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| AMAZON WEB SERVICES (AWS) Services Agreement |  |

# This Agreement

## This Agreement is between Telstra Corporation Limited ABN 33 051 775 556 and the entity to whom the AWS from Telstra Service (**AWS Services**) are supplied (**you**). This will be the entity specified on the order for the AWS Services or in the Telstra Cloud Services Store unless we are in fact supplying the AWS Services to another entity in which case it will be that entity.

## By completing your order for, and making use of, the AWS Services, you acknowledge and agree that you have read and understood this Agreement and are bound by its terms (including all documents incorporated by reference).

## You warrant that the individual who accepts these terms is authorised to do so on your behalf.

## We may amend the terms of this Agreement from time-to-time by posting notice of the amended terms on the Telstra Cloud Services Store. By continuing to use the AWS Services, you agree to the amended terms. If you do not agree, you can cancel your AWS Service under clause 7.1.

## **Eligibility and Use of the Telstra Cloud Services Store**

## You can register and purchase the AWS Services through the Telstra Cloud Services Store. Alternatively, if you already have AWS accounts, you can transfer these to usby completing an AWS Direct application form (**AWS Direct Services**). This Agreement only applies to AWS Services (including AWS Direct Services) registered with us.

## To receive and use the AWS Services, you must at your own cost and for the same duration as the term of your AWS Services:

### have a Cloud Direct Connect or Cloud Gateway service from us. If you are not already receiving these services from us, you can acquire them from us under the Cloud Direct Connect section of Our Customer Terms. Unless we agree otherwise, you must acquire only from us all services you use for carrying data to or from your AWS Services;

### create an account in the Telstra Cloud Services Store;

### meet any minimum system requirements required to use the Telstra Cloud Services Store; and

### be a registered Australian business for GST purposes.

## You must comply with the Terms of Use (available at <http://www.telstra.com.au/terms-of-use/>) when using the Telstra Cloud Services Store.

## **Separate agreement with AWS**

## By entering into this Agreement, you acknowledge that:

### your use of the AWS Services is subject to the AWS Customer License Terms, which is a separate agreement between you and Amazon Web Services, Inc., a current version of which is located here at <https://s3-us-west-2.amazonaws.com/legal-reseller/AWS+Reseller+Customer+License+Terms.pdf>; and

### the AWS Customer Licence Terms are incorporated by reference into this Agreement and you have expressly agreed to these terms by clicking on and accepting the AWS Customer Licence Terms at <https://s3-us-west-2.amazonaws.com/legal-reseller/AWS+Reseller+Customer+License+Terms.pdf>

# AWS Services

## The AWS Services provide a range of cloud-based computing and storage features. More detail about the features of each of the AWS Services is set out in the relevant Service Terms.

## The specific AWS Services that you have acquired, including pricing details, are set out in your order or in the Telstra Cloud Services Store.

## With AWS Direct services, you will continue to have access to, and the ability to order and administer and must obtain support for, your AWS Services through the AWS web portal directly with AWS. We will have access to your payer account for billing purposes.

## **Service Levels**

## Notwithstanding anything to the contrary in the AWS Customer Licence Terms, we will comply with the applicable Service Level Agreement for the AWS Services as if we are AWS and will provide you with any corresponding service credits in accordance with the terms set out in the relevant Service Level Agreements. If we fail to comply with our service level obligations as if we are AWS under a Service Level Agreement, we accept liability to you, but limit our liability to any applicable service level credits under the applicable Service Level Agreement or where the Service Level Agreement does not provide for service credits, we limit our liability to an amount equal to the charges billed for the affected Services for the period of interruption to your AWS Services.

## If you have AWS Direct Services, except for issues with the Cloud Direct Connect or Cloud Gateway service, we recommend you contact AWS directly if you have an issue with your AWS Direct Services.

## **Jurisdiction**

## You may use the AWS Services in any of the AWS Regions.

## **Your Content**

## We and our subcontractors (including AWS) will not, except as necessary to comply with the law or valid and legal binding order of a governmental or regulatory body:

### disclose Your Content to any government or third party;

### move Your Content from the AWS Region selected by you;

### access Your Content other than as necessary to maintain the AWS Services or provide the AWS Services to you and your End Users.

## Unless prohibited by a court order or other legal requirement, we will give you reasonable notice of any such legal requirement or order referred to in the clause above.

## **Changes to AWS Services**

## You agree that we may:

### change any of the AWS Services (in whole or in part) if our third party service provider changes them;

### change or discontinue our obligations to you under this Agreement which correspond to those in any Service Level Agreements that apply to any AWS Service if and to the extent that our third party service provider changes or discontinues those Service Level Agreements, or add to the Service Levels that apply to any AWS Service.

## We will try to give you as much notice as possible of any changes, but are not required to do so.

## You agree that we may use subcontractors to fulfil contractual obligations under this Agreement or to provide certain services on our behalf. If we use subcontractors, we will:

### impose appropriate contractual obligations upon subcontractors; and

### be responsible if the acts or omissions of our subcontractors cause us to breach any of our obligations under this Agreement.

# Your commitment to us

## You:

### must comply, and must ensure that your End Users comply, with this Agreement and all laws, rules and regulations applicable to your use of the AWS Services;

### except where due to our breach of this Agreement, are responsible for all activities that occur under your accounts, regardless of whether the activities are authorised by you or are undertaken by you, your employees or a third party (including contractors, agents and end users (and we are not responsible for unauthorised access to your accounts);

### must ensure that Your Content, Your Submissions or your (and your End Users’) use of Your Content, Your Submissions or the AWS Services does not violate any of the Policies or any applicable law;

### are solely responsible for the development, content, operation, maintenance and use of Your Content and Your Submissions;

### are responsible for properly configuring and using the AWS Services in a manner that will provide appropriate security and protection of your accounts, and for providing appropriate security, protection, and backup of Your Content, which may include use of encryption technology to protect Your Content from unauthorised access, and routine archiving of Your Content;

### must not sell, transfer or sublicense log in credentials or private keys generated by the AWS Services to any other entity or person (because they are for your own internal use only) except that you may disclose your private key to your agents and subcontractors (including any related bodies corporate who are acting as an agent or subcontractor) performing work on your behalf;

### are responsible for your End Users’ use of Your Content and the AWS Services;

### must immediately suspend access to Your Content and the AWS Services by any End User, person or entity whom you become aware has breached its obligations under this Agreement;

### must ensure that all equipment connected to the AWS Services by you, or on your behalf, is technically compatible with the relevant AWS Service(s) and that your Premises and the equipment complies with and is used in accordance with all reasonable procedures notified by us from time to time and any applicable legislation;

### are solely responsible for selecting, supplying and maintaining your own facilities and equipment;

### are solely responsible for the content and security of any data or information which you send or receive using the AWS Services; and

### are solely responsible for any use of the AWS Services, or any Facility connected to the AWS Services on your Premises, by you or any third party whether authorised or not.

# licences

## As between you and us, you own all right title and interest in and to Your Content. Except as provided in this Agreement, we and our third party provider obtain no rights to Your Content.

## Your Submissions will be governed by the terms of the Apache License, Version 2.0, unless you request and we consent in writing to another licence.

## Unless you request otherwise in writing, we and our third party provider may use your trade names, trademarks, service marks, logos, domain names and other distinctive brand features in presentations marketing materials, customer lists, financial reports and website listings (including links to your website) for the purpose of advertising or publicising your use of the AWS Services and Your Submissions.

## As between you and us, we or our licensors own all right, title and interest in and to the AWS Services, and all related technology and Intellectual Property Rights. Subject to the terms of this Agreement, we grant you a limited, revocable, non-exclusive, non-sub licensable, non-transferrable licence during the term of this Agreement to:

### access and use the AWS Services solely in accordance with this Agreement; and

### copy and use the AWS Content solely in connection with your permitted use of the AWS Services.

## Except as expressly set out in this Agreement, you obtain no rights to the AWS Services, including any related Intellectual Property Rights. Some AWS Content may be provided under a separate licence, such as the Apache Licence, Version 2.0, which will be identified to you in the notice file or on the download page, in which case that licence will govern your use of that AWS Content.

## You must not (and you must ensure that each of your End Users) do not use the AWS Services in any manner or for any purpose other than as expressly permitted by this Agreement. You must not (and you must ensure that each of your End Users) do not, or attempt to:

### modify, alter, tamper with, repair or otherwise create derivative works of any Content included in the AWS Services (except to the extent Content included in the AWS Services are provided under a separate license that expressly permits the creation of derivative works);

### reverse engineer, disassemble or decompile the AWS Services or apply any other process or procedure to derive the source code of any software included in the AWS Services;

### access or use the AWS Services in a way intended to avoid incurring fees or exceeding usage limits or quotas; or

### resell or sublicense the AWS Services.

## During and after the term of this Agreement, you must not assert, nor will you authorise, assist or encourage any third party to assert, any intellectual property infringement claim regarding any AWS Services you have used.

## You must not use any of our or our third party suppliers’ trade marks without permission. You must not imply any relationship or affiliation between you, our third party supplier, and us, except with prior written permission.

## If you choose to provide any Suggestions to us or our third party suppliers, we and our third party suppliers will be allowed to use them without restriction, and you irrevocably assign all right, title and interest in and to the Suggestions.

# Payment and Invoices

## You must pay us the charges for the AWS Services as set out in your order or in the Telstra Cloud Services Store or other location from time to time.

## You agree that:

### AWS Services are sold globally and are quoted in a single currency – the US dollar;

### the Telstra Cloud Services Store displays pricing in US dollars and does not include GST;

### your Telstra bill will show prices in Australian dollars;

### we 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 charges are converted into Australian dollars; and

### payment is required in Australian dollars, directly to us.

## The charges for the AWS Services 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.

## If you genuinely dispute an invoice you need not pay the disputed amount until the dispute is resolved, however you must pay all undisputed amounts by the due date.

## You may only make a claim on the basis that the charges on an invoice for AWS Services are incorrect within 12 months of the invoice due date.

# Taxes

## Subject to clauses 6.2 and 6.3, you must pay all Taxes in connection with the AWS Services.

## Where GST is imposed on a taxable supply made in connection with this Agreement and the recipient of that supply receives a tax invoice for that supply, the recipient must pay the GST to the supplier (without deduction or set-off) by the tax invoice due date.

## If one party is required to indemnify or reimburse another party (Payee) for any cost, loss or expense, the indemnity or reimbursement payable does not include any amount for which the Payee (or an entity grouped with the payee for GST purposes) is entitled to an input tax credit, but will be increased in accordance with clause 6.2 if the amount payable is consideration for a taxable supply.

## We may charge you an annual charge in relation to the ACT Government Utilities Tax (ACT Government Utilities Tax Charge) if you acquire one or more affected services within the ACT Government Area. We will notify you of the applicable ACT Government Utilities Tax Charge amount each year before it is payable. ACT Government Area means the area of the Australia Capital Territory, including the Jervis Bay area of NSW.

# Suspension or Cancellation of Services

## You may cancel any of your AWS Services at any time in accordance with clause 8.3.

## We may limit, suspend or cancel the provision of an AWS Service at any time without notice to you:

### in the event of an emergency or to provide resources to emergency and other essential services;

### if the supply or use of an AWS Service is or is to become unlawful;

### if, in our reasonable opinion, the provision of an AWS Service is liable to cause death or personal injury or damage to property; or

### if your or one or more of your End Users’ use of the AWS Service:

#### poses a security risk to the AWS Services or any third party;

#### risks adversely impacting our third party supplier’s systems, the AWS Services or the systems or Content of any other customer;

#### risks subjecting us or our third party supplier to liability; or

#### breaches the Policies or clause 4.

## We may limit, suspend or cancel the provision of an AWS Service at any time by notice to you:

### subject to clause 5.4, if you do not pay any amounts due for that AWS Service on time;

### 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 Service;

### if your use of an AWS Service interferes (or threatens to interfere) with the efficiency of our network and you fail to rectify the situation;

### if you are or become a carrier or carriage service provider (as defined in the Act); or

### if an administrator, receiver, liquidator or provisional liquidator is appointed to you, or you resolve to enter into any settlement, moratorium or similar arrangement for the benefit of your creditors, or you are unable to pay your debts when they are due.

## Where provision of an AWS Service has been suspended or cancelled under clause 7.3(a), we may require you to pay a re-connection charge when the Service is re-connected.

## You remain liable for all fees and charges you incur during the period of suspension, but you are not entitled to any service credits for the period of the suspension.

# term and Termination

## **Term**

## This Agreement begins on the date you complete your order in the Telstra Cloud Services Store, and continues until it is terminated or all the AWS Services have expired or been terminated.

## With the exception of the Reserved Instance AWS Service, the AWS Services are available on monthly casual plans only and there is no minimum term. The Reserved Instance AWS Service has a minimum term of either 12 months or 36 months, depending on the plan you select.

## **Termination**

## You can terminate your AWS Service by giving us 30 days’ written notice.

## We may:

### immediately terminate your AWS Services if you commit a material breach and do not remedy the breach within 30 days of receiving a notice to do so;

### withdraw from the market one or more of the AWS Services (in whole or in part, including individual features if relevant) by giving you prior reasonable notice and either:

#### transfer you to an alternative service; or

#### cancel your AWS Service; or

### terminate your AWS Services for convenience by giving you no less than 180 days’ prior written notice.

## We may also immediately terminate your AWS Service if the Cloud Direct Connect or Cloud Gateway associated with your AWS Service is terminated or expires.

## **Consequences of Termination**

## If this Agreement expires or is terminated for any reason:

### you must pay us all outstanding invoices by the due date and within 30 days of request for payment, all other amounts outstanding as at the date of, or arising as a result of, expiry, termination or cancellation (including any fees for in-process tasks completed after the date of termination);

### other than for our material breach, in relation to any Reserved Instance AWS Service, you must pay us an amount equal to the charges that would have been payable for the full term of your Reserved Instance AWS Service (had that service not expired or been terminated); and

### all rights a party has accrued before expiry, termination or cancellation continue.

## If this Agreement expires or terminates for any reason, clauses 3 (Your commitment to us), 4.7 (Licences) 8.5, 8.8 and 8.9 (Termination), 9 (Confidentiality and Privacy), 10 (Indemnity), 11 (Warranties) and 12 (Limitation of Liability) continue in full force and effect.

## Following termination of the Agreement, if requested by you in writing, we will:

### for a period of 30 days, engage with our third party supplier to transition your AWS Services to our third party supplier or another reseller of our third party supplier; and

### for a period of 90 days, not take action to remove any of Your Content as a result of the termination, and will allow you to retrieve any remaining customer content from the AWS Service if permitted by our third party supplier and provided:

#### such action is not prohibited by law or the order of a governmental or regulatory body or it could subject us or our third party supplier to liability; and

#### you have paid all amounts due under this Agreement, other than genuinely disputed amounts.

## You must pay us for, and the terms of this Agreement will continue to apply to, any use of the AWS Services after the termination date.

# Confidentiality and Privacy

## Each party must treat as confidential information:

### the provisions of this Agreement; and

### all information provided by the other party under this Agreement, including our technical, operational, billing, pricing and commercial information in relation to the supply of Services.

## A party must not disclose the other party’s confidential information to any person except:

### to its employees, lawyers, accountants and our sub-contractors on a ‘need to know’ basis provided those persons first agree to observe the confidentiality of the information;

### with the other party’s prior written consent;

### if required by law, any regulatory authority or stock exchange; or

### if it is in the public domain, other by breach of this Agreement.

## You agree and will ensure that any of your related bodies corporate which receive services connected with this Agreement and your representatives are aware that:

### we may use and disclose information about you and each of them in accordance with our Privacy Statement (as amended by us from time to time), which is available at http://www.telstra.com.au/privacy/privacy\_statement.html or by calling us on 1800 039 059;

### we may use and disclose information about you and each of them to AWS who may then 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

### information about you and each of them that you and each of them disclose directly to AWS (either as part of the AWS Customer License Terms or otherwise) 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.

## If we have actual knowledge of the unauthorised access to or acquisition of any of Your Content that is subject to applicable data breach notification law and such access or acquisition is caused by a confirmed breach of AWS security measures that renders misuse of the information reasonably likely, we will:

### promptly notify you as required by applicable law; and

### take commercially reasonable measures to address the breach in a timely manner.

# indemnity

## You indemnify us, and our third party service provider (including our respective employees, officers, directors and representatives), against any Losses arising out of a third party claim (including a claim by our third party provider against us) arising from or in connection with:

### your (or any of your End Users’) use of the AWS Services in a manner not authorised by this Agreement;

### violation of applicable law by you, your End Users or Your Content or Your Submissions; and

### alleged infringement or misappropriation of any third party rights by Your Content or Your Submissions, or by the use, development, design, production, advertising or marketing of Your Content or Your Submissions.

# warranties

## Each party represents and warrants to the other that it will comply with all applicable laws, rules, regulations and ordinances in the performance of this Agreement, including without limitation, all applicable laws relating to privacy and data protection.

## We warrant that the AWS Services will perform substantially in accordance with the Documentation.

## Subject to clauses 11.1, 11.4 and 12.3, the AWS Services are provided ‘as is’ and to the extent permitted by law we and our licensors (including their affiliates and licensors) make no other representations or warranties of any kind, whether express, implied, statutory or otherwise, regarding the AWS Service or the Third Party Content, and disclaim all other warranties, including any implied or express warranties of merchantability, satisfactory quality, fitness for a particular purpose, non-infringement, or quiet enjoyment, arising out of any course of dealing or usage of trade, that the AWS Service or Third Party Content will be uninterrupted, error free, or free of harmful components and that any content, including your Content or Third Party Content will be secure or not otherwise lost or damaged.

## **Mandatory Notice if ACL applies**: Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

# Limitation of liability

## Except for your payment obligations and indemnification under clause 9.4, or damages for gross negligence or wilful misconduct, neither party nor any of their affiliates or licensors will be liable to the other party under any cause of action or theory of liability, even if a party has been advised of the possibility of such damages for any:

### loss of profits, revenues, customers, opportunities or goodwill;

### unavailability of any or all of the AWS Services (other than to the extent we are liable to pay service credits to you for that unavailability under an applicable Service Level Agreement, in which case our liability is limited to the amount of that service credit);

### investments, expenditures or commitments by you related to use of or access to the AWS Services;

### cost of procurement of substitute goods or substitute services (except under clause 11.4);

### unauthorised access to Your Content, or any compromise, alteration or loss of Your Content; or

### cost of replacement or restoration of any lost or altered Your Content; or

### any indirect, incidental, special, consequential or exemplary damages,

### (together, the **Excluded Losses**).

## Except for your payment obligations and indemnification arising under clause 9.4 or damages for gross negligence or wilful misconduct, the aggregate liability under this agreement of either party and any of their respective affiliates or licensors will not exceed the amount paid by you to us under this agreement for the AWS Service that gave rise to the liability during the 12 months before the liability arose. Nothing in this clause will limit your payment obligations under this agreement.

## The exclusions and limitations in this clause 12 and other parts of this agreement apply to the greatest extent permitted by law and apply to all liability in connection with this agreement (whether in contract, tort (including negligence), statute or otherwise. For any liability which cannot lawfully be excluded, but can be limited, our liability is limited to our choice of re-supplying or paying the cost of re-supplying services and repairing, replacing or paying the cost of repairing or replacing goods.

# Dispute resolution

## The parties agree to use best endeavours to resolve in good faith any dispute concerning this Agreement. Each party must follow the procedures in this clause 13 before starting arbitration or court proceedings (except for urgent injunctive or declaratory relief).

## 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.

## 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.

# General

Entire agreement

## This Agreement constitutes the entire agreement between the parties about the AWS Services, and supersedes any previous agreement or representation relating to the AWS Services.

Governing law

## This Agreement is governed by the laws of New South Wales.  Each party submits to the non exclusive jurisdiction of the courts of that place and the courts of appeal from them.

Interpretation

## In this Agreement:

### a reference to this Agreement includes all its parts described in clause 1.1, and includes any amendment to or replacement of them;

### a reference to a statute, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

### terms used that are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) have the meaning given in that Act, unless the context makes it clear that a different meaning is intended;

### a reference to a party includes a reference to the party’s executors, administrators, successors and assigns;

### the singular includes the plural, and vice versa; and

### “includes”, “including”, “for example”, “such as” and similar terms are not words of limitation.

Notices

## All notices and consents must be in writing and sent to the addresses or fax numbers for notices specified on the front page of the Agreement Terms, or to your officer or as otherwise agreed.  Notices must not be sent by email.

## Notices sent:

### by hand are taken to be received when delivered;

### by post to an address in Australia are taken to be received by the third Business Day after posting;

### by post to an address outside Australia are taken to be received by the seventh Business Day after posting; or

### by fax are taken to be received when the sender’s fax machine issues a successful transmission report.

Variations

## This Agreement may only be varied:

### by written agreement between the parties; except

### for terms set out in Our Customer Terms, in accordance with the Act or except where expressly permitted under this Agreement, including under clauses 1.4 or 2.9.

If you require information about detrimental changes to Our Customer Terms before they take effect, it will be available at <http://www.telstra.com.au/customerterms/>.

Severability

## If any clause or part of any clause is held by a court to be invalid or unenforceable, that clause or part of a clause is to be regarded as having been deleted from this Agreement and this Agreement otherwise remains in full force and effect.

Waiver of rights

## A right created by this Agreement may only be waived in writing by the party giving the waiver, and the failure to exercise or any delay in exercising a right or remedy provided by this Agreement or by law does not waive the right or remedy.

## A waiver of a breach of this Agreement does not waive any other breach.

Warranties

## Each party warrants to the other that entering into and performing its obligations under this Agreement does not breach any of its contractual obligations to any other person.

## You warrant that you have not relied on any representations or warranties by us other than those in this Agreement.

Assignment and Agency

## A party must not assign its rights or novate its obligations under this Agreement without the other party’s prior written consent, which must not be unreasonably withheld.

## You may appoint a third party to act on your behalf in relation to this Agreement with our prior written consent, which will not be unreasonably withheld.  We may withdraw our consent on reasonable grounds relating to the conduct of the third party.

Force Majeure

## If a party is unable to perform or is delayed in performing an obligation under this Agreement (other than an obligation to pay money) because of an event beyond that party’s reasonable control, including acts of God, labour disputes or other industrial disturbance, electrical or power outage, utilities or telecommunications failures, earthquake, store or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war (Force Majeure Event), that obligation is suspended but only so far and for so long as it is affected by the Force Majeure Event.

## If a Force Majeure Event occurs, the non-performing party must:

### promptly give the other party notice of the event and an estimate of the non-performance and delay;

### take all reasonable steps to overcome the effects of the event (but this does not require the settlement of industrial disputes or other claims on unreasonable terms); and

### resume compliance as soon as practicable after the event no longer affects either party.

export control restrictions

## You must comply with all applicable import, re-import, export, and re-export control laws and regulations, including the Export Administration Regulations, the International Traffic in Arms Regulations, and country-specific economic sanctions programs implemented by the United States Office of Foreign Assets Control. You are responsible for compliance related to the manner in which you or your End Users choose to use the AWS Services, including any transfer and processing of Your Content, the provision of Your Content to third parties, and the region in which any of those occur.

# Additional terms for Public Sector Customers

## **General**

## The terms in this clause 15 apply:

### in addition to (and without limiting) the terms in the remainder of this Agreement; and

### if, and only if, you are a Public Sector Customer.

## If there’s any doubt, we will determine whether you are a Public Sector Customer.

## For the purposes of interpreting this Agreement for Public Sector Customers:

### in the event of an inconsistency between this clause 15 and the remainder of this Agreement, this clause 15 prevails to the extent of the inconsistency; and

### if a definition is set out in this clause 15 (such as ‘Policies’) and also in clause 16 or elsewhere in this Agreement, all references to those defined terms throughout the Agreement are interpreted using the alternative definition set out in this clause 15.

## **Public Sector Access Policy**

## Clause 1.8 does not apply to your use of the AWS Services, and instead, by entering into this Agreement and using the AWS Services, you acknowledge that:

### your use of the AWS Services is subject to the applicable Public Sector Access Policy, which is incorporated by reference into this Agreement; and

### you expressly agree to the terms of the Public Sector Access Policy.

## Your continued access to and use of the AWS Services is conditioned on your compliance with the Public Sector Access Policy, all laws, rules, regulations, instructions and other policies applicable to your use of the AWS Services, including the Policies. You must immediately discontinue your use of the AWS Services if you cannot comply with the Public Sector Access Policy.

## **No Service Levels**

## Despite clauses 2.4, 12.1(b) and any other provision that refers to service levels in this Agreement, the Service Level Agreements do not apply to your use of the AWS Services.

## **Third Party Content**

## Without limiting clause 11.3, you acknowledge and agree that use of Third Party Content is at your sole risk.

## As part of the AWS Services, you may have access to AWS Content and Third Party Content, which may be subject to additional terms and conditions (including for example the Terms of Use and Apache Licence Version 2.0). By using that Content, you are subject to such additional terms. You are solely responsible for securing any necessary approvals for the download and use of such Content.

## **Your responsibilities**

## You are solely responsible for the development, content, operation, maintenance, and use of Your Content with the AWS Services. For example, you are solely responsible for:

### the technical operation of Your Content, including ensuring that calls you make to any AWS Service are compatible with then-current application program interfaces for that AWS Service;

### compliance of Your Content with the Acceptable Use Policy, the other Policies, and the law;

### any claims relating to Your Content;

### properly handling and processing notices sent to you (or any of your affiliates) by any person claiming that Your Content violate such person’s rights, including notices pursuant to the Digital Millennium Copyright Act (and equivalent Australian legislation);

### any action that you permit, assist or facilitate any person or entity to take related to this Agreement, Public Sector Access Policy, Your Content or use of the AWS Services; and

### End Users’ use of Your Content and the AWS Services and ensuring that End Users comply with your obligations under the Public Sector Access Policy and that the terms of your agreement with each End User are consistent with the Public Sector Access Policy.

## If you become aware of any violation of your obligations under the Public Sector Access Policy by an End User, you must immediately terminate such End User’s access to Your Content and the AWS Services.

## **Suspension**

## If we suspend your AWS Service in accordance with this Agreement, to the extent practicable, we will:

### suspend your right to access or use only those instances, data, or portions of the AWS Services that caused the suspension; and

### limit the suspension to those accounts that caused the suspension.

### If commercially feasible, access to the AWS Services will be restored once the conditions or circumstances giving rise to the suspension have been removed or corrected.

## **Suggestions**

## If you provide any Suggestions to us or AWS when using the AWS Services, clause 4.9 does not apply, and instead you grant to us and AWS a perpetual, irrevocable, non-exclusive, worldwide, royalty-free right and licence to reproduce, distribute, make derivative works based upon, publicly display, publicly perform, make, have made, use sell, offer for sale, and import the Suggestions, including the right to sublicense such rights through multiple tiers, alone or in combination.

## **Additional representations and warranties**

## You represent and warrant that:

### you and your End Users’ use of the AWS Services (including any use by your employees and personnel) will not violate the Public Sector Access Policy;

### you or your licensors own all right, title and interest in and to Your Content;

### Your Content (including the use, development, design, production, advertising, or marketing of your Content) or the combination of your Content with other applications, content or processes, do not and will not violate any applicable laws or infringe or misappropriate any third-party rights; and

### your use of the AWS Services will not cause harm to any End User.

## **Limitation of liability**

## When applying clause 12.1:

### the term ‘cause of action or liability’ in the opening paragraph is interpreted to include reference to the words ‘compensation, reimbursement or damages’;

### clause 12.1(b) is amended to remove the words in parentheses (because no service levels apply), and the following words are added to the end of the clause:

### *…including as a result of any suspension of your use of or access to the AWS Services, our discontinuation of any or all of the AWS Services or any unanticipated or unscheduled downtime of all or a portion of the AWS Services for any reason;*

### clause 12.1(e) is replaced with the following:

### *any unauthorised access to, alteration of, or the deletion, destruction, damage, loss or failure to store any of Your Content or other data that you or any End User submits or uses in connection with the AWS Services (including as a result of your or any End Users’ errors, acts or omissions).*

## **Notification of Public Sector Opportunities**

## You acknowledge that, notwithstanding any other obligations between the parties (including obligations of confidentiality), we may do either or both of the following:

### notify AWS of any Public Sector Opportunities; and

### put AWS in contact with you to seek access to relevant information regarding any Public Sector Opportunity involving you,

### without breaching any confidentiality obligations that we may otherwise owe you.

## **Revocation or resale rights or termination of back-end agreement**

## You acknowledge and agree that we rely on AWS to provide the AWS Services to you. If for any reason AWS suspends or cancels our right to resell the AWS Services (whether in whole or in part, and whether to some or all customers), we may immediately suspend or cancel the AWS Services to you.

## **Commonwealth and State Records Laws**

## You acknowledge and agree that:

### neither we nor AWS are responsible for, and exclude liability for, compliance with applicable Commonwealth or State Records Law; and

### at all times, you will comply with (and ensure that each of your End Users complies with), applicable Commonwealth or State Records Law.

## On termination of this Agreement (or on the end of the AWS Service for any other reason), you must ensure that you separately retain all Commonwealth or State Records in accordance with the applicable Commonwealth or State Records Law. You must pay for all storage fees for Your Content stored on the AWS Service from the date of termination (or end for any other reason) of the AWS Service to the date on which you notify us that you have complied with this clause. This clause expressly survives termination of this Agreement.

## **Additional definitions**

## In this clause 15 (and throughout the Agreement, in accordance with clause 15.3(b)):

## **AWS Site** means <http://aws.amazon.com> and any successor or related site designated by AWS.

## **Commonwealth or State Records Law** means the *Archives Act 1983 (Cth)* and any similar law of a State or Territory of Australia that relates to the retention of the records of that State or Territory. **Commonwealth or State Record** means any data, record or document that is deemed by a Commonwealth or State Records Law to be a record of the Commonwealth, or a State or Territory of Australia that is not the subject of a destruction authority or an exemption from retention applying to the Public Sector Customer, under the applicable Commonwealth or State Records Law.

## **Policies** means the Acceptable Use Policy, the Terms of Use, the Service Terms, all restrictions described in the AWS Content and on the AWS Site, and any other policy or terms referenced in or incorporated into the Public Sector Access Policy.

## **Public Sector Access Policy** means the access policy currently located at <https://s3.amazonaws.com/Reseller-Program-Legal-Documents/AWS+Access+Policy.pdf>. The Public Sector Access Policy may be updated by AWS from time to time and may be made available on any successor or related site designated by AWS.

## **Public Sector Customer** means a customer of our AWS Service that is an agency, organisation, or other entity that is either within or is owned, funded, managed or controlled (in whole or in part) by:

### any level of any government in Australia or any other country’s government at any level;

### any quasi-governmental entities (such as the World Bank);

### any International governing/regulatory bodies (such as EU institutions);

### any publicly funded institutions such as colleges, universities, and hospitals); and

### any higher-tier prime contractors, consultants or other entities working in support of the foregoing.

## **Public Sector Opportunity** means any potential or existing contract, agreement, or other legally binding arrangement between us and a Public Sector Customer, as well as any request or invitation for a proposal/tender, call for bids/tenders, or any similar type of formal engagement with a Public Sector Customer.

## **Service Level Agreement** means all service level agreements that AWS offers with respect to the AWS Services and post on the AWS Site, as they may be updated by AWS from time to time.

# Definitions

## In this Agreement, unless otherwise stated:

Acceptable Use Policy means the Amazon Web Services Acceptable User Policy, currently available at http:////aws.amazon.com/aup/, as it may be updated by AWS from time to time, and as may be made available on any successor or related site designated by AWS.

Act means the Telecommunications Act 1997 (Cth).

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

AWS Content means Content that we or our third party suppliers make available in connection with the AWS Services, or on any other site to allow access to and use of the AWS Services, including APIs, WSDLs, Documentation, sample code, software libraries, command line tools, proofs of concept, templates, and other related technology (including any of the foregoing that are provided by any of our respective personnel). AWS Content does not include the AWS Services or Third Party Content.

AWS Customer Licence Terms means the customer licence terms currently located at https://s3-us-west-2.amazonaws.com/legal-reseller/AWS+Reseller+Customer+License+Terms.pdf, as they may be updated by AWS from time to time, and as may be made available on any successor or related site designated by AWS.

AWS Services means the services provided by AWS and made available to Telstra customers through the Telstra Cloud Services Store.

Business Day means any day other than a Saturday, Sunday or recognised public holiday in the jurisdiction in clause 14.2.

Content means software (including machine images), data, text, audio, video, images or other content.

Documentation means developer guides, getting started guides, user guides, quick reference guides and other technical and operations manuals and specifications for the AWS Services, located at <http://aws.amazon.com/documentation> (and any successor or related locations designated by AWS) as such documentation may be updated from time to time.

End User means any individual or entity that directly or indirectly through another user (a) accesses or uses Your Content or (b) otherwise accesses or uses the AWS Services under your account. The Term End User does not include individuals or entities when they are accessing or using the AWS Services or any Content under their own account, rather than your account.

Facility means facility as defined in the Act and includes any line, equipment, tower, mast, antenna, tunnel, hole, pit or pole used in connection with a Service.

Intellectual Property Rights means all current and future registered rights in respect of copyright, designs, circuit layouts, trademarks, trade secrets, domain names, database rights, know-how and confidential information and any other intellectual property rights as defined by Article 2 of the World Intellectual Property Organisation Convention of July 1967, excluding patents.

Losses means any claims, damages, losses, liabilities, costs and expenses (including reasonable attorneys’ fees).

Our Customer Terms means the Standard Form of Agreement formulated by Telstra for the purposes of Part 23 of the Act, as amended by us from time to time in accordance with the Act.

Policies means any policies of our third party service provider, including its Acceptable Use Policy, Privacy Policy, Terms of Use, Service Terms, Trademark Use Guidelines available at [http://aws.amazon.com/](http://aws.amazon.com/%20)  as amended from time to time, and any other policy or terms as advised by us or by AWS directly to you from time to time.

Premises means any land, building, structure, vehicle or vessel which is owned, leased or occupied by you containing a Facility or a Service, or to which a Service is supplied.

**Regions** means the country and city locations in which the AWS infrastructure and AWS Services are made available by AWS. The current country and city locations for each of their Regions is available at <http://aws.amazon.com/about-aws/global-infrastructure/>, as may be amended by AWS from time to time.

Service Level Agreement means all service level agreements that AWS offers with respect to the AWS Services and posts on the AWS site, as they may be updated by AWS from time to time. The service level agreements that AWS currently offers with respect to the Services are located at: <https://aws.amazon.com/legal/service-level-agreements/> (and any successor or related locations designated by AWS), as may be updated by AWS from time to time.

Service Terms means the rights and restrictions for particular AWS Services located at <http://aws.amazon.com/serviceterms>, as they may be updated by AWS from time to time, and as may be made available on any successor or related site designated by AWS.

Suggestions means all suggested improvements to the AWS Services that you provide to us or our third party service provider.

Taxes means a tax, levy, duty, charge, deduction or withholding, however described, imposed by law or a government agency, together with any related interest, penalty or fine, including in respect of GST, but excluding income tax.

Third Party Content means Content of a third party made available on the AWS Services or on developer forums, sample code repositories, public data repositories, community-focused areas of the AWS site, or any other part of the AWS site that allows third parties to make available software, products or data.

Telstra Cloud Services Store means the online store located at <https://buycloud.telstra.com/>, as may be updated or replaced by Telstra from time to time, where customers can purchase the AWS Services.

**Your** Content means Content that you or any End User (a) runs on the AWS Services (b) causes to interface with the AWS Services or (c) uploads to the AWS Services under your account or otherwise transfers, processes, uses or stores in connection with your account.

**Your Submissions** means Content that you post or otherwise submit to developer forums, sample code repositories, public data repositories, community-focused areas of the AWS site, or any other part of the AWS site that allows third parties to make available software, products or data.