

OUR CUSTOMER TERMS CLOUD SERVICES – IBM CLOUD

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Certain words are used with the specific meanings set out in the General Terms part of the Cloud Services section <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 IBM Cloud (formerly SoftLayer) 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/index.htm>, 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/index.htm> 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 GENERAL

Availability – Cease Sale and Exit Notification

- 2.1 From 4 February 2021, Telstra's IBM Cloud SoftLayer services will no longer be available to new customers.
- 2.2 On 4 February 2022, Telstra's IBM Cloud SoftLayer will be exited and all remaining services will be discontinued.

What is the IBM Cloud platform?

- 2.3 The IBM Cloud platform is a cloud infrastructure platform operated and managed by IBM. The IBM Cloud platform offers a choice of bare metal servers, virtual server instances and private clouds. All servers are deployed on demand and provisioned automatically.
- 2.4 We do not provide you with physical access to the infrastructure.
- 2.5 You agree to comply with any requirements set out in the Service Descriptions. You agree that the applicable Service Descriptions shall govern and apply to the relevant IBM Cloud Services that you acquire from us.
- 2.6 The following clauses contain a summary of the core IBM Cloud Services that you can order from us.

Bare metal servers

- 2.7 A Bare Metal Server is an on-demand, single-tenant physical server, with highly customisable compute and configuration options and a choice of hourly and monthly billing (hourly billing is restricted to certain models).

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Virtual Servers

- 2.8 A virtual server is a virtual instance provisioned on multi-tenant hardware on the IBM Cloud public cloud. Physical server resources will be shared with multiple customers. Virtual Servers are available with a choice of hourly and monthly billing.

Storage

- 2.9 The Storage service is designed to integrate multiple storage technologies – including File Transfer Protocol (FTP), Network Attached Storage (NAS), Internet Small Computer System Interface (iSCSI), together an online data backup and recovery tool option. You can select from block storage, file storage and object storage options.

Network

- 2.10 IBM Cloud integrates three distinct and redundant network architectures: private, public, and management.
- 2.11 You may use the Private Network to upload/download content, administer your servers and data storage devices, transmit information between your servers and data storage devices, transmit information between your private backend servers and your servers and data storage devices provided by IBM Cloud, administer the Customer Data, retrieve data, access server consoles, and otherwise manage the Customer Data.
- 2.12 All customers are granted equal access to the Public Network.

Security

- 2.13 IBM Cloud provides a security-rich environment for deploying and running customer workloads. The environment is achieved through easy to use enabling IBM Cloud security features combined with certified physical and logical security of the IBM Cloud data centres.

3 ORDERING AND CANCELLING IBM CLOUD SERVICES

Orders

- 3.1 An order may be accepted or rejected by us in our discretion.
- 3.2 IBM Cloud Services can be acquired on a monthly basis and selected IBM Cloud Services can be selected on an hourly basis. Orders for monthly recurring IBM Cloud Services will automatically renew each month unless and until terminated by you.

Customer Point of Contact

- 3.3 Prior to the start of the IBM Cloud Services, you must designate a person (the "Customer Point of Contact"), to whom all nontechnical communications in relation to the IBM Cloud Services will be addressed and who will have the authority to act on your behalf. The Customer Point of Contact will:
- (a) serve as the interface between you and all of your end users;
 - (b) ensure all applicable information, data, consents, decisions and approvals as required by us to:

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- (i) perform the IBM Cloud Services, are provided within two business days of our request; and
- (ii) help resolve IBM Cloud Services issues, and escalate issues within your organisation, as necessary.

Termination

- 3.4 You may terminate, cancel or downgrade (e.g. remove features, functionality) the IBM Cloud Services in any order through the IBM Cloud Portal (or as otherwise advised from time to time).
- 3.5 Your request to terminate, cancel or downgrade any IBM Cloud Services must be received in the IBM Cloud Portal at least 24 hours prior to 00:00:01 US Central Standard time of the first day of the next calendar month for the change to be effective in the next calendar month otherwise the IBM Cloud Services will be deemed to have been renewed.
- 3.6 We may change, modify, withdraw or remove features or functionality from the IBM Cloud Services upon 90 days' notice to you.
- 3.7 If you have ordered a IBM Cloud Service which is being withdrawn from sale, we will continue to provide the IBM Cloud Service for a period of 12 months from the effective date of withdrawal from sale. However, no withdrawn IBM Cloud Services may be ordered after the effective date of the withdrawal from sale.
- 3.8 In respect of expiration or termination of an order for any reason you must return to us all Telstra Materials (including confidential information disclosed to you) and other property belonging to us including the property of our subcontractors.

4 USE OF IBM CLOUD SERVICES

Your Responsibilities

- 4.1 You will:
 - (a) use reasonable security precautions for providing access to the IBM Cloud Services to your employees and individuals to whom you provide access;
 - (b) comply with the IBM Cloud AUP;
 - (c) reasonably cooperate with any investigation of any outages, security problems, and any suspected breach of the IBM Cloud AUP;
 - (d) comply with all applicable license terms or terms of use for any software, content, service or website which you use or access when using or providing access to the IBM Cloud Services;
 - (e) provide us (either via the order or via the Telstra Cloud Services portal) with reasonably sufficient Account Information about you in your order for the IBM Cloud Services to be performed (including in order to invoice you for IBM Cloud Services);
 - (f) use reasonable endeavours to ensure your Account Information is up to date;

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- (g) comply with any applicable TPS Agreements for Third Party Services. These agreements are separate and independent from your agreement with us. We and our subcontractors are not party to the TPS Agreements; and
 - (h) use commercially reasonable efforts to prevent unauthorized access to or use of the IBM Cloud Services and promptly notify us of any known or suspected unauthorized use of your account or your end user's accounts, the IBM Cloud Services or any other breach of security in connection with the IBM Cloud Services of which you become aware.
- 4.2 You authorise and consent for us and our subcontractors to collect, store and use your business contact information, including Personal Information, wherever you do business including in jurisdictions outside Australia, for use in connection with the IBM Cloud Services.
- 4.3 You must obtain any necessary consents, including those of individuals, and take any other actions required by applicable laws, including but not limited to the Privacy Act 1988 (Cth), prior to disclosing any Personal Information to us and our subcontractors. If you disclose any Personal Information to us when supplying your data to us as specified in this clause, on or prior to making the disclosure, you will take all reasonable steps necessary to disclose to the relevant individuals such information about us that is prescribed under Australian Privacy Principle 5 of the Privacy Act 1988 (Cth). Information about we collect, use and disclose Personal Information is set out in our privacy statement available at www.telstra.com/privacy. We will refer individuals who request access to their Personal Information to you. However, if required by applicable law, we may deal with such access requests directly and will notify you as soon as reasonably possible after receipt of the request. You will reimburse us for our reasonable expenses incurred in dealing with the request.

Export Restrictions

- 4.4 You will comply with applicable export and import laws and regulations, including those of the United States of America and Australia, that prohibit or limit export for certain uses or to certain end users. You will cooperate with us by providing all necessary information to us, as needed for compliance.

Prohibited Content

- 4.5 You will respond to all reports from us, our subcontractors, your end users, or Third Parties that any Prohibited Content is being stored or hosted on the IBM Cloud Services that we provide to you. You agree to immediately take down, delete or modify any Prohibited Content created, uploaded or transferred in connection with the IBM Cloud Service that we or our subcontractors, in our or our subcontractor's sole discretion, determine to be Prohibited Content that is brought to our attention, including pursuant to a take-down, deletion or modification request. In the event that you do not immediately comply with a request to take down, delete or modify Prohibited Content, we reserve the right to suspend and/or terminate public and/or your access to the IBM Cloud Services on which the Prohibited Content resides.
- 4.6 You acknowledge and agree that we reserve the right, at any time in our sole discretion, to suspend or temporarily terminate access to the IBM Cloud Services by you based upon a determination by us or our subcontractors that Customer Data constitutes Prohibited Content. We will use reasonable endeavours to notify you about the reasons prior to any such suspension or termination or in any event as soon as practicable thereafter.

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Limitations

- 4.7 We do not warrant that the IBM Cloud Services will operate uninterrupted or error free. IBM Cloud Services are not designed or intended for use in situations where failure or fault of the IBM Cloud Services could lead to death or serious bodily injury of any person, or to physical or environmental damage, including without limitation aircraft navigation, air traffic control systems, other modes of human mass transportation weapon systems, life support systems or nuclear or chemical facilities.

Software

- 4.8 You are responsible for complying with software license terms of software you install or use in connection with your IBM Cloud Services. Where we provide software for your use, you will comply with the respective license terms set out in the Vendor Terms part of the Cloud Services section of Our Customer Terms.
- 4.9 If you are a Microsoft Volume Licensing customer covered by Microsoft Software Assurance, you may be able to use your eligible software licences on your IBM Cloud Services. You will need to apply to Microsoft for permission to use your existing software licences on your IBM Cloud Services. We can provide further information regarding mobility licensing upon request.
- 4.10 In addition to the terms set out in the Vendor Terms part of the Cloud Services section of Our Customer Terms, you will need to comply with the terms of your licence agreements with Microsoft if you use your existing software licences.

5 SERVICE LEVELS

- 5.1 You agree that the service levels and the process for service level claims in this clause 5 shall govern and apply to your IBM Cloud Services.
- 5.2 You are solely responsible for providing us with notification of events giving rise to a Service Level Credit and accurate and current contract information.
- 5.3 The service levels in this clause 5 are provided for the following resources forming part of your IBM Cloud Services:
- (a) Private Network
 - (b) Public Network
 - (c) IBM Cloud Portal
 - (d) Redundant Infrastructure
- 5.4 The services levels do not apply to the availability of third party services, third party services are subject to TPS Agreements.
- 5.5 We will use reasonable endeavours to achieve the service levels for your IBM Cloud Services outlined in table 1 below.

Table 1

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Service Levels	
Support	
Service Support Coverage Hours	24 hours x 7 days
Service Availability	
Private Network	100%
Public Network	100%
IBM Cloud Portal	100%
Redundant Infrastructure	100%
Hardware	
Replacement	2.5 hours ¹
Upgrade	2.5 hours ²

¹ Measured from verification by us of your notification in the Telstra Cloud Services portal of a hardware failure. This response period does not include time required to reload the operating system or applications.

² Upgrades will commence and be completed within two hours of hardware upgrade maintenance periods that have been scheduled and confirmed in advance through the Telstra Cloud Services portal. This response period does not include time required to reload the operating system or applications.

Service Level Credits – Service Availability

- 5.6 For each 30 continuous minute period of Qualifying Outage Minutes for a IBM Cloud Service in a Measurement Period, we shall provide a service level credit of 5% of the fees for the relevant IBM Cloud Service which was subject to the Loss of Service during the Measurement Period.
- 5.7 Any period of Qualifying Outage Minutes for a IBM Cloud Service which is less than 30 continuous minutes shall not be eligible for an award of Service Level Credits.
- 5.8 The Service Level Credit for hourly services only is based on the Initial Term for hourly services, and comprises 10% of the sum of the hourly fees for this Initial Term for hourly services, for each hour of outage. The maximum service credit for hourly services is the amount that would have been invoiced if an hourly service had been ordered as a monthly service.
- 5.9 You cannot combine alleged Claimed Outages for different resources (such as Public Network, Private Network, IBM Cloud Portal and Redundant Infrastructure) to meet the calculation.

Service Level Credits – Hardware

- 5.10 If the hardware installation or upgrade does not meet the service level in table 1 above, you may be eligible for Service Level Credits as provided in table 2 below which can be used for future fees directly related to hardware.

Table 2 - Hardware Service Level Credits

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Response period	Service Level Credit (percentage of monthly hardware fees)
2 hours or less	N/A
2.1 to 6 hours	20%
6.1 to 10 hours	40%
10.1 to 14 hours	60%
14.1 to 18 hours	80%
18+ hours	100%

Applying for Service Level Credits

5.11 To be eligible to receive Service Level Credits, you must comply with the following process:

- (a) report any Claimed Outages by opening a ticket on Telstra Cloud Services portal together with the following information:
 - (i) the IBM Cloud Service type,
 - (ii) IP address,
 - (iii) dates and times,
 - (iv) error messages received (if any),
 - (v) contact information, and
 - (vi) full description of the interruption of IBM Cloud Service including logs, if applicable;
- (b) submit a report of Claimed Outage at Telstra Cloud Services portal within five (5) days of the end of the Claimed Outage after the technical issues have been resolved. You will be granted an extension of time relating to the length of the delay caused by us if the IBM Cloud Portal is unavailable (such extension will only apply to the extent of the delay);
- (c) We will review Claimed Outages against Verified Outages within a reasonable period;
- (d) Our determination of Service Level Credits is final;
- (e) You agrees to pay all invoices in full while a Claimed Outage is being reviewed or Service Level Credit is being determined;
- (f) We will communicate the successful or unsuccessful claim of Service Level Credits to you through Telstra Cloud Services portal. We will apply the Service Level Credits to a future bill.

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- 5.12 You will not qualify for Service Level Credits if, at the time of the report of the Claimed Outage, you:
- (a) are not current on your payment of the fees for the IBM Cloud Services;
 - (b) have not paid your fees when due and payable for the IBM Cloud Services three or more times in the previous twelve calendar months (and have not immediately paid the overdue invoice upon receipt of a notice from us that an invoice is outstanding).
- 5.13 Service Level Credits may be used solely for future payments for IBM Cloud Services. The Service Level Credits may not be sold or transferred to other parties. You may not use any Service Level Credits if you are in breach of Your Agreement for IBM Cloud Services and any such breaches are resolved to our reasonable satisfaction.
- 5.14 If you make a false claim for Claimed Outages you may incur a one-time charge of AUD\$75 per incident for such claims. False claims are also a violation of Your Agreement for the IBM Cloud Services and may, in our sole discretion, result in a suspension of your IBM Cloud Services.
- 5.15 You acknowledge and agree that the Service Level Credits for IBM Cloud Services constitute a reasonable and genuine pre-estimate of the anticipated or actual loss or damage which would be incurred by you and to the extent permitted by law are your sole and exclusive remedy for any failure to meet the service levels for IBM Cloud Services.

6 SPECIAL MEANINGS

- 6.1 The following words have the meaning set out below:

“Account Information” means your billing information, contact information, payment information or such other information requested in the IBM Cloud Portal.

“Claimed Outage” means the period (measured in minutes) during which you claim a Loss of Service during a Measurement Period as reported using the Approved Procedure.

“Customer Data” means all data, software and information, including, without limitation, data text, software, scripts, video, sound, music, graphics and images that are created, uploaded or transferred by you in connection with your IBM Cloud Services embodied in any electronic or tangible medium, which is created, collected, processed, stored and/or transmitted in connection with the IBM Cloud Services, including Personal Information.

“Excluded Minutes” means the period of any outage (measured in minutes) in the Measurement Period due a Service Level Credit Exclusion.

“Initial Term” for:

- (a) hourly services is the number of hours initially ordered; and
- (b) monthly services is a period commencing when your IBM Cloud Services are provisioned and concluding at the end of the same calendar month.

“Loss of Services” means your inability to connect through either the Public Network or the Private Network to the IBM Cloud data centres providing the IBM Cloud Services to access the IBM Cloud Services.

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"Measurement Period" means the relevant Initial Term or Renewal Term.

"Personal Information" means

- (a) information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not, and whether the information or opinion is recorded in a material form or not; or
- (b) information or a document that relates to the affairs or personal particulars of another person (such as a company or a business), which is received or learnt by us or our subcontractors as a consequence of or in the performance of the IBM Cloud Services.

"Private Network" means the portion of the network operated by IBM Cloud which provides you with secure private network connectivity from your private backend network directly to your servers and data storage devices on the IBM Cloud internal network and to other IBM Cloud Services.

"Prohibited Content" means any Customer Data that is illegal or violates the 'prohibited content' restrictions in the AUP.

"Public Network" means the portion of the network operated by IBM Cloud which provides public Internet access to your servers and data storage services on IBM Cloud's network.

"Qualifying Outage Minutes" mean the aggregate of all minutes of a Verified Outage during a Measurement Period, minus any Excluded Minutes in that Measurement Period.

"Redundant Infrastructure" means the power and heating, ventilation and air-conditioning (HVAC) services.

"Renewal Term" means a calendar month.

"Scheduled Maintenance" means IBM Cloud or its third party service providers performing system upgrades, enhancements and routine maintenance activities which are announced on the IBM Cloud Portal upon two days advance notice or for maintenance determined by IBM Cloud to be an emergency upon notice provided through the IBM Cloud Portal.

"Service Description(s)" means the description of the IBM Cloud Services which can be found at: <https://www.ibm.com/cloud>.

"Service Level Credit" means the amount that we will provide to you as a credit in the event that we fail to meet or exceed the service levels.

"Service Level Credit Exclusion" means any period during which the IBM Cloud Services are not available for any of the following reasons:

- (a) Scheduled Maintenance;
- (b) Your use of the IBM Cloud Services in violation of Your Agreement;
- (c) Issues relating to Customer Data;
- (d) Problems with your access to the Internet;

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- (e) System administration, commands, file transfers performed by your representatives;
- (f) force majeure;
- (g) Suspension of your access to the IBM Cloud Services;
- (h) Violation of the IBM Cloud AUP;
- (i) Problems caused by your use of the IBM Cloud Services after we have requested that you modify such use and you did not modify your use as requested;
- (j) Problems arising from any third party's software, hardware, or other technology or equipment.

"IBM Cloud AUP" means the IBM Cloud acceptable use policy located at <https://www.ibm.com/support/customer/csol/contractexplorer/cloud/csa/au-en/10> (or other such location as we may designate from time to time).

"IBM Cloud Portal" means the web portal at <https://control.softlayer.com/> (or such other location as we may designate from time to time).

"IBM Cloud Services" means any of the services made generally available to you for purchase through the IBM Cloud Portal.

"Telstra Material" means any software, methodologies, manuals, tools, documentation and other material (in any form) in which intellectual property rights are owned by or licensed to us in connection with the IBM Cloud Services.

"Third Party Services" means services which are provided by third parties (excluding Telstra and IBM) directly to you. The IBM Cloud Services do not include Third Party Services.

"TPS Agreements" means agreements for Third Party Services which are between you and the provider of the Third Party Services. These agreements are separate and independent from Your Agreement with us for the IBM Cloud Services.

"Verified Outage" means a Claimed Outage for a particular IBM Cloud Service that has been verified by us or our subcontractors using monitoring logs of accessibility of the IBM Cloud data centres or any of the IBM Cloud Services.