity is the same as the Telstra Private Cloud product. Usage charges for internet connectivity are set out in the current pricing guide.

8.2 In the event of a DOS or DDOS attack directed against a customer service hosted by Telstra we reserve the right take any reasonable steps to protect the Telstra Private Cloud platform. Unless you can activate an effective DOS or DDOS mitigation strategy this may involve *rate limiting* traffic and/or *blacklisting* the source IP addresses or *black-holing* the affected service (removing it from service).

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### 9 PRIVATE NETWORK SERVICES

#### Next IP services

- 9.1 You can connect your Telstra Private Cloud to your Next IP connectivity with Cloud Connector purchased through Telstra Cloud Sight. Service terms for Cloud Connector are set out in the [Telstra Cloud Sight](#) section of Our Customer Terms.

### 10 EARLY ADOPTER RELEASES

- 10.1 From time to time we may make available, or invite you to receive, early adopter releases of new features and functionality on the Telstra Private Cloud platform (**Early Adopter Releases**). The Early Adopter Releases may be made available in various stages of development, such as alpha, beta or pre-general release.
- 10.2 The following terms and conditions, together with any additional restrictions we notify you of either on the Telstra Cloud Sight platform or in the invitation, will apply to any features or functionality within the Early Adopter Releases until they are made generally available on the Telstra Private Cloud platform.
- 10.3 The purpose of granting you Early Adopter Releases is to provide you with an opportunity to:
- (a) evaluate the features and functionality of the Early Adopter Releases and their suitability against your objectives, and to provide us with feedback on enhancements that you feel would be beneficial to future service offerings; and
  - (b) provide feedback in relation to the user experience and any improvements we should consider.
- 10.4 We will advise you if there are any additional charges or restrictions associated with the Early Adopter Releases at the time we invite you to trial them.
- 10.5 You acknowledge that:
- (a) the Early Adopter Releases are confidential to us. You must not disclose information about the Early Adopter Releases to any person without our prior written consent, except to your employees on a 'need to know' basis;
  - (b) the Early Adopter Releases are not an officially released Telstra service and as such, may have limited or different capability to the full commercial version;
  - (c) technical support for Early Adopter Releases will be provided on a "reasonable efforts" basis only and we do not guarantee that the Early Adopter Releases will be fault free or to fix and/or modify the Early Adopter Releases whilst they are part of the Early Adopter program;
  - (d) we may change the nature of the features and functionality in the Early Adopter Releases from time to time;
  - (e) any data collected by us related to your participation in the Early Adopter program and use of the Early Adopter Releases may be used by us to evaluate the Early Adopter Releases and for our internal planning, internal marketing or product development purposes and you consent to such use.

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- 10.6 You agree to participate in the Early Adopter program by:
- (a) nominating a person who will act as a single point of contact between the parties, including for the purpose of co-ordinating feedback and training in relation to the Early Adopter Releases, and ensuring that this person will be available to liaise with us during business hours;
  - (b) providing regular feedback on the Early Adopter Releases;
  - (c) ensuring that at the end of a trial of an Early Adopter Release:
    - (i) End Users and the person nominated under clause 18.1(a), attend a debrief interview and complete such questionnaires as may be provided by us to you; and
    - (ii) if the trial is successful, being willing to provide a customer testimonial which we may use in connection with promotion of the Early Adopter Release. We will agree the content of such testimonial with you prior to publication.
- 10.7 To the extent permitted by law, we provide the Early Adopter Releases "AS IS" without any representation or warranty of any kind. For clarity, we and our suppliers provide no representation or warranty, about the suitability, reliability, availability, timeliness, lack of viruses (or other harmful components), accuracy and/or ownership of the information, software, products, services and related graphics contained within or generated by the Early Adopter Releases whether express, implied or statutory, including without limitation the implied warranties or merchantability, fitness for a particular purpose, title and non-infringement.
- 10.8 Subject to clause 10.9, we make no guarantee or representation, express or implied, relating to the capabilities or performance of the Early Adopter Releases and we exclude all liability (including in relation to any implied conditions and warranties), whether arising in contract, tort (including negligence) or otherwise for or in respect of all Claims, actions, loss, liability or damage (whether direct, indirect, consequential or incidental loss or damage and whether for loss of profits or data or otherwise) suffered or incurred by you or any other person arising out of or in connection with the supply of the Early Adopter Releases.
- 10.9 If our liability cannot lawfully be excluded, that liability is limited to our choice of re-supplying or paying the cost of re-supplying the services.
- 10.10 We may terminate or suspend the provision of an Early Adopter Release, a feature or functionality within an Early Adopter Release or withdraw the Early Adopter program at any time by giving you written notice to that effect and neither party will have any liability whatsoever to the other in relation to such suspension, termination or withdrawal.

## 11 BUSINESS CUSTOMER INFORMATION

- 11.1 You acknowledge and agree that we may give your BCI to our Colocation Service Providers for the following purposes:
- (a) the provision and use of the Colocation Services in connection with your Telstra Private Cloud Service;
  - (b) account administration, payment, billing and accounting reconciliation;

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- (c) operational maintenance and support activities for the provision of your Telstra Private Cloud Service;
- (d) security and secure access to any data centre;
- (e) fraud/crime detection and prevention;
- (f) subject to BCI having been previously permanently anonymised and de-identified (so that the data or information cannot identify or be linked to you or the your relevant personnel in any way) before any such use, customer and market analysis and reporting;
- (g) if required by law, in connection with legal proceedings, obtaining legal advice, or establishing , exercising or defending legal rights; and
- (h) for purposes of safeguarding national security or defense.

## 12 DEFINITIONS

12.1 The following words have the meanings set out below:

**Business Contact Information or "BCI"** means business contact data containing personal information (i.e. first and last name, business phone numbers, email addresses, and physical addresses) of the parties (including its affiliates, sublicensees', subcontractors, agents' and/or third-party consultants', contractors' or partners') employees, or of any authorized person (altogether "Representatives"), and whose use, processing or transfer is regulated by applicable data protection and privacy laws or regulations as personal information.

**Colocation Services** means Licensed Space, Cross Connects and related Services provided by the Colocation Service Provider to the Telstra or a third-party provider on behalf of Telstra

**Data Controller** means the entity that controls the collection, use, disclosure, storage or otherwise processing of personal data and has the authority to decide the purposes and the means for which personal data is processed in accordance with applicable data protection and privacy laws or regulations

**Licensed Space** means an area or space licensed by or on behalf of Telstra from the Colocation Service Provider in a data centre, and used by the Telstra to supply Telstra Private Cloud Services

**Scheduled Maintenance Window Time** means a time as communicated by Telstra to you, to the most recent nominated commercial contact provided by you to Telstra for this service.