AGREEMENT FOR AMAZON WEB SERVICES (AWS) SERVICES FROM TELSTRA

1   THIS AGREEMENT

1.1   This Agreement is between Telstra Limited ABN 64 086 174 781 and the entity to whom the AWS Services from Telstra (**AWS Services**) are supplied (**you**). This will be the entity specified in your Application Form for these services or on your order for the AWS Services, unless we are in fact supplying the AWS Services to another entity in which case it will be that entity.

1.2   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).

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

1.4   You acknowledge and agree that:

(a)   subject to clause 1.4(b), we may amend the terms of this Agreement from time-to-time by publication of the varied terms at www.telstra.com/awsterms (or as made available by us on any successor or related site);

(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 notice of the change. You can cancel your service within 30 days of our notice if do not accept the changes by giving us 30 days' notice of cancellation, in which case:

(i)   you will only incur usage fees and charges for the AWS 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, within 30 days from the cancellation date, you can request us to engage with AWS or another reseller to transition your Reserved Instance AWS Service for the remainder of the minimum term; and

(c)   subject to clause 1.4(b), 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

1.5   To receive and use the AWS Services, you must complete an Application Form and at your own cost, for the duration of the term of your AWS Services:

(a)   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;

(b)   be a registered Australian business for GST purposes; and

(c)   if you are a Public Sector Customer, be located in Australia.

No separate agreement with AWS

1.6   You acknowledge and agree that:

(a) this Agreement and inclusion by reference of any document (including for example, AWS policies, terms or service descriptions), does not create an agreement between you and AWS;

(b) contractual commitments or obligations between AWS and us regarding our resale or provision of AWS Services do not apply as between you and AWS and AWS (including its licensors) has no liability or obligations to you (or your End Users) with respect to the AWS Services you receive, use or access under this Agreement; and

(c) you will not pursue AWS (or its licensors) for any Losses arising out of, or in connection with, the AWS Services you (or your End Users) receive, use or access under this Agreement.

1.7 You indemnify us, AWS and our licensors (including our respective employees, officers, directors and representatives) against any Losses arising from, or connected to, any claim made or attempted to be made by you (or any of your End Users) against AWS (including its licensors) for AWS Services you receive, use or access under this Agreement.

2 AWS SERVICES

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

2.2 The specific AWS Services that you have acquired, including pricing details, are set out in your order for the services.

Service Levels

2.3 Service Levels may apply to certain AWS Services. 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.

Jurisdiction

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

Your Content

2.5 Subject to clause 2.7, 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:

(a) disclose Your Content to any government or third party;

(b) move Your Content from the AWS Region selected by you; and

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

2.6 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.

2.7 Despite clause 2.5, if we are advised that any of Your Content violates the Policies, you must provide all reasonable assistance to us in relation to removing that Content, failing which we or AWS may remove or disable access to Your Content that violates the Policies.

Changes to AWS Services

2.8   You agree that we may:

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

(b)   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.

2.9   We will try to give you as much notice as possible of any changes.

2.10   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:

(a)   impose appropriate contractual obligations upon subcontractors; and

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

3   YOUR COMMITMENT TO US

3.1   You:

(a)   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;

(b)   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);

(c)   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;

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

(e)   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;

(f)   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;

(g)   are responsible for your End Users' use of Your Content and the AWS Services;

(h)   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;

(i)   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;

(j)   are solely responsible for selecting, supplying and maintaining your own facilities and equipment;

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

(l)   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.

4   LICENCES

4.1   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.

4.2   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.

4.3   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.

4.4   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:

(a)   access and use the AWS Services solely in accordance with this Agreement; and

(b)   copy and use the AWS Content solely in connection with your permitted use of the AWS Services.

4.5   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.

4.6   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:

(a)   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);

(b)   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;

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

(d)   resell or sublicense the AWS Services.

4.7   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.

4.8   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.

4.9   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.

5   PAYMENT AND INVOICES

5.1   You must pay us the charges for the AWS Services as set out in your order and invoice for the services.

5.2   You agree that:

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

(b)   the pricing for AWS Services made available via 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;

(d)   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

(e)   payment is required in Australian dollars, directly to us.

5.3   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.

5.4   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.

5.5   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.

6   TAXES

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

6.2   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.

6.3   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.

6.4   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.

7   SUSPENSION OR CANCELLATION OF SERVICES

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

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

(a)   in the event of an emergency or to provide resources to emergency and other essential services;

(b) if the supply or use of an AWS Service is or is to become unlawful or is necessary to comply with requests of governmental entities;

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

(d) if your or one or more of your End Users' use of the AWS Service:

(i) poses a security risk to the AWS Services or any third party;

(ii) risks adversely impacting our third party supplier's systems, the AWS Services or the systems or Content of any other customer;

(iii) risks subjecting us or our third party supplier to liability; or

(iv) breaches the Policies or clause 4.

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

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

(b) 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;

(c) 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;

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

(e) 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. .

7.4 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.

7.5 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.

8   TERM AND TERMINATION

Term

8.1 This Agreement begins on the date we accept your Application Form or registration for AWS Services from Telstra, and continues until it is terminated or all the AWS Services have expired or been terminated.

8.2 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

8.3 You can terminate your AWS Service by giving us 30 days' written notice.

8.4 We may:

(a) immediately terminate your AWS Services if:

(i) you commit a material breach and do not remedy the breach within 30 days of receiving a notice to do so;

(ii) AWS terminates or cancels our right to resell the AWS Services (whether in whole or in part, and whether to some or all customers), in which case we will, if possible, give you reasonable notice; you violate an applicable law or it is necessary for us to comply with applicable laws or requests of government entities; or

(iii) your use of the AWS Services exposes or threatens to expose us or AWS to any material liability;

(b) 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:

(i) transfer you to an alternative service; or

(ii) cancel your AWS Service; or

(c) terminate your AWS Services for convenience by giving you no less than 90 days' prior written notice.

8.5 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

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

(a) 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);

(b) 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), unless your service is transitioned within 30 days of the termination under clause 8.8(a); and

(c) all rights a party has accrued before expiry, termination or cancellation continue.

8.7 If this Agreement expires or terminates for any reason, clauses 1.6 and 1.7 (No separate agreement with AWS), 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) and 13 (Dispute Resolution) continue in full force and effect.

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

(a) 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 you consent to us providing your information (including your contact information) to AWS for this purpose); and

(b) 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:

(i) 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

(ii)   you have paid all amounts due under this Agreement, other than genuinely disputed amounts.

8.9   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.

9   CONFIDENTIALITY AND PRIVACY

9.1   Each party must treat as confidential information:

(a)   the provisions of this Agreement; and

(b)   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.

9.2   A party must not disclose the other party's confidential information to any person except:

(a)   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;

(b)   with the other party's prior written consent;

(c)   if required by law, any regulatory authority or stock exchange; or

(d)   if it is in the public domain, other by breach of this Agreement.

9.3   Notwithstanding 9.1, we may disclose confidential information:

(a)   to our Related Body Corporate or any of our professional advisors or rating agencies; and

(b)   to any person in connection with any of our, or our Related Body Corporate's, actual or potential financing, risk transfer, monetisation or similar transactions,

provided those persons first agree to observe the confidentiality of the information.

9.4   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:

(a)   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;

(b)   we may use and disclose information about you and each of them to AWS who 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;

(c)   if your use of your AWS Services includes one or more third-party solutions, we and AWS may disclose to the applicable third party solution provider information about you and each of them which is associated with the use of the third-party solution; and

(d)   information about you and each of them that you and each of them disclosed directly to AWS 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.

9.5   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:

(a)   promptly notify you as required by applicable law; and

(b)   take commercially reasonable measures to address the breach in a timely manner.

10   INDEMNITY

10.1   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:

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

(b)   any breach of clauses 9 and 14.18 to 14.20;

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

(d)   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.

11   WARRANTIES

11.1   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.

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

11.3   Subject to clauses 11.1, 11.4 and 12.4, 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.

11.4   **Mandatory Notice if ACL applies**: Our services come with guarantees that cannot be excluded under the Australian Consumer Law. If there is a major failure with the service, you are entitled to cancel your services and to a refund for the unused portion or to be compensated for its reduced value. You are also entitled to be compensated for any other reasonably foreseeable loss or damage. If the failure does not amount to a major failure you are entitled to have problems with the service rectified in a reasonable time and, if this is not done, to cancel your service and obtain a refund for the unused portion of the services.

12   LIMITATION OF LIABILITY

12.1   Except for your payment obligations and indemnification under clauses 1.7 and 9.5, 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 claim for :

(a)   loss of profits, revenues, customers, opportunities or goodwill;

(b)   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);

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

(d)   unauthorised access to Your Content, or any compromise, alteration or loss of Your Content;

(e)   cost of replacement or restoration of any lost or altered Your Content; or

(f)   any indirect, incidental, special, consequential or exemplary damages.

12.2   Except for your payment obligations and indemnification under clauses 1.7 and 9.5, in addition to clause 12.1, neither party nor any of their affiliates or licensors will be liable to the other party under any claim for:

(a)   the value of Your Content; or

(b)   investments, expenditures or commitments by you related to use of or access to the AWS Services.

12.3   Except for your payment obligations under this Agreement and indemnification arising under clauses 1.7 and 9.5 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.

12.4   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.

13   DISPUTE RESOLUTION

13.1   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).

13.2   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.

13.3   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.

14   GENERAL

ENTIRE AGREEMENT

14.1   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

14.2   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

14.3   In this Agreement:

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

(b)   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;

(c)   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;

(d)   a reference to a party includes a reference to the party's executors, administrators, successors and assigns;

(e)   the singular includes the plural, and vice versa; and

(f)   "includes", "including", "for example", "such as" and similar terms are not words of limitation.

NOTICES

14.4   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.

14.5   Notices sent:

(a)   by hand are taken to be received when delivered;

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

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

(d)   by fax are taken to be received when the sender's fax machine issues a successful transmission report.

VARIATIONS

14.6   This Agreement may only be varied under clause 1.4 or by written agreement between the parties.

SEVERABILITY

14.7   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.

NO SET-OFF

14.8   You may not exercise any right to set-off or withhold any amount payable to us under this Agreement, unless expressly permitted under this Agreement.

WAIVER OF RIGHTS

14.9   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.

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

WARRANTIES

14.11   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.

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

ASSIGNMENT AND AGENCY

14.13   We may do any of the following without your consent:

(a)   novate this Agreement to another Telstra Group Entity; and

(b)   assign, transfer or otherwise deal with, or grant security or create an interest or trust in or over (to or with any person):

(i)   all or any part of this Agreement;

(ii)   any of our rights, receivables or interests in connection with this agreement; or

(iii)   any related assets; and

(c)   do all things required or desirable to give effect to paragraphs (a) and (b).

14.14   You must not assign your rights or novate your obligations under this Agreement without the other party's prior written consent, which must not be unreasonably withheld.

14.15   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

14.16   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.

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

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

(b)   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

(c)   resume compliance as soon as practicable after the event no longer affects either party.

EXPORT CONTROL RESTRICTIONS

14.18   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 United States company, such as the Export 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, including any transfer and processing of Your Content, the provision of Your Content to End Users and third parties, and specifying the region in which any of those occur.

14.19   You represent that you and the entities that own or control you and the financial institutions used to pay us under this Agreement, 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.

ANTI-BRIBERY

14.20   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 of this Agreement. We may immediately terminate or suspend performance (in whole or in part) under this Agreement if you breaches this clause 14.20.

15   ADDITIONAL TERMS FOR PUBLIC SECTOR CUSTOMERS

General

15.1   The terms in this clause 15 apply:

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

(b)   if, and only if, you are a Public Sector Customer.

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

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

(a)   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

(b)   in the event of an inconsistency between the remainder of the Agreement and the terms of the Public Sector Access Policy, as part of this clause 15, the terms of the Public Sector Access Policy will prevail to the extent of inconsistency.

Public Sector Access Policy

15.4   By entering into this Agreement and using the AWS Services, you acknowledge that:

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

(b)   you expressly agree to the terms of the Public Sector Access Policy; and

(c)   any terms (including in respect of rights, obligations or limitations) expressed as for the benefit of AWS in Public Sector Access Policy, are also to be interpreted as expressed for the benefit of us under the terms of this Agreement.

15.5   Your continued access to and use of the AWS Services is conditioned on your compliance with:

(a)   the Public Sector Access Policy; and

(b)   all applicable laws, rules, regulations, instructions and other policies and contractual requirements (including but not limited to applicable Data Protection Laws, Your Content Requirements and Public Records Laws) relating to a Public Sector Opportunity (collectively, '**Public Sector Requirements**').

15.6   You must immediately discontinue your use of the AWS Services if you cannot comply with the Public Sector Requirements or the Public Sector Access Policy.

15.7   We may terminate, cancel of suspend your AWS Services if continued provision of the AWS Services would result in a breach of the Public Sector Requirements or any liability to us or AWS under the Public Sector Requirements.

Additional representations and warranties

15.8   You represent and warrant that:

(a)   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; and

(b)   you will comply with any applicable Public Sector Requirements, including requirements on you or our behalf regarding disclosure or crediting of any discounts, rebates, credits, fees or other consideration by us.

Additional Indemnity

15.9   In addition to the other indemnification obligations under this Agreement, you indemnify us, AWS and our licensors (including our respective employees, officers, directors and representatives), against any Losses arising out or in connection with any third party claim relating to:

(a)   a breach by you (or your End Users) of any of your obligations, representations, or warranties under this clause 15 (including the Public Sector Access Policy); or

(b)   except to the extent caused by our or our third party's gross negligence or wilful misconduct, any violation of the Public Sector Requirements.

Revocation or resale rights or termination of back-end agreement

15.10   You acknowledge and agree that we rely on AWS to provide the AWS Services to you. If for any reason AWS terminates, 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 terminate, suspend or cancel the AWS Services to you.

Additional definitions

15.11   In this clause 15:

Data Protection Laws means any laws, regulations, or similar legal obligations regarding security, safety, privacy, or similar qualitative or quantitative standards relating to information or data (including, but not limited to, the processing, storage, use of, access to, or transmission of such data) that may apply to the AWS Services.

Public Records Laws means any law, regulation, or official policy relating to an obligation to maintain, preserve, and/or disclose Content, documentation, or other records maintained by (or on behalf of) a Public Sector Customer (including, but not limited to, 'Freedom of Information,' 'Public Records'. 'Open Records', or 'Archives' laws, or other similar requirements at any level of government).

Public Sector Access Policy means the access policy currently located at https://s3-us-west-2.amazonaws.com/solution-provider-program-legal-documents/AWS+Public+Sector+Access+Policy.pdf. The Public Sector Access Policy may be updated at this location 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 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 entities (such as the World Bank);

(c)   an international governing/regulatory bodies (such as EU institutions);

(d)   a publicly funded institutions (such as colleges, universities, and hospitals); and

(e)   a higher-tier prime contractor, consultant or other entity 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.

Your Content Requirements means any requirements specified or required by you or your End User regarding the treatment or management of Your Content (e.g., security, location, storage, durability, reliability, redundancy, etc.) in connection with a Public Sector Opportunity.

16   TERMS FOR AWS MARKETPLACE PURCHASES

16.1   This clause 16 applies in respect of any AWS Marketplace Purchases made on or after 7 March 2024,

16.2   We may invoice you on a Telstra invoice for AWS Marketplace Purchases you make from a Vendor in the AWS Marketplace under your Vendor Agreement. This is called the **AWS Billing Service**.

16.3   This clause 16 applies to the AWS Billing Service. It applies to the extent of any inconsistency with the balance of this agreement, but only in respect of the AWS Billing Service. It does not affect the other services provided under this agreement.

16.4   Further details regarding acquiring AWS Marketplace Purchases to be invoiced by us on a Telstra invoice 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.

16.5   The following clauses do not apply to the AWS Billing Service (but the remainder do, subject to this clause 16):

(a)   clauses 1.6 and 1.7 (No separate agreement with AWS);

(b)   clause 2 (AWS Services);

(c)   clause 3 (Your Commitment to us);

(d)   clause 4 (Licences);

(e)   clause 10 (Indemnity);

(f)   clauses 11.2 and 11.3 (Warranties); and

(g)   clause 12 (Limitation of Liability);

16.6   In respect of remaining clauses, references to 'AWS Services' are read to include 'AWS Billing Services' and/or 'AWS Marketplace Purchases', as relevant.

Eligibility and your obligations

16.7   You must pay us for your AWS Marketplace Purchases in accordance with this clause.

16.8   Our provision of the AWS Billing Service is subject to you, for the Term, having a separate Vendor Agreement with the relevant Vendor and complying with all applicable laws relating to the AWS Billing Service.

16.9   Acquiring AWS Billing Services is not generally available to Public Sector Customers. By using 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 16.9(b)(i).

16.10   You permit us to disclose any of your information to AWS for the purpose of clause 16.9.

16.11   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 clauses 16.8 or 16.9.

Separate agreement with Vendors for AWS Marketplace Purchases

16.12   You acknowledge and agree that:

(a)   we do not provide you with any AWS Marketplace Purchases. You receive your 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 this agreement (as amended by this clause 16);

(b)   you will not prevent any Vendor from exercising any of its rights or performing any of its obligations under your Vendor Agreement;

(c)   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

(d)   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 Marketplace Purchases and Vendor Agreement.

16.13   Conversely, you acknowledge and agree that 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 the Vendor in relation to our services (including the AWS Billing Service).

Giving you root access to our management account

16.14   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.

16.15   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.

Liability and indemnity

16.16   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)   clause 16.8 (Eligibility and your obligations);

(b)   clause 16.9 (Eligibility and your obligations);

(c)   clause 16.13 (Separate agreement with Vendors for AWS Marketplace Purchases);

(d)   clause 16.14 (Giving you root access to our management account) in connection with use of our management account (if relevant); and

(e)   clause 16.24 (Confidentiality).

16.17   Except for indemnification under clause 16.16 and your payment obligations under this agreement, 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.

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 AWS Marketplace Purchases or the terms of your Vendor Agreement(s), except in relation to any claim by a Vendor against you alleging non-payment for your AWS Marketplace Purchases 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.

16.18   Except for indemnification arising under clause 16.16 and your payment obligations under clause 16, 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.

16.19   The exclusions and limitations in this clause 16 apply to the greatest extent permitted by law and apply to all liability in connection with the AWS Billing Service (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.

16.20   Notwithstanding anything else in this agreement in respect of the AWS Billing Services:

(a)   nothing 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.

Term and Termination

16.21   Without limiting any other provision of this agreement, either party may terminate the AWS Billing Services on 30 days' notice to the other party (although terminate does not affect your obligation to pay us for any of your AWS Marketplace Purchases that AWS links to us or our accounts, or otherwise charges us).

16.22   Any termination, cancellation or suspension of the AWS Billing Service does not terminate, cancel or suspend your AWS Marketplace Purchases supplied by a Vendor. If you wish to terminate your AWS

Marketplace Purchases, you must do so under the terms of your Vendor Agreement with the Vendor. Nothing in this agreement limits or prevents any termination rights of you or the relevant Vendor under a Vendor Agreement.

16.23 If you, AWS or a Vendor terminates any of your AWS Marketplace Purchases under your Vendor Agreement, you must notify us in writing.

Confidentiality

16.24 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.

16.25 The following definitions apply to the AWS Billing Services:

(a) **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.

(b) **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).

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

(d) **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.

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18 DEFINITIONS

18.1 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).

Application Form means an agreed application or order form for AWS Services from Telstra.

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 Services means each of the AWS services you access, receive and use through Telstra under the terms of this Agreement.

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 legal 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/ 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.

Related Body Corporate has the meaning it has in the Corporations Act, but as if each reference to a "body corporate" includes a proprietary company, a partnership or a trust.

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.

Subsidiary of an entity has the meaning given to that term in the Corporations Act, but includes:

(a)   a partnership in which the entity has, in aggregate, a direct or indirect interest of over 50% in the partnership or which is controlled by the entity; and

(b)   a trust in which the entity has, in aggregate, a direct or indirect interest of over 50% of the issued units of the trust.

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 Group Entities means any of the following entities:

(a)   Telstra;

(b)   a Subsidiary of Telstra or a Subsidiary of a Related Body Corporate of Telstra; or

(c)   a Related Body Corporate of Telstra.

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.