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

# ABOUT THIS PART

## This is the HyperFlex Platform part of the Cloud Services section of Our Customer Terms. Depending on the nature of the products and services you are receiving under this Cloud Services section, provisions in other parts of the Cloud Services section, as well as in [the General Terms of Our Customer Terms](http://www.telstra.com.au/customer-terms/index.htm) at <http://www.telstra.com.au/customer-terms/business-government/index.htm>, may apply.

## See section one of the General Terms of Our Customer Terms at <http://www.telstra.com.au/customer-terms/business-government/index.htm> for more detail on how the various sections of Our Customer Terms are to be read together.

## See section one of the General Terms part of the Cloud Services section for more detail on how the various parts of the Cloud Services section are to be read together.

# HyperFlex Platform

What is the HyperFlex Platform?

## The HyperFlex Platform is a hyper-converged infrastructure solution incorporating storage and server technologies.

## The HyperFlex Platform may include some or all of the following features (which may be revised by us from time to time in accordance with these Our Customer Terms), depending on your specific order with us:

|  |  |
| --- | --- |
| Feature | DESCRIPTION |
| Product | **HyperFlex Product:** the HyperFlex infrastructure platform, which is a system of pre-selected hardware and software (including Third Party Branded Products) and any accompanying Documentation. |
| **Third Party Branded Products:** any Products which are available for purchase or license from us that are manufactured, developed or made available by other companies and for use in conjunction with HyperFlex Products that we may be able to offer you from time to time. |
| Services | **Cisco Smart Net Total Care:** support services for Cisco hardware and software forming part of your HyperFlex Product.**Professional Services:** Product training and installation services. |

Eligibility

## The HyperFlex Platform is not available to Telstra wholesale customers. The HyperFlex Platform is only for your internal business use and is not available for resale or distribution.

Service pre-requisites

## You are responsible for obtaining and maintaining (at your cost) any carriage services required in order for you to use the HyperFlex Platform.

## We can provide you with details of the minimum technical capabilities of the required carriage services on request.

## If you do not comply with clause 2.4 for any reason, the service you experience may be adversely affected.

Term

## Your Agreement will specify any applicable minimum term for individual components of your HyperFlex Platform, including but not limited to software licences and maintenance periods. You are responsible for ensuring that you renew and maintain the validity of your software licences and maintenance options.

Third party suppliers

## You acknowledge and agree that we may use third party suppliers to provide or perform elements of the HyperFlex Platform, including but not limited to Cisco.

## You are also entitled to choose third party suppliers to supply some elements of the HyperFlex Platform directly to you. We identify in this section of Our Customer Terms when that is the case, and if you do choose a third party to supply any such elements of the HyperFlex Platform, we are not responsible for providing that element of the HyperFlex Platform and your relationship with that third party is governed by your separate agreement with them.

# HyperFlex Product

HyperFlex Product

## The Product comprises the HyperFlex Product and any Third Party Branded Products.

## The HyperFlex Product is the hardware and software infrastructure platform that you choose for the HyperFlex Platform. Your Agreement will set out the details of the HyperFlex Product you have selected.

## You may choose Third Party Branded Products to form part of your HyperFlex Platform in addition to the core HyperFlex Product. We will let you know what Third Party Branded Products are available on request, and any Third Party Branded Products you choose will be set out in Your Agreement.

## **Charges**

## The charges for your Product will be set out in Your Agreement.

Title and risk

## Subject to paragraph 3.6, ownership of the Product only passes to you once you have paid us in full and risk in the Product passes from us to you on delivery.

## You do not acquire title in any in any Software incorporated in the Product. Any Software in the Product will be licensed to you in accordance with the licence terms below.

Delivery

## We will deliver any Product that you purchase from us to your nominated address. Standard delivery times are four to six weeks from acceptance of your order. We will try, but do not promise, to meet any indicative delivery date. If there’s a change in the original delivery date we will try to tell you.

## You acknowledge that you have examined the equipment before accepting delivery of the Product and satisfied yourself as to its condition; and

## We reserve the right to repossess the Product, or suspend or terminate your HyperFlex Platform, if you don’t pay the purchase price in full within a reasonable period of time after our notice reminding you that you have not yet paid the purchase price. Reconnection fees and early termination charges may also apply, details of which can be found in your application form.

Installation

## If you require assistance with installation of your HyperFlex Platform, you can separately acquire Professional Services from us.

## You are responsible for:

### ensuring the installation locations for the Product meet the Hardware specifications (including for power and cooling), which we can provide you on request; and

### if you engage a third party (rather than us) to install the Product, paying any third parties you engage to install the Product.

Use of the Product

## We recommend that you install any software, upgrades and patches as directed by our third party suppliers or us. If you do not, you may not be able to obtain support services for your HyperFlex Platform.

## You must comply with the licence terms that apply to your HyperFlex Platform. If you do not comply with the licence terms and you remain in breach after receiving notice from us that you are breaching the licence terms, we may immediately terminate your HyperFlex Platform..

Licence terms

## We grant to you a personal, non-exclusive, non-transferrable, worldwide, limited and revocable license, without the right to sublicense, to

### install and use the Software for your internal business purposes only; and

### use the Documentation in support of your use of the Software.

## In addition to the acceptable use policy in the General Terms part of the Cloud Services section of Our Customer Terms, you will not, nor will you allow any third party to:

### reverse-engineer, decompile or disassemble the Software or otherwise reduce it to human-readable format except to the extent required for interoperability purposes under applicable laws or as expressly permitted in open source licenses;

### remove or conceal any product identification, proprietary, intellectual property or other notices in the Software or Documentation;

### use the Software or Documentation to perform services for third parties in a service bureau, managed services, commercial hosting services or similar environment;

### assign or otherwise transfer, in whole or in part, the Software or Documentation licenses to another party or Controller-based licenses to a different storage controller;

### modify, adapt or create a derivative work of the Software or Documentation; and

### publish or provide any Software benchmark or comparison test results.

## If required by a third party licensor, that licensor will be a direct and intended third party beneficiary of these licence terms and may enforce them directly against you.

Audit

## Upon reasonable notice, you grant us and our licensors (or their independent accountants) the right to examine your Software usage to verify compliance with these license terms. If the audit discloses over-usage or any other material non-compliance, you will promptly pay us any additional fees notified to you and the reasonable costs of conducting the audit.

Termination

## We may terminate the Software licence if you are in material breach of the licence terms, and the breach has not been remedied within a reasonable period after we have notified you of the breach. Any failure to remit payments in relation to the Software and Documentation when due will constitute a material breach. Upon expiration or termination of the licence terms, you will promptly return or destroy all copies of the Software and Documentation, including any license enablement keys.

Export Controls

## You acknowledge that the Software and Documentation supplied by us is subject to export controls under the laws and regulations of the United States, the European Union and other countries as applicable, and the Software may include export controlled technologies, including without limitation encryption technology. You agree to comply with such laws and regulations and, in particular, represent and warrant that you:

### will not, unless authorised by U.S. export licenses or other government authorisations, directly or indirectly export or re-export the Software and Documentation to or use the Software and Documentation in countries subject to U.S. embargoes or trade sanctions programs;

### are not a party, nor will you export or re-export to a party, identified on any government export exclusion lists, including but not limited to the U.S. Denied Persons, Entity, and Specially Designated Nationals Lists; and

### will not use the Software and Documentation for any purposes prohibited by U.S. law, including but without limitation, the development, design, manufacture or production of nuclear, missile, chemical biological weaponry or other weapons of mass destruction.

## You agree to provide us end use and end user information upon our request. You will obtain all required authorisations, permits, or licenses to export, re-export or import, as required. You agree to obligate, by contract or other similar assurances, the parties to whom you re-export or otherwise transfer the Software to comply with all obligations set forth in clauses 3.19 and 3.20.

# HyperFlex Services

Cisco Smart Net Total Care

## If you purchase Cisco Smart Net Total Care for the Cisco Hardware and Software in your HyperFlex Platform, it includes:

### 24-hour access to the Cisco Technical Assistance Center for covered Hardware devices;

### advance hardware replacement;

### access to operating system (OS) software updates and upgrades;

### 24-hour access to Cisco online resources;

### access to a web-based user community for self-service support of smart capabilities; and

### diagnostics and alerts on Hardware devices enabled with Smart Call Home.

Professional Services

## If you require additional services in connection with your HyperFlex Platform, such as installation or training, you can separately acquire Professional Services from us.

# Warranties

## If you are a consumer as defined in the Australian Consumer Law, the HyperFlex Platform comes with guarantees that cannot be excluded under the Australian Consumer Law. The provisions of this clause 0 are in addition to the rights and remedies you may have under the Australian Consumer Law or other laws. For important information regarding your rights under the Australian Consumer Law, see <https://www.telstra.com.au/content/dam/tcom/personal/consumer-advice/pdf/business-a-full/Warranties_Against_Defects.pdf> (or any successor to that site).

Hardware Products

## Unless otherwise noted in specific Documentation, we warrant to you for three (3) years from the date of shipment that the Hardware sold by us will operate in accordance with the published specifications in effect on the date the Hardware is shipped.

## To the extent permitted by law, your sole and exclusive remedy is, at our option, the repair or replacement of the Hardware, or a refund of the purchase price paid by you. Replacement parts will be warranted for the remainder of the warranty period in effect on the original Hardware, unless otherwise mandated by applicable law.

Software Products

## We warrant to you, for a period of ninety (90) days from your receipt of the Software that:

### the Software will materially conform to the published specifications in effect on the date you receive the Software, provided that the Software is properly installed on approved Hardware and operated as contemplated in the published specifications; and

### the media containing the Software, if any, (but not the Software itself) is free from physical defects.

## To the extent permitted by law, your sole and exclusive remedy is, at our option, limited to the replacement of the Software with software that materially conforms to the published specifications or refund of the purchase price paid, less reasonable depreciation.

Services

## We warrant that the Professional Services will be performed by us or an authorised service provider in a professional and workmanlike manner.

Exclusions

## The warranties in this clause 5 do not apply to, nor do our prices include, the maintenance of, repair or diagnosis of damage, malfunctions or product failures caused by conditions or events outside of our control. The warranty for any Hardware Product shall become void if a Hardware component is installed as an add-on and or replacement part on the original equipment and such component part has not been authorised by us or our third party suppliers for such installed use.

## The warranties in this clause 5 only cover problems that are reproducible and verifiable and do not cover software, other items or any services, provided by any persons other than us or our third party suppliers.

## Products are not covered under the warranties in this clause 5 if they have been abused, misused, damaged in transport or after delivery to you, modified, or subjected to unauthorised use or installation, as determined by us.

## We will not be liable under the warranties in this clause 5 if testing and examination discloses that the alleged defect in the Product does not exist or was caused by your or any third person’s misuse, neglect, improper installation or testing, unauthorised attempts to repair, or any other cause beyond the range of the intended use, or by accident, fire, lightning or other hazard or event of force majeure.

Third Party Branded Products

## To the extent permitted by law, we do not provide any warranty for Third Party Branded Products. You agree to look to the manufacturer of any Third Party Branded Product you purchase from us with respect to product warranty, service or other post-purchase support.

Hazardous Environments

## The Products are not designed or intended for use in on-line control of aircraft, air traffic, aircraft navigation or aircraft communications, or in the design, construction, operation or maintenance of any nuclear facility, or in the operation or in maintenance of any direct life support system, or in other hazardous environments or life threatening operations. We disclaim any express or implied warranty of fitness for such uses and shall not be liable for any costs, liabilities or damages resulting from the use of the Products in such environments or operations. You agree that you will not use or license the Products for such purposes.

# Special Meanings

## The following words have the following special meanings in this HyperFlex part of the Cloud Services section (unless otherwise stated):

**Documentation** means technical documentation describing the features and functions of the associated Product.

**Software** means software in object code format including (as applicable) operating systems, protocols, backup and recovery, disaster recovery, storage efficiency and management software, whether separately ordered or included in or for use with Hardware which is identified with a separate product or model number.

**Hardware** means HyperFlex storage, compute and network systems and equipment but excluding any software or firmware.

**Product** means Hardware and Software.