

# OUR CUSTOMER TERMS CLOUD SERVICES – TELSTRA INTERNET OF THINGS

## CONTENTS

Click on the section that you are interested in.

<b>1</b>	<b>ABOUT THE TELSTRA INTERNET OF THINGS SECTION</b>	<b>2</b>
<b>2</b>	<b>TELSTRA IOT SERVICE</b>	<b>2</b>
<b>3</b>	<b>ELIGIBILITY AND AVAILABILITY</b>	<b>3</b>
<b>4</b>	<b>FEATURES AND CHARGES</b>	<b>3</b>
<b>5</b>	<b>FREE IOT PLATFORM TRIAL</b>	<b>4</b>
<b>6</b>	<b>DEVICES</b>	<b>4</b>
<b>7</b>	<b>TERM AND TERMINATION</b>	<b>4</b>
<b>8</b>	<b>CONSEQUENCES OF TERMINATION OR EXPIRY</b>	<b>5</b>
<b>9</b>	<b>SERVICE AVAILABILITY</b>	<b>5</b>
<b>10</b>	<b>SUPPORT</b>	<b>5</b>
<b>11</b>	<b>UPDATES AND UPGRADES</b>	<b>6</b>
<b>12</b>	<b>YOUR DATA</b>	<b>6</b>
<b>13</b>	<b>YOUR RESPONSIBILITIES</b>	<b>6</b>
<b>14</b>	<b>INTELLECTUAL PROPERTY</b>	<b>8</b>
<b>15</b>	<b>PLATFORM VENDOR FLOW THROUGH TERMS</b>	<b>8</b>
<b>16</b>	<b>SERVICE LEVEL TARGETS – CORE PLATFORM</b>	<b>13</b>
<b>17</b>	<b>SERVICE LEVEL TARGETS – HOSTING SERVICE</b>	<b>14</b>
<b>18</b>	<b>SCHEDULED MAINTENANCE</b>	<b>14</b>
<b>19</b>	<b>DEFINITIONS AND INTERPRETATION</b>	<b>14</b>

# OUR CUSTOMER TERMS CLOUD SERVICES – TELSTRA INTERNET OF THINGS

Certain words are used with the specific meanings set out below or in the General Terms section of Our Customer Terms.

## 1 ABOUT THE TELSTRA INTERNET OF THINGS SECTION

### Our Customer Terms

- 1.1 This is the Telstra Internet of Things (“IoT”) Service section of Our Customer Terms. Depending on the nature of the products and services you are receiving under this Cloud Services section, provisions in other parts of the Cloud Services section may apply.
- 1.2 See Part A (General) of the Cloud Services section for more detail on how the various parts of the Cloud Services section are to be read together.
- 1.3 Unless you have entered into a separate agreement with us which excludes them, the General Terms section of Our Customer Terms also applies. See section one of the General Terms of Our Customer Terms at <http://www.telstra.com.au/customer-terms/business-government/index.htm> for more detail on how the various sections of Our Customer Terms are to be read together.

### Inconsistencies

- 1.4 If the General Terms of Our Customer Terms are inconsistent with something in this section, then this section applies instead of the General Terms to the extent of the inconsistency.
- 1.5 If a provision of this section gives us the right to suspend or terminate your service, that right is in addition to our rights to suspend or terminate your service under the General Terms.

## 2 TELSTRA IOT SERVICE

### Eligibility

- 2.1 The IoT Service is only available to eligible customers whom Telstra invites to take the service.

### What is Telstra IoT Service?

- 2.2 Telstra IoT is an Internet-of-Things cloud solution that enables you to manage, track and control remote assets equipped with sensors and actuators (“IoT Service”). The IoT Service is provisioned through a cloud-based self-service platform.
- 2.3 You IoT Service is available as:
  - (a) free 30-day IoT Platform Trial (with an option to extend for up to 90 days);
  - (b) IoT Platform; or
  - (c) IoT Solution.

# OUR CUSTOMER TERMS CLOUD SERVICES – TELSTRA INTERNET OF THINGS

## 3 ELIGIBILITY AND AVAILABILITY

### Eligibility

- 3.1 To be able to use the IoT Service, you must:
- (a) have an internet connection and use a compatible browser and device;
  - (b) have a valid ABN, ACN or ARBN; and
  - (c) have and maintain a Telstra Digital Identity (“TDI”).
- 3.2 The terms and charges for your internet connection, device (and if relevant, use of the Telstra Wireless M2M Control Centre) are separate from, and in addition to, the terms and charges for your IoT Service.
- 3.3 If you do not have a TDI, you can register for a TDI at <https://id.telstra.com.au/register/psl?gotoURL=http://cloud.telstra.com/hybrid/identity/login.jsp>.

### Availability

- 3.4 You can subscribe to the IoT Platform or IoT Platform Trial through:
- (a) the Buy Online website at [buyiot.telstra.com](http://buyiot.telstra.com);
  - (b) our Cloud Service Store at [buycloud.telstra.com](http://buycloud.telstra.com); or
  - (c) or if you purchase the IoT Solution, via [butiot.telstra.com](http://butiot.telstra.com) and a separate agreement with us.
- 3.5 You can subscribe to multiple IoT Services on the same Telstra account.

### Telstra Customers

- 3.6 The IoT Service is not available to Telstra Wholesale customers or for resale.
- 3.7 You must ensure that only your Authorised Users use your IoT Service.

## 4 FEATURES AND CHARGES

### Features

- 4.1 The IoT Service supports a number of devices, API calls and storage options, as set out during the online application process or in your separate agreement with us.

### Charges

- 4.2 The charges for your IoT Service are set out:
- (a) if you apply online, during the application process; or
  - (b) in your separate agreement with us.

# OUR CUSTOMER TERMS CLOUD SERVICES – TELSTRA INTERNET OF THINGS

## 5 FREE IOT PLATFORM TRIAL

- 5.1 If you subscribe to the IoT Platform Trial, you will receive a 30-day free trial to the IoT Service. You cannot subscribe to more than one IoT Platform Trial.
- 5.2 Towards the end of your IoT Platform Trial, you will be prompted to subscribe to a paid IoT Service or extend your IoT Platform Trial by another 30 or 60 days (via your Telstra representative).
- 5.3 You may upgrade your IoT Platform Trial to a paid IoT Service at any time.

## 6 DEVICES

- 6.1 You must not use the IoT Service in connection with any device that has not been certified with the RCM compliance mark administered by the Australian Communications and Media Authority, unless we have provided our written consent.
- 6.2 For optimum security, we recommend that you use device supporting HTTPS and not HTTP.
- 6.3 If your devices use the Telstra Mobile Network, for optimum performance your device should contain a Wireless Embedded Module, which has been tested and certified by Telstra (as listed at <https://www.telstra.com.au/content/dam/tcom/business-enterprise/machine-to-machine/pdf/telstra-m2m-certified-devices-modules.pdf>), or you can request that we certify your device for an additional fee.
- 6.4 If you wish to use a device which does not have an approved Wireless Embedded Module, we provide no guarantee that it will be compatible with our Telstra Mobile network.
- 6.5 Your device should also be compatible with our platform APIs (a list of certified devices is listed at <http://www.cumulocity.com/dev-centre>, excluding those devices which are 2G devices), or you can conduct your own device integration and testing.
- 6.6 If you wish to use a device which is not compatible with the platform APIs, we provide no guarantee that it will be compatible with our IoT Platform.
- 6.7 If you have altered a device (including if we have done so on your instructions), so that it no longer supports emergency call access, you are responsible for and must ensure that that any end users of the device are made aware that the device is not able to make emergency calls.

## 7 TERM AND TERMINATION

- 7.1 The Minimum Term for your IoT Service is set out in the table below:

	IoT Platform Trial	IoT Platform	IoT Solution
Minimum Term	30 days (with an option to extend a further 30 or 60 days).	No Minimum Term.  For customers who signed up before 7 August 2017, the Minimum Term is 12 months. At the end of the Minimum Term, your IoT Service will	As set out in your separate agreement with us.

# OUR CUSTOMER TERMS

## CLOUD SERVICES –

### TELSTRA INTERNET OF THINGS

	IoT Platform Trial	IoT Platform	IoT Solution
		automatically become a month-to-month subscription.	

- 7.2 At the end of your IoT Platform Trial, your IoT Service will automatically end unless you have upgraded to a paid service before the date of expiry of your IoT Platform Trial.
- 7.3 You may terminate your IoT Service at any time by contacting us and following the procedure we outline to you at the time.
- 7.4 If you terminate your IoT Service you will still have to pay all Fees up to and including the date your IoT Service ends.

## 8 CONSEQUENCES OF TERMINATION OR EXPIRY

### Your IoT Service

- 8.1 Upon termination or expiry of your IoT Service (including, if applicable, the IoT Platform Trial), you must immediately:
- (a) cease using and ensure that each of your Authorised Users ceases using the IoT Service; and
  - (b) pay to us all Fees, expenses or other sums payable to us under this IoT Service section of Our Customer Terms that have accrued or are payable as at the date of termination or expiry.

### Your Customer Data

- 8.2 It is your responsibility to use appropriate means to retrieve or back-up all your Customer Data before termination or expiry of your IoT Service. After termination or expiry of your IoT Service (including the IoT Platform Trial), you will not be able to access or retrieve your Customer Data.
- 8.3 At the end of the IoT Service, we will erase all your Customer Data (to the extent permitted by law).

## 9 SERVICE AVAILABILITY

- 9.1 You must not use the IoT Service for services which require guaranteed data and service availability, and you agree that the IoT Service is not a substitute for any other means of ensuring safety or obtaining emergency assistance (for instance, it is not a replacement for, or suitable platform for accessing, 000 services).
- 9.2 You acknowledge and agree that we or our third party service provider may perform scheduled maintenance on your IoT Service, which may cause your IoT Service to be temporarily unavailable. We will give you reasonable notice before performing such scheduled maintenance.

## 10 SUPPORT

- 10.1 We will provide you with support in relation to pricing, billing, provisioning and device configuration for Approved Devices.

# OUR CUSTOMER TERMS

## CLOUD SERVICES –

## TELSTRA INTERNET OF THINGS

### 11 UPDATES AND UPGRADES

- 11.1 We are not required to develop, release or install any updates, upgrades, patches, bug fixes, new releases or new versions in respect of your IoT Service (“**Updates**”). When we do develop or release any Updates, we will give you reasonable notice if the Update is likely to impact your service.

### 12 YOUR DATA

- 12.1 You acknowledge that we may receive data (including sensitive data like location information and in some instances, Personal Information) as a result of providing the IoT Service. Except as required by law, you have sole responsibility for the legality, reliability, integrity, accuracy and quality of the data you provide to us using the IoT Service.
- 12.2 To the extent we are required to process data (including Personal Information) in connection with the IoT Service, and in addition to the matters set out in our Privacy Policy (where relevant):
- (a) you acknowledge that our third party service providers and mobility partners may receive, access, use, store and disclose that data;
  - (b) you acknowledge that the data may be disclosed or stored outside Australia or the country where your Authorised Users are located;
  - (c) you consent to us and our third party service provider, to receive, share and disclose data arising from use of the IoT Service with telecommunications or other third party service providers used in conjunction with the IoT Service;
  - (d) you confirm you are entitled to disclose the relevant data to us and our third party service provider so that we may lawfully use, process and disclose the data to supply the IoT Service;
  - (e) you must ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and disclosure by us and our third party service provider as required under the Privacy Act (if relevant); and
  - (f) you must comply with your obligations under our Privacy Policy (if relevant), the Privacy Act (if relevant) and any other applicable law in relation to the data disclosed to us in connection with your use of the IoT Service.

### 13 YOUR RESPONSIBILITIES

#### Provision of Authentication Credentials

- 13.1 On your request, we will provide you with Authentication Credentials in order for your Authorised Users to access and use the IoT Service.

#### Your obligations in relation to the Authentication Credentials

- 13.2 You must:
- (a) not use another company’s trade mark for a URL name for your tenancy, unless you have the right to use that trade mark;

# OUR CUSTOMER TERMS

## CLOUD SERVICES –

### TELSTRA INTERNET OF THINGS

- (b) not chose a tenancy name which may reasonably be considered to be inappropriate, or may prejudice Telstra's reputation or brand (including if a URL is, or may be reasonably considered to be, offensive, defamatory or misleading); if this occurs, we are not able to rename the URL and so may deactivate the URL and delete your data, provided we have first given you 30 days' notice to retrieve your data;
- (c) ensure that each Authentication Credential is securely maintained and used only by your Authorised User to whom the Authentication Credential has been issued;
- (d) comply with any policies, guidelines or other requirements that we may issue from time to time in any way relating to Authentication Credentials; and
- (e) immediately notify us and take immediate steps to disable an issued Authentication Credential if:
  - (i) an Authorised User ceases to be employed by, contracted to, or otherwise authorised to use the IoT Service by you;
  - (ii) an Authentication Credential is lost, stolen, missing or is otherwise compromised; or
  - (iii) you become aware of any breach of the provisions of this IoT Service section of Our Customer Terms by your Authorised User, in which case the Authentication Credentials will be suspended until such time as the breach is remedied to our satisfaction.

#### Management of Authentication Credentials

- 13.3 We reserve the right at any time and from time to time to change and/or revoke Authentication Credentials by providing you with written notice.

#### General responsibilities

- 13.4 You will be responsible for:
- (a) all activities on and use of the IoT Service, and any information or content uploaded or entered into the IoT Service, using any of your Authentication Credentials; and
  - (b) obtaining all consents, permits or approvals necessary to upload and store the Customer Data into the IoT Service
- 13.5 You must:
- (a) use the IoT Service only for your internal business purposes;
  - (b) comply with our Acceptable Usage Policy or any other policies regarding the use of the IoT Service that we notify you of from time to time;
  - (c) use the latest industry standard virus and malware detection and prevention methodologies and products in connection with your IoT Services, including on any devices you use with your IoT service;
  - (d) only use your IoT Service for lawful purposes and in accordance with this IoT Service section of Our Customer Terms;

# OUR CUSTOMER TERMS

## CLOUD SERVICES –

## TELSTRA INTERNET OF THINGS

- (e) not permit any person other than your Authorised Users to use the IoT Service and ensure that those Authorised Users, in using the IoT Service, comply with the terms and conditions of this IoT Service section of Our Customer Terms as if they were you; and
- (f) not rent, lease, sell, modify, adapt, translate, reverse engineer, de-compile, disassemble or copy all or any part of the IoT Service.

### Access to your system

- 13.6 You acknowledge and agree that we and our third party service providers may access (including by remote access) your computer systems or other devices used to access the IoT Service, including to provide support services to you and to monitor your use of the IoT Service. You must do all things reasonably requested by us to ensure we have such access.

## 14 INTELLECTUAL PROPERTY

### Licence

- 14.1 We grant you, for the Term, a limited, revocable, non-exclusive and non-transferable licence to access and use, and to allow your Authorised Users to access and use, the IoT Service and the Documentation solely to the extent such access and use is necessary for you and your Authorised Users to receive the IoT Service, in accordance with this IoT Service section of Our Customer Terms.

### Our Intellectual Property

- 14.2 You do not receive any ownership of or rights in respect of the Intellectual Property in the IoT Service or any Documentation, any Intellectual Property in any materials created as a result of the performance of the IoT Service or any Improvements to the IoT Service.
- 14.3 Any Intellectual Property in respect of the IoT Service or Documentation that is created by or vests in you during the Term is assigned to us or our third party service provider immediately upon the Intellectual Property being created or vesting in you and you agree to do all things and execute all documents as is reasonably necessary to effect such assignment.

### Your Intellectual Property

- 14.4 As between you and us, you retain ownership of your Intellectual Property in respect of the Customer Data. You grant us and our third party service provider, a non-exclusive, irrevocable licence to reproduce and otherwise exploit Customer Data for the purposes of providing the IoT Service (including any Additional Services) to you or for any purposes which we consider are ancillary to our provision of the IoT Services or Additional Services or are otherwise necessary for the proper operation of the IoT Service.

## 15 PLATFORM VENDOR FLOW THROUGH TERMS

- 15.1 You agree that we host the IoT Service on infrastructure provided by a third party infrastructure provider, and as such, the infrastructure provider's terms of use as set out in this section of Our Customer Terms apply to your IoT Service in addition to Our Customer Terms. Subject to your rights and our obligations in relation to detrimental changes to Our Customer Terms in the relevant General Terms section of Our



# OUR CUSTOMER TERMS

## CLOUD SERVICES –

## TELSTRA INTERNET OF THINGS

Customer Terms, we may update this clause 15 at any time to reflect changes in the terms offered by our third party infrastructure provider.

- 15.2 We (or our third party licensors) own all right, title and interest in the IoT service, and all related technology and intellectual property rights. Subject to the terms of this IoT Services section of Our Customer Terms, we grant you a limited, revocable, non-exclusive, non-sub licensable, non-transferrable licence during the Term of your service to access and use the IoT Service solely in accordance with this IoT Service section of Our Customer Terms (including content we make available to you through the IoT Service).

### Acceptable Use

- 15.3 You may not use or encourage, promote or instruct others to use the IoT Service:
- (a) for any illegal, harmful, deceptive or offensive use (including advertising, transmitting or otherwise making available gambling sites or services; disseminating, promoting or facilitating child pornography; or offering, promoting or disseminating fraudulent goods or services, including Ponzi schemes, pyramid schemes, phishing and pharming), or to transmit, store, display, distribute or otherwise make available content that is illegal, harmful, infringing or offensive;
  - (b) to violate the security or integrity of any network, computer or communications system, software application or network or computer device;
  - (c) with network connections to any users, hosts, or networks unless you have permission to communicate with them (and you must not conduct monitoring or crawling that impairs or disrupts the monitored or crawled service, conducting denial of service attacks or similar mail bombing, news bombing, broadcast attacks or flooding techniques);
  - (d) operate services like open proxies, open mail relays or open recursive domain name servers;
  - (e) distribute, publish, send or facilitate the sending of unsolicited mass email or other messages, promotions, advertising or solicitations, including commercial advertising and informational announcements; or
  - (f) alter or obscure mail headers or assume a sender's identity without their explicit permission, or collect replies to messages sent from another internet service provider if those messages violate these terms or the acceptable use policy of that provider.

- 15.4 We may investigate any violation of these terms, and report unlawful activity to appropriate third parties. We may cooperate in investigations being conducted by law enforcement or regulators or appropriate third parties, including by disclosing your Platform Data where required to do so in accordance with any Privacy laws.

- 15.5 Any software provided as part of the IoT Services must not be transferred outside the IoT Service without our specific authorisation.

### Suspension and termination

- 15.6 If our agreement with our third party service provider, or relevant services under our agreement with our third party service provider, are suspended or terminated, we may suspend or terminate your IoT Service. If the relevant third party services are amended

# OUR CUSTOMER TERMS

## CLOUD SERVICES –

### TELSTRA INTERNET OF THINGS

or withdrawn, we may amend or withdraw elements of the IoT Service, or migrate you to an alternative service and take reasonable steps to offset any material detrimental effects of the transfer caused by any material differences between the suspended or terminated service and the alternative service we offer. If we cancel your service in this way, we will not charge you any early termination charge. Where you can demonstrate that transferring you to an alternative service under this clause 15.6 has resulted or is likely to result in a material detriment to you, you may terminate the agreement with us in accordance with the [General Terms for Small Business customers or the General Terms for Corporate](#) customers, as applicable. In all cases, we will provide you with as much notice as is possible in the circumstances (but you agree that we may not be able to give you any notice in some circumstances if we do not receive it from our third party service provider). Without limitation, the following may give rise to a suspension of you (or your users) use of the IoT Service:

- (a) poses a security risk to the IoT Service or any third party;
- (b) risks adversely affecting our systems or those of our third party providers or any other customer;
- (c) risks subjecting us or our third party service provider (or our respective affiliates) to liability; or
- (d) is in breach of these terms.

If we suspend you or your users as a result of (a)-(d), we will use commercially reasonable efforts to restore your rights to use and access those portions of the IoT Service that gave rise to the suspension promptly after you have resolved the problem giving rise to the suspension.

#### Infrastructure location and security

- 15.7 If the location of the infrastructure that supports your IoT Service changes for reasons beyond our control, the IoT Service (including all content and data processed through it) may be transferred to another location. We will advise you if this occurs. Where you can demonstrate that changes made under this clause 15.7 have resulted or are likely to result in a material detriment to you, you may choose to terminate this agreement, and we will waive any applicable early termination fees.

#### Usage restrictions

- 15.8 You must comply with all laws, rules and regulations applicable to your use of the IoT Service.
- 15.9 You must ensure that your Platform Data does not violate any applicable law. You are responsible for the development, content, operation, maintenance and use of your Platform Data, and for any claims relating to your Platform Data. You must provide information or other materials related to your Platform Data (including copies of any applications) as we reasonably request to verify your compliance with these terms, and must reasonably cooperate with us to identify the source of any problem we reasonably believe may be attributable to your Platform Data.
- 15.10 We may monitor external interfaces (e.g. ports) of your Platform Data to verify your compliance with these terms, and you must not block or interfere with our monitoring. You may use encryption technology or firewalls to keep your Platform Data confidential. You will reasonably cooperate with us to identify the source of any problem with the IoT Service that we reasonably believe may be attributable to your Platform Data.

# OUR CUSTOMER TERMS

## CLOUD SERVICES –

## TELSTRA INTERNET OF THINGS

- 15.11 If we or our third party service provider reasonably believe that any of your Platform Data violates the law, infringes or misappropriates the rights of any third party or otherwise violates these terms (**Prohibited Content**), we will notify you of the Prohibited Content and may request that you remove or disable access to the Prohibited Content. If you do not remove or disable access to the Prohibited Content within 2 Business Days of our notice, we may remove or disable access to the Prohibited Content or suspend the IoT Service to the extent we are not able to remove or disable access to the Prohibited Content. We may also remove or disable access to any Prohibited Content without prior notice in connection with illegal content, where the Prohibited content may disrupt or threaten the IoT Services, or as required to comply with law or any judicial, regulatory or other governmental order or request. If we remove content without prior notice, we will provide prompt notice to you unless prohibited by law.
- 15.12 You are responsible for your users use of your Platform Data and the IoT Service, and will ensure that your users comply with your obligations under this clause 15. If you become aware of any violation of these terms by one of your users, you must prohibit the end user from using the IoT Service and notify us so that we may suspend access by that user.
- 15.13 You must not, and must not attempt to:
- (a) modify, alter, tamper with, repair or otherwise create derivative works from the IoT Service;
  - (b) reverse engineer, disassemble or decompile the IoT Service or apply any other process or procedure to derive the source code of any software included in the IoT Service;
  - (c) access or use the IoT Service in a way intended to avoid incurring fees or exceeding usage limits or quotas;
  - (d) resell or sublicense the IoT Service; or
  - (e) assert, or authorise, assist or encourage any third party to assert, any intellectual property infringement claim regarding the IoT Service.

### Patches and upgrades

- 15.14 From time to time, we or our third party service provider may apply upgrades, patches, bug fixes or other maintenance to the IoT Service (**Maintenance**). We agree to use reasonable efforts to provide you with prior notice of any scheduled Maintenance (except for emergency Maintenance) and you agree to use reasonable efforts to comply with any Maintenance requirements that we notify you about.

### Warranties and Liability

- 15.15 If you are a consumer as defined in the Australian Consumer Law, our goods come with guarantees that cannot be excluded under the Australian Consumer Law. Nothing in these terms is to be taken to exclude, restrict or modify any guarantee, condition or warranty that we are prohibited by law from excluding restricting or modifying. If such a statutory guarantee applies to this agreement and we breach it, we accept liability for such breach, but, where it is lawful to do so and fair and reasonable to do so, we limit our liability at our choice to in the case of goods resupplying the goods or paying the cost of having them resupplied, or in the case of services, resupplying the services or paying the cost of having the services resupplied.

## OUR CUSTOMER TERMS CLOUD SERVICES – TELSTRA INTERNET OF THINGS

- 15.16 The IoT Service is offered 'as is' and except to the extent prohibited by law, including the Australian Consumer Law and subject to clause 15.15, we and our third party service providers (and our respective affiliates and licensors) make no other representations or warranties of any kind, whether express, implied, statutory or otherwise, regarding the IoT Service or the Third Party Content, and disclaim all other warranties, including any implied or express warranties:
- (a) of merchantability, satisfactory quality, fitness for a particular purposes, non-infringement or quiet enjoyment;
  - (b) arising out of any course of dealing or trade usage;
  - (c) that the IoT service or Third Party Content will be uninterrupted, error free, or free of harmful components; and
  - (d) that any content, including your content or Third Party Content, will be secure or not otherwise lost or damaged.
- 15.17 Despite any other clause of this IoT Service section of Our Customer Terms or the General Terms of Our Customer Terms, and to the extent permitted by law, including any rights you may have under the Australian Consumer Law and subject to clauses 15.6 and 15.15, except in relation to payment obligations arising under the clause 4.2, or damages for gross negligence or wilful misconduct, neither you nor we (including our third party suppliers) (nor any of their affiliates) will be liable for any:
- (a) indirect, incidental, special, consequential or exemplary damages;
  - (b) loss of profits, revenues, customers, opportunities or goodwill;
  - (c) unavailability of the IoT Service (except to the extent we have advised you that a service credit applies, in which case we will be liable to the extent of the service credit);
  - (d) investments, expenditures or commitments by you relating to use of or access to the IoT Service;
  - (e) cost of procurement of substitute goods or substitute services;
  - (f) unauthorised access to your Platform Data or any compromise, alteration or loss of data; or
  - (g) cost of replacement or restoration of any lost or altered data.
- 15.18 To the extent permitted by law (including rights you may have under the Australian Consumer Law), the aggregate liability in relation to the IoT Service of either party or any of their respective affiliates or licensors, will not exceed the amounts paid by you to use for the IoT Service during the 12 months before the liability arose, however, this will not limit your obligation to pay us for:
- (a) your use of the IoT Service;
  - (b) any other payment obligations under this IoT Service section of Our Customer Terms; or
  - (c) your indemnification obligations under this IoT Service section of Our Customer Terms.

# OUR CUSTOMER TERMS

## CLOUD SERVICES –

### TELSTRA INTERNET OF THINGS

15.19 In relation to liability which by law we cannot exclude but can limit, we limit our liability at our choice to in the case of goods resupplying the goods or paying the cost of having them resupplied, or in the case of services, resupplying the services or paying the cost of having the services resupplied where it is lawful and fair and reasonable to do so.

#### Indemnity

15.20 You must defend and indemnify us, our third party licensors and service providers, our respective affiliates (including related bodies corporates), and the employees, officers, directors and representatives of all of them from and against any Losses arising out of or relating to any third party claim concerning:

- (a) you or your users' use of the IoT Service in a manner not authorised by this IoT Service section of Our Customer Terms;
- (b) violation of applicable law by you, your end users or your Platform Data; or
- (c) alleged infringement or misappropriation of any third party rights by your data (including arising from our use, development, design, production, advertising or marketing involving your data in reliance on your rights in the data).

15.21 We will promptly notify you of any claim the subject of clause 15.20 but if we fail to promptly notify you, this will only affect your obligations to the extent that our failure prejudices your ability to defend the claim.

15.22 In relation to claims as set out in clause 15.20, you may:

- (a) use counsel of your own choosing (subject to our and our third party suppliers' written consent, which will not be unreasonably withheld) to defend against any claim; and
- (b) settle the claim as you deem appropriate, provided that you obtain our (and if necessary, our third party service providers' prior written consent, which will not be unreasonably withheld) before entering into any settlement.

15.23 We and our third party service providers may also participate in the defence at our own expense.

## 16 SERVICE LEVEL TARGETS – CORE PLATFORM

16.1 Your IoT Service is made up of several elements. The service level targets in this section 16 do not provide an end-to-end availability target and only apply in relation to the Core Platform. We will use reasonable efforts to meet the targets, but they are not guaranteed performance standards, and we are not liable for a failure to meet them.

16.2 We will use reasonable efforts to meet the following availability target for the IoT Service.

Core Platform Availability Measure	Standards
Core Platform Availability	99.95% (measured monthly) (excluding Excused Downtime – Core Platform)
Latency	300 milliseconds

# OUR CUSTOMER TERMS

## CLOUD SERVICES –

### TELSTRA INTERNET OF THINGS

If the Core Platform Response Time takes more than 2 seconds, the Core Platform is deemed unavailable.

#### 17 SERVICE LEVEL TARGETS – HOSTING SERVICE

17.1 Your IoT Service is made up of several elements. The service level targets in this section 17 do not provide an end-to-end availability target and only apply in relation to the Hosting Service. We will use reasonable efforts to meet the targets, but they are not guaranteed performance standards, and we are not liable for a failure to meet them.

17.2 We will use reasonable efforts to meet the following availability target for the Hosting Service.

Hosting Service Availability Measure	Standards
Hosting Monthly Uptime Percentage	99.95% during each Service Month (excluding Excused Downtime – Hosting Service)

#### 18 SCHEDULED MAINTENANCE

18.1 We or our third party service provider may perform scheduled maintenance on your IoT Service, which may cause your IoT Service to be temporarily unavailable. We will give you reasonable notice before performing such scheduled maintenance.

#### 19 DEFINITIONS AND INTERPRETATION

19.1 In this IoT Service section of Our Customer Terms, unless the context otherwise requires:

**Additional Services** means any service which we agree to provide to you during the Term in addition to the IoT Service, including the provision of consulting, customisation, implementation, training, integration or other services.

**Authentication Credential** means the username and password or other means of authentication which Authorised Users are required to provide in order to be able to access the IoT Service.

**Authorised Users** means the employees, agents, contractors or other representatives of yours or your subsidiaries or other related parties who are issued with an Authentication Credential in accordance with this IoT Service section of Our Customer Terms.

**Business Day** means any day other than a Saturday, Sunday or public holiday observed in Melbourne, Victoria, Australia.

**Content** means software (including machine images), data, text, audio, video, images or other content.

**Customer Data** means all information or communications (whether relating to you or your Authorised Users or otherwise) uploaded to the IoT Service by you, on your behalf, or by your Authorised Users.

**Core Platform** means our (or our third party provider's) operating environment software and hardware used to provide the IoT Service, including load balancing servers, web servers, backend storage systems, and third party and proprietary software used to

# OUR CUSTOMER TERMS

## CLOUD SERVICES –

### TELSTRA INTERNET OF THINGS

provide remote availability to you (but excluding the hosting platform on which the Core Platform is hosted and the other elements listed in paragraph (a) of the definition of Excused Downtime – Core Platform).

**Core Platform Response Time** means the amount of time measured in milliseconds from issuing the request (i.e. an http request) until the IoT Service generates the corresponding results page and begins to transmit it back to you, which will not exceed an average of 1,000 milliseconds over any 24-hour period excluding Excused Downtime – Core Platform.

**Emergency Maintenance** will be limited to that maintenance which could not have been reasonably foreseen by us which is necessary in order to prevent the likely outage of the Core Platform which will not occur more than once every six months and will not generally exceed 1 hour per incident.

**Excused Downtime – Core Platform** means unavailability of the IoT Service as a result of any or all of the following:

- (a) the performance or failure of:
  - (i) the telecommunications network used to access the IoT Service;
  - (ii) any SMS authentication system;
  - (iii) the hosting platform on which the Core Platform is hosted; or
  - (iv) any other element of the IoT Service other than the Core Platform,
- (b) scheduled maintenance as described in section 18;
- (c) a Force Majeure event;
- (d) failure or deficiency of web site availability to the extent caused by or associated with outages elsewhere on the Internet;
- (e) our suspension or termination of your right to use the IoT Service in accordance with your agreement with us;
- (f) any outages for Emergency Maintenance; and
- (g) downtime caused by issues with the third party platform on which the Core Platform is hosted.

**Excused Downtime – Hosting Service** means unavailability of the IoT Service as a result of any or all of the following:

- (a) scheduled maintenance for which we or our service provider have provided advance notice to the designated administrative contact for your account or other maintenance provided pursuant to your agreement with us or one of our service providers;
- (b) factors outside of our reasonable control (or that of our service provider), including any Force Majeure event or internet access failure or connectivity related problems beyond the demarcation point of the Hosting Service;
- (c) from any actions or inactions by you or any third party (including without limitation your failure to acknowledge a recovery volume);

# OUR CUSTOMER TERMS

## CLOUD SERVICES –

## TELSTRA INTERNET OF THINGS

- (d) from your or any third party services, equipment, software or other technology (other than third party equipment within our direct management and control);
- (e) from failures of individual instances or volumes not attributable to Unavailability;
- (f) our suspension or termination of your right to use the Hosting Service in accordance with your agreement with us.

**Platform Data** means any Content that you or your end users run on the IoT Service, cause to interface with the IoT Service, uploads to the IoT Service or otherwise transfer, process, use or store in connection with the IoT Service.

**Documentation** means any manuals, guides, reference materials or other similar documents in any form that we make available to you in connection with the IoT Service.

**Fees** means any fees or other amounts payable by you to us under this IoT Service section of Our Customer Terms, including any fees for the provision of Additional Services.

**Force Majeure** means an event outside of our reasonable control.

**Hosting Service** means any hosting service that we or our third party supplier provides to you as part of the IoT Service from time to time.

**Improvement** means any modification, enhancement, alteration, development, new use or other change to the IoT Service.

**Intellectual Property** all industrial and intellectual property rights, both in Australia and throughout the world, and includes any copyright, moral right, patent, registered or unregistered trade mark, registered or unregistered design, trade secret, knowhow, right in relation to semiconductors and circuit layouts, trade or business or company name, indication or source or appellation of origin or other proprietary right, or right of registration of such rights.

**Latency** means the average of Core Platform Response Time, aggregated over each 24-hour daily period.

**Losses** means any claim, damages, losses, liabilities, costs and expenses (including reasonable attorney's fees).

**Minimum Term** means the minimum Term for your IoT Platform Trial, IoT Platform or IoT Solution (as applicable), as set out in the table in clause 7.1.

**month** means a period of one month starting on the date you take up your IoT Service, and each subsequent one month period after that.

**Hosting Monthly Uptime Percentage** is calculated by subtracting the percentage of 5-minute periods during the Service Month in which the Hosting Service was in the state of Unavailable (excluding cloud analytics components of the Hosting Service) from 100%, excluding Hosting SLA Exclusions.

**Personal Information** has the meaning set out in section 6(1) of the Privacy Act.

**Privacy Act** means the *Privacy Act 1988* (Cth).



# OUR CUSTOMER TERMS CLOUD SERVICES – TELSTRA INTERNET OF THINGS



**Service Month** means any entire calendar month during the Term.

**Term** means the period of time during which your IoT Service is active.

**Third Party Content** means Content of a third party made available through the IoT Service, for instance through developer forums, sample code repositories, public data repositories, community-focused areas of the IoT Service (if any), or any part of the IoT Service that allows third parties to make available software, products or data.

**Unavailable** means that you are unable to connect to and use the Hosting Service.