

# Table of Expected Terms

## Document Overview

This document sets out a list of the terms that will likely be needed for the Proposed Arrangement to work effectively. It provides a brief commentary on the rationale for each term in relation to the Proposed Arrangement.

This document is based on the types of clauses included in the API Centre's template bilateral agreement.

It is important to emphasise that particular terms do not carry more importance than others, as it is the combination of terms that provides a comprehensive set of standard terms and conditions, and therefore for the benefits of the Proposed Arrangement to accrue.

The table does not set out an exhaustive list of terms, and is provided to give an indication of the terms likely to be discussed and agreed as part of the Proposed Arrangement. A complete list of terms of agreement will be developed as part of the proposed authorised discussion among Standards Users.

The table headings below can be explained as follows:

- Contract Term – a list of the main terms in an agreement;
- Description – provides an overview of what that Term covers in reference to the template bilateral agreement;
- Significance to Proposed Arrangement – a brief explanation of why this is important to the Proposed Arrangement.

# Contract Terms

Contract Term	Description	Significance to the Proposed Arrangement
<p><b>Key Commercial Terms</b></p>	<p>The Key Commercial Terms are where all the specific commercial details of the agreement are recorded in a clear and prominent manner. This is the place to establish the scope of several key defined terms and core concepts of the agreement. There may be additional detail in specific terms later in the document.</p> <ul style="list-style-type: none"> <li>• Standardised APIs (see row 3 below)</li> <li>• Customer Data (see rows 5, 6 &amp; 9 below)</li> <li>• Services (see rows 3, 5, 6 &amp; 23 below)</li> <li>• Service Levels (see rows 3 &amp; 23 below)</li> <li>• Fees (see row 4 below)</li> <li>• Due Diligence / Accreditation Requirements (see rows 5, 8 &amp; 24 below)</li> <li>• Technical Service Providers (see rows 1 &amp; 3 below)</li> <li>• Dispute Resolution Scheme (see row 12 below)</li> </ul>	<p>This is important to the Proposed Arrangement because it summarises key commercial terms.</p> <p>As set out in the body of the application, these are the key terms that Third Parties struggle to negotiate with API Providers and currently differ for each Provider.</p>
<p><b>1. Defined Terms and Interpretation</b></p>	<p>Certain words and phrases within the agreement will have special meanings. The Defined Terms and Interpretation clause sets out these meanings and the general rules of interpretation for the agreement.</p>	<p>Having defined terms and rules of interpretation will ensure there is certainty about the definitions and interpretation of terms in the standard terms and conditions as part of the Proposed Arrangement.</p>

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<b>2. Commencement, Term &amp; Renewal</b>	<p>How start date of the contract will be determined. Provisions relating to duration and conditions of renewal may also be included if there is a specified or minimum duration of the contract), but it is expected that the default term of the contract would be open-ended, given that accreditation would automatically enable Third Parties to partner on the default terms (with any limits on term being able to be negotiated separately by an API Provider and Third Party if desired as part of negotiating price).</p>	<p>Certainty about when a contract begins is necessary for contractual arrangements. The default term would give effect to the purpose of the accreditation scheme by giving an accredited Third Party access to Standardised APIs on the standard terms of the agreement.</p>
<b>3. Standardised APIs and Services</b>	<p>API Provider's obligation to provide access to the Standardised API(s) and any related services.</p> <p>Acknowledge that from time to time, the API Centre might:</p> <ul style="list-style-type: none"> <li>• update the API Standards in a way that requires a corresponding update or upgrade to a Standardised API; or</li> <li>• issue a Minimum Open Banking Implementation Plan that requires the API Provider to provide a new Standardised API or a new version release of an existing Standardised API to be made available by a certain date.</li> </ul>	<p>This is important to the Proposed Agreement as it requires the API Provider to provide an accredited Third Party with access to the Standardised APIs on the standard terms of the agreement.</p>
<b>4. Fees and payment terms</b>	<p>Third Party's obligation to pay the fees agreed between the API Provider and Third Party, and will establish the parties' agreed processes and deadlines for the payment of the fees.</p>	<p>This is important to the Proposed Arrangement because standardising the pricing structure and setting pricing principles provides greater transparency and clarity for Third Parties, ensuring</p>

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	<p>Will cover as a minimum:</p> <ul style="list-style-type: none"> <li>• Fees Structure / Model / Format (including any pricing principles)</li> <li>• Fees Review periodicity</li> <li>• Payment mechanisms</li> <li>• Penalty mechanisms for late or non-payment.</li> </ul>	<p>that the benefits of the Proposed Arrangement can accrue by making sure the price is not set too high. This is currently an area of great difficulty for Third Parties when negotiating with an API Provider.</p> <p>As set out in the application, the actual amount of the fees will be negotiated between each API Provider and each Third Party.</p>
<p><b>5. Third Party obligations</b></p>	<p>Roles and responsibilities of Third Parties accessing and using a standardised API, including:</p> <ul style="list-style-type: none"> <li>• obligations relating to risk mitigation, to manage risks associated with multiple parties (Third Party and API Provider) jointly providing services to Customers</li> <li>• mandatory provisions in Third Party Customer Terms and Conditions and Customer Consents.</li> <li>• Third Party obligations as they relate to each of the specific Standardised APIs (Account Information, Payment Initiation, etc.).</li> </ul>	<p>This is important to the Proposed Arrangement as it gives effect to the accreditation criteria and ongoing compliance with them.</p> <p>It also forms a key element of the liability framework which needs to be standardised for Third Parties with all API Providers when using the API Standards.</p>
<p><b>6. API Provider's obligations</b></p>	<p>Roles and responsibilities of API Providers who are providing standardised APIs as a service, including:</p> <ul style="list-style-type: none"> <li>• obligations relating to risk mitigation, to manage risks associated with multiple parties (Third Party and API Provider) jointly providing services to Customers</li> <li>• API Provider obligations as they relate to each of the specific Standardised APIs (Account Information,</li> </ul>	<p>This is important to the Proposed Arrangement because these responsibilities are a key element of the liability framework and ensuring these are standardised across all API Providers is integral to realising the benefits of the Proposed Arrangement.</p>

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	Payment Initiation, etc.), including obligations in relation to the technical provision of the Third Party's access to the Standardised APIs (i.e., use reasonable care and skill to meet or exceed any applicable Service Levels).	Requiring API Providers to provide access to Standardised APIs to accredited Third Parties and ensuring those standardised APIs meet the required terms (eg, service levels) is also an integral part of the subject matter of the Proposed Arrangement.
<b>7. Registration and Compliance</b>	Requirements for all parties in relation to maintaining status as a registered API Standards User and compliance the API Centre Terms and Conditions, and compliance with relevant laws and industry standards.	This will ensure agreed criteria for operating in the ecosystem and that there is ongoing compliance with those agreed terms.
<b>8. Security Measures</b>	Requirement for each party to comply with their respective security obligations under the API Centre Terms. The API Centre terms require Standards Users to have adequate security measures in place to protect Customer Data from loss, corruption, or unauthorised use.	This is important to the Proposed Arrangement because it defines the key protections for customer information within the ecosystem.  This term gives effect to mitigating the principal risk involved in data exchange.
<b>9. Customer Data and payment transaction requirements</b>	Requirement for each party to comply with data protection obligations (linking to the party's obligations within the API Centre Terms and Conditions with respect to consent and additional data requirements).	This is important to the Proposed Arrangement because it defines the key protections for customer information within the ecosystem.
<b>10. Confidentiality</b>	Confidentiality obligations for the parties (eg, to keep certain information confidential).	Having provisions to protect confidential information provided by parties under an agreement is standard practice in commercial arrangements. For a party to be comfortable providing any confidential information to a

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		counterparty under the Proposed Arrangement, it will be necessary to have appropriate protections in place in the standard terms and conditions.
<b>11. Intellectual Property</b>	<p>Obligations in relation to the treatment and ownership of intellectual property (IP that is used in the performance of, or is produced or developed in connection with, the provision of the services under the agreement.</p> <p>Would include issues relating to marketing, branding and trademark usage.</p>	<p>Having provisions to protect intellectual property is standard practice in commercial arrangements. For a party to be comfortable sharing or using intellectual property as part of the provision/acquisition of services under the Proposed Arrangement, certainty about ownership of intellectual property and protections for intellectual property is necessary.</p>
<b>12. Complaints and Disputes</b>	<p>How complaints and disputes will be resolved, including:</p> <ul style="list-style-type: none"> <li>(a) with Customers in relation to services using the Standardised APIs;</li> <li>(b) between the parties;</li> <li>(c) any role attributed to the API Centre within a dispute process; and</li> <li>(d) cost and cost allocation associated with disputes. It may also set out provisions relating to customer losses and how these are attributed between the parties.</li> </ul> <p>This will incorporate the dispute resolution schemes which are mandatory for API Providers and many Third Parties (in accordance with the Financial Service Providers</p>	<p>This is important to the Proposed Arrangement because it defines key protections for the customer within the ecosystem, and the issues resolution processes.</p>

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	(Registration and Dispute Resolution) Act 2008) to avoid any duplication or misalignment of processes.	
<b>13. Review of this Agreement</b>	Ongoing contract management, for example any annual review between the parties to discuss relationship and changes to the standard terms and conditions.	Provides certainty about what happens if the standard terms and conditions are amended.
<b>14. Warranties</b>	Warranties / representations provided by the parties, and any exclusions of warranties (eg, contracting out of warranties that are implied at law to the extent that contracting out is possible).	Related to 5 and 6 above, this provides certainty about the obligations and liability of the parties.
<b>15. Liability</b>	Liability framework, including when each party is liable to the other for losses to the other party and any limitations of liability.	This is important to the Proposed Arrangement because it sets a standardised liability framework for all Standards Users, to ensure that there is no uncertainty about liability and the rights of Customers.
<b>16. Indemnities</b>	<p>Any indemnities to be provided by each party to the other party and as part of the customer liability framework, including, for example, indemnities for any loss suffered because of external third party claims resulting from circumstances such as a party:</p> <ul style="list-style-type: none"> <li>• failing to meet its obligations to customers;</li> <li>• failing to adequately protect customer data;</li> <li>• breach of other obligations to customers;</li> <li>• other breaches relating to intellectual property and misconduct.</li> </ul>	This is important to the Proposed Arrangement because it sets a standardised liability/indemnity framework for all Standards Users, to ensure that there is no uncertainty about liability in particular situations.

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<b>17. Notification of a breach or risk events</b>	Prescribed notification and management/mitigation processes in the event of a material breach of the terms and conditions or API Terms, or if a Risk Event (as defined under the API Centre Terms) occurs.	Supports risk management and mitigation.
<b>18. Suspension, termination, or withdrawal of registration as an API Standards User</b>	Obligations that each party has if either party has its registration suspended or terminated or withdraws from being registered, including in relation to managing repercussions for customers.	Provides certainty about what happens in the event a party is suspended as a Standards User or ceases to be a Standards User.
<b>19. Termination</b>	Grounds upon which a party can terminate the agreement, the consequences of providing a notice of termination, and the rights and obligations of the parties on termination.	Provides certainty about when parties can terminate an arrangement, and provisions relating to that, which is necessary to provide certainty about the contractual relationship that will arise as part of the Proposed Arrangement.
<b>20. Force Majeure</b>	Circumstances in which a party may be excused from any delay or failure in performing its obligations where that failure is attributable to a Force Majeure Event, and the party complies with notification and mitigation requirements.	Having provisions that set out what happens if a force majeure event occurs is standard practice in commercial arrangements. It provides certainty about the parties' obligations if such an event arises.
<b>21. Notices</b>	Requirements for providing a valid notice to the other party.	Having provisions relating to providing notice to the other party is standard practice in commercial arrangements. It provides certainty about matters such as when notices are deemed to be received.



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<b>22. General</b>	General standard contract provisions, such as rights to assign or subcontract, and governing law.	Having general terms regarding matters such as assigning an agreement and the law that governs an agreement is standard practice in commercial arrangements, and provides certainty to the parties on particular matters.
<b>23. Services and Service Levels</b>	Service levels or performance criteria that the API Provider must comply with in the provision of the Services.	This is important to the Proposed Arrangement because it specifies required service levels.
<b>24. Security Measures</b>	Security measures required to be adopted by the parties (which may incorporate or provide further detail on the general security measures applicable to the use of the API Standards or a Standardised API under the API Centre Terms).	This is important to the Proposed Arrangement because it defines the detailed protections for customer information within the ecosystem.