

## SERVICE SCHEDULE - TELSTRA ADVANCED SERVICES

This **Service Schedule** sets out the terms and conditions for Telstra Advanced Services.

### 1 SERVICE DESCRIPTION

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- 1.1 Telstra Advanced Services give you access to a team of cloud experts who can provide the following assistance in relation to the on-boarding or use of your Eligible Telstra Cloud Service (as defined below at clause 2.1):
- (a) **service management:** providing advice in relation to best practice architecture and assisting with solution design and cost optimisation solutions;
  - (b) **infrastructure management:** assisting with, and providing advice in relation to, the implementation of monitoring, orchestration, and patching;
  - (c) **security management:** providing advice in relation to best practice security policies and solutions;
  - (d) **application services:** assisting with, and providing advice in relation to, the implementation of application tools (which for clarity, excludes application development or configuration services);
  - (e) **network management:** assisting with the design of your network setup, and providing advice in relation to best practice options and solutions; and
  - (f) **backup & disaster recovery:** assisting with the design of your back-up and disaster recovery options, and providing advice in relation to best practice options and solutions, and
  - (g) **migration:** assisting with the migration of workloads from an existing cloud platform (either a third party provider or on premises) to an Eligible Telstra Cloud Service.

(the “**Telstra Advanced Services**”).

### 2 ELIGIBILITY

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- 2.1 To be able to use the Telstra Advanced Services, you must have one or more of the following cloud services with us:
- (a) Amazon Web Services (AWS);
  - (b) Microsoft Azure;
  - (c) Cloud Infrastructure;
  - (d) Cloud Gateway (formerly Cloud Direct Connect);
  - (e) Telstra Programmable Network (TPN);and
  - (f) CloudHealth from Telstra.

(each an “**Eligible Telstra Cloud Service**”).

### 3 CHARGES AND PACKAGES

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- 3.1 When you take up the Telstra Advanced Services, you will purchase a pre-agreed number of service hours (“**Service Hours Package**”), as set out in your service order form or separate agreement with us.
- 3.2 The relevant fees and charges for your Telstra Advanced Services and your initial Service Hours Package, are set out in the Pricing Guide (see: <https://www.telstra.com.au/content/dam/tcom/business-enterprise/network-services/cloud-services/pdf/telstra-advanced-services-price-guide.pdf>). We will invoice

you for the applicable fees and charges at the end of the billing cycle during which you purchase a Service Hours Package from us.

- 3.3 Payment is required in US dollars, or other currency as agreed, and must be made directly to us.
- 3.4 Each time we provide Telstra Advanced Services to you, we will deduct the agreed number of hours from the then-current number of hours remaining in your Service Hours Package. If you run out of hours, we will not provide any Telstra Advanced Services to you unless you purchase a new Service Hours Package in accordance with clause 3.1.
- 3.5 If, as part of your Telstra Advanced Services, you ask us and we agree to purchase anything on your behalf we will charge you an amount corresponding to the price we paid on your behalf. We will only incur such fees and charges on your behalf if we have your prior written approval.

## 4 HOW WE SUPPLY THE SERVICES TO YOU

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### ORDERING SERVICES

- 4.1 Once you have purchased a Service Hours Package from us, you can order Telstra Advanced Services capabilities from us via the email address set out below, or any other email address or other means of communication we notify you from time to time ("**Contact Details**"): ***advancedservices@telstracloudpremiumservices.zendesk.com***
- 4.2 Each time you order Telstra Advanced Services capabilities from us as set out in clause 3.1, following the receipt of your request:
- (a) we will use best endeavours to respond to your request within 24 hours after our receipt of such request; and
  - (b) we will respond to you and confirm:
    - (i) that the requested services can be delivered;
    - (ii) whether you have enough hours remaining on your Service Hours Package, or whether you need to purchase a new Service Hours Package from us;
    - (iii) the number of hours that will be deducted from your Service Hours Package for the performance of the relevant services; and
    - (iv) any applicable assumptions and exclusions,(our "**Response**").
- 4.3 If you do not have enough hours available in your Service Hours Package to allow us to provide the services and deduct the number of hours set out in our Response, we will not provide those services to you unless and until you purchase a Service Hours Package with enough hours to allow us to provide the services and deduct the relevant number of hours set out in our Response.
- 4.4 Subject to clause 4.3, once you confirm with us that you agree with details set out in our Response (including specifically the scope of the services, the proposed number of hours that that will be deducted from your Service Hours Package for the performance of the relevant services, and any applicable assumptions and exclusions), then:
- (a) our Response and your confirmation under this clause 4.4 form a Statement of Work for the purposes of the Telstra Advanced Services;
  - (b) we will provide the agreed services to you in accordance with our Response and this Service Schedule; and

(c) we will deduct the agreed number of hours from your Service Hours Package.

4.5 You must not use any other email address or means of communications to contact or communicate with us in relation to your Telstra Advanced Service.

#### **CHANGES REQUESTS**

4.6 If a party wishes to make a change to the Agreement or a Statement of Work under it, that party can submit a proposed Change Request to the other party.

4.7 If we receive, or submit, a proposed Change Request, we will:

- (a) assess the impact, costs, benefit and risk of the proposed change and discuss these with you; and
- (b) document all changes made to the Agreement in a proposed Change Request.

4.8 A proposed Change Request must include a validity period. During the validity period you may:

- (a) accept the proposed Change Request; or
- (b) reject the proposed Change Request.

4.9 If you do not accept or reject the proposed Change Request within the validity period, the validity period will lapse. If the proposed Change Request is rejected or the validity period lapses, the Agreement and any applicable Statements of Work will continue in force unamended.

4.10 No changes will be effective until the proposed Change Request is agreed and signed by each party's authorised representative.

#### **HOURS THAT WE WORK**

4.11 We provide you consultation for Telstra Advanced Services on business days between 8:00am to 8:00pm (AEST) (excluding Saturdays, Sundays and public holidays). However, the migration work we provide under clause 1.1(g) may occur outside of these hours and be subjected to additional charges.

### **5 YOUR TASKS AND OBLIGATIONS**

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5.1 To enable us to provide the Telstra Advanced Services to you, you must:

- (a) comply with all of our reasonable directions, instructions and requests in relation to the Telstra Advanced Services;
- (b) comply (and ensure your end users comply) with any user guides we provide to you and all applicable laws, rules and regulations applicable to your use of the Telstra Advanced Services (including obtaining any required licences or registrations);
- (c) provide us all the information (including by making your staff available to answer questions) we request to assist us in providing the Telstra Advanced Services or Deliverables to you;
- (d) ensure that all the information you provide us is accurate and complete;
- (e) provide us with full and safe access to your sites and any necessary equipment, data, applications, platforms, accounts, materials, information (including configuration information) and all facilities, services or accessories reasonably required for us to provide the Telstra Advanced Services;
- (f) provide us with all assistance that we reasonably request or that is otherwise necessary to supply the Telstra Advanced Services or Deliverables;
- (g) perform your own user acceptance end-to-end testing of any solution if we ask you to;

- (h) provide your Input by the dates specified in the Agreement or Statement of Work or, where no dates are specified, as soon as possible upon our request;
- (i) nominate a person who will act as a single point of contact between us and you (including for the purpose of co-ordinating training in relation to the Telstra Advanced Service) and ensure that this nominated person is available to liaise with us during business hours; and
- (j) notify us of any change to your services or equipment that is relevant to or likely to affect the Telstra Advanced Services we provide to you.

5.2 If, for the purpose of providing the Telstra Advanced Services to you, we need to access:

- (a) your premises, you must:
  - (i) ensure that your premises are safe and comply with all applicable health, safety, environment and community laws and regulations; and
  - (ii) obtain any consents required, and pay for any site access and induction fees necessary, to enable our Personnel to access your premises for the purposes of providing the Telstra Advanced Services to you; or
- (b) any account (including accounts with third party service providers, such as Amazon or Microsoft) you hold in connection with your Eligible Telstra Cloud Service, you must ensure that we have access to that account, in which case we recommend that you create a user under your account for us.

5.3 You must not alter, tamper, reverse engineer, repair or attempt to repair any equipment provided or made available to you as part of the Telstra Advanced Services or cause, or allow, any person to do any of these acts or things.

5.4 You must not, and must ensure that your employees, contractors or agents do not, attempt to gain unauthorised access to accounts, computer systems or networks in connection with the Telstra Advanced Services, through hacking, password mining or by any other means. You must not obtain or attempt to obtain any materials or information through any means not intentionally made available through the supply of the Telstra Advanced Services or Deliverables.

5.5 You must not, and must ensure that your related bodies corporate do not, during the Restraint Period, seek to employ or engage the services of any of our Personnel involved in providing the Telstra Advanced Services to you. This does not apply in relation to a person who responds to a genuine published advertisement. You acknowledge that the restraint in this clause 4.5 is reasonable in its extent and goes no further than is reasonably necessary to protect our interest in maintaining our Personnel.

## **6 DELIVERY, TITLE AND RISK**

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### **DELIVERY**

6.1 We aim, but don't guarantee, to meet the scheduled timeframes and delivery dates set out in the Agreement. Except where expressly agreed otherwise, the scheduled timeframes are estimates only and may change.

6.2 To the extent any delay is not caused by us:

- (a) we will not be responsible for a delay in delivering a Deliverable or a Deliverable which depends on another Deliverable;
- (b) the delivery date or due date for impacted Deliverables will automatically be extended by a period equal to the period of delay; and
- (c) notwithstanding any other provision of this Service Schedule, you must pay us:

- (i) additional fees for any additional work performed by us at our then prevailing rates; and
- (ii) all additional out-of-pocket expenses incurred by us,

as a consequence of the delay.

## **TITLE AND RISK**

- 6.3 Risk in a Deliverable passes to you when we deliver the Deliverable to you.
- 6.4 Title to each Deliverable (excluding any Intellectual Property Rights in a Deliverable) remains with us until you have paid us in full for that Deliverable.
- 6.5 You must not pledge or encumber a Deliverable until title in that Deliverable has passed to you.

## **7 INTELLECTUAL PROPERTY**

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### **LICENSED MATERIAL**

- 7.1 We grant to you a non-exclusive, non-sub-licensable and non-transferable licence to the Intellectual Property Rights in the Licensed Material to use, adapt and reproduce the Licensed Material incorporated in a Deliverable in the Jurisdiction solely for your internal business purposes.
- 7.2 We, or our suppliers, retain all right, title and interest (including all Intellectual Property Rights) in and to the Licensed Material, and you acquire no interest in or to the Licensed Material, other than the licence under clause 7.1.
- 7.3 Except to the extent expressly permitted by applicable law or under the Agreement, you must not, and must not permit others to, use, copy, reproduce, adapt, merge with other software, modify, decompile, reverse-engineer, disassemble or translate all or any part of the Licensed Material.
- 7.4 You must not use the Deliverables other than in accordance with the terms of the Agreement, any documentation provided with the Deliverables and our reasonable instructions.
- 7.5 You must not challenge or impair the validity of our title to, or interest in, any Intellectual Property Rights in the Licensed Material.

### **YOUR MATERIAL**

- 7.6 You or your licensors retain ownership of the Intellectual Property Rights in Your Material. You grant us a royalty-free licence in the Intellectual Property Rights in Your Material to use Your Material for the purpose of performing our obligations under the Agreement including the right to:
  - (a) copy, modify, adapt and make derivative works of Your Material; and
  - (b) permit our subcontractors to use, copy, modify, adapt and make derivative works of Your Material.
- 7.7 We acknowledge that the licence granted in clause 7.6 does not transfer to us any Intellectual Property Rights in any of Your Material.
- 7.8 You indemnify us for any and all loss, damage, liability, costs or expenses incurred by us as a result of a claim that Your Material or its use by us in accordance with the terms of this Agreement infringes any Intellectual Property Rights, or any other rights, of a third party.

### **OWNERSHIP OF INTELLECTUAL PROPERTY IN DELIVERABLES**

- 7.9 Unless otherwise agreed, we (or our suppliers) own all Intellectual Property Rights in and to all Deliverables arising out of the provision of the Telstra Advanced Services and you hereby assign all such Intellectual

Property Rights to us on and from the date those rights are created.

- 7.10 You agree to perform any actions and sign any documentation we require in order to give effect to clause 7.9.

## **8 THIRD PARTIES**

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- 8.1 Unless otherwise agreed in the Agreement:
- (a) the Telstra Advanced Services or any Deliverables are provided for your benefit only;
  - (b) you must not use the Telstra Advanced Services for a third party's benefit or allow a third party to use them; and
  - (c) we are not responsible for the use by a third party or use by you for the benefit of a third party of the Telstra Advanced Services or any Deliverables.
- 8.2 You indemnify us for any loss, damage, liability, costs or expenses we incur as a result of any use by a third party or use by you for the benefit of a third party of the Telstra Advanced Services or any Deliverables (unless such use is expressly permitted in the Agreement).
- 8.3 You acknowledge that we may purchase some components of the Telstra Advanced Services or Deliverables from third party suppliers. If one of our third party suppliers suspends, cancels or terminates a service that we rely on to provide you with a Telstra Advanced Service or Deliverable, we may:
- (a) replace or modify that Telstra Advanced Service or Deliverable;
  - (b) suspend or cancel that Telstra Advanced Service or Deliverable; or
  - (c) terminate the affected part of the Agreement.
- 8.4 If we exercise our rights under clause 8.3, we will give you as much notice as is reasonably practicable in the circumstances and in the event of cancellation or termination no early termination fees will apply.

## **SOFTWARE**

- 8.5 Where a component of the Telstra Advanced Services or Deliverable provided to you is purchased from a third party supplier, it may include a non-exclusive, non-transferable licence to use certain software or we may give you access to software as a service ("**Service Software**") for the sole purpose of your use of the Telstra Advanced Services. Except as permitted by law, you must not (and you must ensure that your users do not):
- (a) remove, modify or obscure any copyright, trade mark or similar notices on any Service Software;
  - (b) attempt to reverse engineer, decompile, disassemble, or derive any part of the source code of any Service Software; or
  - (c) modify, translate, or create derivative works based on any Service Software.

## **9 WARRANTIES AND LIMITATION OF LIABILITY**

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- 9.1 You agree that you will comply with the terms of the Eligible Cloud Services whether with us or with a third party.
- 9.2 You acknowledge and agree that we are not responsible for the Eligible Cloud Services that are not provided by Telstra. The Eligible Cloud Services that may be provided to you by Telstra will be subject to and on the terms of any separate agreement between you and us in relation to such Eligible Cloud Services.

- 9.3 You acknowledge that Eligible Cloud Services may implement procedures that can restrict or eliminate our or our suppliers' ability to access your data or other resources in the Eligible Cloud Services for the purposes of the Telstra Advanced Services.
- 9.4 You agree that we will not be liable for any failure or delay in performing our obligations to the extent such failure is caused by a Force Majeure Event, being any circumstance not within the reasonable control of us, to the extent that the circumstance or its effect on us could not have been avoided, prevented, or circumvented despite the exercise of reasonable diligence by us.

## 10 INDEMNITY

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- 10.1 You indemnify us against all loss, liability, cost or expense, suits or proceedings arising as a result of or in connection with any third party claim that relates to your data (including hosted content, any data stored on our storage platform and any software or configuration data you install (or that you request we install) on our service platform) or arising as a result of or in connection with your use of the Telstra Advanced Services (including any breach by you of the terms of this Service Schedule).
- 10.2 You indemnify us against (and must pay us for) any loss or damage we suffer, relating to:
- (a) your (and your end users') use (or attempted use) of any component of the Telstra Advanced Services or Deliverable; and
  - (b) equipment you use in connection with the Telstra Advanced Services.
- 10.3 You indemnify us against (and must pay us for) any costs (including legal costs) relating to your breach of this Service Schedule.

## 11 SERVICE HOUR PACKAGE TERM

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- 11.1 Your Service Hours Package (and all hours included) term commences from the date you purchase your Service Hours Package from us and expires within 12 months from the date.

## 12 DEFINITIONS

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- 12.1 In this Service Schedule, unless otherwise stated:

**Change Request** means a written request (in a form specified by us) for a change to any specifications or to any work to be carried out under the Agreement or a Statement of Work under it;

**Contact Details** has the meaning provided in clause 4.1;

**Deliverable** means an item required to be provided to you or a task to be completed by us in accordance with the relevant specifications but does not include hardware provided or software licensed under separate terms;

**Eligible Telstra Cloud Service** has the meaning provided in clause 2.1;

**Force Majeure Event** means an event beyond that party's reasonable control;

**Input** means the goods, services and other assistance to be provided by you as specified in the Agreement or a Statement of Work under it;

**Intellectual Property Rights** means all current and future registered rights in respect of patents, copyright, designs, circuit layouts, trademarks, trade secrets, domain names, database rights, know-how and confidential information and any other intellectual property rights as defined by Article 2 of the World Intellectual Property Organisation Convention of July 1967;

**Jurisdiction** means the place(s) specified in the Agreement, or if none is specified, where the Telstra Advanced Services are provided;

**Licensed Material** means Material (excluding hardware, software and any software tools which must be provided by us to you on separate terms) comprised in a Deliverable but does not include Your Material;

**Material** means all material in any form, including documents, reports, products, hardware, information, data, software, software tools and software development methodologies;

**Personnel** means any person, company or other contracting party engaged by us to provide services to you or on behalf of us under a contract of services, either directly or indirectly (for example, through a third party) and includes employees, agency workers, consultants, agents and suppliers who perform the Telstra Advanced Services;

**Pricing guide** means the Telstra Advanced Services price guide available at <https://www.telstra.com.au/content/dam/tcom/business-enterprise/network-services/cloud-services/pdf/telstra-advanced-services-price-guide.pdf>, or as otherwise specified from time to time by us at <http://www.telstra.com.au>.

**Response** has the meaning provided in clause 4.2;

**Restraint Period** means:

- (a) the Term; plus
- (b) an additional period specified in the Statement of Work or Agreement, and if no period is specified, 3 months;

**Service Hours Package** has the meaning provided in clause 3.1;

**Service Schedule** has the meaning as provided in the first paragraph;

**Statement of Work** means the statement of work (or similar document), if any, agreed between you and us under the Agreement;

**Telstra Advanced Services** has the meaning provided in clause 1.1;

**Your Material** means Material:

- (a) in which you own the Intellectual Property Rights; or
- (b) in which you are licensed the Intellectual Property Rights by a third party (other than us or our subcontractors),

and excludes the Licensed Material and any improvements to it.