

## Standard Terms and Conditions of Service

GorillaStack is excited to be working with you.

We believe that transparency is key to making your cloud a better place. This document sets out what you can expect of us and what we expect of you in respect of our relationship and the Services we provide.

What follows are our Standard Terms and Conditions of Service and they form a legally binding agreement between us and you (the **Agreement**) in respect of your use of, and access to, our Systems and the Services we offer.

### 1. When it all begins

This Agreement takes effect on the earlier of:

- (a) you clicking an “Accept” button or check box on our Website or during a registration process for use of our Services;
- (b) you continuing to use any of our Services after we notify you of the terms of this Agreement;
- (c) the effective time for this Agreement as described on the first invoice you receive from us; or
- (d) the date otherwise agreed by you and us in writing,

(the **Effective Date**).

This Agreement will continue in full force and effect for the Term and your Plan will automatically renew itself at the conclusion of each Prepaid Period until such time as this Agreement is validly terminated in accordance with paragraph 8.

### 2. What we expect from you

#### 2.1. Accessing and using our Services

You agree to use and access our Services in accordance with the terms of this Agreement and any other policies or rules (including the Rules of Play) we publish on our website from time to time.

#### 2.2. Your responsibilities

To get started, you will need to select a Plan, create a Team, select Users to join that Team, ensure that those Users have properly signed up at [app.gorillastack.com/register](https://app.gorillastack.com/register) and link your Team to your AWS Account.

You are solely responsible for:

- (a) all activities undertaken by or through your Team or Team Accounts, even where those activities were undertaken without your express or implied permission;
- (b) all information, data and content stored, published or accessed through or by your Team or Team Accounts;
- (c) ensuring the integrity, hygiene and accuracy of Your Data; and
- (d) backing up Your Data and any other data you use or require in relation to the Services.

### **2.3. The do's**

- (a) You must take all reasonable steps to:
  - i. ensure that all Passwords are kept secure and not shared by or between Users; and
  - ii. prevent your Team and all Team Accounts from making unauthorised, improper or illegal access to, or use of, our Services;
- (b) You must notify us immediately if you suspect:
  - i. unauthorised, improper or illegal access to or use of our Services or Systems;
  - ii. that your Team, access to Team Accounts or the security of Passwords have been compromised; or
  - iii. that there is any problem with or vulnerability in Your Data (including if you suspect that Your Data contains or may contain any viruses or other attributes which may interfere with, disrupt, infect, attack or overload our Services or Systems).
- (c) You must ensure that each User in your Team complies with the Rules of Play and, to the maximum extent possible, this Agreement.

### **2.4. The don'ts**

You must not (and must ensure that none of the Users in your Team):

- (a) breach or permit others to breach this Agreement or the Rules of Play;
- (b) undermine or circumvent our security or authentication measures;
- (c) use our Services in an unauthorised, improper or illegal manner or for any unauthorised, improper or illegal purposes;
- (d) charge members of your Team or any third party for use of or access to our Services or any platform or product offered by us;
- (e) interfere with, disrupt, infect, attack, exploit vulnerabilities in or overload our Systems;
- (f) interrupt or otherwise interfere with the Services we provide to our other customers;
- (g) imitate, replicate or reverse engineer our Services or Systems, whether for financial gain or otherwise, or access our Services or Systems with the intention of doing so; or
- (h) access or use our Services if you are a direct competitor of GorillaStack.

## **3. What you can expect of us**

### **3.1. Our responsibilities**

We will make commercially reasonable efforts to:

- (a) make the Services available to you without unreasonable interruption;
- (b) respond to your complaints regarding the Services;
- (c) notify you if we become aware of unauthorised, improper or illegal access to your Account or Team Accounts;
- (d) maintain the integrity of our Systems;
- (e) communicate with you regarding the Services and changes to the Services or this Agreement;
- (f) strive for continuous improvement in our Services; and

- (g) provide you with general information through our website to assist you in using our Services.

We are not:

- (h) obligated to provide you with technical support or bespoke solutions which respond to your specific technical or business needs; or
- (i) responsible for unauthorised, improper or illegal access to or use of the Services by or through your Account or any Team Account.

#### **4. Information – Ownership and Confidentiality**

##### **4.1. What we own**

We retain all right, title and interest in and to the Services, the Confidential Information, Our Data and all related Intellectual Property Rights.

##### **4.2. What you own**

You retain all right, title and interest in and to Your Data.

##### **4.3. What we share**

- (a) In exchange for your ongoing payment of Fees, we grant you a non-exclusive, non-transferable licence to access and use the Services in accordance with the terms of this Agreement during the Term. The licence is provided under this paragraph is revocable upon us giving you notice and terminates automatically at the end of the Term.
- (b) You grant us and our subcontractors a non-exclusive, royalty-free licence to use and manipulate Your Data during the Term for the purpose of providing you with the Services, supporting your use of the Services, responding to your feedback and enquiries and meeting our other obligations under this Agreement.
- (c) You grant us a royalty-free, worldwide, irrevocable, perpetual, transferrable licence to use and incorporate into our Services or any associated products, without attribution, any improvements, suggestions, recommendations, feedback, concepts for product development or other ideas provided by you in relation to the Services.

##### **4.4. Respecting each other's information**

- (a) You agree to keep the Confidential Information confidential.
- (b) We agree to keep Your Data confidential (except to the extent otherwise agreed by you).
- (c) Paragraphs 4.4(a) and (b) do not apply in to:
  - i. disclosure of information to a party's legal advisers who are under a duty of confidence;
  - ii. disclosure made with the prior written consent of the person to whom the obligation of confidence is owed, which can be withheld in that person's discretion and may be given subject to conditions;
  - iii. disclosure required by law (including any order of a court of competent jurisdiction) or the rules of any stock exchange, statutory or portfolio duty; and
  - iv. information which is, at the relevant time, in the public domain other than as a result of a breach of this Agreement.

## 5. Linking other products to our Services

Our Services are designed to help you generate efficiencies and get the best value from products and services offered by third parties. This requires you to link products and services offered by third parties (**Linked Web Products**) to our Services. By linking Linked Web Products to our Services, allowing our Services to interface with those Linked Web Products or providing us with access codes or passwords to your Linked Web Products, you authorise us to access your Linked Web Products and all associated data, applications and infrastructure.

While we endeavour to bring our customers a great set of Services through GorillaStack, we do not have control over the Linked Web Products provided by others or the integrity of the data, applications or infrastructure you provide us or permit us to access through or in connection with those Linked Web Products.

You acknowledge and agree that:

- (a) you are responsible for ensuring that you have properly linked relevant Linked Web Products to our Services;
- (b) Linked Web Products are not part of the Services we offer and are not controlled, owned or operated by us;
- (c) you are responsible for paying all fees and complying with the terms and conditions associated with use of Linked Web Products;
- (d) we are not responsible:
  - i. for the integrity of the data, applications or infrastructure we obtain through your Linked Web Products;
  - ii. for your use or misuse of any Linked Web Products;
  - iii. for the consequences of your use or misuse of any Linked Web Products;
  - iv. for your payment or non-payment of any fees associated with any Linked Web Products;
  - v. if your ability to benefit from our Services is hindered because your access to Linked Web Products is interrupted, suspended or terminated;
  - vi. for any Loss to any person caused or contributed to by the way you use or misuse Linked Web Products; or
  - vii. if the Linked Web Products change or become obsolete or unavailable, whether permanently or temporarily.

## 6. Fees and Taxes

### 6.1. Fees

- (a) You must pay us the Fees applicable to your Plan as set out on our website or in our separate Fee Agreement with you.
- (b) Unless otherwise stated, all Fees are quoted in U.S. Dollars.
- (c) Unless we agree otherwise, all Fees are payable in advance.
- (d) If you elect to pay your Fees via credit card, direct debit or electronic money transfer, we will charge your Fees to your nominated account on the date that the Fees becomes payable in accordance with the parameters of your Plan. If, having made commercially reasonable efforts to obtain payment via credit card, direct debit or electronic money transfer, we are unable to obtain that payment or receive a notification from your or our financial institution that payment or payment authorisation has failed, we reserve the right to send you an invoice you for your Fees and charge you a dishonour and manual processing fee of USD\$20. You must pay an invoice received under this paragraph 6.1(d) within 20 Business Days of receipt. If you elect to pay your Fees upon receipt of an invoice, we will invoice you via email for the Fees

applicable to your Plan. You must pay all Fees and other charges set out in the invoice within 20 Business Days of receipt.

- (e) All payments to us must be made without deduction, set-off, counterclaim or withholding and are final and non-refundable.
- (f) We may change the Fees applicable to your Plan by giving you no less than 20 Business Days' notice. If we change the Fees applicable to your Plan, you will be invoiced for the amount of the increased or decreased Fee (as the case may be) on and from the next invoice issued by us following expiration of the 20 Business Day notice period and you must pay the increased or decreased Fee (as the case may be) on and from the date of the invoice. If you have pre-paid your Plan for a period, the change in Fee will not apply to you until the end of the pre-paid period.

## **6.2. Taxes**

- (a) The Fees are exclusive of any applicable Taxes.
- (b) In addition to paying the Fees, you must pay all Taxes (except for our income and payroll taxes) due or payable in connection with this Agreement.
- (c) If GorillaStack has the legal obligation to pay or collect Taxes for which You are responsible, an amount corresponding to the relevant Tax liability will be invoiced to and paid by You unless you provide GorillaStack with valid proof of exemption from the appropriate taxation authority.

## **6.3. Special provisions relating to GST**

- (a) All references to amounts payable under or in connection with this Agreement are, unless expressly stated otherwise, expressed on a GST exclusive basis. If GST is payable on a taxable supply made under or in connection with this Agreement, the amount payable for that taxable supply will be the amount expressed in this Agreement plus GST. The recipient of the taxable supply must pay the GST to the supplier on the earlier of the time of making payment of the consideration in respect of which the GST is calculated and the issue of an invoice relating to the taxable supply. The supplier must provide a tax invoice to the recipient as a pre-condition for payment by the recipient of GST under this clause.
- (b) Where any indemnity, reimbursement or similar payment under this Agreement is based on any cost, expense or other liability incurred, it will be reduced by any input tax credit entitlement, or notional input tax credit entitlement, in relation to the relevant cost, expense or other liability.
- (c) Unless the context requires otherwise, words used in this clause that have a specific meaning in the GST law (as defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth)) will have the same meaning in this clause.
- (d) This clause will continue to apply after expiration or termination of this Agreement.

## **7. What if we need to change things?**

### **7.1. Changes by us**

- (a) We may change any part of this Agreement, the Rules of Play, our policies which apply to your use of the Services pursuant to this Agreement or the Fees payable in respect of the Services by:
  - i. publishing updates on our website; or
  - ii. sending you a notification of the updated Agreement, rules, policies or fees (as applicable), which notification may be provided via email, SMS or other electronic means.

The changes to this Agreement, rules, policies and/or the Fees (as applicable) will take effect 20 Business Days after the date on which updates are first published on our website (the **Change Date**). If you continue using the Services on or after the Change Date, you are deemed to have accepted the changes as they pertain to you, your Account and your Team.

- (b) We may update, change or discontinue the Services from time to time. If we permanently discontinue any Services, we will refund you any amounts you have prepaid in respect of the discontinued Services and attributable to the period after discontinuation.

## 7.2. Changes by you

- (a) If you elect to upgrade to a more expensive Tier, the upgrade will take effect immediately.
- (b) If:
  - i. **(short-term payment plans)** at the time of making an election under paragraph 7.2(a), a month or less remains of the subsisting Prepaid Period, we will not charge you any additional amounts attributable to the upgrade until after the conclusion of the subsisting Prepaid Period; or
  - ii. **(long-term payment plans)** at the time of making the election, more than a month remains of the subsisting Prepaid Period, you must pay us the difference between the Fees you have prepaid and the Fees chargeable for the more expensive Tier, pro-rated to cover the number of days between the date that the upgrade takes effect and the end of the subsisting Prepaid Period.

For the avoidance of doubt, from the expiry of the Prepaid Period subsisting at the time of making your election under paragraph 7.2(a) going forward, you must pay us the Fees applicable to your upgraded Tier.

- (c) If you elect to downgrade to a cheaper Plan, unless we otherwise agree in writing:
  - i. the change in Plan will take effect immediately following the conclusion of the subsisting Prepaid Period; and
  - ii. you will not be entitled to any refund or rebate in respect of the period between your election to change your Plan and the date that the change comes into effect.

For the avoidance of doubt, from the expiry of the Prepaid Period subsisting at the time of making your election under paragraph (c) going forward, you must pay us the Fees applicable to the downgraded Tier.

- (d) For the purposes of paragraphs (a) and (c), you will be deemed to have made an election to upgrade or downgrade Tiers if you:
  - i. select a new Tier through your Account;
  - ii. expressly communicate that election to us, whether through our website, via email or otherwise; or
  - iii. you continue using our Services inconsistently with the Tier for which you have prepaid five Business Days after receiving a notification from us that your usage is inconsistent with the Tier for which you have prepaid.

## 8. When it all ends

### 8.1. If you wish to end this Agreement

- (a) You may terminate this Agreement for any reason by providing us with notice of your intention to terminate. Notice for the purposes of this clause 8.1(a) can be provided:

- i. by cancelling your subscription in your Account Settings within the GorillaStack app; or
- ii. by emailing the notice to us at [hello@gorillastack.com](mailto:hello@gorillastack.com), only.

If you give notice of an intention to terminate this Agreement under this paragraph 8.1(a), termination of this Agreement will take effect upon expiration of the Prepaid Period subsisting at the time that you provide notice under this paragraph.

- (b) You may terminate this Agreement by giving 10 Business Days' notice if we suspend activity through your Account or Team for a period of 5 Business Days' or longer without having a reason to do so under paragraph 8.4.

## **8.2. If we wish to end this Agreement**

We may terminate this Agreement:

- (a) for any reason by providing no less than 20 Business Days' written notice to you;
- (b) for Cause by providing 5 Business Days' written notice to you; or
- (c) for an Immediate Termination Event, immediately by giving written notice to you.

## **8.3. What happens to your money if the Agreement is terminated?**

- (a) If we terminate this Agreement under paragraph 8.2(a), we will reimburse you for the amount prepaid by you in respect of the subsisting Prepaid Period, pro-rated to cover the number of days from the date that termination takes effect until the end of the Prepaid Period.
- (b) If you terminate this Agreement under paragraph 8.1 or we terminate this Agreement under paragraphs 8.2(b) or 8.2(c) or deregister your Account or any Team Account under paragraph 8.3, you will not be entitled to a refund of any amounts paid by you to us for Services in respect of any Prepaid Period.

## **8.4. What we can expect of each other after expiry or termination**

- (a) At the end of the Term:
  - i. you must ensure that your Account and all Team Accounts cease all activity through your Team;
  - ii. we will unlink your Account and all Team Accounts from your Team and Your Data; and
  - iii. unless paragraph 8.6 applies, we will not deregister your Account or Team Accounts, so that you and others may continue using those Accounts to access our Services through other teams established under other agreements with us.
- (b) After termination or expiry of this Agreement, you will no longer be able to access Your Data through or for the purposes of your Team. You are responsible for undertaking periodic back-ups of Your Data and ensuring that you have a copy of all of Your Data prior to termination or expiry (as the case may be). We are not liable for any Losses you sustain (including in relation to any loss of Your Data) or any inconvenience to you resulting from suspension or termination of this Agreement or any Account.
- (c) Expiry or termination of this Agreement does not affect any of your or our rights which accrued prior to termination or expiry.

## **8.5. If we need to press the pause button**

- (a) We may suspend your Account, activity through your Team or any Team Accounts in our discretion and without penalty:

- i. if you are in breach of this Agreement;
  - ii. for Cause; or
  - iii. if an Immediate Termination Event occurs.
- (b) Suspension under this paragraph 8.5 will take effect immediately upon us giving you notice.
- (c) During the period of any suspension, you may not be able to Your Data through the suspended Account or Team (as the case may be). We are not liable for any Losses you sustain (including in relation to any loss of Your Data) or any inconvenience to you resulting from suspension of an Account or Team or your inability to access Your Data during the period of suspension.
- (d) Our right of suspension under this paragraph 8.5 is in addition to our rights to terminate this Agreement.

## **8.6. If we need to deregister an Account**

- (a) We may deregister your Account or any Team Account without penalty if:
  - i. you give us a notice asking us to do so;
  - ii. the relevant Account is used in breach of this Agreement or the Rules of Play; or
  - iii. we believe, on reasonable grounds, that the Account has been used to intentionally or knowingly:
    - 1. adversely impact, interfere with, disrupt, infect, attack, exploit vulnerabilities in or overload our Services or our Systems;
    - 2. adversely impact our other customers;
    - 3. subject us to Loss; or
    - 4. undertake unlawful, improper or unauthorised activity.
- (b) If your Account or any Team Account is deregistered, you will not be able to access Your Data through such Account or Team Account. You are responsible for undertaking periodic back-ups of Your Data and ensuring that you have a copy of all of Your Data. We are not liable for any Losses you sustain (including in relation to any loss of Your Data) or any inconvenience to you resulting from deregistration of any Account under this paragraph 8.6 or your inability to access Your Data following deregistration.

## **9. Liability and indemnities**

### **9.1. Your liability to us**

You agree to indemnify, and hold harmless, us and each of our officers, employees, agents, subcontractors and representatives in respect of all Losses that each may suffer or incur and each Claim that is or may be made against any of them in connection with:

- (a) the use of our Services by or through your Account or your Team;
- (b) the breach of this Agreement or law by or through your Account or your Team;
- (c) the negligent, wrongful, unauthorised or unlawful acts or omissions of you or of any person accessing our Services or Systems by or through any Team Accounts;
- (d) any Claim between you and a third party;
- (e) any Claim by a third party in relation to Your Data, Third Party Data or your use of Linked Web Products, including any alleged infringement of third party rights (including third party Intellectual Property Rights).

This clause 9.1 will continue unaffected by suspension or termination of this Agreement or any Account.



## 9.2. Our liability to you

- (a) You use our Services at your own risk.
- (b) The parties to this Agreement agree that, to the maximum extent permitted by law, neither we nor any of our officers, employees, agents, subcontractors or representatives have any liability to you for Losses that you sustain or may sustain or Claims made against you by third parties in connection with:
  - i. your use of or access to our Services;
  - ii. your inability to use or access our Services;
  - iii. your use of or access to Linked Web Products or any failure in, or disruption to, such Linked Web Products;
  - iv. any unauthorised access to, alteration of, damage to or loss or failure of Your Data or Third Party Data; or
  - v. us breaching or otherwise failing to comply with our obligations under this Agreement where such breach or failure is caused by events outside our reasonable control (such as a failure in equipment that is not owned or operated by us, a failure of any Linked Web Products, an industrial strike or an act of God).

To the extent that a liability for a Loss or Claim described in this paragraph cannot be excluded at law, we limit our liability to you for that Loss or Claim to the maximum extent permitted by law.

- (c) To the maximum extent permitted by law, we and of our officers, employees, agents, subcontractors and representatives disclaim and all warranties, covenants, conditions, representations and guarantees implied by law. Where such warranties, covenants, conditions, representations or guarantees cannot be disclaimed, we limit our liability in respect of breach of such warranties, covenants, conditions, representations and guarantees to the maximum extent permitted by law.

## 10. General Provisions

### 10.1. Notices

- (a) We may provide notice to you by:
  - i. sending it to the e-mail address you provided in relation to your Account;
  - ii. sending you a message through your Account; or
  - iii. publishing the notice on our Website.
- (b) You may provide notice to us by:
  - i. where specified in this Agreement, making an election, ticking a box or selecting an option (and performing all steps necessary to submit that election, tick or selection to us) on our Website or through your Account;
  - ii. emailing the notice to us at [hello@gorillastack.com](mailto:hello@gorillastack.com); or
  - iii. any other means expressly permitted in this Agreement.
- (c) All notices provided under or in relation to this Agreement must be provided in accordance with this clause 10.1 and must be in legible written English.
- (d) Subject to paragraph 10.1(e), a notice provided under this clause 10.1 will be deemed to be given and received:
  - i. if sent via email, 2 hours after sending, provided that the sender did not in during the 2 hours since sending the email receive notification that the email did not send or was not received by the intended recipient; or
  - ii. if sent as a message through your Account or published on our Website, as soon as it is sent or published (as the case may be).

- (e) If by virtue of paragraph 10.1(d) or any other provision of this Agreement, a notice would be deemed to be given after 5pm on a Business Day or on a day which is not a Business Day, that notice is deemed under this paragraph 10.1(e) to be given at 9am on the following Business Day.

#### **10.2. Publicity**

- (a) You consent to us identifying you in our advertising and marketing materials as a user of our Services. We will not publish any feedback given by you in relation to our Services or attribute any feedback on our Services to you without your consent.
- (b) You must not publish or consent to the publication of any press releases, marketing material, article, feedback, commentary or advertising which identifies GorillaStack or our Services without our consent.

#### **10.3. Assignment**

- (a) You may not assign, novate, subcontract or otherwise deal with your rights or obligations under this Agreement except with our written consent.
- (b) We may assign, novate, subcontract or otherwise deal with our rights and obligations under this Agreement without your consent by giving notice to you of such assignment, novation, subcontract or dealing.

#### **10.4. Survival and Merger**

- (a) The provisions of this Agreement will not merge on completion of any transaction contemplated in this document. To the extent that any provision has not been fulfilled or obligation has not been performed, it will remain in force.
- (b) All provisions of this Agreement which are capable of doing so survive termination or expiry of this Agreement.

#### **10.5. Waiver and Variation**

- (a) No party to this Agreement may rely on the words or conduct (including the delay in exercising any rights) of any other party as a Waiver of any right unless the Waiver is in writing and signed by the party granting the Waiver.
- (b) Subject to paragraph 7, this Agreement may only be varied in writing and signed by the parties to this Agreement.

#### **10.6. Invalidity and unenforceability**

If any provision of this Agreement is invalid, illegal or unenforceable the provision will be severed. Severance under this paragraph (a) will not affect the continued operation of the remaining provisions of this Agreement.

#### **10.7. Further assurances**

Each party to this Agreement must, at its own expense, do all reasonable things and execute all documents necessary to give full effect to this Agreement and the transactions contemplated by it.

#### **10.8. Entire agreement**

This Agreement contains the entire agreement between the parties with respect to its subject matter. It sets out the only conduct, representations, warranties, covenants, conditions, agreements or understandings (collectively **Conduct**) relied on by the parties and supersedes

all earlier Conduct by or between the parties in connection with its subject matter. None of the parties has relied on or is relying on any other Conduct in entering into this Agreement or completing the transactions contemplated by it.

## 10.9. Governing law and Jurisdiction

This Agreement is governed and construed in accordance with the law in force in the State of New South Wales, Australia. Each party to the Agreement irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in the State of New South Wales, the Commonwealth of Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with the Agreement. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

## 11. Definitions and Interpretation

### 11.1. Interpretation

In this Agreement:

- (a) the terms “you” and “your” refer to you and the organisation, entity or any other persons you represent;
- (b) the terms “we”, “us” and “our” refers to GorillaStack Pty Ltd;
- (c) specifying anything after the word ‘include’ or any similar expression does not limit what else is included;
- (d) headings and bold type are for convenience only and do not affect the interpretation of the Agreement;
- (e) other parts of speech and grammatical forms of a word or phrase defined in an Agreement have a corresponding meaning;
- (f) an expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any government agency as well as an individual;
- (g) reference of any law means that law as amended, applied and/or interpreted from time to time;
- (h) a reference to this Agreement includes all amendments or supplements to, or replacements or novations of, this Agreement;
- (i) a reference to a clause or paragraph is a reference to a clause or paragraph of this Agreement; and
- (j) no provision of the Agreement will be construed adversely to a party because that party was responsible for the preparation of the Agreement or that provision.

### 11.2. Definitions

Capitalised terms used in this Agreement have the meanings given below unless the context requires otherwise.

**Account** means an account to access the Services created by you or a member of your Team.

**AWS** means Amazon Web Services.

**AWS Account** means your Amazon Web Services account or accounts, set up by you with Amazon Web Services and linked to your Team by you.

**Business Day** means a day other than a Saturday or Sunday on which banks are open for business in Sydney, Australia.

**Cause** means:

- (a) you are in breach of this Agreement (including, but not limited to, any failure to pay amounts due and owing to us) and do not remedy that breach within 10 Business Days' of us notifying you of the breach and requesting its rectification; or
- (b) we believe, on reasonable grounds, that:
  - a. use of the Services by or through any Team Account:
    - i. poses a risk to the Services or any third party;
    - ii. may adversely impact the Services, our Systems or our other customers; or
    - iii. may subject us to Loss; or
  - b. a Team Account has been used in a manner which may be unlawful, improper or unauthorised by you or by us.

**Claim** means any dispute, claim, demand, proceeding, complaint or action of any nature or kind, including in relation to infringement of any Intellectual Property Rights of any person on grounds.

**Confidential Information** includes:

- (a) Our Data;
- (b) all information that we directly or indirectly disclose to you (except to the extent that such information is or relates exclusively to Your Data);
- (c) all information relating to us or our past, present or future business, strategy, Services, technology, customers, finances or fee arrangements;
- (d) information that we designate or treat as confidential, or which you ought to know is confidential;
- (e) information, documents and other data in which we have Intellectual Property Rights; and
- (f) information that we are obligated to keep confidential; and
- (g) information of a type described above which was provided to you prior to the Effective Date.

**Effective Date** has the meaning given in paragraph 1.

**Fee** means the amount payable by you in respect of your use of the Services, as set out in your Plan.

**Fee Agreement** means a written agreement between us and you setting out the Fees payable by you in respect of the Services you obtain from us under this Agreement.

**GorillaStack** means GorillaStack Pty Ltd (ABN 73 606 657 774).

**Immediate Termination Event** means:

- (a) your account has been suspended for Cause and you have not rectified the relevant Cause within 10 Business Days' of the suspension taking effect;
- (b) we have reasonable grounds to believe you are or may be Insolvent;
- (c) a Linked Web Product that we rely on to provide Services ceases to be available to you or to us; or
- (d) we are required to cease providing the Services to you for legal reasons.

**Intellectual Property Rights** means any intellectual and industrial property rights, including trade marks, copyright (including future copyright), inventions, patents, designs, circuits and

other eligible layouts, database rights, and other intellectual property rights as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation dated 14 July 1967 (as amended from time to time), whether registrable or not and wherever existing in the world, including all renewals, extensions and revivals of, and all rights to apply for, any of the foregoing rights.

**Insolvent** means insolvent, bankrupt, in liquidation, being unable to pay one's debts as and when they become due, being subject to an execution or a winding, attempting to pass a resolution for winding up or becoming a party to the appointment of or having an official manager, receiver or administrator appointed for the whole or any part of your property or undertaking or becoming a party to or attempting to enter into any composition or scheme of arrangement.

**Loss** means any liability, loss, damage, judgment, amount agreed upon in settlement, outgoing, cost or expense (including legal fees on a full indemnity basis).

**Our Data** means all software, data, text, audio, video, images or other content which we may make available to you in connection with the Services.

**Password** means all passwords to access any Team Accounts.

**Plan** means a payment plan for use of a defined set of our Services, which may either be:

- (a) a standard Fee for a set of standard inclusions as set out on our website; or
- (b) a negotiated Fee for a set of bespoke inclusions, as agreed by you and us in writing.

**Prepaid Period** means a period of time in respect of which you have prepaid your Fees for our Services.

**Rules of Play** means the terms and conditions described as the "Rules of Play" and assented to by Users in connection with the Services.

**Services** means the platform for managing your cloud infrastructure and associated products made available at [www.gorillastack.com](http://www.gorillastack.com) and [app.gorillastack.com](http://app.gorillastack.com).

**Systems** means our website, or any servers, networks or other platforms used by us for providing Services to you or others.

**Taxes** means all income tax, sales tax, payroll tax and other taxes (including GST), stamp duty, levies, imposts, duties, deductions, charges and withholdings plus any interest, penalties, charges, fees or other amounts payable in respect thereof.

**Team** means the group of Users nominated by you to use our Services as part of your Team (and includes you).

**Team Account** means any Account maintained by any User in your Team

**Term** means the period commencing on the Effective Date and ending on the date that this Agreement is validly terminated in accordance with paragraph 8.

**Third Party Data** means the data provided to us by AWS or other third parties when you link your AWS Account to your Team.

**Tier** means the set of inclusions in a Plan.

**User** means a person who has signed up for an Account at [app.gorillastack.com/register](http://app.gorillastack.com/register)

**Your Data** means the technical data which you or any member of your Team:

- (a) provide to us;
- (b) authorise us to access; or
- (c) cause to interface with our Services,

and includes the Third Party Data. Your Data does not include anything you licence to us under clause 4.3(c).

**Waiver** includes an election between rights and remedies and conduct which might otherwise give rise to an estoppel.

**Website** means [www.gorillastack.com](http://www.gorillastack.com) .