

OUR CUSTOMER TERMS PRIVATE CLOUD RESELL

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

1 ABOUT THIS PART

- 1.1 This is the Private Cloud Resell part of the Cloud Services section of Our Customer Terms. Depending on the nature of the products and services you are receiving under this Cloud Services section, provisions in other parts of the Cloud Services section, as well as in the General Terms of Our Customer Terms at <http://www.telstra.com.au/customer-terms/business-government>, may apply.
- 1.2 See section one of the General Terms of Our Customer Terms at <http://www.telstra.com.au/customer-terms/business-government> for more detail on how the various sections of Our Customer Terms are to be read together.
- 1.3 See section one of the General Terms part of the Cloud Services section for more detail on how the various parts of the Cloud Services section are to be read together.

2 PRIVATE CLOUD RESELL SERVICE

What is the Private Cloud Resell Service?

- 2.1 The Private Cloud Resell Service is a range of infrastructure solutions comprising various elements that you can choose from including compute, storage, network, software and server resources.
- 2.2 The Private Cloud Resell Service may include some or all of the following features (which may be revised by us from time to time in accordance with these Our Customer Terms), depending on your specific order with us:

FEATURE	DESCRIPTION
Products	Platform: the infrastructure platform, where each product is a configured system of pre-selected hardware and software (including Third Party Software) and any accompanying documentation. Third Party Branded Products: Products which are available for purchase or license from us that are manufactured, developed or made available by other companies and for use in conjunction with the Platform to provide an ancillary service.
Services	Support and Maintenance Services: support services and where selected, Maintenance from the vendor for your Products which may be at an additional fee. Professional Services: Product installation, configuration and training services. Managed Services: ongoing management and operation of your Private Cloud Resell Service.

- 2.3 Certain platform vendors publish and update from time to time validated designs and

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reference architectures. Only the designs and reference architectures published by the relevant vendor are pre-validated. We are not responsible for any compatibility issues arising from configuring the Products other than in accordance with a pre-validated design.

Eligibility

- 2.4 The Private Cloud Resell Service is not available to Telstra wholesale customers. The Private Cloud Resell Service is only for your internal business use and is not available for resale or distribution.

Service pre-requisites

- 2.5 You are responsible for obtaining and maintaining (at your cost) any carriage services required in order to use the Services.
- 2.6 We can provide you with details of the minimum technical capabilities of the required carriage services on request.
- 2.7 If you do not comply with clause 2.5 for any reason, the service you experience may be adversely affected and we may terminate your Private Cloud Resell Service.

Charges

- 2.8 The charges for your Private Cloud Resell Service will be set out in Your Agreement.
- 2.9 There are two payment options for your Private Cloud Resell Service:
- (a) once off (upfront); or
 - (b) monthly for the minimum term.
- 2.10 If you select the monthly payment option, you may be required to enter into a separate lease agreement and the terms of that lease agreement will apply in addition to these Private Cloud Resell Service terms.

Term

- 2.11 Your Agreement will specify any applicable minimum term for individual components of your Platform, including but not limited to software licences and maintenance periods.
- 2.12 You are responsible for ensuring that you renew and maintain the validity of your software licences and maintenance options, noting that the minimum term for the Platform may be different to the term of your software licence and/or maintenance services.
- 2.13 At the end of the minimum term, if you have a Managed Service, it will continue on a month-to-month basis unless otherwise terminated by you or us, or if you let us know that you do not want it to continue beyond the minimum term.
- 2.14 If your Private Cloud Resell Service is terminated in part or in whole before the end of your chosen minimum for any reason other than our material breach, we may charge you the following early termination charges (**ETC**):
- (a) Products: An amount equal to the full amount remaining to be paid in respect of each Product at the date of termination.

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- (b) Services: An amount equal to the actual costs and expenses that we have incurred or committed to in anticipation of providing the services to you and that cannot be reasonably avoided by us as a result of the termination, which will not exceed an amount equal to:
 - (i) 100% of the remaining amount to be paid in respect of Professional Services which have been completed at the date of termination or vendor provided Support and Maintenance Services;
 - (ii) 50% of the remaining amount to be paid in respect of Managed Services to be terminated, calculated at the date of termination.

You acknowledge that these ETCs are a genuine pre-estimate of losses that we would incur as a result of the termination.

Third party suppliers

- 2.15 You acknowledge and agree that we may use third party suppliers to provide or perform elements of the Private Cloud Resell Service.
- 2.16 You are also entitled to choose third party vendors to supply some elements of the Private Cloud Resell Service directly to you. We identify in this section of Our Customer Terms when that is the case, and if you do choose a third party to supply any such elements of the Private Cloud Resell Service, subject to the Australian Consumer Law provisions in the General Terms of Our Customer Terms, we are not responsible for providing that element of the Private Cloud Resell Service and your relationship with that third party is governed by your separate agreement with them.

Export Controls

- 2.17 You acknowledge that the Software and Documentation supplied by us is subject to export controls under the laws and regulations of the United States, the European Union and other countries as applicable, and the Software may include export controlled technologies, including without limitation encryption technology. You agree to comply with such laws and regulations and, in particular, represent and warrant that you:
 - (a) will not, unless authorised by U.S. export licenses or other government authorisations, directly or indirectly export or re-export the Software and Documentation to or use the Software and Documentation in countries subject to U.S. embargoes or trade sanctions programs;
 - (b) are not a party, nor will you export or re-export to a party, identified on any government export exclusion lists, including but not limited to the U.S. Denied Persons, Entity, and Specially Designated Nationals Lists; and
 - (c) will not use the Software and Documentation for any purposes prohibited by U.S. law, including but without limitation, the development, design, manufacture or production of nuclear, missile, chemical biological weaponry or other weapons of mass destruction.
- 2.18 You agree to provide us end use and end user information upon our request. You will obtain all required authorisations, permits, or licenses to export, re-export or import, as required. You agree to obligate, by contract or other similar assurances, the parties to whom you re-export or otherwise transfer the Software to comply with all obligations set forth in clauses 2.17 and 2.18.

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Hazardous Environments

- 2.19 The Products are not designed or intended for use in on-line control of aircraft, air traffic, aircraft navigation or aircraft communications, or in the design, construction, operation or maintenance of any nuclear facility, or in the operation or in maintenance of any direct life support system, or in other hazardous environments or life threatening operations. Subject to the Australian Consumer Law provisions in the General Terms of Our Customer Terms, we disclaim any express or implied warranty of fitness for such uses and shall not be liable for any costs, liabilities or damages resulting from the use of the Products in such environments or operations. You agree that you will not use or license the Products for such purposes.

Audit

- 2.20 Upon reasonable notice, you grant us and our licensors (or their independent accountants) the right to examine your Software usage to verify compliance with these license terms. If the audit discloses over-usage or any other material non-compliance, you will promptly pay us any additional fees notified to you and the reasonable costs of conducting the audit.

3 PRODUCT

Product

- 3.1 The Product comprises the Platform and/or Third Party Branded Products.
- 3.2 The Platform is the hardware and software infrastructure platform that you choose for the Services. Your Agreement will set out the details of the Platform you have selected.
- 3.3 You may choose Third Party Branded Products to form part of your Private Cloud Resell Service in addition to the Platform. We will let you know what Third Party Branded Products are available on request. Any Third Party Branded Products you choose will be set out in Your Agreement.

Title and risk

- 3.4 Subject to paragraph 3.5, ownership of the Product only passes to you once you have paid us in full and risk in the Product passes from us to you on delivery. You must not sell, dispose of or encumber the Product until you have paid us in full.
- 3.5 You do not acquire title in any in any Software incorporated in the Product. Any Software in the Product will be licensed to you as described in the Licence Terms section below.

Delivery

- 3.6 We will deliver any Product that you purchase from us to your nominated address. Standard delivery times are four to six weeks from acceptance of your order. We will try, but do not promise, to meet any indicative delivery date. If there's a change in the original delivery date we will try to tell you.
- 3.7 You acknowledge that you have examined the equipment before accepting delivery of the Product and satisfied yourself as to its condition.
- 3.8 We reserve the right to repossess the Product, or suspend or terminate your Private Cloud Resell Service, if you don't pay the purchase price in full within a reasonable period of time after our notice reminding you that you have not paid the purchase price. Reconnection fees and early termination charges may also apply details of which can be found in Your

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Agreement.

Use of the Product

- 3.9 We recommend that you install any software, upgrades and patches as directed by our third party suppliers or us. If you do not, you may not be able to obtain support services for your Platform (and we are excused providing them).

Licence Terms

- 3.10 Depending on the Products and scope of Services you choose, your use of the Private Cloud Resell Service may be subject compliance with additional terms of use imposed by third party vendor (**Licence Terms**). A copy of the Licence Terms can be found in the Vendor Terms and Conditions part of the Cloud Services section of Our Customer Terms.
- 3.11 You must comply with the Licence Terms that apply to your Private Cloud Resell Service.
- 3.12 If you do not comply with the Licence Terms and you remain in breach after receiving notice from us or the third party vendor that you are breaching the Licence Terms, we may immediately terminate your Private Cloud Resell Service.

4 SERVICES

Support and Maintenance Services

- 4.1 Depending on the Products you chose Support and Maintenance Services may be available in connection with your Products, additional fees may apply.
- 4.2 Support and Maintenance Services many comprise some or all of:
- (a) telephone access to the vendor's support desk;
 - (b) access to the vendor's web-based support portal;
 - (c) replacement parts service;
 - (d) vendor services response levels;
 - (e) vendor support hours;
 - (f) hardware replacement; and
 - (g) maintenance access to bug fixes and new software features,
- as further described below and as set out in Your Agreement.

Installation

- 4.3 If you require assistance with your Platform, you can acquire Professional Services from us, as described in the Services section below.
- 4.4 You are responsible for:
- (a) ensuring the installation locations for the Product meet the hardware specifications (including for power and cooling), which we can provide you on request; and

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- (b) if you engage a third party (rather than us) to install the Product, paying any third parties you engage to install the Product.

Managed Services

4.5 You may select one of the following managed services for your Private Cloud Resell Service:

	CAPACITY AND AVAILABILITY MANAGEMENT	VIRTUAL PLATFORM MANAGEMENT	FULLY MANAGED
Suitable for	Bare metal solutions, including Big Data Applications, BYO Virtualisation	Suitable for customers that have internal teams to manage their virtual servers	A fully managed solution suitable for customers that want to focus on business outcomes.
Includes	Platform Capacity and Availability Management	Platform Capacity and Availability Management Virtual Platform Management	Capacity and availability management Virtual Platform Management Virtual Machine Managed Services
Online Portal	Yes, incident logging		
Cloud Management Platform	Telstra Cloud Management platform is available as an add-on		
Service Desk Coverage	24x7		
Service Level Reporting	Monthly	Monthly	Monthly
IT Service Management			
Incident Management	Yes	Yes	Yes
Problem Management	Yes	Yes	Yes
Change Management	Yes	Yes	Yes
Configuration Management	Yes	Yes	Yes
Alarming			
What's Alarmed	Availability alarming and monitoring of physical infrastructure, including: routers, switches, firewalls, servers, storage		
	N/A	Availability alarming of the virtual infrastructure layer, including hypervisor hosts, virtual networks and storage	
	N/A	N/A	Availability alarming of the virtual guests, including

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			Windows, Linux and virtual firewall appliances
Physical Infrastructure	Yes	Yes	Yes
Virtual Infrastructure	No	Yes	Yes
Virtual Machines/Appliances	No	No	Yes
Alarm Response	Responding to alarms proactively, based on severity	Responding to all alarms proactively, based on severity	Responding to all alarms proactively, based on severity
Monitoring			
What's Monitored	Utilisation and capacity Monitoring of physical infrastructure, including: routers, switches, firewalls, servers, storage		
	N/A	Utilisation and capacity monitoring of the virtual infrastructure layer, including hypervisor hosts, virtual networks and storage	
	N/A	N/A	Monitoring of the virtual guests, including Windows, Linux and virtual firewall appliances
Physical Infrastructure	Yes	Yes	Yes
Virtual Infrastructure	No	Yes	Yes
Virtual Machines	No	No	Yes
Monitoring Response	Responding to monitoring alerts proactively, based on severity	Responding to monitoring alerts s proactively, based on severity	Responding to monitoring alerts proactively, based on severity Alarming and monitoring of backup solution
Capacity Management			
Physical Infrastructure	Yes	Yes	Yes
Virtual Infrastructure	No	Yes	Yes
Virtual Machines	No	No	Yes
Lifecycle Management			
Firmware Updates	Critical	Critical	Critical

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Hypervisor Patching	N/A	Critical	Annual
Hypervisor Upgrades	N/A	N/A	Optional – Professional Services
Virtual Machine Patching	No	No	Yes, cost per virtual instance
Managed Antivirus			
Monitoring	N/A	N/A	Responding to monitoring alerts proactively, based on severity
Updates	N/A	N/A	Scheduled as agreed
Managed Backup			
Platform configuration ONLY	Yes - Requires a single control server or VM that must be backed up		Yes
Hypervisor configuration	No	Yes	Yes
Virtual Machine – Company Data	No	No	Mandatory, backup charges not included
Reporting	No	No	Daily completions reports
Job reruns	No	No	Re run on jobs as agreed
Backup Testing	No	No	Quarterly backup restoration testing of a data set no larger than 100GB

Service Level Objectives for the Managed Service

4.6 The available service levels objectives for the Managed Service are set out in the table below.

SERVICE LEVEL TYPE	SERVICE LEVEL OBJECTIVE	
Service Support Coverage Hours	Priority 1	24 hours x 7 days
	Priority 2 - 4	Business Hours / 9am – 5pm
Service Availability ¹	Single Site	99.90%
	Dual Site ²	99.99%
Service Activation		
Minor	6 weeks	
Standard	8 – 12 weeks	
Major	On application	

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Incident Response Time ³		
Priority 1 – Business Critical	95% within 15 minutes	Calculated as the number of Incidents responded to within the SLA divided by the total number of Incidents, measured monthly.
Priority 2 – High Priority	90% within 30 minutes	
Priority 3 - Normal Request	90% within 1 hour	
Priority 4 - Low Priority	90% within 8 hours	
Incident Restore Time ⁴		
Priority 1 – Business Critical	95% within 4 hours	Calculated as the number of Incidents resolved within the SLA divided by the total number of Incidents, measured monthly.
Priority 2 – High Priority	90% within 1 Business Day	
Priority 3 - Normal Request	90% within 2 Business Days	
Priority 4 - Low Priority	90% within 3 Business Days	
Service Request Response Time ³		
Priority 1 – Business Critical	90% within 1 hour	Calculated as the number of Service Requests resolved within the SLA divided by the total number of Service Requests, measured monthly.
Priority 2 – High Priority	90% within 1 Business Day	
Priority 3 - Normal Request	90% within 2 Business Days	
Priority 4 - Low Priority	90% within 3 Business Days	
Service Request Restore Time ⁴		
Priority 1 – Business Critical	90% within 1 Business Day	Calculated as the number of Service Requests resolved within the SLA divided by the total number of Service Requests, measured monthly
Priority 2 – High Priority	90% within 2 Business Days	
Priority 3 - Normal Request	90% within 5 Business Days	
Priority 4 - Low Priority	90% within 10 Business Days	

¹ Service Availability is calculated each month and measured on the preceding 12 months in accordance with Table 3 in the Cloud Services - General Terms.

² Requires Telstra validated architecture and the sites must be at least 10km apart.

³ Time to Respond is measured from the creation date/time stamp of the Incident to the time when we has taken action to acknowledge the Incident. An Incident may be reported through the following tools: automated monitoring tool, alerting system, or web portal.

⁴ Time to Resolve is measured from the creation date/time stamp of the Incident to the time when we have achieved service restoration minus any time taken by third parties to investigate and resolve issues not with the Managed Private Cloud Resell solution. Implementing a permanent solution or implementing an acceptable workaround to restore service until a permanent solution is identified achieves service restoration. Additional work may be required after service restoration in order to provide a final corrective resolution. Backup Services are not subject to time to resolve SLA for Incidents.

4.7 Priority Levels are defined in the table below:

PRIORITY 1 BUSINESS CRITICAL	PRIORITY 2 HIGH PRIORITY	PRIORITY 3 NORMAL REQUEST	PRIORITY 4 LOW PRIORITY
BUSINESS IMPACT			
Managed Private Cloud Resell solution is down causing all work to cease. You are experiencing a financial loss, or the ability	Level of service degraded or Managed Private Cloud Resell solution is down causing work to cease and potential business impact.	Work continues (e.g. unrelated to the failing component or as a result of implementing a work around) though operational	Work continues (e.g. unrelated to the failing component or as a result of implementing a work around) though minor

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to make strategic business decisions is impaired.		impact is being encountered (e.g. data is occasionally lost).	impact is being encountered.
WORK OUTAGE			
Managed Private Cloud Resell solution failure causes you to be unable to work or perform some significant portion of your business	Managed Private Cloud Resell solution failure causes you to be unable to work or perform some significant portion of your business.	Managed Private Cloud Resell solution failure causes you to be unable to perform some small portion of your business, but you are still able to complete most other tasks. May also include questions and requests for information.	Managed Private Cloud Resell solution failure causes you to be unable to perform a minor portion of your business, but you are still able to complete most other tasks.
NUMBER AFFECTED			
Organisation wide users affected	Multiple sites/department wide users affected.	Single site/group of users affected.	Small group of users affected.

4.8 You must submit all Priority 1 incidents through our Cloud Management Portal.

Difference between incidents and service requests

4.9 Incidents are defined as unexpected issues that have occurred with your Managed Private Cloud Resell solution.

4.10 Service requests are items that are not considered day to day activities within your Managed Private Cloud Resell solution. A service request may include a cost. We will contact you for further details about your service request after which a statement of work and costs will be presented to you for acceptance.

Service Level Exclusions

4.11 Subject to the Australian Consumer Law provisions in the General Terms of Our Customer Terms, in addition to the service level exclusions in the General Terms for Cloud Services, we are not responsible for a failure to meet a service level where:

- (a) the failure is caused because you did not backup your data or the data becomes corrupt as part of a backup;
- (b) you fail to comply with a request from us to maintain sufficient capacity for your workloads;
- (c) the failure relates to your operation of an application on our service platform, as part of a service under the Cloud Services section, which is not version "n-1" or later; or
- (d) you fail to maintain the required level of Product support and maintenance.

Service Level Rebates

4.12 Service level rebates are not available for the Private Cloud Resell Service.

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Professional Services

- 4.13 If you require additional services in connection with your Products, such as installation or training, you can acquire Professional Services from us. The terms for any Professional Services will be described in a Statement of Work we agree with you and in the Professional Services section of Our Customer Terms at <https://www.telstra.com.au/content/dam/tcom/personal/consumer-advice/pdf-b/professional-services.pdf>.

5 WARRANTIES

- 5.1 If you are a consumer as defined in the Australian Consumer Law, the Private Cloud Resell Service come with guarantees that cannot be excluded under the Australian Consumer Law. The provisions of this clause 5 are in addition to the rights and remedies you may have under the Australian Consumer Law or other laws. For important information regarding your rights under the Australian Consumer Law, see https://www.telstra.com.au/content/dam/tcom/personal/consumer-advice/pdf/business-a-full/Warranties_Against_Defects.pdf (or any successor to that site).

Hardware

- 5.2 We warrant that the Hardware will perform substantially in accordance with the Documentation be free from material defects for a period of one (1) year (or such longer period as available from the vendor) from the date of shipment of the Products ("**Hardware Warranty Period**").
- 5.3 To the extent permitted by law and subject to the Australian Consumer Law provisions in the General Terms of Our Customer Terms, your sole and exclusive remedy is, at our option, the repair or replacement of the Hardware, or a refund of the purchase price paid by you. Replacement parts will be warranted for the remainder of the Hardware Warranty Period in effect on the original Hardware, unless otherwise mandated by applicable law.
- 5.4 In the event of a warranty claim during the Hardware Warranty Period, contact us for details of the process to return the Hardware.

Software

- 5.5 We warrant to you, for a period of ninety (90) days from your receipt of the Software ("**Software Warranty Period**") that:
- (a) the Software will materially conform to the published specifications in effect on the date you receive the Software, provided that the Software is properly installed on approved Hardware and operated as contemplated in the published specifications; and
 - (b) the media containing the Software, if any, (but not the Software itself) is free from physical defects.
- 5.6 To the extent permitted by law and subject to the Australian Consumer Law provisions in the General Terms of Our Customer Terms, your sole and exclusive remedy is, at our option, limited to the replacement of the Software with software that materially conforms to the published specifications or refund of the purchase price paid, less reasonable depreciation.
- 5.7 Unless otherwise agreed, the provision of any bug fix, patch, or error correction by us will not operate to extend the original Software Warranty Period.

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Services

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

Third Party Branded Products

- 5.9 To the extent permitted by law and subject to the Australian Consumer Law provisions in the General Terms of Our Customer Terms, we do not provide any warranty for Third Party Branded Products. You agree to look to the manufacturer of any Third Party Branded Product you purchase from us with respect to product warranty, service or other post-purchase support.

6 DEFINITIONS

- 6.1 The following words have the following special meanings in this Private Cloud Resell Service part of the Cloud Services section (unless otherwise stated):

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

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

Product means Hardware and Software.

Software means software in object code format including (as applicable) operating systems, protocols, backup and recovery, disaster recovery, storage efficiency and management software, whether separately ordered or included in or for use with Hardware which is identified with a separate product or model number.

Third Party Branded Products means Products which are available for purchase or license from us that are manufactured, developed or made available by other companies and for use in conjunction with the Platform.