

API LICENSE AGREEMENT

NOTICE -- READ THIS BEFORE DOWNLOADING, COPYING, OR USING THE API (AS DEFINED BELOW), THE SERVICES (AS DEFINED BELOW), OR OTHER PROLANCER MATERIALS.

By using the Total Recall VR Application Programming Interface, you ("You" and "Your") accept and agree to be bound by the following terms and conditions (the "API License Agreement").

1. DEFINITIONS

- a) "API" means certain documents, files and protocols commonly known as the Total Recall VR Application Programming Interface developed by Prolancer.
- b) "Services" means any software applications and associated services developed, sold or hosted by Prolancer which is accessed by the API.

2. AGREEMENT

2.1 License. Subject to the terms of this Agreement, Prolancer hereby grants to You under its intellectual property and patent rights a non-exclusive, non-assignable, non-transferable, non-sub-licensable license to use the API to access and use the Services and the output thereof, for personal or business purposes.

2.2 Modifications. Prolancer reserves the right to release modified versions of the API and to require You to use the most recent version. Prolancer may modify the API License Agreement at any time with or without notice. If a modification is unacceptable to You, You must remove the implementation of the API from Your site and discontinue use of the Services. Your continued use of the API or the Services will deem acceptance of the modifications by You.

2.3 Prolancer Ownership and Rights. You acknowledge that Prolancer owns all right, title and interest, including without limitation any and all rights existing under patent law, copyright law, moral rights law, trade secret law, trademark law, unfair competition law, publicity rights law, privacy rights law, and any and all other proprietary rights in and to the API and the Services and that You shall not acquire any right, title, or interest in or to the Service, except as expressly set forth in this API License Agreement.

There are no implied licenses under this Agreement, and any rights not expressly granted to you hereunder are reserved by Prolancer.

You shall not take any action inconsistent with Prolancer's ownership of the API or the Services.

2.4 Limitations on Use. You shall not make use of the API in any way not expressly permitted by this Agreement. You shall not use or enable a third party to use any alternative to access, query, or use the API.

2.5 Specific Prohibitions. Notwithstanding anything contrary in this Agreement, You are specifically prohibited from doing any of the following:

- (a) You shall not sell, transfer, sublicense and/or assign this API to any third party;
- (b) You shall not modify, reverse engineer, disassemble, deconstruct, decompile or otherwise alter the API;
- (c) You shall not distribute, facilitate, enable or allow access or linking to the API in any manner deemed by Prolancer in its sole and absolute discretion to be objectionable or harmful to the business and reputation of Prolancer or for any unlawful, illegal, pornographic, or injurious purpose, and;
- (d) You shall not make any use of the API that impairs the functionality of the API.

2.6 Representations. You represent and warrant to Prolancer that:

- (a) any information, data or content ("Content") You provide shall not infringe the intellectual property or proprietary rights of any party, contain any confidential information of a third party or constitute defamation, invasion of privacy, or the violation of any right of publicity or any other right of any party;
- (b) You have and will comply with all legislation, rules and regulations regarding the Content; and
- (c) You shall not use the facilities and capabilities of the Services to conduct any activity or solicit the performance of any illegal activity or other activity which infringes the rights of Prolancer or any third party.

2.7 Term and Termination. This API License Agreement shall remain effective for as long as you use the API or the Services or until otherwise terminated in accordance with its terms. The license will terminate if you fail to comply with the terms of this API License Agreement. Upon any termination of this API License Agreement, You agree to discontinue the use of the API and the Services. Unless otherwise specified in a properly executed sales order, Prolancer may terminate this Agreement for any or no reason at any time without notice to You.

2.8 Copyright Notice. In order to protect the proprietary rights in the API and Services, You agree to reproduce and incorporate the Prolancer copyright notices and all other proprietary legends in and on all copies of the API and Services, including partial copies, in any form.

2.9 Disclaimer of Warranty. YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT INSTALLATION AND USE OF THE API AND/OR THE TEXTWISE SERVICES IS AT YOUR SOLE RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE API AND/OR THE TEXTWISE SERVICES ARE PROVIDED "AS-IS," WITH ANY AND ALL FAULTS AND WITHOUT ANY EXPRESS, OR IMPLIED WARRANTIES OF ANY KIND. PROLANCER DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, OR OTHERWISE WITH RESPECT TO THE API AND/OR THE SERVICES INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THERE IS NO WARRANTY OF NON-INFRINGEMENT, TITLE, OR QUIET ENJOYMENT. PROLANCER DOES NOT WARRANT THAT THE API AND/OR THE SERVICES IS ERROR-FREE OR WILL BE UNINTERRUPTED, FREE FROM SPYWARE, MALWARE, ADWARE, VIRUSES, WORMS, OR OTHER MALICIOUS CODE, OR WILL FUNCTION TO MEET YOUR REQUIREMENTS. PROLANCER DOES NOT WARRANT THAT THE API AND/OR THE SERVICES WILL WORK ON YOUR HARDWARE, WITH YOUR OPERATING SYSTEM, OR WITH ANY OTHER SOFTWARE INSTALLED ON YOUR COMPUTER. IF APPLICABLE LAW IMPLIES ANY WARRANTIES WITH RESPECT TO THE LICENSED MATERIAL, ALL SUCH WARRANTIES ARE LIMITED IN DURATION TO NINETY (90) DAYS FROM THE DATE OF ORIGINAL DOWNLOAD OR USE OF THE API AND/OR THE SERVICES.

2.10 Limitation of Liability. IN NO EVENT WILL PROLANCER OR THEIR RESPECTIVE SUBSIDIARIES, OFFICERS, DIRECTORS, AND EMPLOYEES BE LIABLE FOR PERSONAL INJURY, OR ANY INDIRECT, SPECIAL, INCIDENTAL, ECONOMIC, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND, ARISING OUT OF OR RELATED TO THIS API LICENSE AGREEMENT, THE API OR THE SERVICES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF PROFITS OR DATA OR THE USE OF OR INABILITY TO USE THE API OR THE SERVICES, INCLUDING, WITHOUT LIMITATION, DAMAGES OR COSTS RELATING TO THE LOSS OF PROFITS, BUSINESS, GOODWILL, DATA, TIME OR COMPUTER PROGRAMS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL PROLANCER'S AND ITS SUBSIDIARIES', OFFICERS', DIRECTORS', AND EMPLOYEES' LIABILITY EXCEED THE AMOUNT PAID BY YOU FOR THE API OR THE SERVICES REGARDLESS OF THE FORM OF THE CLAIM (INCLUDING, WITHOUT LIMITATION, ANY CONTRACT, PRODUCT LIABILITY, OR TORT CLAIM).

YOU MAY NOT ASSERT ANY CLAIM RELATED TO THIS API LICENSE AGREEMENT AGAINST PROLANCER MORE THAN 2 YEARS AFTER SUCH CLAIM ACCRUED.

Some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you. The above limitations will not apply in case of personal injury where and to the extent that applicable law requires such liability.

THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS ITS ESSENTIAL PURPOSE.

2.11 Indemnity. You agree to hold harmless, indemnify, and defend Prolancer, and (as applicable) its subsidiaries, affiliates, officers, agents, and employees, from and against any third party claim arising from or in any way related to Your use of the Services, violation of this API License Agreement or any other actions connected with use of Services, including any liability or expense arising from all claims, losses, damages (actual and consequential), suits, judgments, litigation costs and attorneys' fees, of every kind and nature. In such a case, Prolancer will provide You with written notice of such claim, suit or action.

2.12 Severability. If one or more provisions of this API License Agreement are held to be unenforceable under applicable law, then (a) such provision shall be excluded from this API License Agreement; (b) the balance of the API License Agreement shall be interpreted as if such provision were so excluded; and (c) the balance of the API License Agreement shall be enforceable in accordance with its terms.

2.13 Applicable Law. This license will be governed by the laws of the State of New South Wales, Australia, without regard to conflict of law principles. You and Prolancer agree to submit to the personal and exclusive jurisdiction of the courts located within Sydney, New South Wales, Australia.

2.14 Entire Agreement. This API License Agreement constitutes the complete agreement between You and Prolancer with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements or understandings, whether written or oral.

2.15 Waiver of Breach. No waiver of breach or failure to exercise any option, right or privilege under the terms of this Agreement or any order on any occasion or occasions shall be construed to be a waiver of the same or any other option, right or privilege on any other occasion.