

# OUR CUSTOMER TERMS

## CLOUD SERVICES – MIGRATIONWIZ



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# OUR CUSTOMER TERMS

## CLOUD SERVICES – MIGRATIONWIZ

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

### 1 ABOUT THE MIGRATIONWIZ SECTION

- 1.1 This is the MigrationWiz application service section of Our Customer Terms.
- 1.2 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, may apply.
- 1.3 See section one of the General Terms of the Cloud Services section for more detail on how the various parts of the Cloud Services section are to be read together.
- 1.4 Unless you have entered into a separate agreement with us which excludes them, the General Terms section of Our Customer Terms also applies. 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.

### 2 MIGRATIONWIZ

#### What is MigrationWiz?

- 2.1 The MigrationWiz application service is an email migration service from BitTitan, Inc ("BitTitan").

#### Eligibility

- 2.2 MigrationWiz is available through the Telstra Apps Marketplace. To use the Telstra Apps Marketplace, you need an internet connection, and need to create an account in the Telstra Apps Marketplace. You also need to meet any minimum system requirements required to use the Telstra Apps Marketplace.
- 2.3 The Telstra Apps Marketplace part of the Cloud Services section of Our Customer Terms governs your use of the Telstra Apps Marketplace (a copy is available at <https://www.telstra.com.au/customer-terms/business-government/cloud-services/apps-marketplace>).
- 2.4 You must be at least 18 years old to access or use the MigrationWiz service.
- 2.5 You further represent and warrant that you are not:
  - (a) a resident of any country subject to a United States embargo or other similar United States export restrictions, including Iran, Libya or Syria;
  - (b) on the United States Treasury Department's list of Specifically Designated Nationals;

- (c) on the United States Department of Commerce's Denied Persons List or Entity List; or
- (d) on any other United States export control list.

### 3 APPLICATION FEATURES

#### Licence

- 3.1 We grant you a Migration Licence for the Licence Term to perform Migrations on behalf of yourself or your Authorised Users.
- 3.2 To use the MigrationWiz service you must create an account associated with a valid email address. You may only create one account per email address.
- 3.3 You may not use the MigrationWiz service in any manner or for any purpose other than as expressly permitted set out in Your Agreement. A Migration License does not include or authorise:
  - (a) publicly performing or publicly displaying the MigrationWiz service;
  - (b) modifying or otherwise making any derivative use of the MigrationWiz service;
  - (c) using any data mining, robots or similar data gathering or extraction methods;
  - (d) downloading (other than page caching) any portion of the MigrationWiz services or any information contained in the MigrationWiz service;
  - (e) reverse engineering or accessing the MigrationWiz service to build a competitive product or service; or
  - (f) using the MigrationWiz service other than for its intended use.
- 3.4 The Migration License is conditional on your continued compliance with these terms. We will immediately terminate the Migration Licence if you do not comply with these terms and conditions.
- 3.5 We may change any of the MigrationWiz service features (including the service as a whole) or change or remove features or functionality of the MigrationWiz service from time to time. We will notify you of any discontinuation of the Service. We will comply with the General Terms of Our Customer Terms if there is a detrimental change to the MigrationWiz service.

#### Authorised Users

- 3.6 You are responsible for any access or use of the MigrationWiz service by Authorized Users. Further, you will ensure that all Authorized Users comply with your obligations under these terms and conditions. The acts or omissions of any Authorized User are considered your acts or omissions.

#### User Materials

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## CLOUD SERVICES – MIGRATIONWIZ

- 3.7 You are solely responsible for the content of your User Materials that is migrated using the MigrationWiz service. Neither our suppliers nor we claim ownership of any User Materials and do not control, verify, or endorse the User Materials. You are responsible for:
- (a) the nature, quality and accuracy of the User Materials,
  - (b) compliance of the User Materials with applicable laws, regulations and ordinances; and
  - (c) any third party claims relating to the User Materials.
- 3.8 You represent and warrant that:
- (a) the storage, use or transmission of the User Materials doesn't violate any applicable laws, regulations or ordinances or these terms and conditions; and
  - (b) you have provided legally required notice of your use of the MigrationWiz service to all relevant data subjects including, but not limited to, Authorized Users and obtained consent for you to transfer personal information and other User Materials to us and our third party suppliers for processing in the United States and other countries.
- 3.9 You acknowledge and agree that from time to time we or our supplier may need to debug or repair an account, email mailbox migration information (including email addresses and server connection endpoints) or User Materials, in which case we or our suppliers may access your account or User Materials.
- 3.10 In addition to any other consent you may provide on behalf of yourself or any other Authorized Users, by requesting us to investigate or assist with problems with User Materials or an account, you authorise us, our supplier and its subcontractors to access your User Materials and accounts and modify the User Materials stored therein to the extent reasonably necessary to resolve the relevant problem.
- 3.11 You on behalf of yourself or any other authorized users represent and warrant that you have the authority to grant us, our supplier and its subcontractors such access and the right to make any modifications we or our supplier reasonably deem necessary. You understand that in some cases, this may involve us, our supplier and its subcontractors viewing, in human-understandable form, the contents of the User Materials and may result in damage to such contents.

### **Security and backup**

- 3.12 You are responsible for maintaining appropriate security, protection and backup of your User Materials. Neither our third party suppliers nor we are responsible for any unauthorised access to, alteration of, or the deletion, destruction or loss of, or damage to, or failure to store, any User Materials or other data that you submit or use in connection with your account or the MigrationWiz service.

#### 4 YOUR LIABILITY TO US

##### Representations and Warranties by You

- 4.1 By accessing or using the MigrationWiz service, you represent and warrant that:
- (a) you have the right and authority to access and use the MigrationWiz service to migrate User Materials;
  - (b) your access or use of the MigrationWiz service will not violate any agreement or obligation between you and a third party;
  - (c) your access or use of the MigrationWiz service will not violate any applicable law, ordinance or regulation or cause Telstra or its third party suppliers to be in violation of any applicable law, ordinance or regulation; and
  - (d) the User Materials do not now and will not in the future infringe, misappropriate or violate any patent, copyright, trademark, trade secret, trade dress, mask work, moral right, right of attribution or integrity or other intellectual property rights (collectively, "Intellectual Property Rights") of a third party.

##### Indemnity

- 4.2 You will defend, indemnify and hold harmless our supplier and us from and against all claims, damages, losses, liabilities, costs and expenses arising out of or relating to:
- (a) breach of any of these terms and conditions by you and Authorized Users; or
  - (b) any alleged or actual infringement, violation, or misappropriation of any intellectual property rights or non-proprietary right, by you, your agents or representatives, or by Authorized Users related to any User Materials.

#### 5 OUR LIABILITY TO YOU

##### Representations and Warranties by Us

- 5.1 To the extent permitted by law:
- (a) the Site and the MigrationWiz service are provided on an "as is" basis without warranties of any kind, either express or implied;
  - (b) we expressly exclude all other warranties, express or implied, or statutory guarantees, including, without limitation, implied warranties or statutory guarantees of merchantability, fitness for a particular purpose, title and non-infringement as to the MigrationWiz service and the site, including the information, content and materials contained therein;

(c) we do not represent or warrant that the MigrationWiz service or the site are accurate, complete, reliable, current or error-free. While we attempt to make your access and use of the MigrationWiz service and the site safe, we cannot and do not represent or warrant that the site is free of viruses or other harmful components; therefore, you should use industry-recognized software to detect and disinfect viruses.

5.2 You acknowledge that User Materials may become irretrievably lost or corrupted or temporarily unavailable due to a variety of causes, including hardware or software failures, protocol changes by e-mail account providers, intentional data blockages by e-mail account providers, internet outages, acts of god or other disasters, scheduled or unscheduled maintenance, or other causes either within or outside our control. You are solely responsible for verifying that any User Materials or data you migrate through the MigrationWiz service have been accurately reproduced at their new destination.

### **Limitation of liability**

5.3 To the extent permitted by law, in no event shall our supplier or we be liable for any special, indirect or consequential damages, or any damages for loss of use, loss of profits or loss of data, whether in an action in contract, tort (including but not limited to negligence) or otherwise, arising out of or in any way connected with the use of or inability to use the MigrationWiz service and the Site, including the information, content and materials contained therein, including without limitation any damages caused by or resulting from reliance by you on any information obtained from us or our supplier, or that result from mistakes, omissions, interruptions, deletion of files or e-mail, errors, defects, viruses, delays in operation or transmission or any failure of performance, whether or not resulting from acts of god, communications failure, theft, destruction or unauthorized access to our or our supplier's records, programs, service or the site.

5.4 To the extent permitted by law, in no event shall the aggregate liability of us or our supplier whether in contract, warranty, tort (including negligence, whether active, passive or imputed), product liability, strict liability or other theory, arising out of or relating to this agreement exceed the greater of:

(a) the compensation you have paid, if any, during the 30 days prior to the date of the event giving rise to liability or

(b) \$100.

5.5 If the Australian consumer law imposes a statutory guarantee in relation to the service or site, and our liability for breach of that statutory guarantee cannot be excluded but can be limited, then the limitations in this clause 5 do not apply and our liability for a breach of the relevant statutory guarantee is limited to the resupply of the service or paying the cost of resupplying the service, where it is fair and reasonable to do so.

5.6 You acknowledge that our third party supplier, BitTitan, is a third party beneficiary of this Agreement and has all right and authority necessary to enforce the terms of this Agreement against you.

### 6 CHARGES

- 6.1 The pricing for the MigrationWiz service is set out in the Telstra Apps Marketplace.
- 6.2 We charge you in advance for the MigrationWiz services.
- 6.3 Charges are non-refundable, even if you do not use the Migration Licence to perform a Migration. Accordingly, you should only buy a Migration Licence if you need it.

### 7 TERM AND TERMINATION

#### Term

- 7.1 Unless otherwise agreed by us, you must use the Migration Licence before expiry of the Licence Term.

#### Termination

- 7.2 You may terminate this Agreement by ceasing to access and use the MigrationWiz service. There are no early termination charges because the MigrationWiz application service is a once-off service. However, if you do not use an entitlement, we will not refund the charges for that entitlement.
- 7.3 We may temporarily suspend or terminate your right to access or use the Site or MigrationWiz service if we or our third party supplier determine that your or any of your Authorized User's use of the Site or MigrationWiz service:
  - (a) poses a security risk to the Site or MigrationWiz service or any third party,
  - (b) may adversely impact the MigrationWiz service or the systems or User Materials of other customers of the Service,
  - (c) may subject us or our third party supplier or our affiliates, or any third party to liability, or
  - (d) may be fraudulent

(collectively, "Unauthorized Activity"). You acknowledge that if your access to or use of the MigrationWiz service is suspended or terminated, you may no longer have access to the User Materials.

- 7.4 We may immediately terminate your licence to use the MigrationWiz service if you breach any material term of these terms and conditions.

### 8 SUPPORT

- 8.1 We will provide you with Level 1 Support in relation to the MigrationWiz service. You can request support by logging a trouble ticket via the Telstra Apps Marketplace or by calling the Telstra Apps Marketplace Helpdesk.

- 8.2 For all support, other than Level 1 Support, you can contact us and we will raise a request with BitTitan for technical support for you. Alternatively, you can contact BitTitan directly, either by clicking the 'contact' support button, which appears during a Migration issue, or by email at [support@bittitan.com](mailto:support@bittitan.com).
- 8.3 When requesting support for the MigrationWiz service, you need to provide the following information:
- (a) Your MigrationWiz account name;
  - (b) Connector name (only if there are multiple);
  - (c) Affected Mailboxes;
  - (d) Error message or description of the situation (including source/destination);
  - (e) Steps taken to resolve the issue so far;
  - (f) Expected result vs. Actual result;
  - (g) Any screenshots (with appropriate redaction); and
  - (h) Log files (Lotus Notes only).
- 8.4 Support is available for the MigrationWiz service 24 hours a day every day of the year. We will endeavour to respond to your support request within 24 hours.

## 9 SPECIAL MEANINGS

- 9.1 Unless otherwise stated, the following words have the special meaning set out below:

**Authorised User** means your employees, independent contractors, agents, consultants and customers who you have authorised or otherwise designated or permitted to access and use the MigrationWiz services.

**Level 1 Support** means support relating to pricing, billing, provisioning via the Telstra Cloud Services Store, call logging, first-level technical support (including identifying known problems and applying known solutions to those problems).

**Licence Term** means a period of 12 months from the date you purchase a Migration License.

**Migration** means the successful migration of the User Materials of your nominated email account mailbox or mailboxes to a separate email account mailbox or mailboxes (as nominated by you) using the MigrationWiz service.

**Migration Licence** means a limited, non-exclusive and transferable license to access and use the MigrationWiz e-mail migration services solely to initiate, manage and perform e-mail migrations.



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**Site** means the website found at [www.bittitan.com](http://www.bittitan.com) and other related or successor sites controlled by BitTitan.

**User Materials** means any data or materials that you and Authorized Users provide to the MigrationWiz service, including, without limitation, data within your or an Authorized User's e-mail mailbox.