

# OUR CUSTOMER TERMS CLOUD SERVICES – MICROSOFT AZURE

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# OUR CUSTOMER TERMS

## CLOUD SERVICES – MICROSOFT AZURE

Certain words are used with the specific meanings set out below or in the [General Terms section of Our Customer Terms](#).

### 1 ABOUT THE MICROSOFT AZURE SECTION

- 1.1 In addition to this Microsoft Azure 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 (see <https://www.telstra.com.au/customer-terms/business-government#cloud-services>); and
  - (c) other parts of the Cloud Services section, depending on the nature of the products and services that you receive from us.
- 1.2 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 MICROSOFT AZURE

#### What is Microsoft Azure?

- 2.1 Microsoft Azure is an open, flexible, enterprise-grade cloud computing platform, that provides a range of computing and storage features.

#### Features

- 2.2 Microsoft Azure provides a range of integrated computing, storage, networking, access management features. Details of the available features can be found at <http://azure.microsoft.com/services/>.

### 3 MICROSOFT CUSTOMER AGREEMENT

- 3.1 A copy of your Microsoft Customer Agreement is available on <http://www.telstra.com.au/content/dam/tcom/personal/consumer-advice/pdf/business-gov/cloud/microsoft-cloud-agreement.pdf>.
- 3.2 By placing an order with us for Microsoft Azure services, you accept the terms of the Microsoft Customer Agreement. For the avoidance of doubt, the Microsoft Customer Agreement regulates the relationship between you and Microsoft. You agree that acceptance of the terms of the Microsoft Customer Agreement is a condition of the use of the Microsoft Azure service.
- 3.3 You acknowledge that Microsoft Customer Agreement incorporates the Online Services Terms, the SLAs and the Offer Details for your Microsoft Azure services (as each term is defined in the Microsoft Customer Agreement).

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- 3.4 If you choose to purchase Microsoft Azure services from us, we will be your Reseller (as that term is defined in your Microsoft Customer Agreement) in relation to those Microsoft Azure services.
- 3.5 You acknowledge and agree that Microsoft can refuse, in its discretion, to agree to make the Microsoft Azure services available to you. We have no control over, or liability in relation to, any such refusal.
- 3.6 Microsoft is responsible for provisioning the Microsoft Azure services based on the information that you provide to us. We will provide you with administrative log-in credentials for accessing your Microsoft Azure services that Microsoft provides to us.

### 4 MICROSOFT AZURE - TERMS OF USE

- 4.1 You must comply and ensure each of your Users comply with these Microsoft Azure Terms of Use with respect to their access to and use of the Microsoft Azure services.

#### Amending the Terms of Use

- 4.2 We may update these Microsoft Azure Terms of Use at any time. Subject to any right you may have to cancel your subscription to a Microsoft Azure service, you agree to the new terms by continuing to use the Microsoft Azure services after we notify you of them.

#### Territorial restriction

- 4.3 You acknowledge and agree that we are only permitted to supply Microsoft Azure services to you if you are a registered Australian business.

#### Charges

- 4.4 Without limiting any other charges payable by you under Our Customer Terms, you agree that we will charge you on a monthly basis for all for your Microsoft Azure services.
- 4.5 The term options for any Microsoft Azure services and any early termination charges will be contained in the applicable product specific terms set out below.

#### Third party programs

- 4.6 The Microsoft Azure services may include third party programs. Additional terms may apply to your use of those third party programs which will be notified to you by us, our suppliers or through the Microsoft Azure services. You must comply with any such additional terms.
- 4.7 The Microsoft Azure services may also contain third party open source programs that Microsoft, not the third party, licenses to you under Microsoft's licence terms. Notices, if any, for the third party open source programs are included for your information only.

### Technical Limitations

- 4.8 The Microsoft Azure services are provided subject to certain technical limitations which only allow you to use the Microsoft Azure services in certain ways. You must not work around any applicable technical limitation.
- 4.9 You must comply (and must ensure that your Users comply) with all applicable technical limitations. For further information regarding the applicable technical limitations for the Microsoft Azure Service, refer to your Microsoft Customer Agreement (and the Online Service Terms incorporated by the Microsoft Customer Agreement).

### Intellectual Property Rights

- 4.10 The rights granted under these Microsoft Azure Terms of Use do not give you or Users any right to use or exploit our patents or other intellectual property rights in software or devices that access that device.
- 4.11 Without limiting anything else in Our Customer Terms, all intellectual property rights in documentation provided to you by us for training or education, or other information about the Microsoft Azure services are owned by us, Microsoft or our suppliers. You are granted no rights under such intellectual property rights and must not copy such documentation unless permitted by Our Customer Terms. Any person that has valid access to your computer or internal network may copy and use such documentation for your internal reference purposes.
- 4.12 Additional intellectual property right restrictions may be contained in your Microsoft Customer Agreement.

### Service suspension rights

- 4.13 Without limiting any other right we or Microsoft may have, we may suspend the supply of a Microsoft Azure service (in whole or in part) with or without notice:
  - (a) if you or a User uses the Microsoft Azure services in a way that we believe:
    - (i) is fraudulent;
    - (ii) poses a direct or indirect threat to our security or network capability, functionality or integrity or anyone else's use of the Microsoft Azure services; or
    - (iii) is illegal or likely to be found illegal;
  - (b) in an emergency or if there are reasonable grounds to believe there is a threat or risk to the security of a Microsoft Azure service or integrity or security of our network or other Cloud Services;
  - (c) if we reasonably believe it is necessary to prevent unauthorised access to any customer's data;

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- (d) for maintenance of the Microsoft Azure services, if we reasonably believe it is necessary or desirable to do so to maintain or restore any part of the network or other Cloud Services;
- (e) if we reasonably believe it is necessary to comply with a legal requirement; or
- (f) if we reasonably believe that you have materially breached Our Customer Terms.

#### 4.14 If we suspend a Microsoft Azure service:

- (a) we will provide advance notice before suspending the Microsoft Azure service, except where we or Microsoft reasonably believe an immediate suspension is required;
- (b) we will provide you with the reason for such suspension at your request;
- (c) you and your Users may not be able to access any data through that Microsoft Azure service during the suspension period;
- (d) the suspension will only apply to the minimum necessary portion of the Microsoft Azure service and will only be in effect for as long as is reasonably necessary to address the issues which gave rise to the suspension; and
- (e) we may cancel your Microsoft Azure service subscription and instruct Microsoft to delete your Customer Data without any retention period, if you do not fully address the reasons for the suspension within 60 days after we suspend your Microsoft Azure service.

### **Availability of Microsoft Azure**

4.15 Whilst you may consume resources in any available region, you acknowledge that availability of the Microsoft Azure services, some service functionality, and language versions varies by region.

### **Responsibility for Your Accounts**

4.16 Without limiting anything else in Our Customer Terms, you are responsible for:

- (a) passwords for Users, if any;
- (b) all activity with your Microsoft Azure accounts, including that of Users; and
- (c) dealings with third parties that take place through your Microsoft Azure account or associated accounts.

4.17 You must keep and ensure each User keeps your accounts and all non-public authentication credentials associated with your accounts (for example, passwords) confidential.

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- 4.18 You must notify us right away about any possible misuse of your accounts or authentication credentials, or any security incident related to the Microsoft Azure services.

### Updates

- 4.19 Microsoft may update or supplement the Microsoft Azure services made available to you. You acknowledge and agree that we have no control of, and no liability in relation to, any such update or supplement, including where any such update or supplement would cause detriment to you.
- 4.20 If Microsoft modifies the functionality or features of, or update, your Microsoft Azure services made available to you as part of your Microsoft Azure services, you acknowledge that:
- (a) some previously available functionality or features may change or may no longer be available to you and your Users; and
  - (b) if you do not use the updated application or software, some or all features may not be available to you and your Users and the use of the application and software may be interrupted.
- 4.21 If Microsoft provides additional functionality for a Microsoft Azure Service, additional licence terms and/or fees may apply. We will tell you beforehand if any additional terms or fees will apply to your ongoing use of a Microsoft Azure service.

### Use of Other Web Sites and Services

- 4.22 You and each User may need to use Microsoft or Microsoft-approved web sites and services to access and use the Microsoft Azure services. You may also choose to use certain Microsoft applications that you obtain from the Microsoft Office store or other Microsoft marketplace. The terms of use that come with those sites, applications or services (as applicable) will apply to your use of them.

### Third Party Content and Services

- 4.23 To the extent permitted by law, we are not responsible for any third party content you or Users access directly or indirectly via the Microsoft Azure services.
- 4.24 You are responsible for your dealings and any dealings of Users with any third party (including advertisers) related to the Microsoft Azure services (including the delivery of and payment for goods and services).

### Non-Microsoft Products

- 4.25 Your use of any Non-Microsoft Product will be governed by separate terms between you and the third party providing that Non-Microsoft Product.
- 4.26 You understand that neither we nor Microsoft assume any responsibility or liability whatsoever for the Non-Microsoft Product.

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- 4.27 You are solely responsible for any Non-Microsoft Product that you install or use with the Microsoft Azure services. We are not a party to and are not bound by any terms governing your use of any Non-Microsoft Product.
- 4.28 If you install or use any Non-Microsoft Product with the Microsoft Azure services, then you, not Microsoft or us, direct and control the installation and use of it in the Microsoft Azure services through your use of application programming interfaces and other technical means that are part of the Microsoft Azure services. We will not run or make any copies of such Non-Microsoft Product outside of our relationship with you.
- 4.29 If you install or use any Non-Microsoft Product with the online service, you may not do so in any way that would subject our or Microsoft's intellectual property or technology to obligations beyond those set out in Our Customer Terms.

### Your materials

- 4.30 You may be able to submit Customer Data for use in connection with the Microsoft Azure services.
- 4.31 When you submit Customer Data for use in connection with any Microsoft Azure services that enables communication or collaboration with third parties, you acknowledge that those third parties may then be able to:
- (a) use, copy, distribute, display, publish, and modify your Customer Data;
  - (b) publish your name in connection with the Customer Data; and
  - (c) facilitate others' ability to do the same.

Some Microsoft Azure services may offer functionality that restricts third parties' ability to do so. It is your responsibility to make use of that functionality as appropriate for your intended use of the Customer Data.

- 4.32 You must secure all rights in your Customer Data necessary for us to provide you the Microsoft Azure services without violating the rights of any third party, or otherwise obligating Microsoft or us to you or any third party. Neither we nor Microsoft accepts or will accept any obligations set out in any separate license or other agreement that may apply to your Customer Data or use of the Microsoft Azure services.
- 4.33 You are responsible for all Customer Data and other content sent using and/or included in the Microsoft Azure services.
- 4.34 As between you and us, you retain all right, title and interest in and to your Customer Data. We acquire no rights in Customer Data other than the rights you grant to us (if any) for the applicable Microsoft Azure services. This does not apply to software or services that we license to you.
- 4.35 Microsoft's rights and obligations in relation to your Customer Data will be set out in your Microsoft Customer Agreement.

### Use of Customer Data

- 4.36 You acknowledge and agree that we will maintain access to your Microsoft Azure service subscriptions ordered through us so that we can, without limitation collect information concerning your usage of Azure and manage your Microsoft Azure service to the extent required. If you delete or disable our access (known as 'Foreign Principal' access) you will prevent us from providing appropriate support for your Microsoft Azure service. You agree that if you do not reinstate our access to your Microsoft Azure service subscriptions we are not liable for any failure to support your Microsoft Azure service as a consequence.
- 4.37 You consent to us and Microsoft using and disclosing Customer Data:
- (a) to ensure compliance by you and your Users with Our Customer Terms;
  - (b) as required or authorised by law;
  - (c) to protect our rights or the rights of others;
  - (d) to provide the Microsoft Azure services to you;
  - (e) to provide troubleshooting for the Microsoft Azure services;
  - (f) to improve the Microsoft Azure services; and/or
  - (g) as otherwise provided in Our Customer Terms.
- 4.38 You are responsible for responding to requests by a third party regarding your use of the Microsoft Azure services (such as a request to take down content under applicable legislation).

### Acceptable Use

- 4.39 Without limiting anything else in Our Customer Terms, and in addition to any restrictions in your Microsoft Customer Agreement, you must not and must ensure each User does not:
- (a) use the Microsoft Azure services in a way that is prohibited by any law, regulation or governmental order or decree in any relevant jurisdiction;
  - (b) use the Microsoft Azure services to try to gain unauthorised access to or disrupt any service, data, account or network by any means;
  - (c) use the Microsoft Azure services to violate the rights of others;
  - (d) authorise any third party to access or use the Microsoft Azure services on your behalf (other than your employees, contractors or other persons authorised by you to use the Microsoft Azure services in connection with your business, as contemplated under Our Customer Terms or your Microsoft Customer Agreement);



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- (e) use any automated process or service to access or use the Microsoft Azure service such as a BOT, a spider or periodic caching of information stored by us or our suppliers;
- (f) use the Microsoft Azure services to falsify any email header information (e.g. "spoofing"), send spam or distribute malware;
- (g) use the Microsoft Azure services to make available any offering designed to violate these terms (e.g. enable sending of spam, enable denial of service attacks etc.);
- (h) use the Microsoft Azure services in a way that could harm the Microsoft Azure services or impair anyone else's use of it; or
- (i) remove, modify, or tamper with any regulatory or legal notice or link that is incorporated into the Microsoft Azure services.

### No High Risk Use

- 4.40 You acknowledge that the Microsoft Azure services are not fault-tolerant and is not guaranteed to be error free or to operate uninterrupted.
- 4.41 We do not recommend that you or your Users use the Microsoft Azure services in any application or situation where the Microsoft Azure services' failure could lead to death or serious bodily injury of any person, or to severe physical or environmental damage ("High Risk Use").
- 4.42 Examples of High Risk Use include, but are not limited to: aircraft or other modes of human mass transportation, nuclear or chemical facilities, life support systems, implantable medical equipment, motor vehicles, or weaponry systems.

### Privacy

- 4.43 Without limiting anything else in Our Customer Terms, you acknowledge that Customer Data (including personal information as defined in the Privacy Act 1988 (Cth) "Personal Information") collected through the Microsoft Azure services may be transferred and stored and processed in the United States, Australia or any other country in which Microsoft or its service providers and their subcontractors maintain facilities.
- 4.44 By using the Microsoft Azure services, you consent to the transfer of Customer Data (including Personal Information) outside of Australia.
- 4.45 You must also obtain the consent of each person who provides Customer Data (including Personal Information) to you to:
  - (a) transfer that data to Microsoft and its agents and affiliates; and
  - (b) permit its transfer, storage and processing in accordance with Our Customer Terms.
- 4.46 You agree that Customer Data (including Personal Information ) collected through the Microsoft Azure services (or in relation to these Microsoft Azure Terms of Use) may be used by Microsoft and its affiliates for the purposes of

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calculating amounts payable, tracking and monitoring usage of the Microsoft Azure services, support services and internal analysis.

- 4.47 Unless you otherwise notify us, by using the Microsoft Azure services, you consent and agree to provide the consent of each User to Microsoft and its affiliates contacting you for the purposes of the operation and delivery of the Microsoft Azure services, marketing or selling its products and services.

### No retention of data

- 4.48 You are advised to extract your data from your User's accounts as soon as possible before your subscription to the Microsoft Azure service expires or terminates because your accounts may be permanently deactivated upon expiry or termination.
- 4.49 You agree that after expiry or termination, we may require Microsoft to permanently deactivate and disable your and your User's accounts and delete Customer Data in such accounts.
- 4.50 You understand that the Microsoft Azure services may not support retention or extraction of software provided by you to run in the Microsoft Azure services.
- 4.51 You agree that, other than as described above, neither we nor our suppliers have any obligation to continue to hold, export or return your Customer Data. You agree that neither we nor our suppliers have any liability whatsoever for deletion of your Customer Data pursuant to the above terms, save for liability arising as a direct result of our negligence.

### System requirements

- 4.52 You are responsible for having the platforms, systems, hardware and software for each User which is required for access to, and use of, the Microsoft Azure services as advised by Microsoft from time to time. You acknowledge that if you do not have such platforms, systems, hardware or software you and your Users may not be able to access or use the Microsoft Azure services. In such circumstances, you must still pay all fees and charges in relation to your subscription for the Microsoft Azure services.

### Disclaimer

- 4.53 Without limiting any other disclaimers in Our Customer Terms, you acknowledge that the information, software, products, and services included in or available through the Microsoft Azure services may include errors, including inaccuracies or typographical errors.
- 4.54 To the extent permitted by law and unless expressly stated, we (including our affiliates) do not, make any representations or warranties in relation to the Microsoft Azure services (including fitness for a particular purpose, merchantability, title and non-infringement of third party rights, or that the Microsoft Azure services will be uninterrupted or error free), and have no liability for damages, whether direct, indirect or consequential, arising from the use by you or your Users of the Microsoft Azure services.

### Liability

- 4.55 To the extent permitted by law, we will not be responsible or liable in any way for:
- (a) unauthorised access to or alteration of your transmissions or data with, any material or data sent or received or not sent or received with, or any transactions entered into through or in connection with, the Microsoft Azure services;
  - (b) any threatening, defamatory, obscene, offensive or illegal content or conduct of any other party or any infringement of another's rights, including intellectual property rights;
  - (c) any content sent using and/or included in the Microsoft Azure services; and/or
  - (d) the deletion, corruption or failure to store any messages or other content maintained or transmitted by the Microsoft Azure services.

### Indemnity

- 4.56 You agree to indemnify and hold us harmless from any loss, damage or expense (including reasonable legal fees) we suffer or incur in connection with any claim, demand, or proceedings asserted by any third party due to or arising out of your or your User's breach of these terms or the Microsoft Customer Agreement, or conduct while using the Microsoft Azure services.

## 5 SUPPORT AND SERVICE LEVELS

### What are the support services for Microsoft Azure services?

- 5.1 We will provide you with support services in relation to Microsoft Azure services 24 hours per day, 365 days per year. You can find out more about the support available, and how to contact us, on the Cloud Services Portal.

### What are our service levels for Microsoft Azure Services?

- 5.2 Microsoft makes certain service level commitments to you under the Service Level Agreement that forms part of your Microsoft Customer Agreement. You can find the applicable service levels for Microsoft Azure services at <http://azure.microsoft.com/support/legal/sla/>.

## 6 TERM

- 6.1 Subject to clause 6.2, you must subscribe to the relevant Microsoft Azure services on a casual (month-to-month) basis.
- 6.2 If applicable, you may subscribe to Microsoft Azure services for a fixed minimum term of greater than one month in order to receive a special price or discount made available by us.
- 6.3 Unless you or we cancel your Microsoft Azure subscription on 48 hours' notice prior to expiry, your subscription will automatically renew on a

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monthly basis. This does not apply to a fixed minimum term agreed under clause 6.2 (unless we specify or agree otherwise).

### Early Termination Charges

- 6.4 No early termination charges will apply in relation to a Microsoft Azure service (unless we specify otherwise or you have committed to a minimum term to receive a special price or discount made available by us).

## 7 SPECIAL MEANINGS

- 7.1 The following words have the following special meanings in this Microsoft Azure part:

**Customer Data** means all data (including all text, sound or image files and software) that is provided to us, our licensors or Microsoft by you (or on your behalf) through your or your Users' use of the Microsoft Azure services.

**Microsoft** means Microsoft Regional Sales Corporation or a successor or assign.

**Microsoft Azure** means any one of the Microsoft Azure products that you purchase from us under the terms of this Microsoft Azure section of Our Customer Terms.

**Microsoft Customer Agreement** means the Microsoft cloud agreement between you and Microsoft the terms of which you accept as a condition of using a Microsoft cloud service and which governs your use of the Microsoft Azure services.

**Non-Microsoft Product** means any software, data, service, website or other product licensed, sold or otherwise provided to you by an entity other than Microsoft, or us, whether you obtained it via a Microsoft cloud service or elsewhere.

**User** means any individual who accesses or uses the Microsoft Azure services under a Microsoft Customer Agreement.