

OUR CUSTOMER TERMS CLOUD SERVICES – CLOUD MANAGEMENT PLATFORM

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1 APPLICABLE TERMS

- 1.1 In addition to this Cloud Management Platform Section of Our Customer Terms, unless we agree otherwise, the following terms also apply:
- (a) General Terms of Our Customer Terms (see <http://www.telstra.com.au/customer-terms/business-government/index.htm>); and
 - (b) General Terms of the Cloud Services section of Our Customer Terms (see <https://www.telstra.com.au/customer-terms/business-government#cloud-services>);
 - (c) if applicable as detailed below, the Telstra Cloud Sight terms in Part F – Cloud Management of the Cloud Services section of Our Customer Terms (see <https://www.telstra.com.au/content/dam/tcom/our-customer-terms/business-government/pdf/cloud-sight.pdf>) and
 - (d) other parts of the Cloud Services section, depending on the nature of the products and services that you receive from us.

For an explanation of the interrelationship between the various sections of Our Customer Terms see clause 1 of the General Terms of the Cloud Services section at the link above.

2 SERVICE OVERVIEW

- 2.1 If you take up the Cloud Management Platform services described in this section, you may also have the option to use Telstra Cloud Sight:
- (a) as further described; and
 - (b) subject to the eligibility criteria and terms and conditions specified, in the Telstra Cloud Sight service terms in Part F – Cloud Management of the Cloud Services section of Our Customer Terms (see <https://www.telstra.com.au/content/dam/tcom/our-customer-terms/business-government/pdf/cloud-sight.pdf>).

3 CLOUD SIGHT

- 3.1 You may specify that you wish to take up the option to use Telstra Cloud Sight in your Application Form or at any time by notifying us.
- 3.2 You acknowledge and agree the terms and conditions in the Telstra Cloud Sight section of Our Customer Terms (see <https://www.telstra.com.au/content/dam/tcom/our-customer-terms/business-government/pdf/cloud-sight.pdf>):
- (a) apply and govern our supply, and your use, of Telstra Cloud Sight; and

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- (b) have been accepted by you and are incorporated into your agreement with us for the supply of Cloud Management Platform services.

3.3 If you are using Telstra Cloud Sight, the remaining terms in clause 114 to clause 11 of this Cloud Management Platform section do not apply.

4 THE APPLICATION

Overview

- 4.1 The Application is a cloud portfolio management solution. It is designed for managing cloud infrastructure across multiple public and private clouds.
- 4.2 Full specifications for the Application are set out in <http://docs.rightscale.com/>. The specifications for the Application may vary from time to time.
- 4.3 For clarity, if you are not using Telstra Cloud Sight and are using the Application, all the terms in this Cloud Management Platform section of Our Customer Terms apply.

Network

- 4.4 The Application is delivered as a software as a service over the internet. Therefore, performance will be depend on your network connection and computer configuration.

Fee estimates

- 4.5 The Application is designed to allow you to estimate the fees for selected Underlying Cloud Services (**Estimates**). These Estimates are based on:
 - (a) publicly available information; and
 - (b) the fee information for the Underlying Cloud Services that you choose to manage through the Application and that may be obtained from your relevant Underlying Cloud Services bill or from the Underlying Cloud Services provider.
- 4.6 You acknowledge that Estimates:
 - (a) may not be accurate;
 - (b) may not be complete;
 - (c) may be in another currency and require you to convert the Estimates to Australian dollars, which will introduce variability due to currency fluctuations;
 - (d) may not take into account all options and discounts;
 - (e) may not take into account the specifics of your agreed pricing with us or third parties for the Underlying Cloud Services (although you may

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be able to apply mark-ups or mark-downs within the Application to adjust the standard pricing);

(f) may not reflect the actual price at which you may be able to purchase the Underlying Cloud Service(s) (whether from us or another supplier); and

(g) may change from time to time.

4.7 You acknowledge that we make no warranties or representations as to the accuracy or completeness of the Estimates.

4.8 You acknowledge that we set our pricing independently of any Estimates. We will not use or refer to Estimates in quoting, pricing, or billing the Telstra-supplied Underlying Cloud Services to you.

4.9 You agree that you will make your own enquiries outside of the Application to verify the Estimates if you intend to use them to order the Underlying Cloud Services or track your bills for the Underlying Cloud Services or both.

Changes and updates

4.10 Our suppliers or we can make Updates to the Application at any time. Once installed, the Updates will form part of the Application.

4.11 You agree that our suppliers may, on our behalf, automatically transmit, install, and otherwise provide Updates to the Application without further notice to you or need for your consent. You acknowledge that you may experience a disruption to the Application when changes are made.

5 OUR ACCESS TO THE APPLICATION

Robot Account

5.1 You acknowledge and agree that we will maintain access to your Application through a robot account (**Robot Account**) so that we can, without limitation:

(a) collect information concerning and around your usage of the Application; and

(b) manage your service to the extent required.

If you delete or disable the Robot Account, you may lose some or all of the Application functionalities and prevent appropriate support for your Application. We reserve the right to reinstate the Robot Account in our sole discretion.

Data collection

5.2 You acknowledge and agree that we aim to capture metrics on your use of the Application. These metrics may be used, without limitation, to enable accurate billing, improvements in service delivery, and targeted sales. The metering information will include, without limitation:

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- (a) your Cloud Management Platform Account ID; and
- (b) your number of VM Hours for virtual machines (including without limitation Govern Virtual Machines, Manage Virtual Machines, and Automate Virtual Machines).

6 PRICING, ORDERING, TERM, AND TERMINATION

Pricing plans

- 6.1 Unless you otherwise agree with us in writing, you can choose one of the pricing plans as made available from time to time.

The details for the plans are set out on our website.

- 6.2 If you exceed the number of allocated users available to you on your plan, you may be advised to move to a higher plan. You agree that we may contact you about this.

- 6.3 Your plan includes fixed inclusions and excess rates for each of the three available billing tiers: Govern, Manage and Automate. You acknowledge that:

- (a) Your plan will not block your usage of any billing tier;
- (b) Each tier is independently metered and charged; and
- (c) Unused inclusion for one tier cannot be applied to reduce excess consumption in any other tier.

- 6.4 You acknowledge and agree that each month you shall be billed for actual usage of each billing tier. This will include any overage fees at the rates in the pricing summary in your application form.

- 6.5 You agree that notwithstanding any information you may receive from us about possibly suitable plans that it is solely your responsibility to ensure that you are on the correct plan for your circumstances.

Ordering

- 6.6 Your order must contain the ordering information that we request. The information that you provide must be accurate and complete. This information may include configuration information. If the information you provide us with is inaccurate or not complete, the Application may not work properly (or at all).

Term

- 6.7 Your term will be:
- (a) the default term for the plan you have chosen; or
 - (b) the term set out in your application form or separate agreement with us,

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(“**Initial Term**”).

At the end of any fixed term, unless we have agreed with you otherwise, your contract will renew for another term of the same duration as the Initial Term (“**Renewed Term**”) unless you inform us before expiry of the term that you don’t wish to renew the contract. Telstra shall endeavour to give you reasonable notice of such an opportunity to opt-out before your contract automatically renews.

Trial

- 6.8 We may offer trials of the Application from time to time. Details of any trials will be made available on our website.
- 6.9 This Cloud Management Platform Section of Our Customer Terms will apply during any trial (to the extent applicable).

Early termination charges for termination or plan switches

- 6.10 You will be able to change plans or to discontinue your service subject to the payment of any applicable early termination charges (**ETCs**). ETCs will not apply in respect of any Renewed Term.
- 6.11 ETCs will apply if:
 - (a) if you move from a higher to a lower plan; or
 - (b) you discontinue your service before the end of the agreed term.
- 6.12 ETCs will be calculated as 75% of the monthly charges payable by you multiplied by the number of months remaining in your term.
- 6.13 Any plan changes will take effect from the end of the relevant billing period (subject to clause 6.14 below).

Termination or expiration generally

- 6.14 You should exit all of your cloud services from the Application and remove all platform agents from your virtual machines before requesting termination of your service. We will remove your access to the Application after you request termination of your agreement. Once your access is removed you will no longer be able to exit your cloud services from the Application or execute the platform agent removal script. Failure to exit your cloud services or remove platform agents from your virtual machines prior to requesting termination of your agreement may lead to additional costs and unwanted alerts. As part of our deactivation process we will take limited actions to remove your cloud services from the platform, but this specifically excludes removal of platform agents from your virtual machines. Our deactivation process may take several weeks to complete.

Telstra cloud services portal bill history and usage metrics

- 6.15 We may give you the ability to view your Application bill history as well as usage and cost metrics via a Telstra portal such as a Telstra cloud services

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portal (**Portal**). Such Portal may display estimated totals for usage and cost. The estimated totals may not correspond to the totals shown on your Telstra bill. The reasons for any discrepancy may include misalignment of billing periods and the lag in displaying information in the current month on the Portal. We do not guarantee that the information on the Portal will be accurate or complete. If you require the exact totals, you must refer to your bill. You must ensure that you pay the total shown on your bill.

VM Hours rounding

- 6.16 We will apply rounding to your usage of VM Hours. Rounding will be applied daily. Decimal fractions less than 0.5 will be rounded down to the next lowest integer, while decimals of 0.5 or above will be rounded up to the next highest integer. For the purposes of illustration: if your VM Hours usage for one day was 24.4999, then your billed usage for that day will be rounded down to 24 VM Hours; if 24.5000, then rounded up to 25 VM Hours.

7 INTELLECTUAL PROPERTY

- 7.1 You acknowledge and agree that we or our suppliers will own all Intellectual Property Rights in all materials (including without limitation the software as a service) in connection with the Application developed or made available by us or by our suppliers to you.
- 7.2 You acknowledge and agree that your rights to use the Underlying Cloud Services will be set forth in the applicable agreements between you and the providers of the Underlying Cloud Services (whether us or a third party).

8 SECURITY AND BACKUP

- 8.1 You will be responsible for the security of your account. We do not guarantee the security of the Application, including the security of any information or data you send, receive or store using it, unless we agree otherwise with you.
- 8.2 You will be responsible for backing up your data and any other content that you use in connection with the Application. You acknowledge and agree that we or our suppliers may overwrite your data 18 months from the date that the data was created.

9 WARRANTIES AND LIMITATION OF LIABILITY

- 9.1 You agree that you will comply with the terms of the Underlying Cloud Services whether with us or with a third party.
- 9.2 You acknowledge and agree that we are not responsible for the Underlying Cloud Services that are not provided by Telstra. The Underlying Cloud Services that may be provided to you by Telstra will be subject to and on the terms of any separate agreement between you and us in relation to such Underlying Cloud Services.
- 9.3 You acknowledge that Underlying Cloud Services may implement procedures that can restrict or eliminate our or our suppliers' ability to access your data

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or other resources in the Underlying Cloud Services for the purposes of the Application.

- 9.4 You agree that you must bring any claim for a breach of any agreement between you and us in relation to the Application within a reasonable time of becoming aware of such breach.
- 9.5 You agree that we will not be liable for any failure or delay in performing our obligations to the extent such failure is caused by a force majeure event, being any circumstance not within the reasonable control of us, to the extent that the circumstance or its effect on us could not have been avoided, prevented, or circumvented despite the exercise of reasonable diligence by us.

10 SERVICE LEVELS

10.1 In this clause 10:

API means the Application Programming Interface for the Application;

Eligible Credit Period means a single calendar month, and refers to the monthly billing cycle in which the most recent Unavailable event occurred.

Monthly Uptime Percentage is calculated by subtracting the percentage of 5-minute periods during the Service Month in which the Application was Unavailable (excluding cloud analytics components of the Application) from 100%, excluding SLA Exclusions.

Service Commitment has the meaning in clause 10.2.

Service Month means any entire calendar month during the term.

SLA Credit means a credit, calculated as set forth in this clause 10, that we apply toward fees owed by you to us in respect of the Application.

SLA Exclusions are defined in clause 10.8.

Unavailable means that you are unable to connect to and use the Application either by logging into the dashboard, or, by accessing the API. Under no circumstances shall the Application be considered Unavailable if you can (i) log-in to the dashboard for the Application or (ii) authenticate to the API and receive a response from the API.

(For further definitions, please refer to clause 11 below.)

Scope

- 10.2 We will use commercially reasonable efforts to make the Application (excluding cloud analytics components of the Application) available with a Monthly Uptime Percentage of at least 99.95% during each Service Month (the "**Service Commitment**"). In the event we do not meet the Service Commitment, you will be eligible to receive an SLA Credit as described below.

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10.3 We will use commercially reasonable efforts to provide support as set out in the table below:

Incident classification	Description, response, and resolution times
Severity 1 incident – critical	Critical production systems cannot function or have significant risk of data loss due to: <ul style="list-style-type: none"> • Complete loss of service; • Critical parts of the service infrastructure that are unavailable or inaccessible; or • Data corruption or loss. <i>Incident Response Time, 1 hour and 30 minutes local, resolution time 9 business hours.</i>
Severity 2 incident – high	Serious production systems can function, but with impaired functionality or performance due to: <ul style="list-style-type: none"> • Operational but highly degraded service performance; or • Important features are unavailable. <i>Incident Response Time, 1 hour and 30 minutes local, resolution time 1 business day.</i>
Severity 3 incident – medium	Moderate systems are not materially impacted, but functionality is impacted. <i>Incident Response Time, 5 business hours, resolution time 4 business days.</i>
Severity 4 – service request (problem)	All other network activities that have no impact on customers and are not otherwise classified as a severity incident. <i>Incident Response Time, 1 business day, resolution time 10 business days.</i>

Service Commitments and SLA Credits

- 10.4 If the Monthly Uptime Percentage is less than 99.95% for a Service Month, you are eligible to receive an SLA Credit equal to 10% of the regular monthly recurring subscription fees for the access to the Application during the Eligible Credit Period. Under no circumstances will the SLA Credit be applied to (a) any our charges that month for one-time integration fees and for any consulting, training, managed services, or other professional services or (b) any charges relating to third party products or services, including Underlying Cloud Services, whether billed by us or a third party.
- 10.5 You may file a claim for an SLA Credit if you believe that we did not meet a Service Commitment.
- 10.6 We will apply any SLA Credits only against fees due from you to us. SLA Credits do not entitle you to any cash refund or other payment from us. SLA Credits may not be transferred, redeemed, or applied to any other account. Unless otherwise provided in your agreement with us, your sole and exclusive remedy if the Application is Unavailable is set forth in this SLA.

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Any downtime occurring prior to a successful SLA Credit claim cannot be used for future claims.

Credit Request and Payment Procedures

10.7 To receive an SLA Credit, you must submit a credit request by sending an e-mail message to cloudservices.sales@team.telstra.com. To be eligible, the credit request must (i) include your account number in the subject of the e-mail message; (ii) include, in the body of the e-mail, the dates and times of each incident you experienced in which the Application was Unavailable; and (iii) be received by us by the end of the second week in the calendar month immediately following the calendar month for which you seeks a SLA Credit. If the Monthly Uptime Percentage in such request is confirmed by us as less than 99.95% for the Service Month, then we will issue the SLA Credit to you within one billing cycle following the month in which the request was received. Your failure to provide us the request and all other information as required above within the deadlines set forth above will disqualify you from receiving an SLA Credit.

SLA Exclusions

10.8 In addition to the service level exclusions in the General Terms for Cloud Services (for link, see clause 1.1. above), the Service Commitment does not apply to any unavailability or inaccessibility of the Application or any Application performance issues: (i) that result from scheduled maintenance of which we have provided advance notice to the designated administrative contact for your account; (ii) caused by factors outside of our reasonable control, including any force majeure event or internet access failure or related problems beyond the demarcation point of the Application; (iii) that result from any actions or inactions by you or any third party (including without limitation your deletion of the Robot Account); (iv) that result from any third party services, equipment, software or other technology (including from your or a third party including without limitation an Underlying Cloud Services provider) other than third party equipment within our direct management and control; or (v) arising from our suspension or termination of your right to use the Application in accordance with your agreement with us (collectively, the **SLA Exclusions**).

11 DEFINITIONS

11.1 Some words in this Cloud Management Platform Section have the meaning set out in the General Terms section of Our Customer Terms or the General Terms of the Cloud Services section (see links at clause 1.1 above).

11.2 The following words have the meaning set out next to them:

Application RightScale’s cloud portfolio management software as a service

Automate Virtual Machine a server or virtual server that is registered by you in the Application for management through the Application and is either provisioned by the Application and / or contains the RightScale Rightlink agent or a monitoring agent

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supported by the Application, which agents are installed upon your executing a script identified in the Application as a RightLink agent or a monitoring agent

Manage Virtual Machine

a server or virtual server that includes RightLink agent only and is able to execute scripts and manage SSH, enables automated provisioning and audit trails, and actions can be initiated by server templates

Govern Virtual Machine

a server or virtual server that is visible inside the Application and that does not contain the RightScale RightLink agent or a monitoring agent supported by the Application. This visibility can eventuate when you connect to a RightScale supported public or private cloud account inside the Application management console

Intellectual Property Rights

all industrial and intellectual property rights throughout the world, including all copyright and analogous rights; rights in relation to inventions or discoveries, including patent rights; designs; circuit layouts; and trade names, brand names and registered or unregistered trade marks, including service marks; and moral rights

Telstra Cloud Sight

means the Telstra Cloud Sight platform and services described in the Telstra Cloud Sight terms in Part F – Cloud Management of the Cloud Services section of Our Customer Terms (see <https://www.telstra.com.au/content/dam/tcom/our-customer-terms/business-government/pdf/cloud-sight.pdf>)

Underlying Cloud Services

cloud services other than the Application

Update

updates, additional functionalities, supplements, add-ons, patches or bug-fixes

VM Hours

the number of up-time hours for virtual machines you have added to your Application,