

# 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 Corporation Limited ("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, "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

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 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:

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- (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
    - (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.

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

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- 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;
  - (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

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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

- 7.1 Telstra may update and modify the terms of this Agreement or any API specific terms and conditions at any time. Changes will be provided to You by posting the changes on the Service or otherwise notifying you. Your continued use of the Service will be deemed acceptance of and agreement to those changes.
- 7.2 This Agreement governs your use of the Service and any API's, however any API-specific terms and conditions will prevail over the terms of this Agreement to the extent of any inconsistency.

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## 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) 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 against loss, liability, damage, cost or expense (including reasonable legal advisor's fees and expenses) incurred by the indemnified party as a result of or in connection with any claim by any third party related to:
- (a) Your Application;
  - (b) Your use of the Service;
  - (c) Any infringement by You of intellectual property, belonging to any third party; or
  - (d) Any breach by You of this Agreement.
- 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

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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:

- (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.
- (b) Telstra has no responsibility, nor liability for the non-availability of the Service. Telstra will attempt to post, but has not obligation to do so, when the Service may be unavailable for maintenance, repairs, or other reasons.
- (c) Telstra's sole responsibility in the case of malfunctions in relation to the Service is limited to using reasonable efforts to correct any malfunction. Telstra has no responsibility or liability for any malfunction whether caused by Telstra or caused by You or any third party. The remedies set out above constitute Your sole and exclusive remedy. You assume total responsibility and risk for Your use of the Service.
- (d) 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

- 12.1 You agree that for Telstra to offer this Service for commercial use, Telstra has limited liability arising from or based on Your use of the Service. This limitation of liability applies to prevent recovery of indirect, incidental, consequential, special, exemplary and punitive damages, whether such claim is based in contract, tort (including negligence) or otherwise, even if Telstra has been advised of the possibility of such damages. Notwithstanding any other provision in this Agreement, Telstra's aggregate liability under this Agreement is limited to a maximum amount equal to AU\$1000.00.
- 12.2 If there is any statutory guarantee or implied term that cannot by law be excluded or disclaimed under this Agreement then Telstra's liability for a breach of that guarantee or implied term will be limited to resupplying or paying the cost of resupplying the relevant Services affected by the breach.

### 13 TERMINATION

13.1 Telstra may terminate this Agreement (including any API Licence):



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- (a) Without notice, upon Your breach of this Agreement; or
- (b) By notice to You if Telstra determines that you are no longer authorised to use the Service.

13.2 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.

### 14 PUBLICITY

14.1 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.

### 15 PRIVACY AND SECURITY

15.1 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>

15.2 You agree that Telstra may also, subject to the Privacy Act 1988:

- (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.

15.3 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

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personal information and Your rights to prevent its use in certain circumstances, such as if You are a victim of identity fraud. A copy of this information is also available from Telstra on request.

- 15.4 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.
- 15.5 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.

### 16 CONFIDENTIAL INFORMATION

- 16.1 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.

### 17 GENERAL PROVISIONS

#### Independent Parties

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

- 17.2 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

- 17.3 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

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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**

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