

# OUR CUSTOMER TERMS CLOUD SERVICES – APPLICATIONS – DURESS ALARM

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# OUR CUSTOMER TERMS

## CLOUD SERVICES – APPLICATIONS – DURESS ALARM

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

### 1 ABOUT THE DURESS ALARM SECTION

- 1.1 This is the Duress Alarm section of Our Customer Terms.
- 1.2 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.
- 1.3 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.

### 2 DURESS ALARM SERVICE

**The Duress Alarm service is not available to new customers from 3 August 2018. Existing customers can continue to receive the Duress Alarm service on their current terms until further notice.**

#### **What is the Duress Alarm service?**

- 2.1 The Duress Alarm service uses the Duress Alarm app (“App”) to enable lone workers, when confronted with a non-life threatening situation, to send a SMS distress message (with a GPS location) to up to 10 pre-determined recipients.

### 3 ELIGIBILITY

- 3.1 You can subscribe to the App through the Telstra Apps Marketplace. To use the Telstra Apps Marketplace, you need an internet connection, and you need to have an existing (or create a new account) in the Telstra Apps Marketplace (located at [marketplace.telstra.com](http://marketplace.telstra.com)). You also need to meet any minimum system requirements to use the Telstra Apps Marketplace.
- 3.2 The Telstra Apps Marketplace part of the Cloud Services section of Our Customer Terms (available at <https://www.telstra.com.au/customer-terms/business-government/cloud-services>) governs your use of the Telstra Apps Marketplace. You also need to meet any minimum system requirements required to use the Telstra Apps Marketplace.
- 3.3 Even if you subscribe to the App through the Telstra Apps Marketplace, you will need to download the App from either Google Play or the App Store.
- 3.4 To access and use the Duress Alarm service, you must:
  - (a) have an ABN, ACN or ARBN;

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- (b) pay a monthly plan fee for the intended number of employees who will be using the App ("**End Users**"), in accordance with this Duress Alarm service section of Our Customer Terms;
- (c) ensure that each End User wanting to use the App has a compatible smartphone with a mobile service plan. We can provide you with details of compatible smartphones on request; and
- (d) have each End User download the App from either Google Play or the App Store (data charges will apply to the downloading and use of the App).

3.5 The App is not available to Telstra Wholesale or Telstra Consumer customers or for resale.

### 4 APPLICATION FEATURES

4.1 The full description of the App and its features can be found at <https://telstra.com/duress/terms/> and in the App Terms of Service.

### 5 YOUR RESPONSIBILITIES

5.1 You must and must ensure that each End User accepts, and comply with, the end user licence terms we provide in connection with the App (including clause 13 of this Duress Alarm section of Our Customer Terms and, if relevant, any end user licence terms presented through the installation or activation process of the App on their devices) ("**EULA**").

5.2 You are responsible for the acts and omissions of your End Users as if they were your acts or omissions.

### 6 LIMITATIONS AND RESTRICTIONS

6.1 While we will use reasonable care in providing the Duress Alarm service to you, to the extent permitted by law (and subject to the provisions of the Australian Consumer Law) we are unable to guarantee that the Duress Alarm service:

- (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.

6.2 Telstra makes no representation or warranty that the App:

- (a) will send a distress message or alert and that the distress message or alert will be received and have any particular effect or result;
- (b) is a substitute for any other means of ensuring safety or obtaining emergency assistance.

6.3 You acknowledge and agree that:

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- (a) the App will only work when your End Users' devices are connected to the Telstra Mobile Network and in mobile network coverage. The App is not suitable for workers in remote or regional areas where mobile coverage may be inconsistent; and
- (b) you and your End Users must not rely on or use, permit or facilitate the use of the App:
  - (i) for any critical, dangerous or hazardous operations or activities, without appropriate back-up processes in place;
  - (ii) during any life-threatening situation or medical emergency where you or any of your End Users are at risk;
  - (iii) in any way that would overload of the Duress Alarm service, and you must put in place reasonable measures to prevent this from happening; and
  - (iv) outside of Australia.

### 7 CHARGES AND PLANS

- 7.1 The Duress Alarm service is available on a casual month-to-month plan only, and is charged to you each month in advance.
- 7.2 The pricing for the Duress Alarm service is set out in your Application Form or the Telstra Apps Marketplace (as relevant), and is based on your number of End Users. You will be charged for Duress Alarm service on the first of each month in advance unless you subscribe during the month in which case you will receive a pro-rated charge for the first month.

### 8 END USER NUMBERS

- 8.1 You may only change between plans by increasing or decreasing the number of End User licences once per month.
- 8.2 If your number of End User licences:
  - (a) decreases during any month, there will be no change to your fees during that month but you will be charged on the first day of the next month for the decreased number of End User licences; or
  - (b) increases during any month, you will be charged on the first day of the next month for:
    - (i) the increased number of End User licences for that month; and
    - (ii) in relation to the preceding month, the number of added End User licences, on a pro-rata basis.

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## 9 SUSPENSION AND CANCELLATION

### We may suspend or cancel your Duress Alarm service

- 9.1 Any rights for us to suspend your subscription or service are in addition to our rights to suspend your subscription or service under the Cloud Services – General Terms and General Terms sections of Our Customer Terms.
- 9.2 You acknowledge that:
- (a) we use a third party service provider to provide the App to you and your End Users;
  - (b) if our third party provider suspends, cancels or terminates the App, we may at any time:
    - (i) replace or modify the App; or
    - (ii) suspend, terminate or cancel your Duress Alarm service,
 and we will give you as much notice as is reasonably possible in the circumstances.
- 9.3 If we cancel your Duress Alarm service at any time other than for your or your End Users' breach of this Duress Alarm section of Our Customer Terms or of the EULA, your plan will expire at the end of the month in which it was cancelled.

### You may cancel your Duress Alarm service

- 9.4 Your Duress Alarm service is a month-to-month service. You may cancel your Duress Alarm service at any time and your plan will expire at the end of the month in which you have cancelled your Duress Alarm service.

## 10 INTELLECTUAL PROPERTY

- 10.1 All intellectual property rights in the Duress Alarm service and the App belong to us or our licensors (for which we grant you a licence to use) and nothing in this Duress Alarm App section of Our Customer Terms transfers any rights to you. You mustn't do anything with the Duress Alarm service or 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.

## 11 LIABILITY AND INDEMNITY

- 11.1 To the extent permitted by law and subject to clause 13.21, we will not be liable to you or your End Users for any loss or damage, however caused (including through negligence) which you or your End Users may suffer arising from or in connection with the Duress Alarm service or the App, its content or your use of the Duress Alarm service or the App, nor do we accept any responsibility for any such loss arising out of your use or your End User's use or your reliance or your End User's reliance on information contained in the App.

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- 11.2 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 or your End Users' breach of the EULA or Our Customer Terms (including any misuse of the Duress Alarm service or the App by you or your End Users).

### 12 AUDIT

- 12.1 We may periodically audit your and your End Users' use of the Duress Alarm service and the App on reasonable notice.

### 13 ADDITIONAL TERMS

- 13.1 You acknowledge that we rely on a third party service provider to supply the Duress Alarm service to you. You must comply with the following terms, which we are required to impose on you by our third party service provider.

#### Use of Duress Alarm App

- 13.2 You must:
- (a) use the App only for its intended purpose;
  - (b) not use the App in a manner that does or may endanger the health or safety of any person;
  - (c) not use the App in a manner that does or may cause damage to or affect the security of property;
  - (d) not breach an individual's privacy by using the App;
  - (e) not use the App for an illegal purpose;
  - (f) not post, upload, distribute, reproduce or edit any copyrighted material, trademarks or other information of a proprietary nature on the App without express permission from the owner of that material, trademarks or proprietary information.
- 13.3 Any and all interactions between you, other users, Emergency Contacts and the Service Producer of the App is done so on your own volition and remains your responsibility before, during and after use of the App. The Service Producer reserves the right to, or not to, conduct any criminal, investigative or other screening of its users or service providers when adding them to their database or permitting their access to the App.
- 13.4 You agree that you will undertake your own independent investigations into other users of the App and the Service Producer prior to using any content on the App.
- 13.5 The Service Producer is not responsible for your or other users' current or future conduct in respect of the App and makes no representations or warranties as to the conduct of any current or future users.

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### CLOUD SERVICES – APPLICATIONS – DURESS ALARM

- 13.6 Any content provided by you to the App is, and remains your sole responsibility. You are expressly prohibited from providing content on behalf of another person unless you have first obtained that person's express permission. You are expressly forbidden from using the App to post any inaccurate, incomplete, misleading, deceptive or illegal material, or any material that infringes another person's individual or collective rights, including intellectual property rights and privacy rights. You acknowledge and agree that your Emergency Contacts may view your location (or approximate location) if you Ratify the alarm.
- 13.7 The Service Producer reserves the right to remove any content on the App deemed by the Service Producer to be in breach of the Terms and Conditions without notice. Any content on the App that promotes, advocates or envisions bigotry, hatred or physical harm of any kind against any group or individual person is directly prohibited.
- 13.8 You agree to not access the App in a jurisdiction where the App may be deemed illegal, unauthorised or improper or infringe on local laws or customs, nor use the service to collect unauthorised information, data-mine or otherwise extract data from the App nor interfere or disrupt the App in any capacity. By using the App you authorise the Service Producer to investigate, suspend the account of, and take any applicable legal action against anyone deemed to have engaged in prohibited behaviour, including but not limited to the behaviours or actions mentioned above.

#### **Intellectual property**

- 13.9 You acknowledge and agree that:
- (a) the Service Producer owns all Intellectual Property Rights relating to the App (save for any Telstra logo displayed on the App); and
  - (b) your use of the App does not confer any Intellectual Property Rights relating to the App on you.

#### **Disclaimer and warranties**

- 13.10 Your use of the App and services relating to the App is at your own risk. To the extent permitted by applicable law, the services and content are provided under the App "as is" without warranty of any kind. Without limiting the foregoing, the Service Producer expressly disclaims any warranties of merchantability, fitness for a particular purpose, quiet enjoyment, non-infringement and any warranties arising out of the course of dealing with or using the App.
- 13.11 You acknowledge and accept that the Service Producer makes no guarantee or warranty, either express or implied as to the legitimacy, legality or quality of any user or service provider on the App and that the Service Producer is not responsible or liable for any conduct, or service provided outside the App.
- 13.12 To the extent permitted by law, the Service Producer makes no warranty that:
- (a) the App and the services relating to the App and its contents will:

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- (i) meet your requirements;
- (ii) be available on an uninterrupted, secure or error-free basis;
- (b) once you have Triggered the alarm, you will receive a Duress Call within a particular time or at all;
- (c) once you have Ratified the alarm, a text message will be sent to your Emergency Contact numbers within a particular time or at all;
- (d) your location that is sent to your Emergency Contacts upon Ratification of the alarm will be accurate; and
- (e) you will have mobile coverage and internet connectivity at any given time.

13.13 To the extent permitted by law, the Service Producer further makes no warranty in relation to the quality, accuracy, timeliness, truthfulness, completeness or reliability of the App, its content (including pinpointing your location) and any services relating to the App.

13.14 You acknowledge and agree that:

- (a) the Duress Alarm WILL NOT WORK:
  - (i) if you do not have location services activated on your mobile phone device;
  - (ii) if you do not have internet connectivity on your mobile phone device at the relevant time;
  - (iii) if you do not have mobile coverage on your mobile phone device at the relevant time;
  - (iv) if your mobile phone device is in SOS Mode;
  - (v) if your mobile phone device is in Aeroplane Mode;
  - (vi) if the licence fee for the App has not been paid for the relevant time period or your licence to use the App has been terminated or suspended;
  - (vii) if your mobile phone device is not switched on (including if it has run out of battery);
  - (viii) in respect of Emergency Contacts which have not been verified;
  - (ix) if you have not installed the Help Widget on your mobile phone device;
  - (x) outside of Australia;
  - (xi) if you do not use the unique code which is contained in the web portal sent to your email address upon registration to



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enable the installation and activation of the Duress Alarm App; or

- (xii) if your account administrator has removed your access to the App;
- (b) the Duress Alarm MAY NOT WORK:
  - (i) if you do not have sufficient mobile coverage or internet connectivity (whether due to exceeding data limits or otherwise) on your mobile phone device at the relevant time;
  - (ii) if your mobile phone device is physically damaged;
  - (iii) the if the software on your mobile phone device is faulty or if there is an incompatibility between that software and the App or if your mobile phone device has been hacked or jailbroken; or
  - (iv) if your mobile service provider imposes restrictions on the operation of your mobile phone device, including blockages on incoming or outgoing calls and text messages;
- (c) by Ratifying the alarm, you agree for your location (or approximate location) to be disclosed to your Emergency Contacts;
- (d) the function of the App may be affected by factors outside the Service Producer's control, including but not limited to network connectivity, network coverage, network congestion, device brand, device model, a device's operating system, a device's operating system or browser's version compliance and your device configuration and, without limiting any other clause in the Terms and Conditions, the Service Producer will not be liable for any loss or damage caused by such factors;
- (e) the text message sent to the Emergency Contacts upon your Ratification of the alarm may not be received by the Emergency Contacts due to any of the matters referred to in (a) to (d) above applying to their mobile phone devices; and
- (f) the fewer emergency contact numbers that you provide for purposes of the App, the greater the chance that an emergency contact will not be notified of your Trigger of the alarm within a timely manner or at all. We encourage you to provide as many emergency contact numbers as possible to increase the chance of an emergency contact receiving a text message upon your Ratification of the alarm.

### **Risk and danger**

13.15 You acknowledge and agree that:

- (a) your use of the App does not create any risk or danger to your health and safety and does not place you in any further risk or danger than that which already exists at the time of use or attempted use of the App; and

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- (b) your use of the App is at your own risk and it is your responsibility to maintain such health, liability, hazard, personal injury, medical, life and other insurance policies as you deem reasonable necessary for any injuries that you may incur while using the App.
- 13.16 You agree not to use the App to violate any applicable law, rule or regulation and you agree not to encourage or enable any other individual to violate any applicable law, rule or regulation.
- 13.17 To the extent permitted by applicable law, the Service Producer disclaims all liability related to any property damage, personal injury or death that may occur during your use of the App, including any claims based on the violation of any applicable law, rule or regulation or your alleged negligence or other tort liability.

### **Indemnity**

- 13.18 You will indemnify and hold harmless the Service Producer and their respective officers, directors, employees, agents, partners subsidiaries and affiliates against any loss, liability, Claim, demand, fee made by a third party, as a result of your failure to comply with the Terms and Conditions, including without limitation reasonable legal and accounting fees arising out of or in any way connected same.

### **Limitation of liability**

- 13.19 Subject to 13.21, to the extent permitted by law, the Service Producer will not be liable to you for any indirect, incidental, special, punitive, exemplary or consequential damages, including lost profits, loss of data or goodwill, service interruption or system failure arising out of or in connection with the Terms and Conditions or from your use of or inability to use the App, whether based on warranty, contract, tort (including negligence), product liability or any other legal principal. The Service Producer shall not be liable for any death, bodily injury, emotional distress and any and all other financial, punitive, compensatory or other damages resulting from your use of the App. Further, the Service Producer will not be deemed liable for any loss or damage, whether direct, indirect, consequential, compensatory, incidental or otherwise, arising from use of any material or copyrighted material found on the App. The Service Producer shall not be liable for any claim arising out of the failure of any function of the App or the inaccuracy or incompleteness of its content.
- 13.20 Subject to 13.21, in no event will the total liability of the Service Producer exceed \$1,000 Australian dollars.
- 13.21 To the extent the Australian Consumer Law (or equivalent consumer protection law) imposes guarantees in relation to which liability cannot be excluded but may be limited, clauses 11.1, 13.19 and 13.20 do not apply, and instead Telstra the liability of Telstra and the Service Producer is limited to, in the case of goods, repairing or resupplying the goods or paying the cost of having the goods repaired or replaced, and in the case of services, resupplying the services or paying for the cost of having the services resupplied, to the extent it is fair and reasonable to do so.

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### Security

- 13.22 You agree to not breach the security of the App, including by installing or placing any computer virus, malware or other malicious hacking method on the App or its services or content.
- 13.23 You agree to waive any claim and/or cause of action against the Service Producer for any damage arising from or connected to data loss or corruption as a result of a computer virus, malware or other malicious hacking method found on the App.

### Alteration

- 13.24 The Service Producer reserves its right to alter, modify, edit and discontinue, whether temporarily, permanently or otherwise, any or all of the services and content provided under the Duress Alarm App with or without notice to you. You agree that by altering the Duress Alarm App in any way shape or form, the Service Producer will not be liable to you or a third party. This clause 13.25 is subject to clause 5 of the General Terms for Small Businesses section of our Customer Terms, or clause 1.5 of the General Terms for Corporate Customers of Our Customer Terms.

### Definitions

- 13.25 In this clause 13:

**Cancellation Code** means the code nominated by you that is required to cancel the Duress Alarm.

**Duress Alarm** means the text message sent to your Emergency Contacts upon Ratification.

**Duress Call** means a call from the App service to you upon your Trigger of the Alarm.

**Emergency Contacts** means the third parties nominated by you as emergency contacts in the App;

**Help Widget** means the widget used for Triggering the alarm on iOS mobile phone devices.

**Intellectual Property Rights** means all industrial and intellectual property rights throughout the world, including all:

- (a) copyright and analogous rights;
- (b) rights in relation to inventions or discoveries, including patent rights;
- (c) designs;
- (d) circuit layouts; and
- (e) trade names, brand names and registered or unregistered trade marks, including service marks; and
- (f) moral rights.

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**Ratify the alarm** means to cause the App service to send the Duress Alarm to your Emergency Contacts by not answering the Duress Call and applying your Cancellation Code.

**Service Producer** means DuressApp Pty Limited.

**Terms and Conditions** means this clause 13, as amended from time to time

**Trigger Alarm Notification** means the notification used for Triggering the alarm on Android mobile phone devices.

**Trigger the alarm** means either:

- (a) pressing and holding the Help Widget on the App on an iOS mobile phone device; or
- (b) tapping and then confirming the Trigger Alarm Notification on the App on an Android mobile phone device,

to cause a Duress Call to be made to you.