

# OUR CUSTOMER TERMS CLOUD SERVICES – SUNGARD DATA CENTRE SERVICES

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# OUR CUSTOMER TERMS

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Certain words are used with the specific meanings set in the General Terms part of the Cloud Services section at <http://www.telstra.com.au/customer-terms/business-government/cloud-services/> of Our Customer Terms, or in the General Terms of Our Customer Terms at <http://www.telstra.com.au/customer-terms/business-government/index.htm>

### 1 ABOUT THIS PART

- 1.1 In addition to this Sungard section of Our Customer Terms, unless we agree otherwise, the following terms also apply:
- (a) General Terms of Our Customer Terms (see <https://www.telstra.com.au/customer-terms/>); 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.
- 1.3 As part of your product selection under this Sungard part of the Cloud Services section, we do not monitor or manage any of your other services, including any of your other services provided under the Cloud Services section.

### 2 SET-UP SERVICES

- 2.1 We will, subject to the terms and conditions of Your Agreement, commence the Set-Up Services on Your Agreement Commencement Date.
- 2.2 We will endeavour to complete the Set-Up Services prior to the Service Commencement Date for the Data Centre Services.

### 3 DATA CENTRE SERVICES

#### Data Centre Space

- 3.1 We will provide the Data Centre Space to you (the **Data Centre Services**).
- 3.2 For the purpose of clause 3.1, we grant to you, for the duration of the Service Term for Data Centre Services a non-exclusive right to install, inspect, operate, repair and maintain Your Equipment in the Data Centre Space.

#### Our Representatives

- 3.3 You acknowledge and agree that notices given or rights exercised by us under Your Agreement may be given or exercised (as applicable) by our Representatives, including the Facility Provider. You must comply with any notice or instruction issued by our Representative or the Facility Provider as though they were notices or instructions issued by us.

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### Use

- 3.4 You must use the Data Centre Space for the sole purpose of installing, inspecting, repairing and maintaining Your Equipment in the Data Centre Space.

### Access

- 3.5 Subject to clauses 3.6, 3.11 and 3.12, you will have 24/7 access to the Data Centre Space for the purpose of exercising your rights specified in clause 3.2.
- 3.6 You must comply with, and must ensure that your Representatives comply with, the Facility Rules (being rules relating to the operation and management of the Facility and the provision of the Services as provided by us to you, and as amended or replaced by us from time to time) relating to access to the Facilities and Data Centre Space.
- 3.7 Without limitation, the Facility Rules (being rules relating to the operation and management of the Facility and the provision of the Services as provided by us to you, and as amended or replaced by us from time to time) may include rules relating to:
- (a) the process for arranging access to the Facility and the Data Centre Space for your Representatives, including any required advance notice for obtaining access, the provision of acceptable proof of identity, and the undertaking of induction training;
  - (b) the process for obtaining approval for on-site work and conducting on-site work, including receipt of deliveries at the Facility;
  - (c) compliance with our instructions concerning security, safety and other general procedures;
  - (d) display of identification and security passes by those authorised to access the Data Centre Space; and
  - (e) issue and return of security passes.
- 3.8 You are responsible for controlling the use of the access cards assigned to you and your personnel.
- 3.9 You must comply with our directions when accessing the Facility and Data Centre Space including, where we require, having our on-site or security staff escort your authorised personnel whilst on premise.
- 3.10 When accessing the Facility or Data Centre Space, you must ensure that your authorised personnel do not touch, interfere with or connect anything to any items of equipment (other than your equipment or where any relevant equipment has been approved by us in writing in advance).
- 3.11 We may suspend your access to the Data Centre Space or may require your Representatives to leave the Data Centre Space and the Facility:
- (a) if you or your Representatives breach the Facility Rules (being rules relating to the operation and management of the Facility and the provision of the Services as provided by us to you, and as amended or replaced by us from time to time);
  - (b) in any event or circumstance where we reasonably consider it appropriate to do so;

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or

(c) in the circumstances contemplated by clause 6.7.

3.12 We may refuse access to the Facility or remove from the Facility any of your Representatives whose admission or presence is, or would be, in our reasonable opinion detrimental to the security of the Facility.

3.13 If we or the Facility provider incur any additional costs attributable to your use or occupation of the Facility (e.g. the cost of hiring additional security staff because of industrial dispute directed towards you) you must pay us the amount of the additional outgoings incurred provided that they are reasonably incurred.

### Power Allocation

3.14 You must ensure that your power utilisation does not exceed the maximum Power Allocation.

3.15 You acknowledge that any consumption by you in excess of your maximum Power Allocation may adversely:

- (a) affect the supply of power to you;
- (b) affect the supply of power to another customer;
- (c) impact upon the proper operation of the Facility cooling system; and
- (d) impact upon ours and the Facility Provider's ability to meet the Service Levels.

3.16 If you become aware you are using power in excess of your Power Allocation you must immediately stop excess power utilisation.

3.17 If your power utilisation exceeds the Power Allocation, we may give notice to you requiring you to rectify the breach ("Excess Power Breach"). You must rectify the breach as soon as reasonably practicable, but in any event within 48 hours of receiving the notice. If you fail to rectify the breach within 48 hours, we may take whatever remedial action we deem necessary, which may include disconnecting power to the Data Centre Space.

3.18 If we or the Facility Provider consider it necessary for the protection of the Facility, the Data Centre Space, other property of ours or the Facility Provider or any third party or the safety or health of any person, or for compliance with any requirement of any government agency, any applicable Law or any obligation owed to any third party, we may exercise its rights under clause 3.17 without first being required to issue the notice referred to or waiting for you to rectify the breach.

3.19 If your power utilisation exceeds the Power Allocation for a period of more than 24 hours on more than 2 occasions (with each continuous period exceeding 24 hours being a separate occasion) in any rolling 30 day period we may, in our sole discretion:

- (a) in the first instance, having regard to operational requirements and the availability of additional power within the Facility, increase the Power Allocation either temporarily or permanently, in which case you will pay our standard rates pro-rated for the remainder of the Term (or agreed temporary period) in 1 kW increments for the Data Centre Space with the increased Power Allocation from the date upon

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which the Power Allocation is increased; or

- (b) if we, acting reasonably, deems it impracticable to provide the Power Allocation increase, we may terminate immediately.

3.20 Notwithstanding any other remedy, right or claim we may have, on each occasion that you fail to rectify the Excess Power Breach you will pay us liquidated and ascertained damages calculated as follows:

- (a) in the case of the first Excess Power Breach by an amount of 5%, a one off sum equal to 1/6 of the aggregate annual Fee payable; and
- (b) where the Excess Power Breach continues to exceed the amount by 5% for longer than 4 days from the notice given a one off sum equal to 1/3 of the aggregate annual Fee payable.

For the avoidance of doubt, this clause applies to each new subsequent Excess Power Breach.

3.21 The parties agree and acknowledge that:

- (a) the amounts payable by you under clause 3.20 are a genuine estimate of the losses which we would suffer as a result of the Excess Power Breach; and
- (b) the liquidated and ascertained damages are likely to be an insufficient remedy for any breach of the Power Allocation and that we are entitled to protect against such a breach by injunctive relief or specific performance (including but not limited to turning off all power to the Data Centre Space).

### Your Equipment

3.22 In addition to your obligations set out in Your Agreement, you must comply with the Facility Rules (being rules relating to the operation and management of the Facility and the provision of the Services as provided by us to you, and as amended or replaced by us from time to time) in relation to your installation, use, repair and maintenance of Your Equipment.

3.23 You must ensure that the size and weight of Your Equipment does not exceed the maximum size and weight that we specify to you (unless we consent to a different size and weight in which case, you must pay an additional charge and ensure that the size and weight of Your Equipment does not exceed the agreed maximum size and weight).

3.24 You must obtain our prior written approval before you connect Your Equipment to any power outlet, network or telecommunications service connection point, or any other equipment. We may revoke this approval where we consider this necessary. If we have not provided approval of the connection, or have otherwise revoked our approval for the connection we may disconnect Your Equipment.

3.25 You must ensure that Your Equipment is stored within the cabinets that are allocated to you, and unless we agree to install Your Equipment as a part of providing the Services you are responsible for installing Your Equipment.

3.26 We may require you to remove any of Your Equipment from the Data Centre Space and the Facility that does not comply with Your Agreement or the Facility Rules (being rules relating

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to the operation and management of the Facility and the provision of the Services as provided by us to you, and as amended or replaced by us from time to time).

### Repair and maintenance

3.27 You must:

- (a) ensure that the Data Centre Space is kept in good repair and condition;
- (b) comply with our requirements and instructions regarding rubbish removal and recycling;
- (c) inform us in writing of any damage to the Data Centre Space, the Facility or our other property or other property of any third party (including the Facility Provider) immediately upon becoming aware of the damage; and
- (d) if requested by us, promptly repair damage to the Data Centre Space or the Facility caused or contributed to by you.

### Allocation of Data Centre Space

3.28 We will allocate the Data Centre Space in our sole discretion.

3.29 We will provide you with notice of any modification, substitution, replacement or change to the Data Centre Space as is reasonable in the circumstances.

3.30 We will use reasonable endeavours to minimise any disruption or inconvenience to you during any modification, substitution, replacement or change to the Data Centre Space.

### Your general obligations

3.31 You must comply with, and must ensure that your Representatives comply with, the Facility Rules (being rules relating to the operation and management of the Facility and the provision of the Services as provided by us to you, and as amended or replaced by us from time to time) at all times whenever using or accessing a Facility in connection with Your Agreement.

3.32 You must comply with all applicable laws and must ensure that your Representatives comply with all applicable laws and that you and your Representatives have obtained all relevant consents, permits, approvals, authorities and licences required to receive and use the Services.

3.33 You must:

- (a) only use the Service for its intended purpose;
- (b) comply with all relevant technical standards and requirements in the overall operational design, installation, configuration and support of the Customer Equipment; and
- (c) not use the Service to commit any offence or allow anyone else to do so.

3.34 You can specify up to 10 personnel to be to be your authorised personnel who will be granted access to the Facility and your Data Centre Space, unless we agree otherwise. You

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must confirm to us in writing the status of your authorised personnel every time there is a change in the authorised personnel list and otherwise every three months.

- 3.35 You must not do any act or thing (including in connection with the installation, inspection, operation, repair, maintenance or replacement of Your Equipment):
- (a) in the Facility or the Data Centre Space that is fraudulent or illegal or that, in our reasonable opinion, is dangerous, annoying, offensive or immoral;
  - (b) that interferes with, obstructs access to, damages or overloads the Facility, the Data Centre Space or any of our property or property of any third party (including the Facility Provider);
  - (c) that causes nuisance to or interference with the use of the Facility or any part of the Facility by us, the Facility Provider or any of our other customers or customers of the Facility Provider (or their customers) and, for the purposes of this clause, interference shall include technical interference; or
  - (d) that may cause us or the Facility Provider to be in contravention of any applicable law or any approval, licence, consent, authority or permit held or required to be held by us or the Facility Provider.

#### **Our right to enter**

- 3.36 We and the Facility Provider, including our respective personnel, agents or representatives may enter the Data Centre Space after giving you reasonable notice:
- (a) to inspect the condition or state of repair of the Data Centre Space;
  - (b) to do repairs to the Data Centre Space or the Facility or other works (including work required for environmental purposes) that cannot reasonably be done unless we or the Facility Provider enters the Data Centre Space;
  - (c) to do anything we or the Facility Provider must or may do to provide the Service or must do under applicable Laws or any approval, licence, consent, authority or permit held or required to be held by us or the Facility Provider;
  - (d) to exercise our rights;
  - (e) to remedy any breach by you, provided that we have given you a notice of such breach and you have failed to remedy that breach within the time specified in the notice; and
  - (f) at any time for the purpose of carrying out Scheduled Maintenance on the Facility or the Data Centre Space.
- 3.37 The Facility Provider and its personnel, agents or representatives may enter the Data Centre Space at any time without notice and remain in the Data Centre Space for as long as necessary if there is an Emergency.



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### 4 ADD-ON SERVICES

#### General

- 4.1 You may from time to time request us to provide Add-On Services, which may include:
- (a) Cross Connect Services;
  - (b) Remote Hands Services; or
  - (c) other services that we may agree to provide from time to time.
- 4.2 Any such request must be made:
- (a) on the Application Form if you request the Add-On Services at the same time as the Data Centre Services; or
  - (b) if you request Add-On Services after you have submitted the Application Form for the Data Centre Services, on a MAC (Move Add Change) Form, which we will provide to you on request.
- 4.3 If we agree to provide the Add-On Services, we will advise you in writing that we accept your request. We are under no obligation to agree to your request.
- 4.4 The terms of Your Agreement shall apply to any Add-On Services that we agree to provide.
- 4.5 We are not obliged to provide any Add-On Services requested by you unless and until we advise you in writing that we accept your request, and we may refuse to provide any Add-On Services to you in our sole discretion.
- 4.6 You must comply with all of our policies, procedures and requirements applicable to the Add-On Services, including the Facility Rules (being rules relating to the operation and management of the Facility and the provision of the Services as provided by us to you, and as amended or replaced by us from time to time).

#### Cross Connects

- 4.7 All data connectivity delivered to the Data Centre Space must be delivered by way of a Cross Connect Service provided by us.
- 4.8 If any Cross Connect Service involves Data Centre Space made available by us or the Facility Provider to a third party, you must obtain the consent of the third party to the provision of the Cross Connect Service.
- 4.9 To the extent permitted by law and any other agreement we have with you, we are not under any circumstances liable for any acts or omissions of any carrier in connection with the supply of any products or services by the carrier to you.
- 4.10 We do not warrant that any Cross Connect Service will be free from interruptions, errors, defects or failures and we do not accept any liability in connection with same.

### 5 SERVICE LEVEL AGREEMENT

- 5.1 The Service Level Agreement (**SLA**) in this clause 5 sets out:

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- (a) the Service Levels that we will achieve in connection with the provision of the Services; and
  - (b) the remedies available to you for any failure by us to achieve the Service Levels.
- 5.2 The remedies set forth in the SLA are your sole and exclusive remedies for any failure by us to achieve the Service Levels.
- 5.3 This SLA covers the following elements of the Data Centre Space:
- (a) supply of power;
  - (b) maintenance of temperature; and
  - (c) maintenance of humidity levels.
- 5.4 This SLA does not apply to any feature of the Data Centre Space not specifically identified in this SLA. To the extent permitted by law, the remedies set forth in this SLA are your sole and exclusive remedies for any failure by us to achieve a Service Level.

### Service Levels

- 5.5 We will achieve the Service Levels in this SLA, as set out in the table below (each a “**Service Level**”). If we fail to achieve a Service Level (a “**Failure**”), you will be entitled under Your Agreement to a Service Credit (each a “**Service Credit**”) as set out in the table below, subject to the terms and conditions of Your Agreement.

| No. | Severity | Service Level  | Service Credit payable by us to you  |
|-----|----------|--|--|
| 1   | High     | <p><b>Supply of power</b></p> <p>Supply of continuous power up to and including at least one of the UPS output boards servicing the Data Centre Space for 99.99% of the time in any calendar month.</p>  | <p>10% of the Data Centre Services Fees payable in respect of that part of the Data Centre Space affected by the Failure for that calendar month, increasing by an additional 10% for each 10 minutes until it has been resolved (up to a maximum of 70% of the Data Centre Services Fees payable in respect of that part of the Data Centre Space affected by the Failure for that calendar month).</p> |
| 2   | High     | <p><b>Maintenance of temperature</b></p> <p>The average temperature measured at any two consecutive fifteen minute intervals at the air flow point at or within 1 metre of the cold air output nominated and measured by us or the Facility Provider located in the Data Centre Space is no greater than 35 degrees Celsius.</p> | <p>10% of the Data Centre Services Fees payable in respect of that part of the Data Centre Space affected by the Failure for the calendar month in which the fifteen minute intervals occur, increasing by an additional 10% for each thirty minutes until it has been resolved (up to a maximum of 50% of the Data Centre Services Fees payable in respect of that part of the Data Centre Space</p>    |

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| No. | Severity | Service Level   | Service Credit payable by us to you   |
|-----|----------|---|---|
|     |          | <p>This Service Level will not apply, and the Service Credit will not be available:</p> <ul style="list-style-type: none"> <li>(a) during any period where Your Equipment exceeds the Power Allocation; or</li> <li>(b) during any period where you have not populated the Data Centre Space:               <ul style="list-style-type: none"> <li>(i) within the Rack, with either Your Equipment or blanking panels (or similar item as approved in writing by us or the Facility Provider on our behalf); and</li> <li>(ii) when applicable, if your supplied racks are installed in a manner that is inconsistent with our or the Facility Provider's airflow containment requirements.</li> </ul> </li> </ul>  | <p>affected by the Failure for the calendar month in which the fifteen minute intervals occur).</p>   |
| 3   | Medium   | <p><b>Maintenance of temperature</b></p> <p>The average temperature measured on any calendar day at the air flow point at or within 1 metre of the cold air output nominated and measured by us or the Facility Provider located in the Data Centre Space is between 18 - 27 degrees Celsius.</p> <p>This Service Level will not apply, and the Service Credit will not be available:</p> <ul style="list-style-type: none"> <li>(a) during any period where Your Equipment exceeds the Power Allocation; or</li> <li>(b) during any period where you have not populated the Data Centre Space:               <ul style="list-style-type: none"> <li>(i) within the Rack, with either Your Equipment or blanking panels (or similar item as approved in writing by us or the Facility Provider on our behalf); and</li> </ul> </li> </ul> | <p>10% of the Data Centre Services Fees payable in respect of that part of the Data Centre Space affected by the Failure for the calendar month in which the calendar day occurs.</p> <p>You will only be able to claim this Service Credit once in any calendar month.</p> |

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| No. | Severity | Service Level  | Service Credit payable by us to you  |
|-----|----------|--|--|
|     |          | (ii) when applicable, if your supplied racks are installed in a manner that is inconsistent with our or the Facility Provider's airflow containment requirements.  |  |
| 4   | Medium   | <p><b>Maintenance of humidity</b></p> <p>The average return air humidity measured at the point nominated and measured by us or the Facility Provider reasonably near to the Data Centre Space will not deviate from the acceptable humidity range of 35-65% for a continuous period of more than 60 minutes in any calendar day.</p> <p>This Service Level will not apply, and the Service Credit will not be available:</p> <p>(a) during any period where Your Equipment exceeds the Power Allocation; or</p> <p>(b) during any period where you have not populated the Data Centre Space:</p> <p>(i) within the Rack, with either Your Equipment or blanking panels (or similar item as approved in writing by us or the Facility Provider on our behalf); and</p> <p>(ii) when applicable, if your supplied racks are installed in a manner that is inconsistent with our or the Facility Provider's airflow containment requirements.</p> | <p>5% of the Data Centre Services Fees payable in respect of that part of the Data Centre Space affected by the Failure for the calendar month in which the calendar day occurs.</p> <p>You will only be able to claim this Service Credit once in any calendar month.</p> |

### Service Credit requirements

5.6 We are not required to provide a Service Credit unless the following requirements are met:

- (a) you give us notice of the Failure immediately upon becoming aware of the Failure; and
- (b) you request the Service Credit in respect of the Failure within 30 days after then end

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of the month of its occurrence.

- 5.7 Any such notice or request must be made in the manner, and include the information, advised by us from time to time.

### Service Credit limitations

- 5.8 The maximum of all Service Credits required to be provided by us to you in any calendar month is 100% of the Data Centre Services Fees payable in respect of that part of the Data Centre Space affected by a Failure for the calendar month.
- 5.9 Service Credits will apply only to Services provided under Your Agreement. We are not required to provide Service Credits to you under Your Agreement against any Services that are provided under any other contract between us and you, nor to provide refunds under Your Agreement that arise under any other contract with you. If upon termination of Your Agreement there are outstanding Service Credits, such Service Credits are forfeited.
- 5.10 Notwithstanding any provision to the contrary in this SLA, the following do not constitute Failures (and you will not be entitled to a Service Credit):
- (a) failures to achieve Service Levels that occur while any undisputed amount that is due and payable to us remains unpaid outside of any contractual payment terms;
  - (b) failures to achieve Service Levels caused by or in connection with Your Equipment, racks supplied by you or your acts or omissions;
  - (c) failures to achieve Service Levels caused by property of a third party or the acts or omissions of any third party:
    - (i) excluding the Facility Provider and its sub-contractors (if any); and
    - (ii) including our other sub-contractors, unless those sub-contractors are acting under our directions or instructions;
  - (d) failures to achieve Service Levels caused by you exceeding the Power Allocation or by you failing to remedy a power imbalance in accordance with Your Agreement;
  - (e) failures to achieve Service Levels caused by our exercise of our rights pursuant to Your Agreement;
  - (f) a failure to achieve a Service Level that is recorded by a monitoring or reporting device, but which we or the Facility Provider can demonstrate to our reasonable satisfaction was incorrectly recorded as a Service Level Failure due to a defect in or failure of the monitoring or reporting device; and
  - (g) failures to achieve Service Levels caused by Force Majeure Events.
- 5.11 Notwithstanding any provision to the contrary in this SLA, and in addition to the items listed in clause 5.10 of this SLA, failures to achieve Service Levels due to scheduled maintenance do not constitute Failures in respect of any Service Level described above.
- 5.12 You must immediately notify us of the Failure.
- 5.13 For each incident, Service Credits for Your Agreement may only be calculated under one

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Service Level. In instances where there are multiple Services Levels for Your Agreement that have been impacted, the Service Credits payable to you shall be calculated using the regime which generates the greatest Service Credit payable to you, and only that Service Credit will be payable and no other additional Service Credits will be payable regardless of the total number of Failures arising from that incident.

### Notification

- 5.14 We will or our Facility Provider will, once we are aware of the incident and as soon as is reasonably practicable in the circumstances, notify you of any incident relating to the Facility where there is a material risk to your authorised personnel or Your Equipment, or your authorised personnel, or Your Equipment has been damaged or your authorised personnel hurt. Following resolution of such an incident we will provide further notification of such resolution.

## 6 FEES AND INVOICING

### Payment of Fees

- 6.1 Unless specified otherwise in writing, the Fees will be charged monthly in advance.
- 6.2 Fees that are not recurring will be charged monthly in arrears, except installation fees which will be charged in your first invoice.
- 6.3 Fees must be paid by the last day of the month without set-off, counterclaim, withholding or deduction.
- 6.4 We are not responsible for the payment of fees and charges for services provided by third parties contracted by you.

### Fee escalation

- 6.5 On the Review Date, the Fees will increase by the greater of 3% or CPI.

### Fee adjustment

- 6.6 Where the cost of supplying the Services increases due to:
- (a) any increase in the cost of supplying the Services associated with any change in Tax Charge; or
  - (b) a material change in the cost of power to us or the Facility Provider (determined by us in our reasonable opinion),

we may, by notice in writing to you, adjust the Fees.

### Suspension

- 6.7 We may:
- (a) suspend your access to the Facility, the Data Centre Space and any other services if an undisputed amount payable under Your Agreement is not paid within 7 days of its due date and you fail to pay the amount within 7 days of receiving an Access Suspension Notice from us; or

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- (b) suspend the provision of power to the Data Centre Space and the provision of all other services to you if an undisputed amount payable under Your Agreement is not paid within 14 days of its due date and you fail to pay the amount within 14 days of receiving a Service Suspension Notice from us.

### 7 INTELLECTUAL PROPERTY

#### No assignment

- 7.1 Each party's Material remains the property of that party and nothing in Your Agreement grants the other party any Intellectual Property Rights in the Material or its other Intellectual Property Rights.

#### Your Material

- 7.2 To the extent reasonably required to allow us to perform and/or deliver the Services, you grant to us a non-exclusive, irrevocable, worldwide, royalty-free licence to exercise and sub-license the Intellectual Property Rights in any of Your Material in connection with us providing any Services to you.
- 7.3 You warrant that use of Your Material by us in accordance with clause 7.2 will not infringe the Intellectual Property Rights or other rights of any third party.

### 8 INDEMNITY

#### Customer indemnity

- 8.1 You indemnify us from and against (and must pay for) any claims, liability, loss, damage, costs or expenses (including legal costs) we incur or suffer arising directly or indirectly, including as a result of any claim by the Facility Provider or the Facility Provider's Representatives or other customers, from or in connection with:
  - (a) any breach of Your Agreement by you;
  - (b) your use (or attempted use) of the Services;
  - (c) the personal injury or death of any person (including any of your Representatives) in connection with Your Equipment, use of the Data Centre Space or use of the Services or any act or omission by you or your Representatives;
  - (d) any wrongful or negligent act or omission by you or your Representatives; or
  - (e) damage to Your Equipment, the Facility, the Data Centre Space or your other property, our property or any third party's (including the Facility Provider's) property caused by or in connection with any act or omission by you or your Representatives.

#### Continuing obligation

- 8.2 Each indemnity contained in Your Agreement is a continuing obligation notwithstanding:
  - (a) any settlement of account; or
  - (b) the occurrence of any other thing,



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### CLOUD SERVICES – SUNGARD DATA CENTRE SERVICES

and it is not necessary for us to incur expense or make payment before enforcing or making a claim under an indemnity.

## 9 LIABILITY

### Our liability to you

- 9.1 Subject to clauses 9.2 and 9.3, our aggregate liability for any loss or damage, however caused (including by our negligence), suffered by you in connection with Your Agreement is limited to:
- (a) where you suffer loss or damage as a result of a failure by us to meet any Service Level, the relevant Service Credit specified in the SLA; or
  - (b) in every other case, an amount equal to the Data Centre Services Fees paid by you to us under Your Agreement in the 12 months prior to you first suffering loss or damage in connection with Your Agreement.
- 9.2 Subject to clauses 9.1(a) and 9.3, we are not liable for any Consequential Loss, however caused (including by our negligence), suffered or incurred by you in connection with Your Agreement.
- 9.3 Nothing in Your Agreement operates to limit or exclude liability that cannot by law be limited or excluded. Our liability to you for breach of any statutory guarantee or term implied by statute which cannot be excluded is (to the extent permitted to by law) limited to, at our discretion:
- (a) in the case of goods, the replacement, repair or supply of equivalent goods or paying the cost of doing so; and
  - (b) in the case of services, resupply of the services or payment of the cost of having the services resupplied.

### When we are not liable

- 9.4 We are only liable to you in the cases set out in clause 9.1. Otherwise, we are not liable to you in contract, tort (including negligence) or otherwise for any loss or damage.

## 10 PPSA

- 10.1 You acknowledge and agree that:
- (a) you have no interest or rights in any property or equipment situated in the Facility not owned by you;
  - (b) you have no right to retain any property or equipment situated in the Facility not owned by you;
  - (c) we or the Facility Provider may register its property or equipment in accordance with the *Professional Property Securities Act 2009* (Cth) ("PPSA"); and
  - (d) you must not register or attempt to register any interest under the PPSA against any property or equipment of ours, the Facility Provider or any third party situated within the Facility.



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- 10.2 You, the Facility Provider and we must not disclose information of the kind mentioned in section 275(1) of the PPSA, except in circumstances required by section 275(7) of the PPSA.

### 11 INSURANCE

- 11.1 You must effect and maintain from a reputable insurance company:
- (a) all insurances required by law, including workers' compensation insurance in accordance with relevant legislation; and
  - (b) public liability insurance for an amount of not less than \$10 million per claim.
- 11.2 If we request, you must provide us with evidence of the currency of the policies referred to in clause 11.1.

### 12 SUBCONTRACTING

- 12.1 We may subcontract the performance of any Service, in whole or in part, to any person.

### 13 ASSIGNMENT

- 13.1 You must not assign, in whole or in part, or novate your rights and obligations under Your Agreement without our prior written consent.
- 13.2 We may assign, in whole or in part, or novate our rights and obligations under Your Agreement.

### 14 TERM

#### Term of Your Agreement

- 14.1 Your Agreement commences on Your Agreement Commencement Date, and continues until termination or expiry of the Service Term for Data Centre Services ("**Your Agreement Term**").

#### Service Term

- 14.2 Each Service commences on the Service Commencement Date, and continues for the Minimum Term.
- 14.3 After expiry of the Minimum Term, the Service automatically extends on a month to month basis on the existing terms (including price), unless either party notifies the other (at least 30 days before any automatic extension) that it does not wish the Service to extend automatically.

### 15 TERMINATION

#### Termination by us

- 15.1 We may terminate Your Agreement by written notice to you if:
- (a) you fail to pay any undisputed amount payable under Your Agreement within 30

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days of its due date;

- (b) you fail to pay any undisputed amount payable under Your Agreement on or before its due date on more than 3 occasions in any rolling 12 month period;
- (c) you commit a material breach of Your Agreement which is incapable of remedy, or you commit a material breach of Your Agreement which is capable of remedy and you fail to remedy the breach within 30 days of receiving a notice from us requiring you to do so;
- (d) an administrator, receiver, liquidator or provisional liquidator is appointed to you, or you resolve to enter into any settlement, moratorium or similar arrangement for the benefit of your creditors, or you are unable to pay your debts when they are due;
- (e) you undergo a change in Control without our prior written approval;
- (f) a Force Majeure Event prevents us from performing all or substantially all of our obligations under Your Agreement for a period exceeding 60 days;
- (g) a Change in Law makes it commercially unviable (in our reasonable opinion), or illegal, for us to continue to provide the Services; or
- (h) we or the Facility Provider cease to have the right to use the Facility, in which case, subject to clause 10.2 upon request by you we will use reasonable endeavours to assist you to transfer Your Agreement to, or enter into a new agreement with, any new owner, lessee or licensee of the Facility.

### Migration

- 15.2 If the Facility is sold or otherwise disposed of by the Facility Provider, on your request we will use reasonable endeavours to assist you to transfer Your Agreement to, or enter into a new agreement with, any new owner, lessee or licensee of the Facility.

### Early Termination Charge

- 15.3 If during the Minimum Term a Service is cancelled or terminated for any reason other than for our material breach, we may charge you any waived Fee(s) for the cancelled or terminated Service(s) and an amount calculated as follows:

$$A \times B \times 50\%$$

"A" = the average Fees paid or payable each month by you for the Service(s) up to the date of cancellation.

"B" = the number of months (or part of a month) remaining in the Minimum Term for the relevant Service(s).

- 15.4 You acknowledge that this amount is a genuine pre-estimate of the loss we are likely to suffer.

### Consequences of termination

- 15.5 Termination of Your Agreement does not affect any accrued rights or remedies of a party.

## OUR CUSTOMER TERMS CLOUD SERVICES – SUNGARD DATA CENTRE SERVICES

### 16 OBLIGATIONS AT END OF YOUR AGREEMENT TERM

16.1 On or before the Exit Date you must:

- (a) remove Your Equipment from the Data Centre Space and the Facility and bear all costs incurred by you associated with such removal;
- (b) repair any damage to the Data Centre Space or the Facility caused by the removal of Your Equipment;
- (c) if and to the extent requested by us, remove any works carried out on the Data Centre Space and make good the Data Centre Space to the condition it was in prior to the works being carried out (and in carrying out any such works, you must comply with the terms of Your Agreement);
- (d) deliver up the Data Centre Space in a condition that is consistent with you having complied with your obligations under Your Agreement;
- (e) deliver any of our confidential information to us; and
- (f) return our and the Facility Provider's property, including but not limited to IDACs, power rails and structured cabling.

16.2 If you do not remove Your Equipment in accordance with clause, 16.1(a) we may treat it as abandoned and deal with it in any way we see fit.

16.3 For the purposes of this clause 16, the Exit Date is:

- (a) if Your Agreement expires – 30 days from the date of expiry;
- (b) if Your Agreement is terminated under clause 0 – 30 days from the date of termination.

16.4 In complying with your obligations under this clause 16, you must not disturb or cause interruption to us, the Facility Provider or other users of the Facility.

### 17 FORCE MAJEURE

17.1 Neither party will be:

- (a) in breach of Your Agreement as a result of; or
- (b) liable for,

any failure or delay in the performance of its obligations under Your Agreement to the extent that such failure or delay is wholly or partially caused, directly or indirectly, by a Force Majeure Event. This clause does not relieve you from making any payment as required under Your Agreement.

### 18 DISPUTE RESOLUTION

18.1 The parties agree to use best endeavours to resolve in good faith any dispute concerning Your Agreement. Each party must follow the procedures in this clause 18 before starting arbitration or court proceedings (except for urgent injunctive or declaratory relief).

## OUR CUSTOMER TERMS CLOUD SERVICES – SUNGARD DATA CENTRE SERVICES

- 18.2 If a dispute arises between the parties that cannot be resolved promptly between our contact person and your contact person, either party may notify the other party of a formal dispute. Each party must nominate a senior executive to meet within 7 days of the notice (or another agreed period) to try and resolve the dispute.
- 18.3 If the dispute remains unresolved, the parties must try to resolve it by mediation administered by the Australian Commercial Disputes Centre according to its Mediation Guidelines.
- 18.4 The parties will continue performing their respective obligations under Your Agreement while the dispute is being resolved, unless and until such obligations are terminated or expire in accordance with Your Agreement.
- 18.5 Each party must bear its own costs of complying with this clause.

### 19 DEFINITIONS AND INTERPRETATION

#### Definitions

- 19.1 The following words have the meanings set out below:

|                                 |  |
|---------------------------------|--|
| <b>Access Suspension Notice</b> | means a notice given by us for the purposes of clause 6.7(a).  |
| <b>Add-On Services</b>          | means Cross Connect Services; Remote Hands Services; and any other services that we may agree to provide from time to time.  |
| <b>Add-On Services Fees</b>     | means the fees for Add-On Services specified in the Application Form or the Move Add Change (MAC) Form (as applicable), or as otherwise agreed by the parties.   |
| <b>Application Form</b>         | means the application form submitted by you to order Services.   |
| <b>Blocks</b>                   | means an agreed number of Racks, the specifics of which are outlined in the applicable Application Form.   |
| <b>Caged Area</b>               | means a caged area which may include Blocks or Racks, the specifics of which are outlined in the applicable Application Form.  |
| <b>Change in Law</b>            | means any present or future law, regulation, treaty, order or official directive or request (which, if not having the force of law, would be complied with by a responsible provider of services similar to the Services) that commences, is introduced, or changes, after the date of Your Agreement. |
| <b>Consequential Loss</b>       | means (a) loss of revenue; (b) loss of reputation; (c) loss of profits; (d) indirect or consequential loss; (e) loss of bargain; (f) loss of actual or anticipated savings; (g) economic loss; (h) lost opportunities, including opportunities to enter into arrangements with third                   |

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parties; (i) loss, corruption or interception of data; and (j) any indirect or consequential loss or damage.

|                                  |   |
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| <b>Control</b>                   | has the meaning given to it in the Corporations Act.  |
| <b>Corporations Act</b>          | means Corporations Act 2001 (Cth).  |
| <b>CPI</b>                       | means the Consumer Price Index (Weighted Average Eight Capital Cities) published by the Australian Bureau of Statistics and calculated as the percentage increase between the CPI for the Quarter ending 31 March that most recently precedes the previous Review Date and the CPI for the Quarter ending 31 March that most recently precedes the current Review Date. |
| <b>Cross Connect</b>             | means a cross connection between the Data Centre Space and any other space in the Facility (whether or not that space is provided by us or the Facility Provider to you or to a third party (including to a carrier)).  |
| <b>Cross Connect Service</b>     | means the installation and ongoing provision of a Cross Connect that you request us to provide, and that we agree to provide, to you in accordance with clause 4.   |
| <b>Data Centre Services</b>      | has the meaning given to it in clause 3.1.  |
| <b>Data Centre Services Fees</b> | means the Fees for Data Centre Services described in the Application Form.  |
| <b>Data Centre Space</b>         | means, in respect of Your Agreement, the Data Centre Space in the Facility allocated by us in accordance with clauses 3.28 to 3.30, which may include: <ul style="list-style-type: none"> <li>(a) Racks;</li> <li>(b) Blocks;</li> <li>(c) Suites; and/or</li> <li>(d) a Caged Area.</li> </ul>   |
| <b>Early Termination Charge</b>  | means a fee that we are entitled to charge in accordance with clause 15.3.  |
| <b>Emergency</b>                 | means any event or circumstance which in our reasonable opinion endangers or threatens to endanger the safety or health of any person or destroys or damages or threatens to destroy or damage the Facility or any part of the Facility, or the property of any other party.  |
| <b>Exit Date</b>                 | has the meaning given to it in clause 16.3.   |

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|                            |  |
|----------------------------|--|
| <b>Facility</b>            | means the data centre facility specified in the Application Form (as changed in accordance with clause 3.29) and includes all fixtures, fittings, plant, machinery, equipment or other property of us or the Facility Provider in or on the Facility.  |
| <b>Facility Provider</b>   | means NineZero DC Management II Pty Ltd ABN 52 618 422 423 trading as Sungard Data Centre.   |
| <b>Facility Rules</b>      | means rules relating to the operation and management of the Facility and the provision of the Services as provided by us to you, and as amended or replaced by us from time to time.   |
| <b>Fees</b>                | means: <ul style="list-style-type: none"> <li>(a) the Set-Up Fees;</li> <li>(b) the Data Centre Services Fees;</li> <li>(c) the Power Fees (if applicable);</li> <li>(d) the Add-On Services Fees; and</li> <li>(e) any other fees as agreed between the parties.</li> </ul>   |
| <b>Force Majeure Event</b> | means any occurrence or omission outside a party's control and: <ul style="list-style-type: none"> <li>(a) an Emergency;</li> <li>(b) a physical natural disaster including fire, flood, lightning or earthquake;</li> <li>(c) war or other state of armed hostilities (whether war is declared or not), insurrection, riot, civil commotion, act of public enemies, national emergency (whether in fact or in law) or declaration of martial law;</li> <li>(d) epidemic or quarantine restriction;</li> <li>(e) ionising radiation or contamination by radioactivity from any nuclear waste or from combustion of nuclear fuel;</li> <li>(f) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government agency;</li> <li>(g) law taking effect after the date of Your Agreement; and</li> </ul> |

## OUR CUSTOMER TERMS CLOUD SERVICES – SUNGARD DATA CENTRE SERVICES

(h) strike, lock-out, stoppage, labour dispute or shortage including industrial disputes that are specific to a party or the party's subcontractors,

but excluding a flood that is determined to be less than a 1 in 100 year flood event.

|                                     |  |
|-------------------------------------|--|
| <b>GST</b>                          | has the meaning it has in the GST Act.   |
| <b>GST Act</b>                      | means A New Tax System (Goods and Services Tax) Act 1999 (Cth).  |
| <b>IDAC</b>                         | means an access card issued by us or the Facility Provider to enable access to the Data Centre Space.  |
| <b>Intellectual Property Rights</b> | means all industrial and intellectual property rights, both in Australia and throughout the world, including, without limitation, any copyright, trade or service marks, patents, registered and unregistered trade marks, registered designs, trade secrets, knowhow, moral rights, rights in relation to semiconductors and circuit layouts, formulations, components, concentrations, protocols, trade, business or company name, indication or source or appellation of origin, or other proprietary right, or right to registration of such rights. |
| <b>Material</b>                     | includes documents, software, object code, source code, configurations, equipment, reports, technical information, studies, plans, charts, drawings, calculations, tables, schedules and data stored by any means.   |
| <b>Minimum Term</b>                 | in respect of a Service, means the minimum term for that Service specified in the Application Form.  |
| <b>Move Add Change (MAC) Form</b>   | means the form by which you request us to provide Add-On Services after the date of submitting the Application Form.   |
| <b>Our Material</b>                 | means any Material provided or to which access is given by us to you for the purposes of Your Agreement.   |
| <b>Power Allocation</b>             | means, in respect of the Data Centre Space, the Power Allocation for that Data Centre Space specified in the Application Form.   |
| <b>Power Fees</b>                   | means, in respect of a month, the power consumed by you during that month (measured in kWh at the power distribution unit located in the Data Centre Space) multiplied by the Power Rate.  |
| <b>Power Rate</b>                   | means the per kWh rate specified in the Application Form.  |

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|                                       |   |
|---------------------------------------|---|
| <b>Quarter</b>                        | means the three month period ending 31 March, 30 June, 30 September or 31 December.   |
| <b>Rack</b>                           | means a physical rack with an agreed Power Allocation, the specific details of which are outlined in the applicable Application Form.   |
| <b>Remote Hands Services</b>          | means minor technical services that you request us to provide, and that we agree to provide, as set out in the Facility Provider's Remote Hands Services description document as amended from time to time. It does not include services or work that requires a greater level of skill than the services described in that document. |
| <b>Representative</b>                 | of an entity means an employee, agent, officer, director, auditor, adviser, partner, associate, consultant, joint venturer or sub-contractor of that entity or of a related body corporate (as defined in the Corporations Act) of that entity.   |
| <b>Review Date</b>                    | means 1 July in each year of Your Agreement Term.   |
| <b>Service Commencement Date</b>      | means, in respect of Your Agreement, the date which is calculated by reference to Your Agreement Commencement Date plus the applicable timeframe for delivery of the Set-Up Services as set out in the Service Delivery Table, or such other later date as agreed between the parties.  |
| <b>Service Delivery Table</b>         | means the timeframe for performance of the Set-Up Services by us, as amended from time to time.   |
| <b>Service Level Agreement or SLA</b> | means the Service Level Agreement in clause 5.  |
| <b>Service Levels</b>                 | has the meaning given to it in the Service Level Agreement.   |
| <b>Service Suspension Notice</b>      | means a notice given by us for the purposes of clause 6.7(b).   |
| <b>Service Term</b>                   | means, in respect of a Service, the Minimum Term and any extension of the term in accordance with clause 14.3.  |
| <b>Services</b>                       | means Data Centre Services and Add-On Services.   |
| <b>Set Up Fees</b>                    | means the Set Up Fees specified in the Application Form.  |
| <b>Set Up Services</b>                | means the preparation, establishment and provisioning of the Data Centre Space by us.   |
| <b>Suite</b>                          | means a separately enclosed area within a data hall comprised of Racks and/or Blocks or as fitted out by you  |



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(as the case may be), the specific details of which are outlined in the applicable Application Form.

### **Tax Charge**

means any tax, duty or governmental charge relating to carbon, emissions, trading scheme, pollution, electricity, carbon dioxide, greenhouse gas or similar emissions or other regulatory charges or schemes.

### **Taxes**

means a tax, levy, duty, charge, deduction or withholding, however described, imposed by law or a government agency, together with any related interest, penalty or fine, including in respect of GST, but excluding income tax.

### **Your Agreement**

means the contract formed between you and us when we accept your Application Form.

### **Your Agreement Commencement Date**

means the date we accept your Application Form.

### **Your Agreement Term**

has the meaning given to it in clause 14.1.

### **Your Equipment**

means all hardware, software, accessories, tools and other information technology and telecommunications equipment owned, leased, licensed, controlled or otherwise used by or in the possession of you or your Representatives from time to time which is located in the Facility, including the Data Centre Space.

### **Your Material**

means any Material provided or to which access is given by the you to us for the purposes of Your Agreement.