

# Hosting and Cloud Services Terms and Conditions

These are the general terms and conditions under which Astron Technology Pty Limited, hereinafter referred to as Astrontech, will provide Hosting and Cloud Services to Customer.

## 1. This Agreement:

- Describes the obligations of Customer and Astrontech in relation to the provision of the Hosting and Cloud Services by Astrontech to Customer and its authorised agents.
- Describes the miscellaneous terms and conditions in relation to the provision of the Hosting and Cloud Services by Astrontech to Customer.
- Defines the conditions of use regarding any software Customer may access using the Astrontech Hosting and Cloud Services.

Additional obligations and terms and conditions ("Additional Terms") may apply for specific Astrontech Hosting and Cloud Services, terms of which will be listed at the end of this Agreement.

## 2. Modification of these Terms of Use

Astrontech reserves the right to change the terms, conditions, and notices under which the Astrontech Hosting and Cloud Services are offered, including but not limited to the charges associated with the use of the Astrontech Hosting and Cloud Services. Customer will be notified via email by Astrontech, of any alterations to these terms and conditions. Customer's continued use of the Astrontech Hosting and Cloud Services constitutes Customer's Agreement to all such terms, conditions, and notices.

## 3. Service Availability

Astrontech will use its best efforts to provide Customer with 99.99% system availability, excluding scheduled outages for upgrades and maintenance purposes.

Astrontech reserves the right to plan a scheduled outage with no less than twenty four (24) hours advance notice. Astrontech will use its best efforts to schedule these outages at non-peak hours and limit their occurrence to strictly necessary upgrades and required maintenance.

Scheduled outages will be notified by email to the designated Customer Contact by Astrontech

Additional unscheduled maintenance may occur due to wide scale anti-virus updates or critical software vendor updates. Customer will be notified of these incidents as soon as is practicable via phone, SMS or email.

## 4. Data Security

Astrontech will store any and all Customer data in secure directories that require authenticated access.

## 5. No Unlawful or Prohibited Use

As a condition of your use of the Astrontech Hosting and Cloud Services, you will not use the Astrontech Hosting and Cloud Services for any purpose that is unlawful or prohibited by these terms, conditions, and notices.

Users must not use the Astrontech Hosting and Cloud Services in any manner which could damage, disable, overburden, or impair Astrontech Hosting and Cloud Services or interfere with any other party's use of the Astrontech Hosting and Cloud Services.

Users must not attempt to gain unauthorised access to AstronTech Hosting and Cloud Services, other accounts, computer systems or networks connected to the AstronTech Hosting and Cloud Services, through hacking, password mining or any other means.

Users may not obtain or attempt to obtain any materials or information through any means not intentionally made available through the AstronTech Hosting and Cloud Services.

## **6. Hosting Customer Owned Software and Customer Specific Software**

Where Customer owns their own software licenses and requires this delivered as part of the Utility Computing Service, Customer acknowledges that:

- AstronTech are not liable if the software is not properly licensed and will be held harmless of any damages in this regard.
- Customer is responsible for purchasing and providing to AstronTech any upgrades or may engage AstronTech to purchase on its behalf.
- All Microsoft Licensing must be bought and delivered through a Microsoft Service Provider Licensing Model (SPLA), such licensing can be provided by AstronTech or via a Microsoft SPLA Partner.
- In circumstances where AstronTech deems the licensing is not adequate, AstronTech reserves the right to either purchase the appropriate licensing and charge Customer accordingly or suspend the provision of the software until the licensing inadequacies are corrected by Customer.

## **7. Privacy**

The Privacy Act (Cth) 1988 (as amended) ("Privacy Act") regulates the way in which personal information is handled. AstronTech is committed to the principles of the Privacy Act.

AstronTech only collects personal information about Customer for the purpose of providing its IT support services to Customer. If the requested information is not provided, AstronTech will not be able to provide its services to Customer as relates to that individual (for example their user account). AstronTech usually collects personal information directly from Customer. AstronTech may use the personal information collected to market other relevant products and services to the individual only in their capacity as a Customer Contact, not as an individual.

AstronTech only discloses personal information held either to Customer, or to the service providers of AstronTech Hosting and Cloud Services (such as our accountants, auditors, lawyers, communications providers or insurers) as an incidental part of their provision of their services.

## **8. Exclusions**

Interruptions to Virtual Infrastructure Services will not be taken into account when calculating percentage uptime if caused by:

- scheduled maintenance or upgrades
- failure of third-party electricity or telecommunications providers outside our direct control
- failure or malfunction of your equipment or software
- failure or malfunction of applications running inside a Virtual Machine
- a force majeure event; or
- the acts or omissions of you or anyone you allow to access your environment remotely

## **9. Liability Disclaimer**

From time-to-time AstronTech will make changes to implement necessary maintenance, and to implement enhancements to the AstronTech Hosting and Cloud Services. Whilst AstronTech endeavours to make such changes outside of business hours, AstronTech and its suppliers may be required to implement these changes at any time.



Astrontech and its suppliers make no representations about the timeliness, suitability, reliability, or availability of the Astrontech Hosting and Cloud Services for any purpose. Any and all software, information, products, and services are provided on an "as is" basis without any warranty of any kind.

Astrontech and its suppliers hereby disclaim all warranties and conditions, including all implied warranties and conditions, with regard to all software, information, products and services and their fitness for any particular purpose, merchantability, title and non-infringement.

Despite their best endeavours, Astrontech and its suppliers make no representations about the lack of viruses, spyware, or other harmful components of the Astrontech Hosting and Cloud Services for any purpose.

In no event shall Astrontech and its suppliers be liable for any direct, indirect, punitive, incidental, special, or consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the use or performance of the Astrontech Hosting and Cloud Services, with the delay or inability to use the Astrontech Hosting and Cloud Services or related services, the provision of or failure to provide services, or for any information, software, products, and services obtained through the Astrontech Hosting and Cloud Services, or otherwise arising out of the use of the Astrontech Hosting and Cloud Services, whether based on contract, tort, negligence, strict liability or otherwise, even if Astrontech or any of its suppliers has been advised of the possibility of damages. Some states / jurisdictions do not allow the exclusion or limitation of liability for consequential or incidental damages, and accordingly the above limitation may not apply to you. If you are dissatisfied with any portion of Astrontech Hosting and Cloud Services, or with any of these terms of use, your sole and exclusive remedy is to discontinue using Astrontech Hosting and Cloud Services.

Astrontech liability to Customer is limited to a refund of the fees paid by Customer to Astrontech.

#### **10. Infrastructure as a Service**

Astrontech cannot be held liable for any damages incurred by Customer where the damages are due to the virus protection vendor supplying out of date, incorrect or defective virus protection signatures or where the virus protection software and/or signatures fail to function as specified.

Astrontech will immediately terminate any account which it believes, in its sole and absolute discretion, is transmitting or is otherwise connected with any spam or other unsolicited bulk email.

In addition, Customer agrees to pay Astrontech's actual damages; to the extent such actual damages can be reasonably calculated. Where damages are difficult to quantify, if actual damages cannot be reasonably calculated you agree to pay Astrontech liquidated damages of \$1.00 for each piece of spam or unsolicited bulk email transmitted.

Unless Customer's hardware firewall is provided by Astrontech, it is Customer's responsibility to ensure that its hardware firewall is suitable for access to the Astrontech Hosting and Cloud Services.

If Customer's hardware firewall is provided by Astrontech, manufacturer's warranties will apply.

Unless Customer's software firewall is provided by Astrontech, or covered under a separate Astrontech Professional Services Agreement, it is Customer's responsibility to ensure that its software firewall is suitable for access to the Astrontech Hosting and Cloud Services.

If virus protection is provided by Astrontech, all signature updates and upgrades will be provided and managed by Astrontech.

Unless Customer's Disaster Recovery (DR) environment is provided by Astrontech under a separate Astrontech Services Agreement, it is Customer's responsibility to ensure that sufficient DR preparations have been made.

Unless Customer's DR hardware is provided by Astrontech, it is Customer's responsibility to ensure that Customer's DR hardware is sufficient to meet its DR needs.

If Customer's DR hardware is provided by Astrontech, manufacturer's warranties will apply.

Unless Customer's DR software is provided by Astrontech, or covered under a separate Astrontech Professional Services Agreement, it is Customer's responsibility to ensure that Customer's DR software is sufficient to meet its DR needs.

## 11. Force Majeure

If the performance of AstronTech's obligations under these Terms or any relevant Sales Contract is prevented, restricted, or affected by force majeure including acts of God, natural disaster, war, terrorism, civil unrest, government action, pandemic, strike, lock out, raw material shortage, breakdown of plant, transport or equipment or any other cause beyond the reasonable control of AstronTech, AstronTech will give notice of such cause to Customer and after 60 days from the receipt by Customer of such notice, either party may terminate the relevant Sales Contract without penalty.

## 12. Definitions

"Authorisation Form" means a form authorising acceptance of a quotation for the AstronTech Hosting and Cloud Services

"Customer" means an organisation or person purchasing the AstronTech Hosting and Cloud Services and any additional AstronTech Services as outlined in the Additional Terms

"Customer Contact" is the person designated by Customer and named in Agreement Details as the primary contact person for that Customer.

"Customer's Facility" means the physical location of any AstronTech Hosting and Cloud Services (on Customer's premises).

"Confidential Information" means information of any kind: relating to the business, property, affairs, officers, methods, processes, technologies, research of a party or a Customer; which the parties know or ought to know is confidential; or which is identified as such, but excludes information which: is publicly available; is obtained from a third party without breach of any obligation of confidentiality; or was already in the possession of a party prior to disclosure pursuant to this Agreement and is not subject to any obligation of confidentiality.

"Data Centre" means the internet data facility in which some or all of the AstronTech Hosting and Cloud Services are located.

"GST" means GST within the meaning of the 'A New Tax System (Goods and Services Tax) Act 1999 (as amended)'.

"Intellectual Property Rights" means any and all beneficial and legal ownership and intellectual and industrial protection rights throughout the world, both present and future, including rights in respect of or in connection with any Confidential Information, copyright (including future copyright and rights in the nature of or analogous to copyright), moral rights, inventions (including patents), trademarks, service marks, designs, and performance protection (whether or not now existing and whether or not registered or registrable) and includes any right to apply for the registration of such right and includes all renewals and extensions;

"Monthly Services" mean those ongoing AstronTech Hosting and Cloud Services which are billed on a monthly basis, "Hourly Services" mean those ongoing AstronTech Hosting and Cloud Services which are billed on a hourly basis.

"Non-Standard Applications" means any applications not offered under the current pricing schedule.

"Order Form" means an order form for AstronTech Hosting and Cloud Services.

"Standard Applications" means those applications offered under the current pricing schedule.

"User" means any person who accesses the AstronTech Hosting and Cloud Services.