

TELSTRA DEV PORTAL TERMS OF USE

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TELSTRA DEV PORTAL TERMS OF USE

This Telstra API Developer Portal Agreement ("**Agreement**") is between Telstra and You and governs Your use of the API Portal provided by Telstra, including all application programming interfaces ("**API(s)**"), Internet of Things products ("**IoT Products**") and other software, information, content, products, materials and services made available to You in relation to the API Portal (collectively the "**Service**").

In this Agreement:

- (a) "**You**" and "**Your**" means and refers to the person(s) or legal entity and its employees, contractors and agents using the Service or otherwise exercising rights under this Agreement
- (b) "**Telstra**", "**We**", "**Us**" or "**Our**" means and refers to Telstra Limited ABN 64 086 174 781.

Please read this Agreement carefully before using the Service. By using or otherwise accessing the Service, You:

- (a) acknowledge that You have read this Agreement and agree to be bound by the terms of this Agreement on behalf of Yourself (if an individual) or the company (or other legal entity) that You represent;
- (b) if entering this Agreement on behalf of another person or entity, warrant that You have authority to execute this Agreement and bind the person or entity; and
- (c) acknowledge and agree that any information You provide in connection with the Service may be transferred to or accessed from outside Australia to enable Us to provide support for Your Service.

If You do not agree to the terms of this Agreement (including as amended from time to time) then You may not use the Service.

1 LICENCE

- 1.1 Telstra grants You a non-exclusive, non-transferable, revocable, restricted access right to access and use the Service to develop, test, connect with, and support a website or software application that You own and operate (Your "**Application**"), including by requesting and receiving relevant API content for display within Your Application for the benefit of Your end users ("**Licence**").
- 1.2 Where payment of fees is required for use of an API this Licence is conditional upon Your payment of those fees in accordance with clause 2 and compliance with the rules for usage of the Service that are contained in this Agreement or that are published on the Service website.
- 1.3 As between Telstra and You, Telstra reserves and retains all right, title and interest, including but not limited to all intellectual property rights in and relating to the Service and Telstra's trade marks (collectively, "**Telstra IP**"). You agree to cooperate with Telstra to maintain Telstra's ownership of the Telstra IP and, to the extent that You become aware of any claims relating to the Telstra IP, You will use reasonable efforts to promptly provide notice

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of any such claims to Telstra. No title to or ownership of any of the Telstra IP is transferred to You or any other person or party under this Agreement.

1.4 You may not:

- (a) sub-licence or authorise any other person or party to use the Service except as authorised by these terms of use; or
- (b) assign, transfer this Agreement or Your rights hereunder, without the prior written consent of Telstra.

2 FEES AND PAYMENT

Fees

2.1 You must pay Telstra the fees where specified by Telstra in relation to specific API's. Payment of fees will be as specified in any API-specific terms of use.

Payment

2.2 You can elect to pay fees for Your APIs and IoT Products via Your Telstra bill or by credit card. Some APIs, API features, IoT Products or IoT Product features may not be eligible for payment by credit card, please refer to the API or IoT Product specific terms for further details.

2.3 If You elect to pay via Your Telstra bill:

- (a) We will charge You for Your usage of Your chosen APIs and IoT Products; and
- (b) charges will be billed to Your Telstra bill from the next billing cycle.

2.4 If You elect to pay by credit card:

- (a) We will email an invoice receipt to You at the beginning of each month;
- (b) for APIs with:
 - (i) once off fees, We will debit the fee from Your credit card at the start of each billing period;
 - (ii) recurring plan fees, We will debit the plan fee from Your credit card at the start of each billing period; and
 - (iii) usage fees, We will debit Your credit card for the usage fees at the end of the billing period. You can check Your usage within the Service; and
- (c) for IoT Products with:
 - (i) once off fees, We will debit the fee from Your credit card on the date of purchase;
 - (ii) recurring plan fees, We will debit the plan fee from Your credit card at the start of each billing period; and

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- (iii) usage fees, We will debit Your credit card for the usage fees at the end of the billing period. You can check Your usage within the Service.
- 2.5 We will notify You if We are unsuccessful when We attempt to debit Your credit card (e.g. card number is incorrect, credit card has been cancelled or insufficient funds). If after 14 days from the payment due date We have still not received payment from You, We may revoke Your API Keys. If, following notice from Us that We have revoked Your API keys, You still do not pay any outstanding amounts, We may cancel Your API Portal access.
- 2.6 You can choose to change Your payment method at any time via the API Portal. If Your new billing details are successfully validated all API charges will be billed to Your new chosen payment method. The change will take effect immediately and You will be billed to Your new payment method at the end of the billing period.
- 2.7 All charges will be posted to Your chosen payment method on the 3rd business day of each month for the previous billing period.
- 2.8 If You have a claim against charges on Your bill, You may be entitled to a credit or refund, such credit or refund will be applied to Your Telstra Dev account as a credit against future Telstra Dev charges.
- 2.9 You can contact API Portal support desk with any billing enquiries via <https://dev.telstra.com/support>.

Taxes

- 2.10 Subject to clauses 2.11 and 2.12, You must pay all Taxes in connection with the Service.
- 2.11 Where GST is imposed on a taxable supply made under or in connection with this Agreement and the recipient of that supply receives a tax invoice for that supply, the recipient must pay the GST to the supplier (without deduction or set-off) by the tax invoice due date.
- 2.12 If one party is required to indemnify or reimburse another party (Payee) for any cost, loss or expense, the indemnity or reimbursement payable does not include any amount for which the Payee (or an entity grouped with the payee for GST purposes) is entitled to an input tax credit, but will be increased in accordance with clause 2.11 if the amount payable is consideration for a taxable supply.
- 2.13 We may charge You an annual charge in relation to the ACT Government Utilities Tax (ACT Government Utilities Tax Charge) if You acquire one or more affected services within the ACT Government Area. We will notify You of the applicable ACT Government Utilities Tax Charge amount each year before it is payable. ACT Government Area means the area of the Australia Capital Territory.

3 ACCESS

- 3.1 Access to the Service may be granted in Telstra's sole discretion by issuing You a token key associated with an e-mail address. You may not access the

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Service in any other manner. You may not provide Your token key to any other person or party, without Telstra's written permission.

- 3.2 You will be responsible for all access to and use of the Service using Your token key(s), whether that access or use is by You or by any third party. Each email address may only be registered to use the Service once, although multiple token keys may be issued to a registered email address for use of multiple API's.
- 3.3 Telstra may monitor Your Application(s) and monitor Your access and use of the Service. Telstra reserves the right, acting reasonably, to limit Your access to or use of the Service or to change Your access and usage rights at any time.

4 YOUR OBLIGATIONS

Restrictions

- 4.1 Use of the Service is subject to compliance with Telstra's reasonable information security policies and procedures which may vary from time to time.
- 4.2 You may not:
- (a) Modify, obscure, circumvent, or disable any element of the Service or its access control features;
 - (b) Disrupt, interfere with, or adversely impact the access or use of the Service by Telstra or others;
 - (c) Transmit any viruses, worms, defects, Trojan horses, or any other malware;
 - (d) Use the Service in connection with an Application that is offensive, abusive, libellous, harassing, threatening, discriminatory, vulgar, pornographic, unethical, unlawful, ;
 - (e) Use any robot, spider, retrieval application or other automated functionality to retrieve or index any portion of Telstra's data, products, or services for any unauthorised purposes;
 - (f) Use any Telstra branding or in any way suggest or imply that Your Application is authorised, approved or affiliated without Telstra's consent;
 - (g) Sell, lease, disclose, transfer, or sublicense content obtained via the Service to any third party, whether directly or indirectly, by means other than through normal user interaction with an API made available by Telstra through the Service;
 - (h) Charge any incremental fees (including content specific or premium charges, but excluding general fees for Your Application) for access to the Service through Your Application, or for integration of any Telstra API with Your Application;

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- (i) Use any Telstra API on a stand-alone basis, for instance, by including it in an Application that does not provide other material content or functionality, unless Telstra approves such solution in a mutually executed written agreement;

Your Application

4.3 You must ensure that:

- (a) Your Application complies with this Agreement as well as any API-specific terms of use and any associated use policies and privacy policies notified to You by Telstra from time to time;
- (b) any third party software utilised by Your Application will not result in Telstra being required to disclose, license or otherwise make available any Telstra IP or any related materials including any software to any third party.
- (c) Your Application complies with all applicable laws and regulations.

5 SUPPORT

5.1 Telstra will use its reasonable commercial efforts to provide e-mail support during working hours but does not guarantee any response or resolution times. Telstra may cease provision of its e-mail support of the Service at any time.

6 MODIFICATION AND UPDATES TO THE SERVICE AND API'S

- 6.1 Telstra may extend, enhance, update or otherwise modify the Service at any time without notice.
- 6.2 Telstra may make backwards incompatible changes to API's from time to time. Telstra may, but shall not be obliged to, maintain the software code for impacted version(s) of any updated API(s) for a reasonable period of time from the date such backwards incompatible changes are announced. It is Your responsibility to ensure that Your Application is compatible with the latest version of the relevant API.
- 6.3 You must ensure that Your Application contains the means for You to update Your Application to the most current version of the API, including via remote updates where Your Application is already distributed to end users.

7 MODIFICATIONS AND UPDATES TO THIS AGREEMENT

Changes We can make without telling You

- 7.1 We can change the terms of this Agreement immediately without telling You if We reasonably consider the change is likely to:
 - (a) benefit You; or
 - (b) have a neutral impact on You.

Examples of changes that will benefit You: reducing charges, adding services at no extra cost to You, increasing Our obligations or giving You new rights.

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Examples of changes that will have a neutral impact on You: changing the access number for a service, or changing the name of a service or how We provide a service to You (including the technology We use) in a way that does not detrimentally impact You.

Changes We can make by telling You at least 3 days beforehand

- 7.2 We can change the terms of this Agreement by telling You at least 3 days beforehand if We reasonably consider the change is likely to have a minor detrimental impact on You.

Examples of changes with a minor detrimental impact: a small increase in charges or taxes, an increase to an ancillary service charge (e.g. billing charges or credit card transaction charges) where We offer a reasonable alternative service at no extra cost, or the removal of a minor feature of Your service.

Changes We can make by telling You at least 30 days beforehand

- 7.3 We can change the terms of this Agreement by telling You at least 30 days beforehand if We reasonably consider that it has more than a minor detrimental impact on You.

Examples of such changes: a significant increase in charges, or the removal of a key feature of Your service or a key pricing offer associated with the service without providing a reasonably comparable alternative feature or pricing offer, or changes that significantly increase the obligations or significantly limit the rights of the majority of Our customers.

Urgent changes

- 7.4 We can make urgent changes to the terms of this Agreement that are:

- (a) required by law; or
- (b) necessary for security reasons, to prevent fraud or for technical reasons,

by telling You at least 3 days before the changes, or if We are unable to do so, by giving as much notice as We reasonably can.

How We can tell You about the changes

- 7.5 We can tell You about changes to the terms of this Agreement under this clause 7 by any method We consider reasonable in the circumstances, including: bill message, bill insert, direct mail, email, SMS/MMS, the Telstra 24x7® App or Our other mobile apps, online account management tools (such as My Account or Your Telstra Tools), or telephone. We may use these methods to direct You to further information about the changes, such as on Telstra.com or at a Telstra Shop.

Changes We cannot make without Your consent

- 7.6 Despite anything to the contrary in this clause 7, if You have acquired any API from Us on a fixed-term basis in connection with or as part of the Service, We can only change the charges and early termination charges for that API during the fixed-term by getting Your consent. This clause 7.6 does not apply to third-party charges relating to the relevant API which We incur and choose to pass-through to You or are otherwise required to pass-through to You.

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Termination rights

- 7.7 If We make changes to the terms of this Agreement and such changes have more than a minor detrimental impact on You, You may cancel Your Service and any related API that is impacted by the change by written notice to Us without having to pay any early termination charges in relation to the Service or the relevant API.

8 REPRESENTATIONS AND WARRANTIES

8.1 You represent and warrant that You:

- (a) are not concealing or disguising Your identity to Telstra and have a legitimate, lawful purpose for accessing and using the Service.
- (b) subject to the Australian Consumer Law provisions in this Agreement, will be solely responsible for all costs, expenses, losses and liabilities incurred, and activities undertaken by You in connection with the Service and Your Applications, including, but not limited to, any network and server equipment Internet service(s), or any other hardware, software or service used by You;
- (c) will not, through use of the Service or otherwise, create any application or other program that would disable, hack or otherwise interfere with any security, digital signing, digital rights management, verification or authentication mechanisms implemented in or by the service, Telstra's network, any Telstra services or products or other Telstra software or technology, or enable others to do so;
- (d) are not presently the subject of, nor the proponent of, any claim that would have a material adverse effect on this Agreement or Your use of the Service; and
- (e) will promptly block, and notify Telstra of any known prohibited use of the Service by anyone acting under Your authority or on Your behalf.

9 INFRINGEMENT

9.1 You agree that You will not assert against Telstra, its affiliates or authorised representatives any claim for infringement or misappropriation of any rights protectable under intellectual property law anywhere throughout the world, including rights protectable under patent, copyright, trade secret or trade mark, in any way relating to the Service.

10 INDEMNIFICATION

10.1 You will indemnify and hold harmless Telstra and its affiliates, officers, directors, employees, agents, successors, and assigns (**Indemnified Parties**) against loss, liability, damage, cost or expense (including reasonable legal advisor's fees and expenses) (**Loss**) incurred by the Indemnified Parties and that arises naturally (that is, according to the usual course of things) as a result of or in connection with any claim by any third party against an Indemnified Party related to:

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- (a) Your Application;
- (b) Your use of the Service in breach of clause 4.2; or
- (c) any infringement by You of intellectual property, belonging to any third party,

except to the extent such a claim is caused or contributed by any of the Indemnified Parties. We will also take reasonable steps to mitigate Our Loss incurred as a result of or in connection with any such claim.

- 10.2 Telstra reserves the right to defend itself or hold You responsible for defending such claim, subject to Telstra's right to participate in such defence or settlement at its cost. You will reasonably co-operate with Telstra in any such defence at Your cost.

11 DISCLAIMER

- 11.1 To the maximum extent permitted by law and subject to the Australian Consumer Law provisions in this Agreement:

- (a) Telstra makes no warranties or representation concerning availability, suitability, accuracy or security of the Service, or any of the features or functionality of the Service. You acknowledge that Telstra is under no obligation to provide or continue to provide the Service and accept that availability of the Service may be restricted due to lack of capacity, data transmission errors, interruption of power and other circumstances beyond Telstra's control Telstra will attempt to post, but has no obligation to do so, when the Service may be unavailable for maintenance, repairs, or other reasons;
- (b) Telstra's sole responsibility in the case of malfunctions in relation to the Service is limited to using reasonable efforts to correct any malfunction; and
- (c) the Service is provided 'as is' and, to the maximum extent permitted by law, Telstra does not make, and expressly disclaims, any express or implied warranties, representations or endorsements of any kind whatsoever, including, without limitation, the implied warranties of merchantability or fitness for a particular purpose, and the warranties of title or non-infringement.

12 LIMITATION OF LIABILITY

Australian Consumer Law

- 12.1 Subject to clause 12.4, nothing in this Agreement excludes or limits, or has the effect of excluding or limiting, the operation of the Australian Consumer Law or any right You may have under the Australian Consumer Law.

Interruption or delay

- 12.2 If We fail to meet any of Our service level obligations (if any) as a result of any interruption or delay to Your Service, We accept liability to You, but limit Our liability to the applicable service level rebates or credits (if any). Where

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You are not entitled to a service level rebate or credit, We limit Our liability to an amount equal to the service charges billed for the affected services for the period of the interruption or delay.

Our breach of contract or negligence

- 12.3 Subject to clause 12.6, We accept liability arising from Our breach of contract or negligence:
- (a) for any personal injury or death to You, Your employees, agents and contractors in relation to the supply of the Services;
 - (b) for any damage to Your real or tangible property resulting from the supply of the Services, but We limit Our liability to Our choice of repairing or replacing the property or paying the cost of repairing or replacing it; and
 - (c) unless clause 12.2 applies, for any other cost or expense You reasonably incur that is a direct result of, and flows naturally from, such breach or negligence (but excludes loss of profits, likely savings and data), but We limit Our liability for all such claims in aggregate to the total amount payable to Us for 12 months of acquiring the relevant Services and the APIs related to the Services.

When We are not liable

- 12.4 Other than for the liability We accept under clauses 12.1, 12.2 and 12.3, and subject to the remainder of this clause 12.4, We exclude all other liability whether to You or a third party for breach of contract, negligence or breach of any other law. For any liability which cannot lawfully be excluded but can be lawfully limited, Our liability is limited to resupplying or paying the cost of resupplying services and repairing, replacing or paying the cost of repairing or replacing goods.
- 12.5 Notwithstanding anything else in this clause 12, Our liability will be reduced to the extent the loss or damage is caused by You, Your employees, agents or contractors.

Beyond Our control

- 12.6 We will not be responsible for any loss or damage arising from circumstances outside Our reasonable control.

After cancellation or suspension

- 12.7 These provisions relating to liability will continue unaffected by cancellation or suspension of Your Service.

13 YOUR LIABILITY TO US

Liability and excluded types of loss

- 13.1 You are liable to Us for breach of contract or negligence under the principles applied by the courts. However, You are not liable to Us for:

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- (a) any loss to the extent that it is caused by Us (for example, through Our negligence or breach of contract);
- (b) any loss to the extent that it results from Our failure to take reasonable steps to avoid or minimise Our loss;
- (c) any loss suffered or incurred by Us in connection with this Agreement or Our service that does not arise naturally (that is, according to the usual course of things) from the event giving rise to the loss; and
- (d) any loss or damage caused by events outside of Your reasonable control.

After cancellation or suspension

- 13.2 These provisions relating to liability will continue unaffected by cancellation or suspension of Your Service.

14 TERMINATION

- 14.1 Either party may terminate this Agreement (including any API Licence) by written notice to the to the other party if the other party is in material breach of this Agreement and fails to remedy the breach within 14 days of being informed of the breach by the first party or if the breach is not capable of being remedied.
- 14.2 In the event of a termination by either party, You agree to immediately cease using the Service and to delete any APIs, software or other materials that You have received from Telstra in connection with Your use of the Service.

15 PUBLICITY

- 15.1 You will refrain from marketing or giving publicity that could give the impression that Your Applications are approved or certified, or qualitatively or functionally accepted or approved by Telstra, or that You have a partnership or preferred relationship with Telstra. You will not make any public statement regarding the Service, this Agreement, the terms of this Agreement, or any specific aspect thereof without Telstra's written approval, which may be withheld in Telstra's sole discretion. You may not use any of Telstra's trade marks or trade dress unless expressly authorised to do so by Telstra in writing.

16 PRIVACY AND SECURITY

- 16.1 You agree and will ensure that Your employees, contractors and agents and Your related bodies corporate utilising this Service as well as users of Your Applications are aware that Telstra may use and disclose information about You and each of them in accordance with Telstra's Privacy Statement (as amended by Us from time to time), which is available at <http://www.telstra.com.au/privacy/privacy-statement/index.htm>
- 16.2 You agree that Telstra may also, subject to the Privacy Act 1988:

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- (a) disclose information about You and Your request for services (including information contained in any application form for additional services and information about the conduct of my account) to a credit reporting body to obtain credit reporting information about You and to another credit provider or a debt collection agent to collect overdue payments relating to credit owed by me and to notify defaults by You; and.
- (b) obtain and use information about Your creditworthiness (including consumer credit reporting information or a commercial credit report) from a credit reporting body or other business that reports on creditworthiness or from a credit provider to assess any application for services or to collect any overdue payments.

16.3 You acknowledge that You should read important information about credit reporting available on Telstra's website at <http://telstra.com.au/privacy/important-information-about-credit/>. This includes details about the credit reporting bodies that Telstra deals with, the kinds of information that Telstra may give to those bodies about You (such as about certain overdue payments), how they may use and disclose it and those bodies' policies regarding its management. It also includes details about Your access, correction and complaint rights regarding credit-related personal information and Your rights to prevent its use in certain circumstances, such as if You am a victim of identity fraud. A copy of this information is also available from Telstra on request.

16.4 Without limiting any other provision of this agreement, You agree that Your Application(s) will adhere to Your published privacy policy that describes to Your users what personal information You and Your Application access, collect and store, and how it is used and shared with Telstra and other third parties, and which otherwise complies with the Privacy Act 1988.

16.5 You will ensure that Your employees contractors and agents maintain reasonable and appropriate controls designed to ensure the privacy, security, and confidentiality of Telstra's information as well as user data collected by Your Application to protect it from accidental or unauthorized use, disclosure or destruction.

17 CONFIDENTIAL INFORMATION

17.1 You agree that information disclosed to You by Telstra under this Agreement may be confidential and proprietary. You agree to hold such Information in confidence with the same degree of care with which You protect Your own confidential or proprietary information, but no less than reasonably prudent care. The parties do not intend that You will disclose to Telstra, and agree that You will refrain from disclosing to Telstra, any information that You regard as proprietary. You warrant that all information disclosed to Telstra by You is or will be free of any obligation of confidence.

18 GENERAL PROVISIONS

Independent Parties

18.1 You and Telstra are independent contractors. No partnership or joint venture is intended to be created by this Agreement, nor any principal-agent

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or employer-employee relationship. You will not attempt to assert the authority to make commitments for or to bind Telstra to any obligation. Although this Agreement contains covenants with respect to confidential and proprietary information, You and Telstra disclaim any other intent to create a confidential or fiduciary relationship.

Severability

- 18.2 If the whole or any part of a provision of this Agreement is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this Agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this Agreement or is contrary to public policy.

No Waiver

- 18.3 The failure of either party at any time to require performance by the other party of any provision of this Agreement will in no way affect the right of such party to require performance of that provision. Any waiver by either party of any breach of any provision of this Agreement will not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself or a waiver of any right under this Agreement.

Jurisdiction

- 18.4 This Agreement will be governed by and construed in accordance with the laws of the State of New South Wales, Australia.