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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 SmartStack 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.

# SmartStack Platform

What is the SmartStack Platform?

## The SmartStack Platform is a converged infrastructure solution which integrates compute, network and storage resources.

## The SmartStack 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 | **SmartStack Product:** the SmartStack infrastructure platform, which is a system of pre-selected hardware and software (including Ancillary Products) and any accompanying Documentation. |
| **Ancillary Products:** any custom or non-standard hardware or software elements additional to the standard features already incorporated in the SmartStack Product that we may be able to offer you from time to time. |
| Services | **Nimble Storage Support Services:** basic support services for Nimble Storage hardware and software forming part of your SmartStack Product.  **Cisco Smart Net Total Care:** support services for Cisco hardware and software forming part of your SmartStack Product.  **Professional Services:** Product training and installation services. |

## The SmartStack Platform can be configured in accordance with a number of validated designs and reference architectures available at <http://www.nimblestorage.com/resources/smartstack/>.

## Please note that only the designs above are pre-validated. We are not responsible for any compatibility issues arising from configuring the SmartStack Platform other than in accordance with a pre-validated design.

Eligibility

## The SmartStack Platform is not available to Telstra wholesale customers. The SmartStack 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 SmartStack 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 2.6 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 SmartStack 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 SmartStack Platform, including but not limited to Cisco and Nimble Storage.

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

# SmartStack Product

SmartStack Product

## The Product comprises the SmartStack Product and any Ancillary Products.

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

## You may choose Ancillary Products to form part of your SmartStack Platform in addition to the core SmartStack Product. We will let you know what Ancillary Products are available on request, and any Ancillary 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 SmartStack Platform, if you don’t to 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 or 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 SmartStack 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 SmartStack Platform.

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

Licence terms

## Your use of the SmartStack Product is subject to your agreement to and compliance with the Nimble Storage General Terms and Conditions a copy of which is available at <http://www.nimblestorage.com/docs/>.

Open Source Software

## Certain items of software included with the Software are subject to “open source” or “free software” licenses (**“Open Source Software”**). A list of attributions required for certain of the Open Source Software components is included with the SmartStack Product(s). Some of the Open Source Software is owned by third parties. The Open Source Software is not subject to these terms and conditions. Instead, each item of Open Source Software is licensed under the terms of the end-user license that accompanies such Open Source Software. Nothing in Your Agreement limits your rights under, or grants you rights that supersede, the terms and conditions of any applicable end user license for the Open Source Software. If required by any license for particular Open Source Software, Nimble Storage makes such Open Source Software, and Nimble Storage’s modifications to that Open Source Software, available by written request to Nimble Storage.

# SmartStack Services

Nimble Storage Support Services

## In addition to the warranty that comes with SmartStack Products, you may also apply for the following support services from Nimble Storage (additional charges may apply):

|  |  |  |  |
| --- | --- | --- | --- |
| **Support Offerings** | **Premium 4-Hour with Onsite Parts Replacement** | **Premium 4-Hour** | **Next Business Day** |
| **Helpdesk Support with Aggressive SLA**  24 x 7 telephone and email assistance  **P11:** Telephone response in 30 minutes or less with immediate escalation to Engineering, if required  **P21:** Response in 2 business hours or less  **P31:** Response in 8 business hours or less  **P41:** Next business day (Monday through Friday)  24 x 7 Engineering Escalation Support | Yes | Yes | Yes |
| **Online Support Portal Access**  Access installation guide, user guide, and other relevant documentation | Yes | Yes | Yes |
| **Access to Software Update**  Access to software updates covering major, minor, and maintenance releases | Yes | Yes | Yes |
| **Advanced Hardware Replacement**  Nimble Storage will ship replacement part(s) in advance of receiving defect part(s). Service Level to receive the part(s) | Not Available | Within 4 hours2 | By the next business day3 |
| **4-Hour Onsite Parts Replacement**  Nimble Storage will replace parts within service level | Within 4 hours2,4 | Not Available | Not Available |
| **On-Site Spares Option**  Availability of individual parts or entire kit on site for quick replacement  Ideal for locations where Advanced Hardware Replacement option is not available | Available as an add-on | Available as an add-on | Available as an add-on |
| **No Return Disk Entitlement**  Customer not obligated to send failed HDDs or SSDs back to Nimble Storage | | | |

Notes:

1 Severity/Priority levels are defined as:

**P1:** Not serving data or severe performance degradation or single controller not operational

**P2:** Performance degradation or intermittent software faults or network degradation

**P3:** Issue or defect causing minimal business impact

**P4:** Request for information; administrative requests

2 Contact Nimble Storage for the latest list. For areas not currently covered, Nimble Storage offers on-site spare parts/kits for purchase.

3 Parts must be identified by 3:00 PM local time. Contact Nimble Storage for the latest list. For areas not currently covered, Nimble Storage offers on-site spare parts/kits for purchase.

## 4 4-Hour Onsite Parts Replacement Service time begins when root cause identification is complete. Contact Nimble Storage for details.

## A complete description of the Nimble Storage Support Services, which may be updated from time to time, is available at <http://www.nimblestorage.com/support/>.

## To receive the Nimble Storage Support Services entitlement as described above you need to register your Product(s) directly with Nimble Storage.

Cisco Smart Net Total Care

## If you purchase Cisco Smart Net Total Care for the Cisco Hardware and Software in your SmartStack 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 SmartStack 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 SmartStack 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.

Hardware Products

## During the Hardware Warranty Period we warrant that the Hardware, when used as permitted under these terms and in accordance with the Documentation, will be free from Error.

## If the Hardware (or any component or portion thereof) fails to conform to the above warranty, we will:

### use commercially reasonable efforts to repair or replace any Hardware for which you have notified us of in writing of a reproducible Error during the Hardware Warranty Period; or

### if we are unable to repair or replace such defective Hardware so that it is free from Error, we will accept the return of the Product incorporating the defective Hardware, and refund you the purchase price actually paid less a reasonable amount for depreciation thereof, and, at our option, terminate these terms.

## Replacement Hardware may be refurbished and/or different models, but will be functionally equivalent to the Hardware being replaced.

## Our warranty obligations under clause 5.2 are conditional on you complying with Nimble Storage’s then-current RMA guidelines and shipping the affected Hardware to us for repair or replacement.

## We will have no warranty obligations under clause 5.2 with respect to returned Hardware, if we determine, in our reasonable discretion, after analysis of that returned Hardware, that the Hardware has no Error (such Product, an “**Ineligible Product**”).

## We will bear all costs of shipping to and from us under clause 5.2, except with respect to any Ineligible Product, for which you will bear all shipping costs.

## The provision of any repair or replacement Product in performance of the warranty obligations will not operate to extend the original Hardware Warranty Period.

## We will have no warranty obligation under clause 5.2 to the extent any claims for warranty service result from or relate to:

### any modifications, alterations, or servicing of the Hardware by any party other than Nimble Storage or Nimble Storage’s subcontractors;

### handling, storage, installation, or use not in accordance with the applicable Documentation;

### damage from accidents, abuse, misuse, or negligence, or any factors beyond our control such as fire or flood;

### any breakdowns, fluctuations, or interruptions in electric power, air conditioning, the telecommunications network, or any combination with products not supplied by us;

### any defect or non-conformance that is not reproducible by us; or

### any violation of these terms.

Software Products

## During the Software Warranty Period, we warrant that the Software, when used as permitted under these terms and in accordance with the Documentation, will be free from Error.

## If the Software (or any module or portion thereof) fails to conform to the above warranty, we will:

### use commercially reasonable efforts to repair or replace any Software for which you have notified us of in writing of a reproducible Error during the Software Warranty Period; or

### we are unable to correct such nonconformity, accept, as applicable, return of:

#### the Product incorporating the affected Software and refund you the fees actually paid for the affected Products less a reasonable amount for depreciation, in which case your right to use such Software will be terminated, or

#### the affected Ancillary Software and terminate your right to use such Ancillary Software.

## The provision of any bug fix, patch, or error correction by us will not operate to extend the original Software Warranty Period.

## We will have no warranty obligation under clause 5.10 to the extent any claims for warranty service result from or relate to:

### any use of a version of the Software other than the current version or the immediately preceding version provided by us or Nimble Storage;

### any use of the Products in a computing environment not meeting the system requirements and security requirements set forth in the Documentation or applicable order documentation, including hardware and operating system requirements;

### any issues arising from the failure of the Software to interoperate with any other software, except to the extent that such interoperability is mandated in the applicable Documentation;

### any violation of these terms; or

### any other conditions listed in clause 5.9.

Services

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

Ancillary Products

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

# Special Meanings

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

**Ancillary Products** means 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 SmartStack Products.

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

**Error** means a material failure of the Product to operate substantially in accordance with the Documentation that we (or Nimble Storage) are able to replicate in a test environment. Any condition that is described as a warranty exclusion under clause 5 will not be deemed an Error.

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

**Hardware Warranty Period** meansa period of one year commencing on the date you receive the applicable Hardware.

**Product** means Hardware and Software.

**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.

**Software Warranty Period** means a period of 90 days commencing on the date you receive the Product containing the applicable Software or the date you download the Ancillary Software.