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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 Nutanix 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.

# Nutanix Platform

What is the Nutanix Platform?

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

## The Nutanix 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 | **Nutanix Product:** the Nutanix 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 Nutanix Products that we may be able to offer you from time to time. |
| Services | **Basic Support:** basic support services for Nutanix Software forming part of your Nutanix Platform.**Production (Platinum) Support:** support services for Nutanix Products forming part of your Nutanix Platform.**Mission Critical (Platinum Plus) Support:** enhanced support services for Nutanix Products forming part of your Nutanix Platform.**Professional Services:** Product training and installation services. |

Eligibility

## The Nutanix Platform is not available to Telstra wholesale customers. The Nutanix 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 Nutanix Platform.

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

## You will need ensure that you have appropriate network switching to connect your Nutanix Platform. Upon request, we can supply network switching as a Third Party Branded Product.

## 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 Nutanix 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 Nutanix Platform, including but not limited to Nutanix and Cisco.

## You are also entitled to choose third party suppliers to supply some elements of the Nutanix 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 Nutanix Platform, we are not responsible for providing that element of the Nutanix Platform and your relationship with that third party is governed by your separate agreement with them.

# Nutanix Product

Nutanix Product

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

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

## You may choose Third Party Branded Products to form part of your Nutanix Platform in addition to the core Nutanix 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 Nutanix 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 Nutanix 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 for your Nutanix Platform.

## You must comply with the licence terms that apply to your Nutanix 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 Nutanix Platform.

Licence terms

## Your use of the Nutanix Platform is subject to your agreement to and compliance with the Nutanix End User Licence Agreement, a copy of which is available at www.nutanix.com/eula/

# Nutanix Services

## In addition to the warranties that comes with the Nutanix Products, you may also apply for Basic, Production or Mission Critical support services (additional charges may apply) (“**Support**”). Support does not include Hardware or Software installation, training, consulting services or preventative maintenance.

Software subscription

## Support will include a subscription to new releases of the Software that are commercially released by Nutanix during your Support term. New releases may include bug fixes, patches releases, and major updates (“**Releases**”), but do not include enhancements or upgrades that Nutanix chooses (in its discretion) to licenses for a separate fee. Any Releases may only be installed as an update to your original Software on the original Hardware.

Software Support

## Support for Software will be provided on our behalf by our third party supplier, Nutanix, as part of the Support package purchased by you. All references to Nutanix in this section are for convenience to readily identify which party you will be dealing with in the administration of the Support, but we remain responsible for provision of the Support. We will provide you with the necessary contact details to deal directly with Nutanix to acquire the Support.

## All problem classifications shall be determined by Nutanix in its reasonable discretion. Nutanix classifies Software problems as either:

### P1—your production use is stopped or so severely impacted that you cannot reasonably continue use of the Products;

### P2—important Product features are unavailable with no acceptable workaround, but your production use is continuing;

### P3 — important Product features are unavailable but a workaround is available, or less significant Product features are unavailable with no reasonable workaround, but your production use is continuing;

### P4 —all other problems.

## You must expeditiously provide Nutanix with notice of any problem. Once notice is received, Nutanix will acknowledge your problem report and commence Support efforts to resolve the problem(s). When it becomes necessary (and in Nutanix’s reasonable discretion), Nutanix will provide on‐site technical Support, and if so provided in Nutanix’s discretion, Nutanix will be responsible for travel and related expenses incurred in providing the on‐site Support. If Nutanix determines that your problem was not caused by Nutanix Products and if the on‐site Support was requested by you, then you will be charged Nutanix’s then‐current daily time and materials rate plus reasonable travel and lodging expenses for the on‐site Support.

Hardware Support

## If Nutanix determines that replacement parts are required for Support, and Hardware support is included in the Support purchased by you, then Nutanix will use reasonable efforts to deliver them to you, at no charge, by the target delivery time (“**TDT**”), which begins after Nutanix has diagnosed the problem. For critical parts, Nutanix’s TDT is 4 hours for Platinum Plus Service, and next business day for Basic and Platinum Service if the problem is diagnosed by Nutanix before 3pm Pacific Standard Time (PST). For non‐critical parts, Nutanix TDT is within a reasonable time after the problem is diagnosed by Nutanix. Nutanix actual delivery times may vary if your location is remote and/or if common carriers encounter delays or require special transportation arrangements reaching your site, or if customs clearances impose delays. The Platinum Plus Service is not available in all locations. Replacement parts may be new or refurbished at Nutanix’s option. All Nutanix Products that are replaced become Nutanix property. Unless you request otherwise, Nutanix or a Nutanix subcontractor will typically provide on‐site installation of the replacement part with your reasonable assistance.

Exclusions

## Neither we nor Nutanix will have any Support obligations to the extent any defects are attributable to:

### negligence or misuse or abuse of the Nutanix Products;

### use of the Nutanix Products other than in accordance with Nutanix’s official specifications (see http://www.nutanix.com/products/hardware-platforms);

### modifications, alterations or repairs to the Nutanix Products made by a party other than Nutanix or a party authorised by Nutanix;

### any failure by you or a third party to comply with environmental and storage requirements for the Nutanix Products specified by Nutanix, including, without limitation, temperature or humidity ranges; or

### use of the Nutanix Product with any non‐Nutanix apparatus, data or programs outside the typical, recommended or reasonably anticipated use of the Products within their specifications.

Your responsibilities

## You need to do the following as a condition of receiving the Support:

### pay all applicable fees for the Nutanix Platform;

### designate from time to time a reasonable number of authorised persons trained by Nutanix who can contact Nutanix for Support, which persons are your only personnel entitled to contact Nutanix for Support;

### register all Nutanix Products with Nutanix, and provide notice to Nutanix of all sites and site moves;

### provide Nutanix access to your site and/or network and personnel as Nutanix reasonably requests to assist Nutanix in performing the Support;

### enable Nutanix’s automated alert system on the Nutanix Products which sends regular system status reports and alerts to Nutanix when certain critical system events occur in the Nutanix Product at your site;

### use the Nutanix Products in a supported configuration and maintain the Software within the then‐current prior two Releases;

### install recommended replacement parts in the Nutanix Products as reasonably directed by Nutanix;

### refrain from arbitrarily changing Nutanix Product settings or configurations reasonably recommended by Nutanix;

### ensure that proper licenses have been obtained for all Software and adhere to all licensing terms and conditions (including this Nutanix Platform section of Our Customer Terms and the Nutanix terms referred to in section 3.14); and

### make available to Nutanix any of your systems data, information and other materials reasonably required by Nutanix for the Support (“**Customer Materials**”), the accuracy of which is your responsibility.

## If you have not continuously purchased and complied with the terms and conditions of Support, you may request that Nutanix perform an inspection of the Nutanix Products and any professional services Nutanix reasonably determines are required for the Nutanix Products to be certified as substantially operating within their official Nutanix Product specifications. After Nutanix’s certification, you may reinstate Support if Nutanix then offers it in general commercial availability and upon payment of:

### for any Nutanix Products that have been off Support for more than ninety (90) days, twenty percent (20%) of the annual rate of Support for recertification services;

### the pro rata Support fees that would have been payable at the then applicable annual rate of Support for the period the Nutanix Products were not covered by Support; and

### the Support fees for the annual period commencing upon the reinstatement of Support.

Non-transferability

## If you sell or otherwise transfer any Hardware to any third party, you will either de‐install and remove the Software from such Hardware prior to sale or transfer, or provide Nutanix with reasonable notice and an opportunity to remove or disable such Software prior to any sale or transfer of the Hardware. Subject to availability of resources, Nutanix will provide de‐installation services to you at the then current time and materials rates provided you have complied with these terms and conditions and entered into a separate agreement with Nutanix to receive such de‐installation services.

## Subject to availability of resources, Nutanix will provide re‐installation and re‐certification services to a third party purchaser or transferee of Nutanix Hardware, in each case at Nutanix’s then current time and materials rates provided the purchaser or transferee has:

### met Nutanix credit requirements;

### obtained a Software license from Nutanix;

### entered into a separate agreement with Nutanix to receive re‐installation and re‐certification services;

### obtained re‐certification of the Products as installed; and

### paid any Support reinstatement fees and purchased at least a one (1) year term of annual Support from Nutanix commencing upon the date of Product transfer.

## Your remaining outstanding term of Support is not transferable. Notwithstanding the foregoing, Nutanix reserves the right to refuse to grant a Software license or provide Services to a proposed purchaser or transferee as determined in Nutanix’s sole and absolute discretion.

Professional Services

## If you require additional services in connection with your Nutanix 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 Nutanix 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

## We warrant that the Hardware will be free from material defects in material and workmanship for the one (1) year period from the date of shipment of the Products (the “**Hardware Warranty Period**”).

## To the extent permitted by law and subject to section 5.14, our entire liability, and your sole and exclusive remedy, under this warranty will be for us, at our option:

### to use reasonable efforts to repair the defective Hardware within a reasonable period of time;

### to replace the defective Hardware; or

### if, after reasonable efforts we are not able to correct the deficiencies, to accept return of the Nutanix Product for a refund of the amount paid for the Nutanix Product and the pre‐paid and unused portion of any remaining term of Support for the Nutanix Product.

## Defective parts must be returned under Nutanix RMA policy at www.nutanix.com/support, and if the defective part is not returned we may invoice you for the replacement part. If you have purchased the no‐return‐disk option, then you will not be invoiced for a replacement disk drive if you do not return a failed drive.

## All Products that are replaced become Nutanix’s property. We will not be responsible for your or any third party’s software, firmware, information, or memory data contained in, stored on, or integrated with any Product returned for repair, whether under warranty or not.

Replacement Parts

## All replacement parts carry a warranty on the terms and conditions set forth immediately above of the following duration:

### if the replacement part is installed with more than ninety (90) days remaining on the Hardware Warranty Period, then the warranty on the replacement part shall be until the expiration of the Hardware Warranty Period;

### if the replacement part is installed during the Hardware Warranty Period but with fewer than ninety (90) days remaining on the Hardware Warranty Period, then the warranty on the replacement part shall be ninety (90) days from the date of installation of the replacement part; and

### if the replacement part is installed after the expiration of the Hardware Warranty Period under the terms and conditions of Support, then the warranty on the replacement part shall be the earlier of ninety (90) days from the date of installation of the replacement part and the last day of Support.

## Replacement parts may be new or refurbished.

Software

## We warrant that the Software will substantially perform in accordance with the official Nutanix Product specifications for the ninety (90) day period from the date of shipment of the Products. We does not warrant that the operation of the Software will be uninterrupted or error free, or that all defects can be corrected.

## To the extent permitted by law and subject to section 5.14, our entire liability, and your exclusive remedy, under this warranty will be for us, at our option:

### to use reasonable efforts to remedy the defective Software within a reasonable period of time so as to cause it to operate as warranted;

### to replace the affected Software; or

### if, after reasonable efforts we are not able to correct the deficiencies, to accept return of the affected Software for a refund of the amount paid by you for the affected Software and the pre‐paid and unused portion of any remaining term of Support for the affected Software.

Services

## We will use reasonable efforts to provide Services in a workmanlike manner. You must notify us of any failure to so perform within ten (10) days after the date on which such failure first occurs.

## To the extent permitted by law and subject to section 5.14, our entire obligation, and your exclusive remedy, under this warranty will be for us, at our option:

### to use reasonable efforts to re-perform the deficient Services within a reasonable period of time; or

### if, after reasonable efforts we are not able to correct the deficiencies, refund the portion of any Services fee that corresponds to the failure to perform.

Exclusions

## We will have no obligation under these warranties to the extent that any problem with a Nutanix Product results from or is otherwise attributable to:

### negligence or misuse or abuse of the Nutanix Product;

### use of the Nutanix Product other than in accordance with the official specifications;

### modifications, alterations or repairs to the Nutanix Product made by a party other than us, our third party supplier Nutanix or a party authorised by either of us;

### any failure by you or a third party to comply with environmental and storage requirements for the Nutanix Product specified by us or Nutanix, including, without limitation, temperature or humidity ranges; or

### use of the Nutanix Product in combination with any non‐Nutanix apparatus, data or programs outside our or Nutanix’s typical, recommended or reasonably anticipated use of the Nutanix Products within their official specifications.

Warranty Disclaimer

## Except pursuant to the limited warranties expressly described above or which otherwise cannot be excluded by law, we do not make, and hereby expressly disclaim any warranty or representation with respect to the Products or Services, express or implied, including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose, performance, accuracy, reliability, and non‐infringement. We do not warrant that the operation of the Products will be uninterrupted or error free.

## Where the *Competition and Consumer Act 2010* (Cth) or other legislation implies or imposes any warranty, condition or guarantee (including statutory guarantees) in relation to the Nutanix Platform, and our liability in relation to that warranty, condition or guarantee cannot be excluded but can be limited, the limitations and exclusions in the remainder of this section 5 (Warranties) do not apply, and instead we limit our liability to one or more of the following at our option:

### in the case of goods, the replacement or repair of the goods or payment of the cost of having the goods replaced; or

### in the case of services, the supply of the services again or payment of the cost of having the services supplied again.

Hazardous use restriction

## The Nutanix Products are not designed for use in hazardous environments requiring failsafe performance, including operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, and life support or weapons systems, or any other system whose failure could lead to injury, death, environmental damage, or mass destruction.

# Special Meanings

## The following words have the following special meanings in this Nutanix 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 Nutanix storage, compute and network systems and equipment but excluding any software or firmware.

**Product** means Hardware and Software.