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# **Our Customer Terms**

## **Telstra Mobile – Kony Platform**

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Certain words are used with the specific meanings set out below (including in the Definitions in clause 14) and in [the General Terms of Our Customer Terms](#).

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## 1 About this section

### Our Customer Terms

- 1.1 This is the Telstra Mobile - Kony Platform section of Our Customer Terms.
- 1.2 [The General Terms of Our Customer Terms](#) also apply unless you have entered into a separate agreement with us which excludes the General Terms of Our Customer Terms.
- 1.3 Some or all of the software comprising the Kony Platform are provided by our software licensor, Kony, Inc. Kony™ is a trademark of Kony, Inc.

### 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.

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## 2 Kony Platform

### What is the Kony Platform?

- 2.1 The Kony Platform is a unified application platform for the design, development and deployment of mobile and web based applications, which you may either:
  - (a) licence from us and install on your premises or the premises of your third party hosting provider (“**On Premise**”); or
  - (b) access via the externally hosted Kony cloud (“**Kony Cloud**”).
- 2.2 All terms and conditions of this Kony Platform section of Our Customer Terms apply to both the On Premise and Kony Cloud versions of the Kony Platform, unless stated otherwise.

### Kony Platform & Applications

- 2.3 The Kony Platform allows you to:
  - (a) design and build your own customised device and web-based business applications using Kony Visualizer or via a native application development tool (“**Custom Built Apps**”);
  - (b) licence and customise any device and web-based business applications that have been pre-built by our software licensor and which we make available from time to time (“**Kony Pre-Built Apps**”); and
  - (c) deploy or otherwise make available Applications to:

- (i) the Devices of your Users – where you have licensed the platform for business-to-employee B2E Applications; or
- (ii) the Devices of your Customers – where you have licensed the platform for business-to-consumer B2C Applications.

- 2.4 You must purchase a separate license for each Kony Pre-built App that you wish to use. Any additional terms that apply to each Kony Pre-Built App you license from us will be set out in your agreement with us.
- 2.5 The development of Custom Built Apps may require additional professional services to develop and integrate the Custom Built Apps for use with the Kony Platform. Any additional professional services work will be done under a separately agreed statement of work.

### **Kony Visualizer**

- 2.6 As part of your license to the Kony Platform, you receive the right to access and use “Kony Visualizer”, which enables you to design and build Custom Built Apps (as well as customising Kony Pre-Built Apps). Kony Visualizer is hosted in the Kony Cloud, but is provided with both the On Premise and Kony Cloud versions of the Kony Platform. Kony Visualizer is not available as a stand-alone product.

### **Kony Fabric**

- 2.7 “Kony Fabric” is a component of the Kony Platform comprised of a set of modular, standards-based enterprise-grade digital infrastructure services with pre-built integration and services to speed development and increase flexibility. Kony Fabric is designed for use with any native, open source, or Kony front-end application, and with any back-end application, service bus, or cloud service API. Kony Fabric is not available as a stand-alone product.

### **Kony Sync Server**

- 2.8 The “Kony Sync Server” is an optional add-on component to the Kony Platform for which you may purchase a separate license, as set out in your separate agreement with us. The Kony Sync Server operates as “middleware” to allow applications and solutions to function in an offline manner when network connectivity is not available. The Kony Sync Server is installed alongside Kony Fabric, either on On Premise or in the Kony Cloud.

### **Licences, Users and other restrictions**

- 2.9 You must purchase a licence for the Kony Platform and each Kony Pre-built App that you intend to use (whether deployment is On Premise or via the Kony Cloud). Details of the licences you receive, and the User and other restrictions associated with each licence, are set out in your agreement with us. The terms of your Kony Platform licences are set out in clause 6.

### **Eligibility**

- 2.10 The Kony Platform and Kony Pre-Built Apps are not available to Telstra Wholesale customers or for resale.
- 2.11 You must be an existing Telstra Enterprise, Government or Premier Business Customer with a valid ABN, ACN or ARBN.

### **Minimum licence commitments**

- 2.12 Minimum User licensing commitments or volume tiers may apply to your licenses to the Kony Platform and each Kony Pre-Built App (where applicable), and will be set out in your agreement with us.

### **Devices & Security**

- 2.13 You are responsible for:
- (a) providing all necessary Devices for your Users to access the Applications and the Kony Platform, and ensuring your Customers are aware they need such Devices; and
  - (b) the security of all User Devices which are used in conjunction with the Applications and the Kony Platform, and ensuring your Customers are aware they are responsible for the security of their own Devices.

We are not responsible for the supply or security of any Devices used in conjunction with the Applications or Kony Platform.

### **Compatible technology**

- 2.14 You acknowledge that the Kony Platform is compatible with specific third party products and technology as set out in clause 5, and it is your responsibility to ensure you are using such compatible technology.

### **Connecting carriage service**

- 2.15 You are responsible for separately arranging a connecting carriage service (ie telecommunications service) for the Devices of your Users, and ensuring your Customers are aware they need a connecting carriage service for their Devices, in order to allow them to access and use the Kony Platform and Applications.
- 2.16 The terms (including fees and charges) for your connecting carriage service are separate from and in addition to the terms (including fees and charges) for your Kony Platform and Kony-Pre-Built Apps licenses.

### **Data**

- 2.17 You are responsible for all information and data you use in conjunction with the Kony Platform and Applications.

### **Licence Term**

- 2.18 You must licence the Kony Platform and each Kony Pre-Built App (both the On Premise and Kony Cloud versions) for the licence term specified in your agreement with us.
- 2.19 You are only licensed to use the Kony Platform and each Kony Pre-Built App for the licence term identified in your agreement with us. Subject to any automatic renewal terms set out in this section or in your agreement with us, each licence will come to an end on expiry of the applicable licence term. None of the licences are perpetual.
- 2.20 If you enter into an agreement with us for any licenses to the Kony Platform and/or any Kony Pre-Built App on or after 1 August 2018, at the end of the applicable licence term specified in your agreement with us, each of your licences automatically renews each year

Telstra Mobile – Kony Platform was last changed on 30 July 2018.

for a further twelve (12) months on the same terms, unless you terminate your licence by providing at least 30 days' written notice to us prior to the date of automatic renewal.

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### **3 On Premise version**

#### **Hosting & Security**

- 3.1 Where you licence the On Premise version of the Kony Platform and/or any Kony Pre-Built Apps, the relevant software is hosted by you on your own Systems or by a third party on their infrastructure (ie a hosting service provider) at your cost.
- 3.2 As part of your (or your nominated third party's) hosting obligations, you are responsible for the security of all Systems and Devices which are used in conjunction with the Kony Platform and/or Pre-Built Kony Apps.

#### **Installation, Infrastructure & Network connectivity**

- 3.3 Where you license the On Premise version of the Kony Platform and/or any Kony Pre-Built Apps, you are responsible for:
- (a) installing the relevant software on your Systems; and
  - (b) ensuring your Systems comprise all necessary equipment, infrastructure and network connectivity to make the software operational, including an application server and the Compatible Third Party Products described in clause 5.
- 3.4 We will support and maintain the On Premise version of the Kony Platform and Kony Pre-Built Apps (where applicable) as set out in clause 10.

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### **4 Kony Cloud**

#### **Hosting**

- 4.1 Where you license the Kony Cloud version of the Kony Platform and/or any Kony Pre-Built Apps, the relevant software is hosted on infrastructure supplied by us.

#### **Location**

- 4.2 Any data (including Personal Information as defined in the *Privacy Act 1988 (Cth)*) transferred to the Kony Cloud will be stored and processed in Sydney, Australia, or any other country in which Kony's hosting provider maintains facilities.

#### **Infrastructure & security**

- 4.3 At your request, we agree to provide you with a description of the infrastructure and security used to host the Kony Cloud.
- 4.4 It is your responsibility to ensure the infrastructure and security used for the Kony Cloud is adequate and appropriate for your use. We will provide you with advanced notice if we or our software licensor intend to make any material changes to the infrastructure and security associated with the Kony Cloud.
- 4.5 While the security of your data is important to us, you acknowledge that, to the extent permitted by law:

- (a) we do not give any warranty or other assurance in relation to the security of the Kony Cloud (or the security of any data you send, receive or store using the Kony Platform or Applications); and
- (b) we are not for liable for any loss of or damage to data, or any unauthorised access to data, which occurs as a result of your use of the Kony Cloud.

#### **Data transmission & storage**

- 4.6 All data sent from the Devices of your Customers or Users (when using Applications or the Kony Platform) will be transmitted to your Systems and processed via the Kony Cloud. No data will be permanently stored in the Kony Cloud unless you have selected such an option in your set up of the Kony Cloud.
- 4.7 When testing any Custom Built App you create using Kony Visualizer, we recommend that you use de-identified or dummy data (rather than any real personal information of your Customers or Users).
- 4.8 You acknowledge that, upon termination of your agreement with us, any data which is hosted or stored in the Kony Cloud may be deleted. We will try to give you notice before this occurs, and an opportunity to retrieve any data. However, we recommend that you back up data on your own Systems on a regular basis.

#### **Support & Maintenance**

- 4.9 Our support and maintenance obligations in respect of the Kony Cloud (including the availability service level for hosting) are set out in clause 11.

#### **Web browser**

- 4.10 You must use a compatible web-browser to access the Kony Cloud, as set out in clause 5.

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## **5 Compatibility with third party products**

- 5.1 The Kony Platform and Kony Pre-Built Apps are compatible with particular versions of Devices, operating systems, browsers, development languages and application servers (“**Compatible Third Party Products**”) as set out in the following link:  
[http://developer.kony.com/twiki/pub/Portal/Docs/KonyPlatform\\_List%20of%20Supported%20Devices\\_OS\\_Browsers.pdf](http://developer.kony.com/twiki/pub/Portal/Docs/KonyPlatform_List%20of%20Supported%20Devices_OS_Browsers.pdf).
- 5.2 Subject to clause 5.4, we or our software licensor may update the above link and compatibility specifications for Compatible Third Party Products (without notice to you) from time to time.
- 5.3 You acknowledge that if your Users and Customers do not have the Compatible Third Party Products, your Users and Customers may not be able to access or use the Kony Platform and Applications. In such circumstances, you will still be liable for all fees and charges in relation to your licenses for the Kony Platform and Kony Pre-Built Apps (where applicable).
- 5.4 At our (or our software licensor’s) sole option, we may cease to offer the Kony Platform and/or any Kony Pre-Built Apps on a particular operating system (including versions). In such a case, we will provide written notice of our intent to discontinue support of an operating system, and must continue to support discontinued operating systems for the lesser of two (2) prior versions or twenty-four (24) months from the date of written notice.

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## 6 Licence & Usage Terms

### Intellectual Property Rights

- 6.1 You acknowledge that we or our third party software licensor owns all rights (including intellectual property rights) in or related to the Kony Platform, the Kony Pre-Built Apps and the Documentation (including all Modifications) and that the Kony Platform and Kony Pre-Built Apps contain confidential and proprietary information of us or our third party software licensor and shall be treated as confidential information for the purposes of your agreement with us.

### Software Licence

- 6.2 Where you obtain a licence from us, you are granted a non-exclusive, non-assignable and non-transferable licence for your licence term to use the Kony Platform, Documentation, and any Kony Pre-Built Apps (where applicable), solely for the purposes (and in accordance with the terms) set out in this Kony Platform section of Our Customer Terms. You must not:
- (a) use, display, copy, modify, sub-licence, assign, rent, share, lease, distribute or otherwise transfer any right to use the Kony Platform, the Documentation or any Kony Pre-Built Apps to any other person except as expressly permitted in this Kony Platform section of Our Customer Terms; or
  - (b) reproduce translate, adapt, modify, alter, de-compile, disassemble, or reverse-engineer the Kony Platform, Documentation or Kony Pre-Built Apps, except as permitted under the *Copyright Act 1968 (Cth)* or as expressly permitted in this Kony Platform section of Our Customer Terms.
- 6.3 Where you receive the On Premise version of the Kony Platform and/or any Kony Pre-Built Apps, we grant you the right to reproduce and install the relevant software on a back-up server, and execute those software components on that back-up server only for back-up, back-up testing, disaster recovery and software fail-over purposes when your production servers are inoperative. You agree to maintain accurate and current records of all locations of backup copies.
- 6.4 We expressly reserve all rights not expressly granted to you under this Kony Platform section of Our Customer Terms.
- 6.5 If you provide us with any material relevant to your access to or use of the Kony Platform or Kony Pre-Built Apps, you grant us a non-exclusive, non-transferable licence to use, copy and modify that material for the sole purpose of licensing the Kony Platform and Kony Pre-built Apps (where applicable) to you or providing Maintenance & Support.
- 6.6 Subject to clause 6.7, you must ensure that access to the Kony Platform is limited to your employees, agents and administrators, and any of your customers expressly authorised to access the Kony Platform.
- 6.7 You may appoint an external service provider (eg a certified Kony partner) as a Developer who has access to any components of the Kony Platform and Kony Pre-Built Apps (where applicable) licensed by you, provided:
- (a) you must at all times ensure the Developer's use of the Kony Platform and Kony Pre-Built Apps is in accordance with this Kony Platform section and your agreement with us; and



- (b) you are responsible for any breach by a Developer of this Kony Platform section or your agreement with us.
- 6.8 To the extent that the Kony Platform or any Kony Pre-Built App is licensed by the number of Users or Developers, you may not reassign or change the identity of a User or Developer more than once per calendar quarter, unless such individual ceases employment (or its contract) with you.
- 6.9 Your licences to the Kony Platform and Kony Pre-Built Apps do not include (and we are not responsible for) any of the following:
- (a) procuring any computer hardware, peripherals, device drivers, third party operating systems, and other products and services which may be required to use the Kony Platform or Applications;
  - (b) the compatibility of the computer hardware, peripherals, device drivers, third party operating systems, and other third party software with the Kony Platform or Applications except as otherwise agreed in clause 5 (Compatibility);
  - (c) installing, integrating or otherwise deploying the Kony Platform or Applications with your infrastructure or operating environment;
  - (d) the maintenance and support of your hardware, peripherals, third party operating systems, third party software and internet service;
  - (e) the results obtained from use and operation of the Kony Platform or Applications;
  - (f) providing cabling and all cabling services in preparation for your use of the Kony Platform and Applications; and
  - (g) providing and maintaining the appropriate operating environment for your hardware and peripherals.
- 6.10 We make no guarantee or representation that the Kony Platform or Applications, or their use, will satisfy or comply with any industry standard or legal or other regulatory requirement, including without limitation those pertaining to data privacy and security or internal controls.

#### **Acceptable use**

- 6.11 You must comply with our [Acceptable Usage Policy](#) (as we vary it from time to time).

#### **Your additional responsibilities**

- 6.12 You must:
- (a) appoint at least one appropriately skilled and qualified member of your staff to liaise with us on all matters relating to the Kony Platform (including maintenance and support);
  - (b) provide us with all reasonable assistance and access to your sites, information, data, materials, network, systems, software and equipment as required by us to perform maintenance and support services associated with the Kony Platform and Applications;

- (c) ensure that our personnel are provided with a safe and proper working environment when attending your sites, including sufficient working space and facilities to perform the maintenance and support services (to the extent site access is required); and
  - (d) ensure that your third party suppliers co-operate with us and provide us with any information and assistance we reasonably require to perform the maintenance and support services.
- 6.13 You are responsible for ensuring the confidentiality and security of any software licence keys, call in numbers for maintenance support, account numbers, log-in and authentication details and personal identification numbers (PIN) used by you in connection with the Kony Platform and Kony Pre-Built Apps. We will not be liable for any loss or damage that you or any other person may suffer in relation to any unauthorised access to, or use of, Kony Platform or Kony Pre-Built Apps.
- 6.14 Upon written request from us (which must not be more than four times a calendar year), you must provide us with a utilisation report which indicates the extent of your usage of the Kony Platform and Kony Pre-Built Apps in comparison to your licence entitlements.

### **Export Laws**

- 6.15 The Kony Platform and Kony Pre-Built Apps are of United States origin for the purpose of United States export controls. You must comply with all applicable national and international laws that apply to the Kony Platform and Kony Pre-Built Apps, including the United States Export Administration Regulations. You must not directly or indirectly export, import or transmit the Kony Platform or any Kony Pre-Built Apps contrary to any laws or regulations concerning such export, import, transmission or use.

### **Third Party Claims**

- 6.16 You indemnify us against all loss, liability, damage cost or expense (including reasonable legal costs and expenses) arising out of any third party claim, action, demand or proceeding associated with your use of the Kony Platform or Kony Pre-Built Apps (including any breach by you of the software licence or acceptable use terms) or that relates to your data, except to the extent caused or contributed to by us.

### **Disclaimers**

- 6.17 To the extent permitted by law:
- (a) other than our limited warranty in clause 9.1, we provide the Kony Platform and Kony Pre-Built Apps on an “as is” basis, and we do not warrant that the Kony Platform or Kony Pre-Built Apps will meet your requirements or will be suitable for your purposes, or be uninterrupted or error-free; and
  - (b) we make no representations or warranties about merchantability, fitness for purpose, title or ownership of the Kony Platform or Kony Pre-Built Apps, or whether they infringe another person’s rights.
- 6.18 You acknowledge that you are responsible for determining that the Kony Platform and Kony Pre-Built Apps are suitable to meet your requirements, that you have not relied on any representations made by us or our third party suppliers, and have relied on your own skill and judgment or that of your advisers when selecting the Kony Platform and Kony Pre-Built Apps.

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## 7 Fees and charges

### Fees

You must pay the licence fees for the Kony Platform and Kony Pre-Built Apps that you have licensed from us, as set out in your agreement with us.

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## 8 Cancellation and Termination

### Early Termination Charge

- 8.1 If your agreement with us is cancelled or terminated (for any reason other than for our material breach) during its licence term, we may charge you an early termination charge as set out in your agreement with us.

### Suspension and cancellation by us

- 8.2 We can suspend your license to the Kony Platform (or any part of it) or any Kony Pre-Built Apps immediately, if we believe on reasonable grounds that they are being used contrary to our [Acceptable Usage Policy](#), or contrary to any term of this Kony Platform section of Our Customer Terms or your agreement with us.
- 8.3 To the extent that you fail to comply with your obligations under this Kony Platform section of Our Customer Terms or your agreement with us, we may terminate your agreement with us (including your software licences) on 30 days written notice. Where your failure to comply materially affects us or our third party software licensor (eg in respect of a breach of the Licenses & Usage Terms in clause 6), we may terminate your agreement with us (including your software licence) immediately.

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## 9 Software Warranty – On Premise Version

### Warranty

- 9.1 Subject to clause 9.3, we warrant that the Kony Platform and Kony Pre-Built Apps installed On Premise will substantially comply with their Specifications for ninety days after first made available for electronic download by you and that the Kony Platform and Kony Pre-Built Apps are checked using an anti-virus software tool prior to supply to you, to attempt to ensure that the Kony Platform and Kony Pre-Built Apps are virus free. In the event we are in breach of this warranty, we shall either repair or replace the affected component of the Kony Platform or Kony Pre-Built Apps so that it is in compliance with the Specifications or so that it is virus free (as the case may be), or, in the event we are unable to do so after the exercise of commercially reasonable efforts, we shall refund, on a pro-rata basis, the amounts paid for the affected/ non-compliant component of the Kony Platform and/or Kony Pre-Built Apps and the licence for the affected component of the Kony Platform and/or Kony Pre-Built Apps will be terminated.
- 9.2 The above warranty is in addition to our obligation to provide Maintenance & Support for the Kony Platform and Kony Pre-Built Apps, in accordance with clause 10 below.

### Disclaimer

- 9.3 It will not be considered a failure of the Kony Platform or Kony Pre-Built Apps to comply with Specifications to the extent you have not properly installed the Kony Platform (or

any component of it) or Kony Pre-Built Apps on your Systems, or have not provided the necessary Systems infrastructure, Devices, network or Compatible Third Party Products.

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## 10 Service Assurance – On Premise Version

### Maintenance & Support

- 10.1 We will provide you with the maintenance and support services described in this clause (“**Maintenance & Support**”):
- (a) for all On Premise versions of the Kony Platform and Kony Pre-Built Apps that you license from us (except Kony Pre-Built Apps which have been customised by you), provided you are using a Supported Version as described below; and
  - (b) during Business Hours - except where you encounter a Severity 1 Error with the Kony Platform or any Kony Pre-Built App, in which case Maintenance & Support is available 24 hours a day, 7 days a week.

To avoid doubt, Maintenance & Support is not provided for Custom Built Apps (as they are not supplied by us).

- 10.2 We will provide you with First Tier Support. Our software licensor will provide you with Second Tier Support on our behalf. We do not guarantee that operation of the Kony Platform or Kony Pre-Built Apps will be continuous or fault free.
- 10.3 The provision of Maintenance & Support services includes the following:
- (a) standard email and web support;
  - (b) 24/7/365 telephone support for Severity 1 Errors;
  - (c) Error resolution and escalation support as described below;
  - (d) access to technical support bulletins;
  - (e) patches, corrections, and updates to the software as made available to us by our software licensor; and
  - (f) enhancements for new features or functionality (for the N version of the software only, as specified in clause 10.6) as made available to us by our software licensor.

### Contact point

- 10.4 You must appoint a designated officer to be responsible as the central contact point for managing issues related to the software, include managing Maintenance & Support services.
- 10.5 Your designated officer may access the Maintenance & Support services by contacting us on the service number provided, unless we advise you of an alternate process.

### Supported Versions

- 10.6 Maintenance & Support services will be provided for the following versions of the components of the Kony Platform and Kony Pre-Built Apps (“**Supported Versions**”):

Version Description	Version Name	Support Details
Latest / most current version (including updates)	N	Maintenance & Support as per clause 10.3.
The version immediately preceding the latest / most current version.	N-1	<p>Partial Maintenance &amp; Support (see below) for 18 months from the date the latest version (ie N version) of the software is released.</p> <p>Maintenance &amp; Support for the N-1 version does not include:</p> <ul style="list-style-type: none"> <li>(a) enhancements under clause 10.3(f); or</li> <li>(b) future compatibility assurances under clause 10.19 in respect of Compatible Third Party Products.</li> </ul>

10.7 We will not provide Maintenance & Support for versions of the Kony Platform and Kony Pre-Built Apps that are older than the N or N-1 version (ie N-2, N-3 and older are not supported).

**Exclusions**

- 10.8 We have no obligation to provide Maintenance & Support services in relation to Errors caused by:
- (a) third party software or hardware products, or use of the Kony Platform or Kony Pre-Built Apps in conjunction with either of those;
  - (b) modifications to the Kony Platform or Kony Pre-Built Apps made by any party other than us or our licensors;
  - (c) your use of the Kony Platform or Kony Pre-Built Apps other than as authorised in this Kony Platform section of Our Customer Terms or as provided for in the Documentation; or
  - (d) your use of any Kony Platform or Kony Pre-Built Apps software that is older other than the N or N-1 version, or your failure to utilise any Error corrections or updates provided by us.
- 10.9 We will notify you if we determine that an Error has been caused by one of the exclusions in clause 10.8 (**Excluded Error**). You may ask us or our software licensor to attempt to rectify an Excluded Error by engaging us or our software licensor to provide professional services at our then published time and materials rates. Such professional services will be provided under a separately agreed statement of work.

- 10.10 You acknowledge that Maintenance & Support may be provided by us or our software licensor from outside of Australia. Where you provide any information to us or our software licensor for the purposes of such Maintenance & Support, you consent to that information being stored and utilised outside of Australia (provided solely for the purpose of Maintenance & Support).

### **Software Errors**

- 10.11 If an Error occurs, your designated officer must conduct reasonable investigations to ensure that the Error is related to the Kony Platform or Kony Pre-Built Apps, and not other issues such as improper usage, your back-end systems, or third party applications.
- 10.12 An Error reported by a designated officer must include information that is necessary for us to identify and reproduce the Error. An initial Error report should include (but not limited to) the following depending on the nature of the Error:
- (a) a general description of the Error and its characteristics;
  - (b) the number of occurrences or frequency of the Error;
  - (c) steps to reproduce the Error;
  - (d) the exact text of any error messages reported by the software;
  - (e) screenshots if applicable;
  - (f) the mobile device type;
  - (g) appropriate server side log files;
  - (h) time of occurrence of the issue(s) (with time zone);
  - (i) application code causing the error; and
  - (j) anything else reasonable requested by us.
- 10.13 On receipt of the Error and initial investigation details from you, we will begin diagnosing the Error and will use reasonable endeavours to assist you until the Error:
- (a) is resolved or a workaround is provided;
  - (b) is assigned back to you as a “customer issue” if the Error is deemed to be related to your Systems or use; or
  - (c) assigned to a third party (e.g. ORACLE /Web Logic) if the Error is deemed to be a third party’s responsibility; or
  - (d) converted to bug or enhancement request for our software licensor to manage.

### **Response & Resolution Times – Service Levels**

- 10.14 Subject to the other terms of this clause 10, we will use reasonable endeavours to comply with the timeframes below for responding to and resolving Errors notified to us. You acknowledge that these service levels are targets only, and we will not be responsible for failing to meet them:

<b>Severity of Error</b>	<b>Response</b>	<b>Resource Assigned Within</b>	<b>Update</b>	<b>Target Resolution</b>
<b>Critical (Sev 1)</b>	1 hour	4 hours	Every 4 hours	24 hours
<b>High (Sev 2)</b>	4 Business hours	1 Business Day	Every Business Day	7 Business Days
<b>Medium (Sev 3)</b>	24 hours	5 Business Days	Every week	21 Business Days or Next Software Update
<b>Low (Sev 4)</b>	48 hours	Based on Resource Availability	N/A	Next Software Update

\*Response times are measured from the time Error tickets/logs are placed in the software licensor's support portal.

- 10.15 We will notify you of the classification of the Error (ie Sev 1 to Sev 4) and we will use reasonable endeavours to achieve the target resolution time, however, the time needed to provide a correction may vary depending on the amount of coding and testing needed for the correction, as well as other factors.
- 10.16 You must ensure that a resource is assigned to work with our support team to provide information or verification on an ongoing basis, until the Error is resolved.
- 10.17 In the event our response time to an Error is negatively impacted due to your or a third party's delayed response to our request for additional information to correct an Error, the response and resolution times provided above will be extended by an amount of time proportionate to such delay.
- 10.18 In the event an Error is related to software in the underlying device manufacturer's Software Development Kit (SDK) and we need support from that third party, then this will also impact the timeframes in the table in clause 10.14 above.

### **Compatibility with Third Party Products**

- 10.19 When a new version of any Kony Platform or Kony Pre-Built Apps software is released, we will ensure it continues to operate with the Compatible Third Party Products, but only for:
- (a) the most recent/current publicly supported version of that Compatible Third Party Product (ie the N version of the Compatible Third Party Product); and
  - (b) the version immediately preceding the most current version (ie the N-1 version) of the Compatible Third Party Product.
- 10.20 Provided you are on a Supported Version of the Kony Platform or Kony Pre-Built Apps software (as applicable), where you are using a version of a Compatible Third Party Product that is older than the N or N-1 version, our software licensor may provide you with professional services (on a time and materials basis) to allow the Kony Platform or Kony Pre-Built Apps to remain compatible with that older version. Such professional services will be provided under a separately agreed statement of work.

- 10.21 Where a new version of a compatible third party operating system, SDK or mobile browser is published by its third party manufacturer, we will use our commercially reasonable endeavours to provide an update of the Kony Platform and Kony Pre-Built Apps (as applicable) to function with that new third party version in accordance with the following timelines:

Third party product	Time to provide Kony Platform and Kony Pre-Built Apps update*
New releases of operating systems, software development kits (SDKs) or mobile browsers	30 Business Days
Net new operating systems (ie a new operating system that was not previously available in the market)	90 Business Days

\*measured from the official date of general availability (GA) release by third party manufacturer to the developer community.

- 10.22 We will revise the Documentation to reflect any corrections, enhancements or updates no later than the time of official releases of the Kony Platform and Kony Pre-Built Apps to customers.
- 10.23 General releases for the Kony Platform and are planned once every quarter. The schedule will be published on our software licensor’s support portal (<http://support.kony.com>, as updated from time to time). Hot fix / defect fix releases, if any, are also published on this portal. Patches or fixes will be provided based on priority, either as a Kony Platform update or as part of the next scheduled release.
- 10.24 Our software licensor’s support portal will also include notices about new release dates for platforms, new supported devices & operating systems, exclusion of support for obsolete or older device operating systems, and other announcements/ newsletters.

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## 11 Service Assurance – Kony Cloud

### Maintenance & Support

- 11.1 The Maintenance & Support terms in clause 10 above apply to any Kony Cloud versions of the Kony Platform and/or Kony Pre-Built Apps that you license from us, except that:
- (a) the Supported Version requirements in clause 10.6 will not apply (as these will be controlled by our software licensor within the Kony Cloud);
  - (b) patches, corrections, updates and enhancements to the Kony Platform and Kony Pre-Built Apps will not be separately supplied to you, but will be applied directly by our software licensor within the Kony Cloud. Our software licensor will decide at its sole discretion as to how and when it applies the patches, corrections, updates and enhancements within the Kony Cloud, and will do so without further notice to you (or the need for your consent); and



- (c) the response and resolution timeframes in the table in clause 10.14 do not apply, but are replaced with the following Tables A and B, which we will use reasonable endeavours to meet:

**Table A - Production Infrastructure Errors**

Severity	Response	Resource Assigned Within	Updates	Target Resolution*
Critical (S1)	1 hour	1 hour	Every 1 hour	4 hours
High (S2)	2 Business Hours	2 Business Hours	2 Business Hours	8 Business Hours
Medium (S3)	1 Business Day	1 Business Day	2 Business Days	5 Business Days
Low (S4)	2 Business Days	Based on Resource Availability	Every Week	Next major software update (quarterly)

\*Response times are measured from the time Error tickets/logs are placed in the software licensor's support portal.

**Table B - Non-Production Infrastructure or Software related Errors**

Severity	Response	Resource Assigned Within	Updates	Target Resolution*
Critical (S1)	1 hour	2 hours	Every 2 hours	1 Business Day
High (S2)	2 Business Hours	4 Business Hours	Every 24 hours	7 Business Days
Medium (S3)	1 Business Day	2 Business Days	Every 48 hours	21 Business Days
Low (S4)	2 Business Days	Based on Resource Availability	Every Week	Next major software update (quarterly)

\*Response times are measured from the time Error tickets/logs are placed in the software licensor's support portal.

### Other Service Levels

- 11.2 We will use reasonable endeavours to meet the following service levels in respect of the Kony Cloud:

Service Level	Target
Cloud Availability	99.95% Monthly
App Services Response Time	1.0 seconds
Messaging Services Response Time	2.0 seconds
Management Services Response Time	2.0 seconds

Where:

- (a) “**Cloud Availability**” is calculated as follows:  
  
(Total minutes in a calendar month – Downtime)/ Total minutes in a calendar month
- (b) “**App Services Response Time**” is the time taken to process and respond to a request sent from a Device to the application services component of the Kony Platform (excluding custom application code execution time). App Services Response Time also excludes any delays due to the mobile wireless network and the time required to retrieve and process data from your own or other external back end systems. This time can be measured through the reporting capabilities of the Kony Cloud using the internal service duration metric available in the service detail report. The Response Time SLA shall not apply to the additional processing time required as a result of custom logic within a Custom Built Application including, but not limited to pre-processors, java connectors, response parsing, and post processors.
- (c) “**Messaging Services Response Time**” is the time taken to process and respond to a request to subscribe or unsubscribe for push notifications, sent from a Device to the messaging services component of the Kony Platform (excluding the time taken to transmit data over the mobile wireless network). This time cannot currently be measured through the reporting capabilities of the Kony Cloud, but customers can open a support ticket to have the Kony Cloud hosting support team verify the response time if they suspect it is not performing within the defined service level. The Kony Cloud messaging services administration console will provide a performance report in a future release to display the average service response time.

11.3 Where requested by you, we will provide you with a report in relation to our adherence to the Cloud Availability service level for the most recently completed month.

11.4 You acknowledge that all service levels in this clause 11 are targets only, and we will not be responsible for failing to meet them.

#### **Scheduled Maintenance**

11.5 We will endeavour to carry out scheduled maintenance:

- (a) within the Scheduled Maintenance Windows;
- (b) at other times with prior notice from us; or
- (c) where we need to implement an emergency outage to perform urgent work,

without affecting your products, services or features. However, your products, services or features may not be available during these periods.

11.6 If we are required to perform emergency maintenance on our service platform, then we will endeavour to inform you as soon as possible. Your service will not be available during an emergency outage. We aim to provide you with as much notice as possible before an emergency outage.

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## 12 Third Party Suppliers

- 12.1 You acknowledge that we may license the Kony Platform and/or the Kony Pre-Built Apps from third party suppliers. If one of our third party suppliers suspends, cancels or terminates a service or licence that we rely on to provide you with the Kony Platform and/or Kony Pre-Built Apps, we may:
- (a) replace or modify the Kony Platform or Kony Pre-Built Apps (as applicable); or
  - (b) suspend, cancel or terminate your licence or the affected part of the Kony Platform or Kony Pre-Built Apps.
- 12.2 We will give you as much notice as is reasonably possible in the circumstances.
- 12.3 You acknowledge that where we have made a disclaimer or otherwise limited our liability in respect of the Kony Platform and Kony Pre-Built Apps (under this or another section of Our Customer Terms or the terms of your agreement with us), that such disclaimer or limitation of liability may also be relied upon by our third party software licensor.

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## 13 Audit of Software Usage

- 13.1 At our written request, you must furnish us with a signed statement by an officer of your organisation verifying that the Kony Platform and Kony Pre-Built Apps (where applicable) are being used pursuant to the terms of this Kony Platform section of Our Customer Terms and your agreement with us.
- 13.2 Upon at least thirty (30) days prior written notice, we, or our authorised representative, may audit your use of the Kony Platform and Kony Pre-Built Apps to ensure that you are complying with this Kony Platform section of Our Customer Terms and the applicable agreement with us. Any such audit will be conducted during regular business hours at your facilities and will not unreasonably interfere with your business activities.
- 13.3 You agree to provide us, or our authorised representative, with access to the relevant records and facilities for the purposes of conducting an audit.
- 13.4 If an audit reveals that you have underpaid license fees during the period audited, then we may invoice you, and you will promptly pay us, for such underpaid fees. If the underpaid fees exceed five percent (5%) of the license fees paid by you for the Kony Platform and Kony Pre-Built Apps, then you will also pay our reasonable costs of conducting the audit.

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## 14 Definitions

- 14.1 The following defined terms have the meanings set out below:

**Applications** means all Custom Built Apps and Kony Pre-Built Apps (whether B2E, B2B or B2C).

**B2C** means business to consumer.

**B2B** means business to business.

**B2E** means business to employee (being all of your internal employees, agents and administrators).

**Business Day** means a day other than a Saturday, Sunday, or recognised public holiday in the State or Territory of the site to which the relevant Kony Platform and Kony Pre-Built Apps are provided.

**Business Hours** mean 8.00 am to 8.00 pm (AEST) on Business Days, unless otherwise agreed in writing.

**Compatible Third Party Products** has the meaning in clause 5.

**Custom Built Apps** has the meaning in clause 2.3(a). It does not include Kony Pre-Built Apps.

**Customers** means all of your customers to whom you make the B2C Applications and B2B Applications available for download and use, including other businesses who may be your customers.

**Developer** means those individuals nominated by you (each who has a unique log-in or other identifier) who are permitted to access the Kony Platform and Kony Pre-Built Apps for development purposes only.

**Devices** means all mobile devices and computers used by your Users and Customers to access Applications, provided they are Compatible Third Party Products as set out in the link in clause 5.

**Documentation** means all operating, procedure or user manuals, and training materials, supplied or made available by us or the software owner in relation to the Kony Platform and Kony Pre-Built Apps.

**Downtime** is defined as a period of time when the Kony Cloud is unavailable or not accessible to you and your Users (including where any key function or feature fails to operate). Downtime does not include:

- (a) performance impacts during an Application deployment initiated by you at which time the associated servers may recycle to update their runtime code;
- (b) Scheduled Maintenance Windows where our software licensor performs upgrades or maintenance to the Kony Cloud (during which time the system may not be available, or may not perform at the committed service levels);
- (c) any performance impacts due to failures in any of your websites, software or back-end data sources which cause the Kony Cloud version of any component of the Kony Platform to be rendered unavailable or operating with degraded performance; or
- (d) any performance impacts due to any of the exclusions identified in clause 10.8.

**Error** means a function of the Kony Platform or Kony Pre-Built Apps (either On Premise or in the Kony Cloud) which does not operate in substantial conformance to its Specifications (and does not include any feature request initiated by you which is not documented in the Specifications).

**First Tier Support** means the provision of first instance troubleshooting and advice on the use and setup of the third party Devices, the Kony Platform, and any Kony Pre-Built Apps, and billing or accounting issues.

**Infrastructure Errors** are errors related to the runtime infrastructure of the Kony Cloud where the root cause of the error resides outside of the Kony Cloud (ie the error resides within infrastructure of Kony's hosting provider, rather than with any software components of the Kony Cloud).

**Kony Cloud** has the meaning in clause 2.1(b).

**Kony Fabric** has the meaning in clause 2.7.

**Kony Platform** has the meaning in clause 2.1.

**Kony Pre-Built Apps** has the meaning in clause 2.3(b). It does not include Custom Built Apps.

**Kony Sync Server** has the meaning in clause 2.8.

**Kony Visualizer** has the meaning in clause 2.6.

**Maintenance & Support** has the meaning in clause 10.1.

**Modification** means modification, enhancement or improvement to any component of the Kony Platform or any Kony Pre-Built Apps by us or our software licensor.

**N version** has the meaning in the table in clause 10.6.

**N-1 version** has the meaning in the table in clause 10.6.

**Non-Production Infrastructure Errors** are Infrastructure Errors that occur within the part of the Kony Cloud designated for non-production use such as development or testing cloud environment.

**On Premise** has the meaning in clause 2.1(a).

**Production Infrastructure Errors** are Infrastructure Errors that occur within the part of the Kony Cloud designated for production use.

**Scheduled Maintenance Windows** means periods during which the Kony Cloud version of any component of the Kony Platform may be unavailable due to the scheduled maintenance windows which are notified by us or otherwise agreed in advance with you. We will use reasonable endeavours to avoid impacting the Kony Cloud availability service level or average response time of the system and any other adverse impact on use of the Kony Platform and Kony Pre-Built Apps during Scheduled Maintenance Windows. We will use our reasonable endeavours to ensure that the total Scheduled Maintenance Window time will not exceed 6 hours per calendar month for each Kony Cloud service.

**Second Tier Support** means all Maintenance & Support services other than First Tier Support.

**Severity 1 or Critical** means an Error that renders the Kony Platform and/or the Kony Pre-Built Apps (as applicable) completely unusable or nearly unusable or introduces a high degree of operational risk. No workaround is available. Until this Error is resolved, the software's use is essentially halted. A large number of Users or Customers, and/or core software functionality, are severely impacted.

**Severity 2 or High** means an Error that renders essential functionality of the Kony Platform and/or Kony Pre-Built Apps (as applicable) to be consistently unavailable or obstructed, and causes a moderate level of hindrance or risk. Workarounds may be available, but use of the Kony Platform is acutely degraded and causes continuing operational risk. A moderate number of Users or Customers are significantly impacted, but overall the software continues to function.

**Severity 3 or Medium** means an Error that is an inconvenience or causes inconsistent behaviour, which does not impede the normal functioning of the Kony Platform and/or Kony Pre-Built Apps (as applicable). It could be an Error that occurs inconsistently and affects non-essential functions or is an inconvenience which impacts a small number of Users or Customers. It may also contain visual errors where the graphical display of the software is not ideal, but still functioning correctly.

**Severity 4 or Low** means an Error that has a small degree of significance, or is a minor cosmetic issue, or is a “one off” case. A “one off” case occurs when the Error occurs infrequently and cannot be reproduced easily. These are Errors that do not impact the daily use of the Kony Platform and/or Kony Pre-Built Apps (as applicable). A Low Error is something that does not affect normal use, and can be accepted for a period of time, but a user would eventually want it changed.

**Specifications** means the Documentation for the Kony Platform and Kony Pre-Built Apps which we provide to you with, or refer to in, your agreement with us.

**Supported Version** has the meaning in clause 10.6.

**Systems** means all of your infrastructure (including equipment, software and network connectivity) used to host and operate the On Premise version of the Kony Platform and Kony Pre-Built Apps.

**User** means a single named individual nominated by you, who has a unique log-in or other identifier for that individual’s use of the Kony Platform and Kony Pre-Built Apps across his or her Devices. A User must be an employee, agent, independent contractor or consultant of your company.

**Year** means each 12 month period of your licence term for the relevant component of the Kony Platform.

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## 15 CheckaLoad

### What is CheckaLoad?

- 15.1 CheckaLoad is a mobile application (App) offered as a SaaS (Software as a Service) model. This application is intended to assess the level of compliance of your chosen load restraint method for various load and vehicle types.
- 15.2 The App is externally hosted in the Kony Cloud which in turn is hosted in Amazon Web Services (AWS), and is subject to the Kony Cloud terms which are set out in clause 4 of this Kony MEAP section of Our Customer Terms. Your Kony Cloud licence (and hosting charges) are included in your CheckaLoad subscription fees.

### Availability

- 15.3 To access and use the App, you must:

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- (a) pay an annual subscription fee for the intended number of users;
- (b) ensure that your users have a compatible smartphone or tablet; and
- (c) have each of your users download the App from either Google Play or App Store or push the app to your users via an appropriate MDM solution (data charges may apply to download and use the App).

## **Limitations**

- 15.4 The App is designed to assist, with assessing the compliance loads of your chosen load restraint method, but is a guide only and cannot prevent accidents from occurring.
- 15.5 While we will use reasonable care in providing the App to you, to the extent permitted by law we are unable to guarantee that the App:
- (a) will always be fault free or free from viruses, errors or other faults;
  - (b) is fit for any particular purpose; or
  - (c) will provide any particular outcome.
- 15.6 We also reserve the right to withdraw the App. Subject at all times to the relevant General Terms section of Our Customer Terms, we will try and let give you reasonable notice if this occurs but we may not always be able to do this.
- 15.7 You acknowledge that:
- (a) the content included in the App is supplied by a third party provider;
  - (b) if our third party provider suspends, cancels or terminates the App, we may:
    - (i) replace or modify the App; or
    - (ii) suspend, terminate or cancel your licence for the App.
  - (c) We will give you as much notice as is reasonably possible in the circumstances.
- 15.8 If we cancel your Service at any time other than for your breach, we will provide a pro-rata refund of prepaid fees.

## **Your Users and Your Data**

- 15.9 You must ensure that your users accept, and comply with, the end user licence terms we provide in connection with the App (including if relevant as presented through the installation process on their devices). You are responsible for the acts and omissions of your end users as if they were your acts or omissions.
- 15.10 You are solely responsible for the data and content you and your users store, send and receive using the App.
- 15.11 You acknowledge and agree that (and will ensure your end users acknowledge and agree that):
- (a) any information that you and your users create, store, send and receive may be stored by us or our third party content provider;

- (b) we will take all reasonable steps to keep your information confidential and act in accordance with our Privacy Policy, but will disclose your information, including personal information about you or your users if we need to in order to deliver the App to you or if we are required to by law;
- (c) data transmission over the internet is not totally secure, and while we aim to protect such information, we do not warrant and cannot ensure the security of any information that you transmit using the App and you do so at your own risk; and
- (d) as the system administrator, we may have access to the data you and your end users provide us as part of your subscription which may include (but are not limited to) visibility of passwords, company details and contractor names.

## **Audit**

15.12 We may periodically audit your use of the App on reasonable notice.

## **Intellectual Property Rights**

15.13 All intellectual property rights in the App belong to us or our licensors (for which we grant you a licence to use) and nothing in this section of Our Customer Terms transfers any rights to you. You mustn't do anything with the App which is not expressly authorised under these terms of use, and in particular, you must not copy, reverse-engineer, decompile, distribute, onsell or share the App.

## **Liability and Indemnity**

15.14 To the extent permitted by law, we will not be liable to you or your users for any loss or damage, however caused (including through negligence) which you or your users may suffer arising from or in connection with the App, its content or your use of the App nor do we accept any responsibility for any such loss arising out of your use or your user's use or your reliance or your user's reliance on information contained in the App.

15.15 You indemnify us from any and all liabilities, costs, damages, expenses and losses (including reasonable legal costs and expenses) arising from any claim, demand, suit, action or proceedings by any third party or you, which is related to, or arises out of, or is in any way associated with your use of the App, or which arises through your breach of Our Customer Terms.

## **User Numbers**

15.16 Your subscription fee entitles you to a prescribed number of individual licences which can be managed online via your Content Management System (CMS) as individual employees (permanent or contractors) join and leave your organisation during the term.

## **Charges**

15.17 Your subscription fees are based on a minimum 24 month subscription unless otherwise agreed in your application form or other agreement with us and will be charged to your Telstra bill annually in advance. The fees will depend on the number of users which will fall into one of five 5 tiers or as specified in your SOW, application form or other agreement with us. Your Kony Cloud licence and hosting charges are included in your Checkaload subscription fees.

## **Term and Early Termination Charge**

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- 15.18 You must take up the App for an initial term of twenty-four (24) or thirty-six (36) months (“**Initial Term**”) unless otherwise agreed in your application form or other agreement with us.
- 15.19 In addition to the cancellation and suspension provisions set out in Part A of the Cloud Services Section, an Early Termination Charge (ETC) will apply if you cancel your subscription before the end of the Term (or any Renewal Term).
- 15.20 The ETC for your subscription is calculated as 60% of the fee for the number of remaining full months in your subscription term.