

# AGREEMENT FOR AMAZON WEB SERVICES (AWS) SERVICES



## 1 THIS AGREEMENT

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- 1.1 This Agreement is between Telstra Corporation Limited ABN 33 051 775 556 (**we, us, our**) and the entity specified in your Application Form (**you or your**).
- 1.2 By completing your Application Form, you acknowledge and agree that you have read and accept the terms of this Agreement (including all terms or other documents incorporated by reference).
- 1.3 You acknowledge and agree that:
- (a) subject to clause 1.3(b), we may amend the terms of this Agreement from time-to-time by publication of the varied terms at: [www.telstra.com/awsterms](http://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 AWS Services under this Agreement 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, the services will be transitioned to AWS under your AWS Services Agreement.
  - (c) subject to clause 1.3(b), by continuing to use the AWS Services, you agree to the amended terms. If you do not agree, you can terminate your AWS Services under this Agreement in accordance with clause 6.2.

## 2 AWS SERVICES

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- 2.1 This Agreement allows us to invoice you for the AWS Services you receive or access from AWS under your AWS Services Agreement. You must pay us for your AWS Services under the terms of this Agreement.
- 2.2 Further details regarding acquiring AWS Services under this Agreement is 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.

### Eligibility and your obligations

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

- (b) having a connection into your private network via a service from us. The terms for these services are not part of this Agreement. If you are not already receiving these services from us, you can acquire them from us under a separate agreement and order for these services. Unless we agree otherwise, you must acquire only from us all services you use for carrying data to or from your AWS Services;
  - (c) being a registered Australian business for GST purposes; and
  - (d) complying with all applicable laws relating to the AWS Services.
- 2.4 Acquiring AWS Services under this Agreement is not generally available to Public Sector Customers. By entering this Agreement, you acknowledge and confirm:
- (a) you are not a Public Sector Customer; or
  - (b) if you are a Public Sector Customer you are located in Australia and before entering this Agreement, you have:
    - (i) entered an AWS Services Agreement directly with AWS; and
    - (ii) received confirmation in writing from us that you comply with clause 2.4(b)(i).
- 2.5 You permit us to disclose any of your information to AWS for the purpose of clause 2.4.
- 2.6 We may terminate, cancel or suspend your AWS Services under this Agreement by notice to you, at any time after you enter this Agreement if it is found you are in breach of clause 2.3 or 2.4.

### **Separate agreement with AWS for AWS Services**

- 2.7 You acknowledge and agree that:
- (a) we do not provide you with any AWS Services under this Agreement. You receive your AWS Services from AWS under the terms of your AWS Services Agreement which governs your access to and use of those services (except for any terms relating to billing, payment and taxes which are replaced with the terms in clauses 3 and 4 of this Agreement);
  - (b) you will not prevent AWS exercising any of its rights or performing any of its obligations under your AWS Services Agreement;
  - (c) contractual rights, commitments or obligations between you and AWS under your AWS Services Agreement in respect of the AWS Services, do not apply between us and you; 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 Services and AWS Services Agreement.

### **Accessing your AWS account**

- 2.8 If you do not already have an AWS account, you consent to us, on your behalf:
- (a) creating an AWS account in the legal name of the entity you have nominated in your Application Form; and
  - (b) entering and accepting an AWS Customer Agreement (located on the AWS site at <http://aws.amazon.com/agreement>) between you and AWS, the terms of which you acknowledge you have read and accept.

### **3 PAYMENT AND INVOICING**

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

### **4 TAXES**

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- 4.1 Subject to clauses 4.2 and 4.3, you must pay all Taxes in connection with the AWS Services.
- 4.2 Where GST is imposed on a taxable supply made under or in connection with this Agreement and the recipient of that supply receives a tax invoice for that supply, the recipient must pay an additional amount equal to the GST to the supplier (without deduction, withholding, counterclaim or set-off) by the tax invoice due date.

- 4.3 If one party is required to indemnify, pay 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 4.2 if the amount payable is consideration for a taxable supply.
- 4.4 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.

## **5 LIABILITY AND INDEMNITY**

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- 5.1 You indemnify us, AWS and our licensors (including our respective Personnel) from and against any Losses relating to any claims made by you or a third party arising from or in connection with:
- (a) any breach by you (or your Personnel) of:
    - (i) clauses 2.3 and 2.4 (Eligibility and your obligations);
    - (ii) clause 2.7 (Separate Agreement with AWS);
    - (iii) clause 3 (Payment and Invoicing);
    - (iv) clause 7 (Confidentiality and Privacy); and
    - (v) clauses 9.19 to 9.21 (Export Control Restrictions and Anti-Bribery),  
of this Agreement; and
  - (b) violation of any applicable law by you or your Personnel related to the AWS Services.
- 5.2 Except for indemnification under clause 5.1 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 to:
- (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 related to this Agreement.
- 5.3 We exclude all liability to you (including to your end users and Personnel) for any claims made by you or a third party for Losses arising out of, or in connection with, your AWS Services or the terms of your AWS Services Agreement.
- 5.4 Except for indemnification arising under clause 5.1 and your payment obligations under this Agreement, 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 during the 12 months before the liability arose.
- 5.5 The exclusions and limitations in this clause 5 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 to you is limited to our choice of re-supplying or paying the cost of re-supplying the AWS Services.

## **6 TERM AND TERMINATION**

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- 6.1 This Agreement begins on the date we accept your Application Form and continues until it is terminated (**Term**).
- 6.2 Either party may terminate this Agreement on 30 days' notice to the other party.
- 6.3 We may terminate, suspend or cancel this Agreement immediately if:
- (a) you commit a material breach and do not remedy the breach within 30 days of receiving a notice to do so;
  - (b) you do not pay us any amounts due under this Agreement in accordance with clause 3;
  - (c) AWS terminates or cancels our right to provide the rebilling services under this Agreement in which case, if possible, we will give you reasonable notice;
  - (d) all the AWS Services on your AWS account have been cancelled or terminated for 45 days;
  - (e) you violate an applicable law or it is necessary for us to comply with applicable laws or requests of government entities;
  - (f) your use of the AWS Services expose or threaten to expose us or AWS to any material liability;
  - (g) if the Australian Competition and Consumer Commission (ACCC) issues or we reasonably anticipate that the ACCC may issue a competition notice in relation to a AWS End Customer Service;
  - (h) if you are or become a carrier or carriage service provider (as defined in the Act); and
  - (i) you become bankrupt or insolvent (or appear likely to do so) or an administrator, receiver or scheme administrator is appointed to you, and that administrator, receiver or scheme administrator does not accept personal liability for the ongoing supply of services by us within 3 business days of our request that they do so.
- 6.4 Where provision of rebilling of your AWS Services under this Agreement has been suspended or cancelled by us we may require you to pay a re-instatement charge if the rebilling service is re-instated.
- 6.5 Any termination, cancellation or suspension of the rebilling services under this Agreement does not terminate, cancel or suspend your AWS Services supplied by AWS. If you wish to terminate your AWS Services you must do so under the terms of your AWS Services Agreement with AWS. Nothing in this Agreement limits or prevents any termination rights of you or AWS under your AWS Services Agreement.
- 6.6 If you or AWS terminate any of your AWS Services under your AWS Services Agreement you must notify us in writing.
- 6.7 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 a request for payment, all other amounts outstanding as at the date of, or arising as a result of, expiry or termination; and

- (b) all rights a party has accrued before expiry, termination or cancellation continue.
- 6.8 If this Agreement expires or terminates for any reason clauses 2.7 (Separate Agreement with AWS), 5 (Liability and indemnity), 6.7 (Termination), 7 (Confidentiality and Privacy) and 8 (Dispute Resolution) continue in full force and effect.

## **7 CONFIDENTIALITY AND PRIVACY**

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- 7.1 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
- 7.2 A party must not disclose the other party's confidential information to any person except:
- (a) to its employees, professional advisors or our Personnel 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.
- 7.3 Notwithstanding 7.1, we may disclose confidential information to:
- (a) our Related Body Corporate or any of our professional advisors or rating agencies; and
  - (b) 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.
- 7.4 You agree and will ensure that any of your Personnel, related bodies corporate (and their personnel), and any individuals, who receive services or whose information is disclosed to us, in connection with this Agreement 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](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 you consent may then collect, process, use and disclose information about you and each of them in accordance with AWS' Privacy statement and Privacy Notice (as amended by AWS from time to time), which is available at: [https://aws.amazon.com/privacy/?nc1=f\\_pr](https://aws.amazon.com/privacy/?nc1=f_pr); and
  - (c) 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.

## **8 DISPUTE RESOLUTION**

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- 8.1 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 8 before starting arbitration or court proceedings (except for urgent injunctive or declaratory relief).

- 8.2 If a dispute arises between the parties that cannot be resolved promptly between our contact person and your contact person, either party may notify the other party of a formal dispute. Each party must nominate a senior executive to meet within 7 days of the notice (or another agreed period) to try and resolve the dispute.
- 8.3 If the dispute remains unresolved, the parties must try to resolve it by mediation administered by the Australian Commercial Disputes Centre according to its Mediation Guidelines.

## **9 GENERAL**

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### **ENTIRE AGREEMENT**

- 9.1 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**

- 9.2 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.

### **VARIATION**

- 9.3 Subject to clause 1.3, this Agreement may only be varied by written agreement between the parties.

### **INTERPRETATION**

- 9.4 In this Agreement:
- (a) a reference to this Agreement includes all of its parts 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**

- 9.5 All notices and consents must be in writing and sent to the addresses or email addresses specified on your Application Form or to your officer or as otherwise agreed.

### **ELECTRONIC SIGNATURES**

- 9.6 If an electronic signature is used, it shall have the same effect as a handwritten signature.

## **WARRANTIES**

- 9.7 Each party warrants and represents to the other that:
- (a) entering into and performing its obligations under this Agreement does not breach any of its contractual obligations to any other person; and
  - (b) it will comply with all applicable laws, rules, regulations and ordinances in the performance of this Agreement.
- 9.8 You warrant and represent to us that:
- (a) you have not relied on any representations or warranties by us other than those in this Agreement; and
  - (b) the individual who accepts these terms is authorised to do so on your behalf.

## **SEVERABILITY**

- 9.9 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**

- 9.10 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**

- 9.11 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.
- 9.12 A waiver of a breach of this Agreement does not waive any other breach.

## **SUBCONTRACTORS**

- 9.13 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

## **ASSIGNMENT AND AGENCY**

- 9.14 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).
- 9.15 You must not assign your rights or novate its obligations under this Agreement without our prior written consent, which must not be unreasonably withheld.
- 9.16 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**

- 9.17 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 (**Force Majeure Event**), that obligation is suspended but only so far and for so long as it is affected by the Force Majeure Event.
- 9.18 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 AND ANTI-BRIBERY**

- 9.19 You must comply with all applicable import, re-import, sanctions, anti-boycott, export, and re-export control laws and regulations, including all such laws and regulations that apply to a United States company, such as the Export 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.
- 9.20 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.
- 9.21 You acknowledge that AWS' Code of Business Conduct and Ethics (available at <http://phx.corporate-ir.net/phoenix.zhtml?c=97664&p=irol-govConduct>) (the "Code") prohibits the paying of bribes to anyone for any reason, whether in dealings with governments or the private sector. You will not violate or knowingly permit anyone to violate the Code's prohibition on bribery or any applicable anti-corruption laws in performance under this Agreement. We may immediately terminate or suspend performance (in whole or in part) under this Agreement if you breach this clause 9.21.

## **10 DEFINITIONS**

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- 10.1 In this Agreement, unless otherwise stated:

**Act** means the Telecommunications Act 1997 (Cth).

**Application Form** means an agreed application for AWS Services.

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

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

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

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

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

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

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

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

**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.

**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.

**Term** has the meaning given in clause 6.1.

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

**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.

