

OUR CUSTOMER TERMS – CLOUD SERVICES – CHECKALOAD

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

1 About this section

- 1.1 This is the CheckaLoad section of Our Customer Terms.
- 1.2 **This section applies only to CheckaLoad purchased through the Telstra Apps Marketplace.**
- 1.3 Provisions in other parts of the Cloud Services section also apply. See section one of the General Terms of the Cloud Services section at <https://www.telstra.com.au/customer-terms/business-government/cloud-services> for more detail on how the various parts of the Cloud Services section are to be read together.
- 1.4 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.
- 1.5 Kony MEAP section of Our Customer Terms also applies to the extent set out in clause 2.2 below. The Kony MEAP section is available at <https://www.telstra.com.au/customer-terms/business-government#telstra-mobile>

2 CheckaLoad

CheckaLoad is not available for purchase by new customers from 21 September 2018. Existing customers can continue on their applicable terms until further notice.

What is CheckaLoad?

- 2.1 CheckaLoad is an application that is intended to assess the level of compliance of your chosen load restraint method for various load and vehicle types (**App**). Further description of the App is available on the Telstra Apps Marketplace.
- 2.2 The App is externally hosted in the Kony Cloud which in turn is hosted in Amazon Web Services, and is subject to the Kony Cloud terms which are set out in clause 4 of the Kony MEAP section of Our Customer Terms. Your Kony Cloud licence (and hosting charges) are included in your CheckaLoad subscription fees.

Eligibility

- 2.3 To purchase the App your principal place of business must be within Australia. You warrant to us that your principal place of business is within Australia.
- 2.4 To access and use the App, you must:
 - (a) ensure that your users have a compatible smartphone or tablet;

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- (b) have you or your users download the app from either Google Play or App Store; and
- (c) meet the eligibility criteria for the Telstra Apps Marketplace, to use which you need an internet connection and need to create an account in the Telstra Apps Marketplace. You also need to meet any minimum system requirements required to use the Telstra Apps Marketplace. The Telstra Apps Marketplace part of the Cloud Services section of Our Customer Terms, which is available at <https://www.telstra.com.au/customer-terms/business-government/cloud-services>, governs your use of the Telstra Apps Marketplace.

Limitations

- 2.5 The App is designed to assist, with assessing the compliance of your load restraint with your chosen load restraint method, but is a guide only and cannot prevent accidents from occurring.
- 2.6 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.
- 2.7 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.
- 2.8 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

- 2.9 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.
- 2.10 You are solely responsible for the data and content you and your users store, send and receive using the App.

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- 2.11 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

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

Intellectual Property Rights

- 2.13 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

- 2.14 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.
- 2.15 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

- 2.16 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.

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Charges

- 2.17 Your subscription fees are set out in the Telstra Apps Marketplace and Kony Cloud licence and hosting charges are included in your Checkaload subscription fees.

Term and Early Termination Charge

- 2.18 You must take up the App for an initial term of twelve (12) months ("**Initial Term**") unless otherwise agreed by us in writing or extended.
- 2.19 At the end of the Initial Term (or any Renewal Term) your subscription to the App will automatically renew for the same term as the Initial Term ("**Renewal Term**") (on the same terms) unless you notify us at least 30 day's prior to the expiry of the Term (or Renewal Term) informing us that you wish to terminate your subscription.
- 2.20 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).
- 2.21 The ETC for your subscription is calculated as 60% of the fee for the number of remaining full months in your subscription term.