

OUR CUSTOMER TERMS ONLINE VIDEO SOLUTION

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OUR CUSTOMER TERMS ONLINE VIDEO SOLUTION

1 ABOUT THIS SECTION

Our Customer Terms

- 1.1 This is the Online Video Solution section of Our Customer Terms.
- 1.2 The General Terms of Our Customer Terms at http://www.telstra.com.au/customerterms/bus_government.htm apply.

Inconsistencies

- 1.3 If the General Terms of Our Customer Terms are inconsistent with something in this section, then this section applies instead of the General Terms to the extent of the inconsistency.
- 1.4 Any right for us to suspend or terminate your Online Video Solution in this section is in addition to our rights to suspend or terminate your Online Video Solution under the General Terms and our agreement with you.

2 ONLINE VIDEO SOLUTION & PROJECT SERVICES

What is the Online Video Solution?

- 2.1 Subject to what features you choose in our agreement with you and under your Service Plan, the Telstra Online Video Solution (**Online Video Solution**) comprises one or more of the following features:
 - (a) ingestion and management (including deletion) of Customer Content;
 - (b) storage of Customer Content, including transcoded video files, promotional artefacts and metadata;
 - (c) streaming of Customer Content in the form of linear video or on-demand video;
 - (d) a web-based portal with functionality to assist you to access and manage the relevant features of the Online Video Solution;
 - (e) transcoding of Customer Content into agreed transcoded formats and profiles, including digital rights management;
 - (f) application of geo-blocking rules to Customer Content;
 - (g) application of domain-blocking rules to Customer Content;
 - (h) a web-based portal providing detailed non-real time analytics information on Customer Content consumption and End User engagement; and
 - (i) access to APIs to allow for integration of service functionality into systems or applications.
- 2.2 Unless we agree otherwise with you, the Online Video Solution also includes the Content Delivery Service comprising of the Media Delivery Service with the Adaptive Media Delivery feature (**CDN Service**), which is subject to the terms of the Content Delivery section of Our Customer Terms.
- 2.3 The Online Video Solution does not include:
 - (a) maintenance and support of your Equipment;

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- (b) supply, maintenance or support of End User Devices;
 - (c) managing DNS problems; and
 - (d) the provision of carriage services to End Users.
- 2.4 Unless otherwise agreed, the Online Video Solution:
- (a) is provided for your benefit only; and
 - (b) must not be used by you for a third party's benefit.
- 2.5 The Online Video Solution must not be resold or resupplied by you, whether in whole or in part, to any person. The provision of your Video Service to an End User is not taken to be a resale or resupply of the Online Video Solution.
- 2.6 You are solely responsible for:
- (a) ensuring that all your Equipment, and any other arrangements, software, hardware, systems or infrastructure necessary for the distribution of the Customer Content via the Online Video Solution, is fully installed and operational before the relevant date specified in the Service Plan; and
 - (b) managing all arrangements with End Users, including all software, hardware, systems or infrastructure necessary for End Users to access and use the Customer Content.
- 2.7 You must provide all information and assistance reasonably required by us in order to enable us to meet our obligations under our agreement with you for the Online Video Solution.

Project Services

- 2.8 We will provide you with Project Services, such as professional services, initial implementation support, general support and training services, if we agree to do so in an SOW.
- 2.9 Each agreed SOW must set out:
- (a) the precise details of the Deliverables, including any professional services, the cost of any infrastructure, hardware, equipment, software or other materials (including upgrades to existing hardware, equipment and software) and who is responsible for those costs;
 - (b) a project plan for the delivery of the Project Services, including the dates when infrastructure, hardware, equipment, software or other materials must be delivered;
 - (c) the rates for any professional services (which will be based on the rates set out in our contract with you for the Online Video Solution or otherwise at our then prevailing rates); and
 - (d) any additional terms and conditions agreed by you and us.
- 2.10 Any timeframes, delivery dates, estimates and applicable assumptions will be agreed under an SOW. The time estimates in an SOW are based on our previous experience, assumptions as to the nature of the works, the availability of our consultants at the date of the SOW and the timeliness of your inputs and materials. If any of these assumptions become incorrect then we will work with you to develop a revised SOW or Service Plan or both.

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Warranty

- 2.11 We aim to, but cannot guarantee, that Project Services will be free from defects or error or that the services will produce particular results or outcomes for you.
- 2.12 If an SOW sets out a warranty period for a Deliverable, then we will correct any material defect in the Deliverable which is notified to us during the warranty period. Nothing in this clause affects any rights you may otherwise have under any law or elsewhere in these terms to have defects corrected.
- 2.13 We do not accept responsibility or liability for defects in a Deliverable which result from your inputs or materials or which are caused by misuse of or intentional damage to the Deliverable (other than by us).

Intellectual Property Rights

- 2.14 As between you and us, we retain all Intellectual Property Rights in and to our material which we incorporate into Deliverables and any material we develop for you in carrying out an SOW.
- 2.15 Unless otherwise set out in an SOW, we grant to you a perpetual, non-exclusive, non-sub-licensable and non-transferable license in Australia to use, adapt and reproduce solely for your internal business purposes the Intellectual Property Rights in our material which is incorporated into a Deliverable.

Our personnel

- 2.16 Where our personnel perform any services at your premises, you must ensure that your premises are safe and comply with all applicable health, safety, environment and community laws and regulations.
- 2.17 You must obtain any consents and fund any site access and induction fees necessary to enable our personnel to access your premises for the purposes of providing services to you.

3 USAGE OF THE ONLINE VIDEO SOLUTION

- 3.1 This clause 3 applies to the Online Video Solution only.
- 3.2 The Service Plan may specify:
 - (a) the number of times that an instance of Customer Content that is consumed on an End User Device via the Online Video Solution each Contract Year before a usage fee becomes payable by you (the “**Stream Usage Allowance**”). In any Month during a Contract Year, if the total amount of times that an instance of Customer Content that is consumed on an End User Device since beginning of the Contract Year is in excess of the Stream Usage Allowance, a usage fee will be payable on the excess. We will notify you when your usage has reached 90% of the Stream Usage Allowance. If the number of times that an instance of Customer Content is consumed on an End User Device via the Online Video Solution at the end of any Contract Year is less than the Stream Usage Allowance, the difference will not be carried forward to the next Contract Year and there will be no reduction in charges otherwise payable; and
 - (b) the amount of Customer Content in the form of video which may be uploaded into the Online Video Solution each Contract Year before a usage fee becomes payable by you (the “**Transcode Usage Allowance**”). In any Month during a Contract Year, if the total amount of video uploaded since beginning of the Contract Year is in excess of the Transcode Usage Allowance, a usage fee will be payable on the excess. We will notify you when your usage has reached 90% of the Transcode Usage Allowance. If the amount of Customer Content in the form of video actually uploaded into the Online Video Solution at the end of any Contract

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Year is less than the Transcode Usage Allowance, the difference will not be carried forward to the next Contract Year and there will be no reduction in charges otherwise payable.

- 3.3 You are solely responsible for:
- (a) ensuring that all your Equipment, and any other arrangements, software, hardware, systems or infrastructure necessary for the distribution of the Customer Content via the Online Video Solution, is fully installed and operational before the relevant date specified in the Service Plan; and
 - (b) managing all arrangements with End Users, including all software, hardware, systems or infrastructure necessary for End Users to access and use the Customer Content.
- 3.4 You acknowledge and agree that your use of the Online Video Solution may lead to Customer Content and Data being transmitted and stored outside Australia.

4 CDN SERVICE AND THIRD PARTY SERVICES

- 4.1 You agree that:
- (a) Customer Content storage or deletion from the CDN Service will be controlled by you via the Online Video Solution;
 - (b) you will not be given access to the Customer Portal (as that term is defined under the Content Delivery section of Our Customer Terms) as part of the CDN Service; and
 - (c) the CDN Service may be unavailable due to a Force Majeure Event or Scheduled Maintenance.
- 4.2 The Service Plan may specify the amount of data which is delivered from the CDN Service to End Users as set out in the Service Plan before a usage fee becomes payable by you (the “**CDN Usage Allowance**”). If the amount of data delivered from the CDN Service to End Users in that period is less than the CDN Usage Allowance, the difference will not be carried forward to the next period and there will be no reduction in charges otherwise payable. If the amount of data actually delivered from the CDN Service to End Users in a period, set out in the Service Plan, is in excess of the CDN Usage Allowance, a usage fee will be payable on the excess. We will notify you when your usage has reached 90% of the CDN Usage Allowance.
- 4.3 If one of our third party suppliers suspends, cancels or terminates the supply of a service or any equipment that we rely on to provide you with the Online Video Solution, then we will endeavour to:
- (a) procure an alternative third party to provide a replacement service or equipment; or
 - (b) provide the relevant service or equipment ourselves.
- 4.4 If we are unable to procure or provide the service or equipment in accordance with clause 4.3, we may suspend, cancel or terminate the Online Video Solution or the affected part of the Online Video Solution. We will give you as much notice as is reasonably possible in the circumstances. You shall be entitled to terminate the Online Video Solution if we are unable to procure or provide the service or equipment in accordance with clause 4.3 within a reasonable time.
- 4.5 In the event that your Online Video Solution includes delivery of Customer Content to a CDN provided by a third party:

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- (a) we will not be responsible for management of that CDN service or for the delivery of Customer Content to that third party;
- (b) you are solely responsible for all arrangements with such third party and for the delivery of the Customer Content from our equipment to the third party; and
- (c) you agree that we will not be liable for any loss you suffer in connection with the operation of that third party CDN service, save for any loss suffered as a direct result of our negligence.

5 END USERS

5.1 You are solely responsible for:

- (a) the relationship with each End User;
- (b) your Video Service (including Customer Content) that is provided or otherwise supplied to an End User, including providing the terms of your agreement with an End User and enforcing that agreement with an End User; and
- (c) the delivery of Customer Content to the platform used by us to provide the Online Video Solution.

5.2 You indemnify us against all losses and damages (including legal expenses) that we may suffer or incur as a result of a claim by an End User, or potential End User, against us in respect of your Video Service (including claims relating to the Customer Content). This indemnity does not apply to the extent the claim is caused or contributed to by our breach of our contract with you for the Online Video Solution.

6 PRIVACY

6.1 The terms of this clause 6 apply to the Online Video Solution unless we tell you otherwise in writing.

6.2 You agree and consent that:

- (a) we may use and disclose Personal Information that is made available to us in order to provide the Online Video Solution to you including disclosing Personal Information to third parties who provide services to us;
- (b) we may use or disclose Personal Information in accordance with the Telstra Privacy Statement (available at <http://www.telstra.com.au/privacy/privacy-statement/index.htm>), this section of Our Customer Terms and in accordance with our agreement and Service Plan(s) with you; and
- (c) in order to deliver and support the Online Video Solution, we may disclose Personal Information we collect from your personnel and End Users to third parties such as our suppliers, contractors and third party service providers (or their respective suppliers). In some instances this will involve the transfer of such Personal Information to a country outside of Australia and you consent to this transfer, storage and use of Personal Information outside of Australia.

6.3 You warrant:

- (a) you have taken all steps necessary in accordance with Privacy Laws to permit us and any third parties who provide services to us to collect Personal Information and to use, disclose, store and transfer such Personal Information as contemplated under this clause 6; and

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- (b) you have notified or made the relevant individual aware of the matters required by APP 5.1 in respect of the use and disclosure of that individual's Personal Information as contemplated under this clause 6.

6.4 You indemnify us against any claim, cost, loss or liability which may arise in connection with your breach of the warranty in clause 6.3 above.

7 CUSTOMER CONTENT

7.1 You must obtain (or procure) all necessary rights to use the Customer Content and the associated metadata that will be used in connection with your Video Service and the Online Video Solution.

7.2 You must ensure you have all necessary rights, permissions and consents (including waivers) relating to Customer Content to allow us to provide the Online Video Solution to you.

7.3 You are solely responsible for the Customer Content and any other software, information, data or material of any nature which you provide to us.

7.4 We may at any time remove or disable access to Customer Content or information stored or transmitted using the Online Video Solution if:

- (a) required by law or by any regulatory body;
- (b) such Customer Content or information breaches or is likely to breach any law or regulation or infringes, or is likely to infringe, the rights of any third party; or
- (c) we reasonably consider that such Customer Content or information could threaten the security or integrity of the Online Video Solution or any of our networks.

7.5 We will provide you with a post-incident report in relation to any action taken under clause 7.4 providing an explanation of what was removed or disabled, and why, as soon as reasonably practicable after any such event.

7.6 You warrant to us that:

- (a) you must implement and maintain (and, where relevant use your best endeavours to procure your third party suppliers to implement and maintain) on any system that interfaces with our systems used to supply the Online Video Solution commercially available systems designed to scan and detect viruses, worms, trojan horse or other form of malicious code in Customer Content and any other materials you transmit to us; and
- (b) the Customer Content and other materials provided by or on your behalf to us, and activities related to each of it (including storage, duplication, adaptation, modification and transmission) carried out in accordance with the requirements in this section of Our Customer Terms, will not infringe the Intellectual Property Rights of any third party, violate any applicable laws (including defamation) or breach any authorisation required to be held by you.

7.7 You indemnify us in relation to any loss or expense incurred by us as a result of a claim by a third party against us as a direct result of any breach of clause 7.6. This indemnity does not apply to the extent the claim is caused or contributed to by our (or our subcontractor's) breach of this section of Our Customer Terms.

7.8 You must hold, at all times during the term of our agreement with you, all authorisations required to be held to enable us to provide the Online Video Solution to you.

7.9 You are solely responsible for:

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- (a) controlling access to and use of the Customer Content through the Online Video Solution;
- (b) ensuring that the Online Video Solution is used by you and End Users only in accordance with this section of Our Customer Terms, our agreement with you and in accordance with all applicable laws;
- (c) ensuring that you use the Online Video Solution in a manner that maintains the security of any communications made by you;
- (d) communicating with End Users, and for handling all complaints and trouble reports made by End Users regarding the Customer Content and the Online Video Solution;
- (e) all changes to, and support and maintenance of, your Equipment; and
- (f) notifying us of the details of your contacts (including any replacements thereto) to allow us to escalate any issues or incidents to those contacts as required.

8 INTELLECTUAL PROPERTY RIGHTS

- 8.1 Other than as expressly set out in this section of Our Customer Terms, nothing in this section of Our Customer Terms transfers ownership in, or otherwise grants any rights in, any Intellectual Property Rights of a party.
- 8.2 You grant to us a non-exclusive and royalty-free licence to use the Intellectual Property Rights in any material (including Customer Content) provided by you (or on your behalf) to us under this section of Our Customer Terms to enable us (and our subcontractors) to perform our obligations under this section of Our Customer Terms and the right to sublicense to our subcontractors on the same terms.
- 8.3 We own all the Intellectual Property Rights in and to the platform (including any improvements to it) used by us to provide the Online Video Solution and all materials and documents relating to the Online Video Solution (including the core solution design, source code, components, information, documentation, infrastructure, platforms and interfaces used in this solution).

9 SPECIAL MEANINGS

- 9.1 In this section of Our Customer Terms unless the context otherwise requires:

API means application programming interface, being software which enables 2 or more other items of software to interact with each other.

CDN means content delivery network.

CDN Service has the meaning given in clause 2.2.

CDN Usage Allowance has meaning set out in clause 4.2.

Commencement Date means the date specified in the Service Plan.

Contract Year means a 12 month period from the Commencement Date and each 12 month period after that.

Customer Content means the content provided by you to and processed via the Online Video Solution.

Data means your data and information which may include Personal Information and End User data.

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DNS means a domain name system.

Deliverable means the deliverables identified in a SOW that will be specifically supplied to you under that SOW, but does not include any part of the Online Video Solution (including any enhancements, modifications or other changes to the Online Video Solution).

End User means a person who acquires Customer Content through your Video Service.

End User Device means the equipment, applications or systems used by your End Users for the purpose of receiving Internet Protocol content services.

Equipment means your equipment required to access the Online Video Solution and upload the Customer Content into the Online Video Solution system.

Force Majeure Event means an event beyond a party's reasonable control resulting in a party being unable to perform or being delayed in performing an obligation (other than an obligation to pay money).

Intellectual Property Rights means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trade marks, trade secrets, know-how, confidential information, patents, invention and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

Month means a calendar month.

Online Video Solution has the meaning given to it in clause 2.1.

Project Services means project services as agreed in an SOW.

Scheduled Maintenance means any planned maintenance, upgrades and configuration changes to the Online Video Solution.

Service Plan means the written service plan the parties enter into under our agreement with you.

SOW means any statement of work agreed by the parties under our contract with you for the Online Video Solution.

Stream Usage Allowance has the meaning given in clause 3.2.

Transcode Usage Allowance has the meaning set out in clause 3.2.

Video Service means your streaming video service, the delivery of which is facilitated by the Online Video Solution.