

## WSO2 Private Cloud Terms and Service Level Agreement

This WSO2 Cloud Service Level Agreement (“SLA”) are the terms of use (“**Terms of Use**”) governing the use of WSO2 Private Cloud Services.

### 1. Definitions

- (a) “**Hosted Software**” means the software and APIs being hosted as part of the Private Cloud Services.
- (b) “**Minute of Unavailability**” is a full minute in which all requests to the Hosted Software failed.
- (c) “**Monthly Charges**” means the monthly prorated Private Cloud Services charges applicable pursuant to the pricing plan selected when subscribing to Private Cloud Services.
- (d) “**Monthly Uptime Percentage**” means 100% minus the percentage of minutes during the calendar month in which the Hosted Software was not available.
- (e) “**Private Cloud Services**” means WSO2 Cloud Services provided with an additional guarantee that WSO2 will internally manage the Subscriber’s deployment (for which such services are subscribed to) as a dedicated separate system.
- (f) “**Scheduled Maintenance**” means periods of Private Cloud Services disruption, which will be a maximum of 4 hours in any month of a Monthly Uptime Percentage measurement period, and which WSO2 notifies the Subscriber of at least 5 calendar days prior to the commencement of such service disruption.
- (g) “**Service Credit**” means a dollar credit, calculated as set forth below, that WSO2 may extend to the Subscriber.
- (h) “**Subscriber**” means any those individual and/or entity that has signed up for Private Cloud Services and thus accepted the Terms of Use.
- (i) “**Terms of Use**” means this Terms of Use agreement that the Subscriber accepts when signing up for Private Cloud Services.

### 2. Private Cloud Services

- 2.1 WSO2 shall provide Private Cloud Services in line with the product documentation provided to the Subscriber and subject to these Terms of Use and the subscription terms signed up to by the Subscriber. These Terms of Use are incorporated into any Order Form that may be executed by the Subscriber for the engagement of Private Cloud Services. Private Cloud Services shall be supported in accordance with the service levels detailed at <https://wso2.com/licenses/support-policy>.
- 2.2 WSO2 shall be responsible for supplying and monitoring the infrastructure on which the Private Cloud Services runs. Private Cloud Services provided pursuant to these Terms of Use shall also include the following: setting up, optimizing, and monitoring systems for production and pre-production, taking responsive actions to maximize uptime and performance, and, subject to S. 2.3 below, installing updates to the Hosted Software within regular Scheduled Maintenance windows.
- 2.3 WSO2 will install updates and patches and for that purpose access the Private Cloud Services at times determined by WSO2. WSO2 will make its best endeavors to coordinate its installation of updates and patches with Subscriber. Installation will occur on a regular, periodic basis (generally

monthly, but in any event no less than quarterly, and sooner in the case of an emergency such as a required security or performance patch).

- 2.4 WSO2 is responsible for disaster recovery (DR) of the platform in case of a disaster. The recovery point objective (RPO) is 4 hours, and the recovery time objective (RTO) is 12 hours.
- 2.5 If Subscriber fails to permit WSO2 to maintain and update Private Cloud Services covered by the Subscriber's subscription for 90 calendar days or to apply emergency patches to address critical vulnerabilities within 10 calendar days of notification, and if, as a result, the version of Private Cloud Services in use by Subscriber is more than two active releases behind WSO2's then-current active release, then WSO2 may charge two days' professional services fees, at its then current rates, for WSO2's installation of a current release, and Subscriber will pay such fees for the installation following receipt of invoice, under the payment terms specified in the relevant agreement between WSO2 and Subscriber.

### **3. Subscriber Usage**

- 3.1 The Subscriber is exclusively liable for technical support for Subscriber's end users, and Subscriber applications running via Private Cloud Services. WSO2 shall be entitled to use information made available by the Subscriber via the Private Cloud Services to maintain, protect and improve such services. WSO2 shall provide Subscriber with support pursuant to this Terms of Use and during the license term provided that applicable support fees are settled promptly.
- 3.2 Daily snapshots of WSO2 databases (relating to Private Cloud Services) will be taken, and retention period is set to 7 calendar days. The WSO2 server logs also will be backed up with the retention period of 30 calendar days. Subscriber shall contact WSO2 to modify the retention periods and additional costs may be incurred.
- 3.3 Subscriber shall carry out penetration/load tests against the WSO2 platform. However, WSO2 needs to be notified in writing 14 calendar days in advance prior to such activity.

### **4. Service Commitment**

WSO2 will use commercially reasonable efforts to keep Private Cloud Services operational and available to the Subscriber with a Monthly Uptime Percentage of at least 99.95%. In the event WSO2 does not meet the Monthly Uptime Percentage commitment, Subscriber will be eligible to receive a Service Credit as described below.

### **5. Service Credits**

Subscriber may be eligible for Service Credits when the Monthly Uptime Percentage drops below 100% as illustrated by the table below:

<b>Monthly Uptime Percentage</b>	<b>Public Cloud Services</b>	<b>Private Cloud Services</b>
99.9% to 99.95%	n/a	10% of Monthly Charges
99% to 99.9%	10% of Monthly Charges	20% of Monthly Charges
95% to 99%	30% of Monthly Charges	30% of Monthly Charges
90% to 95%	50% of Monthly Charges	50% of Monthly Charges
Less than 90%	100% of Monthly Charges	100% of Monthly Charges

WSO2 shall apply the Service Credits against the Monthly Charges otherwise due from Subscriber. Service Credits shall not entitle Subscriber to any refund or other payment from WSO2. Service Credits may not be transferred or applied to any other account. Unless otherwise mutually agreed in writing, Subscriber's sole and exclusive remedy for any unavailability or non-performance of the WSO2 Cloud Service or other failure by WSO2 to provide the WSO2 Cloud Service shall be Service Credits or termination of the Services.

## **6. Dispute Procedures**

WSO2 will proactively monitor and include any entitlement by Subscriber for Service Credits in each monthly statement or report and shall apply any approved Service Credits to the next monthly or annual billing cycle. Subscriber may dispute the credit entitlement within 15 calendar days of receiving the monthly statement or report, by submitting anonymized logs showing the time and date of additional outages. WSO2 shall apply or reject the claim within 15 calendar days of claim receipt.

## **7. WSO2 Cloud Service SLA Exclusions**

- 7.1. The Service Commitment does not apply to any unavailability, suspension or termination of Private Cloud Services, or any other Private Cloud Services performance issues:
- (a) that result from a suspension by WSO2 in accordance with the Terms of Use;
  - (b) that result from access to any Private Cloud Services in violation of the Terms of Use and selected subscription level;
  - (c) that result from documented functional limitations or quotas limiting the Private Cloud Services in accordance with the Terms of Use or Subscriber's subscription tier;
  - (d) that occur during periods of Scheduled Maintenance;
  - (e) that result solely from errors or excessive latency of Subscriber or third-party applications or systems not within the reasonable control of WSO2;
  - (f) that result solely from Subscriber's or third-party hardware, software, or services (for example, third-party services deployed or integrated with the Hosted Software installation) not within the reasonable control of WSO2;

- (g) that are caused by factors outside of WSO2's reasonable control, including Microsoft Azure outages, or due to any causes beyond its reasonable control;
  - (h) that result solely from errors in Subscriber's code and configuration deployed within Private Cloud Services at Subscriber's request;
  - (i) that result from Subscriber's use of Private Cloud Services after WSO2 advised Subscriber to modify its use of that service without adversely affecting Subscriber or any end user, if Subscriber did not modify its use as advised;
  - (j) that arise during previews such as technical previews or betas, not in commercial operation, as reasonably determined by WSO2; and
  - (k) to the extent that they are attributable to the acts or omissions of Subscriber or Subscriber's employees, agents, contractors, or vendors, or anyone gaining access to Private Cloud Services by means of Subscriber's passwords or equipment, in breach of the Terms of Use.
- 7.2. WSO2 shall apply the Service Credits against the Monthly Charges otherwise due from Subscriber. Service Credits shall not entitle the Subscriber to any refund or other payment from WSO2. Service Credits may not be transferred or applied to any other account. Unless otherwise mutually agreed in writing, Service Credits are Subscriber's sole and exclusive remedy for any unavailability or non-performance of the Private Cloud Services or other failure by WSO2 to provide Private Cloud Services.

## **8. Software Licenses**

Subscriber is granted a license to WSO2 software used in a Private Cloud Services deployment under the [WSO2 Software License](#), for the purposes of on-premise development and pre-production systems used in concert with Private Cloud Services.

## **9. Information Security & Data Privacy**

- 9.1. WSO2 has implemented industry standard safety protocols in respect of Private Cloud Services engaged by the Subscriber. By using Private Cloud Services, the Subscriber agrees to allow WSO2 to process and store Subscriber applications and data, and that of Subscriber's end users, only to the extent such processing and storing are essential for the provision of Private Cloud Services. Subscriber is solely responsible for securing their use of Private Cloud Services and for the management of its ongoing security, including the security of any Subscriber applications and end user data contained therein.
- 9.2. Any personal information received or provided pursuant to the Private Cloud Services will be handled by WSO2 in accordance with these Terms of Use and all applicable privacy laws. Such privacy laws include the California Civil Code Sec. 1798.100 et seq. ("CCPA"), the EU General Data Protection Regulation 2016/679 ("GDPR"), the UK GDPR and the Brazil General Data Protection Law, Law 13,709/2018 ("LGPD"), as applicable; WSO2 shall act exclusively as a Service Provider (as defined by CCPA), Data Processor (as defined in GDPR/UK GDPR) and, Processor (as defined in LGPD) and shall retain, use, disclose and process the Subscriber's personal information solely for the purpose of providing and enhancing the Private Cloud Services for the Subscriber. We will take all necessary technical and organizational measures to ensure compliance with all applicable laws (including in respect of security, confidentiality and availability) in regard to the protection of the

Subscriber's personal information. For the purposes of this section: (a) the Subscriber's personal information shall mean personal data or information however it is defined by applicable law; and (b) UK GDPR means GDPR as it forms part of the law of England and Wales by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019).

## **10. Modifications**

WSO2 may make changes to these Terms of Use from time to time following which WSO2 will make a copy of the new Terms of Use available. Upon posting, these changes will become effective for new accounts. For pre-existing accounts, the changes will become effective upon written agreement by the Subscriber, or automatically 30 calendar days after posting, or upon the first anniversary of Subscriber's account creation, whichever is later. If the Subscriber does not agree to any revised terms of these Terms of Use, the Subscriber must cease use of the Private Cloud Services.

## **11. Warranty; Liability; Indemnity**

11.1 **Warranty.** EXCEPT AS EXPRESSLY PROVIDED IN THESE TERMS OF USE AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALL PRIVATE CLOUD SERVICES PROVIDED ARE PROVIDED "AS IS" WITHOUT ANY WARRANTIES OR CONDITIONS OF ANY KIND, INCLUDING IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. NO WARRANTY, WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED BY WSO2 OR MAY BE INFERRED FROM A COURSE OF DEALING OR USAGE OF TRADE. NOTHING STATED IN THIS AGREEMENT IMPLIES THAT THE OPERATION OF PRIVATE CLOUD SERVICES WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT ERRORS WILL BE CORRECTED.

11.2 **Liability.** EXCEPT FOR DAMAGES FOR BODILY INJURY (INCLUDING DEATH), WSO2'S TOTAL AGGREGATE LIABILITY UNDER THESE TERMS OF USE IS LIMITED TO THE AMOUNT OF FEES PAID BY THE SUBSCRIBER DURING THE PERIOD OF A MATERIAL BREACH UP TO A MAXIMUM OF ONE YEAR.

11.3 IN NO EVENT WILL WSO2 OR ITS AFFILIATES BE LIABLE FOR ANY INCIDENTAL INDIRECT, SPECIAL, OR CONSEQUENTIAL COSTS OR DAMAGES INCLUDING, WITHOUT LIMITATION, DOWNTIME COSTS; LOST BUSINESS, REVENUES, GOODWILL, OR PROFITS; FAILURE TO REALIZE EXPECTED SAVINGS; LOSS OF OR DAMAGE TO DATA; OR SOFTWARE RESTORATION, REGARDLESS OF WHETHER ANY OF THE FOREGOING ARE FORESEEABLE, AND REGARDLESS OF WHETHER WSO2 HAS BEEN NOTIFIED OF THE POSSIBILITY OF ANY OF THE FOREGOING. THESE LIMITATIONS APPLY REGARDLESS OF THE BASIS OF LIABILITY; INCLUDING NEGLIGENCE; MISREPRESENTATION; BREACH; LIBEL; INFRINGEMENT OF PUBLICITY, PRIVACY, OR INTELLECTUAL PROPERTY RIGHTS; OR ANY OTHER CONTRACT OR TORT CLAIM.

## **12. Term & Termination**

- 12.1 The Subscriber's right to use any Private Cloud Services terminates on expiry of the term specified in the Subscriber's order form, or upon notice of a material breach that is not cured within 30 calendar days of receipt of notice.
- 12.2 Provisions of these Terms of Use that by their nature express ongoing rights or obligations shall survive the expiration or termination of any Private Cloud Services.
- 12.3 The Subscriber may stop using the Private Cloud Services at any time. WSO2 may terminate such services at any time upon 60 calendar days' prior written notice, with no liability to the Subscriber.
- 12.4 Subscriber agrees that within 30 calendar days of the termination of the Private Cloud Services, Subscriber shall remove all data uploaded by Subscriber to the Private Cloud Services, and the Subscriber acknowledges and accepts that WSO2 shall permanently delete any Subscriber data not removed in accordance with these Terms of Use.