

OUR CUSTOMER TERMS PROFESSIONAL SERVICES

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Certain words are used with the specific meanings set out under clause 12 and in the General Terms of Our Customer Terms at http://www.telstra.com.au/customer-terms/business-government/?red=/customerterms/bus_government.htm.

1 ABOUT THIS PART

- 1.1 This is the Professional Services section of Our Customer Terms.
- 1.2 The General Terms of Our Customer Terms at <https://www.telstra.com.au/customer-terms/business-government> also apply unless you have entered into a separate agreement with us which excludes the General Terms of Our Customer Terms.

2 PROFESSIONAL SERVICES

Professional Services and Deliverables

- 2.1 We will supply you with the Professional Services and the Deliverables.
- 2.2 You may request Professional Services or Deliverables under the Agreement in accordance with the order process set out in clause 3 below.

Availability

- 2.3 The Professional Services are not available to Telstra wholesale customers or for resale.
- 2.4 You must not provide or assist with the provision of the Professional Services to any third party.

3 ORDERING

Order Process

- 3.1 Unless otherwise agreed by you and us in the Agreement, the order process is as follows:
 - (a) you will prepare a Customer Request approved by your Authorised Representative;
 - (b) as soon as practicable after receipt of the Customer Request, we will either confirm our intention to respond to your Customer Request or decline your Customer Request;
 - (c) if we notify you of our intention to respond to your Customer Request, we will as soon as practicable, compile a proposed Statement of Work or amendment to the Agreement (**Order**) and return it to you;
 - (d) you may:
 - (i) accept the proposed Order by signing and returning it to us;
 - (ii) reject the proposed Order and withdraw the Customer Request; or
 - (iii) reject the proposed Order and ask that it be amended and resubmitted. Any request for amendments may be accepted or rejected by us at our discretion; and

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- (b) following receipt of a signed Order from you, we will countersign the Order and return a copy to you.
- 3.2 A Order is not legally binding unless and until it is signed by each party's Authorised Representative.

Changes Requests

- 3.3 If a party wishes to make a change to the Agreement or a Statement of Work under it, that party can submit a proposed Change Request to the other party.
- 3.4 If we receive, or submit, a proposed Change Request, we will:
- (a) assess the impact, costs, benefit and risk of the proposed change and discuss these with you; and
 - (b) document all changes made to the Agreement in a proposed Change Request.
- 3.5 A proposed Change Request must include a validity period. During the validity period you may:
- (a) accept the proposed Change Request; or
 - (b) reject the proposed Change Request.
- 3.6 If you do not accept or reject the proposed Change Request within the validity period, the validity period will lapse. If the proposed Change Request is rejected or the validity period lapses, the Agreement and any applicable Statements of Work will continue in force unamended.
- 3.7 No changes will be effective until the proposed Change Request is agreed and signed by each party's Authorised Representative.

4 DELIVERY, TITLE AND RISK

Delivery

- 4.1 We aim, but don't guarantee, to meet the scheduled timeframes and delivery dates set out in the Agreement. Except where expressly agreed otherwise, the scheduled timeframes are estimates only and may change.
- 4.2 To the extent any delay is not caused by us:
- (a) we will not be responsible for a delay in delivering a Deliverable or a Deliverable which depends on another Deliverable;
 - (b) the delivery date or due date for impacted Deliverables will automatically be extended by a period equal to the period of delay; and
 - (c) notwithstanding any other provision of this Professional Services section of Our Customer Terms, you must pay us:

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- (i) additional fees for any additional work performed by us at our then prevailing rates; and
- (ii) all additional out-of-pocket expenses incurred by us,
as a consequence of the delay.

Title and risk

- 4.3 Risk in a Deliverable passes to you when we deliver the Deliverable to you.
- 4.4 Title to each Deliverable (excluding any Intellectual Property Rights in a Deliverable) remains with us until you have paid us in full for that Deliverable.
- 4.5 You must not pledge or encumber a Deliverable until title in that Deliverable has passed to you.

5 ACCEPTANCE AND DEFECTS

Acceptance of Deliverable

- 5.1 The Agreement may set out that acceptance testing is required for a Deliverable. If so, the following process will apply for that Deliverable:
 - (a) there will be an Acceptance Test Period, unless otherwise agreed, from the date we deliver the Deliverable to you;
 - (b) you may carry out acceptance testing during the Acceptance Test Period to make sure that the Deliverable is materially consistent with the requirements set out in the Agreement;
 - (c) if the Deliverable is materially consistent with the Specifications, you must issue us with an acceptance notice before the end of the Acceptance Test Period; and
 - (d) if the Deliverable has a Defect, you must provide us with a written Defect notice before the end of the Acceptance Test Period which provides us enough information to enable us to identify the Defects and repair that Deliverable. We will then re-submit the Deliverable to you and the acceptance testing process under this clause 5.1 will begin again.
- 5.2 If we do not consider a matter raised by you constitutes a Defect, we will notify you. You and we will use all reasonable efforts to resolve a dispute about whether there is a Defect as soon as reasonably practicable, including by escalation to more senior management. Unless otherwise agreed, we are not required to carry out any repairs or to re-submit the Deliverable while we attempt to resolve the dispute.
- 5.3 Acceptance of a Deliverable occurs on the earliest of:
 - (a) the date you issue a notice of acceptance to us;
 - (b) expiry of the Acceptance Test Period unless you have issued us with a valid Defect notice; or

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(c) the date you use the Deliverable in any way other than for acceptance testing purposes.

5.4 Acceptance of a Deliverable does not affect any rights you may otherwise have under any law or elsewhere in these terms to have Defects in a Deliverable corrected.

Defects

5.5 We:

(a) aim, but don't guarantee, that each Deliverable will be free from Defects or errors; and

(b) don't guarantee that the Professional Services will produce particular results or outcomes for you (such as achieving external certification, accreditation or industry standards).

5.6 We will repair or replace a Deliverable (at our discretion) to correct any Defect in the Deliverable which is notified to us during the Warranty Period.

5.7 We do not accept responsibility or liability for Defects in a Deliverable which:

(a) are notified to us outside the Warranty Period; or

(b) are caused or contributed to by you, your Personnel or any third party, save for such responsibility or liability arising as a direct result of our negligence or negligent contribution.

5.8 You agree that, to the extent permitted by law, clause 5.6 is your sole and exclusive remedy in respect of any Defects in the Deliverables.

6 OUR PERSONNEL AND ASSISTANCE

Our Personnel

6.1 Where our Personnel perform the Professional Services at your Premises, you will ensure that your Premises comply with all applicable health, safety, environment and community laws and regulations. You must ensure that your third party suppliers co-operate with us and provide us with any information and assistance we reasonably require to perform the Professional Services or deliver the Deliverables.

6.2 You will obtain any consent and fund any site access and induction fees necessary to enable our Personnel to access your Premises for the purposes of providing the Professional Services to you.

6.3 You must not, and must ensure that your employees, contractors or agents do not, attempt to gain unauthorised access to accounts, computer systems or networks in connection with the Professional Services, through hacking, password mining or by any other means. You must not obtain or attempt to obtain any materials or information through any means not intentionally made available through the supply of the Professional Services and Deliverables.

6.4 You must not, and must ensure that your related bodies corporate do not, during the Restraint Period, seek to employ or engage the services of any of our Personnel involved in

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providing the Professional Services to you. This does not apply in relation to a person who responds to a genuine published advertisement. You acknowledge that the restraint in this clause 6.4 is reasonable in its extent and goes no further than is reasonably necessary to protect our interest in maintaining our Personnel.

Assistance

6.5 You must:

- (a) provide us all the information (including by making your staff available to answer questions) we request to assist us in providing the Professional Services and Deliverables to you;
- (b) provide us with all assistance that we reasonably request or that is otherwise necessary to supply the Professional Services or Deliverables;
- (c) ensure that all the information you provide us is accurate and complete;
- (d) perform your own user acceptance end-to-end testing of any solution if we ask you to;
- (e) provide us with access to your network, systems and Premises on reasonable notice;
- (f) provide us with a safe working environment; and
- (g) provide your Input by the dates specified in the Agreement or Statement of Work or, where no dates are specified, as soon as possible upon our request.

6.6 You must appoint at least one appropriately skilled and qualified member of your staff to liaise with us on all matters relating to the Deliverables or the Professional Services.

7 PRIVACY

7.1 You agree and consent that:

- (a) we may use and disclose Personal Information that is made available to us as is reasonably required in order to provide the Professional Services and Deliverables to you including disclosing Personal Information to third parties including our subcontractors and suppliers who provide services to us; and
- (b) we may use or disclose Personal Information in accordance with the Telstra Privacy Statement (available at <http://www.telstra.com.au/privacy/privacy-statement/index.htm>), this section of Our Customer Terms and in accordance with our Agreement with you.

7.2 You warrant to us that:

- (a) you have taken all steps necessary in accordance with Privacy Laws to permit us and any third parties who provide services to us to collect Personal Information and to use, disclose, store and transfer such Personal Information as contemplated under this clause 7.1; and

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- (b) you have notified or made the relevant individual aware of the matters, required in relation to notification of the collection of Personal Information under Privacy Laws, in respect of the use and disclosure of that individual's Personal Information as contemplated under this clause 7.

7.3 You indemnify us against any claim, cost, loss or liability which may arise in connection with your breach of the warranty in clause 7.2 above.

8 INTELLECTUAL PROPERTY RIGHTS

Licensed Material

- 8.1 We grant to you a non-exclusive, non-sub-licensable and non-transferable licence to the Intellectual Property Rights in the Licensed Material to use, adapt and reproduce the Licensed Material incorporated in a Deliverable in the Territory solely for your internal business purposes.
- 8.2 We, or our suppliers, retain all right, title and interest (including all Intellectual Property Rights) in and to the Licensed Material, and you acquire no interest in or to the Licensed Material, other than the licence under clause 8.1.
- 8.3 Except to the extent expressly permitted by applicable law or under the Agreement, you must not, and must not permit others to, use, copy, reproduce, adapt, merge with other software, modify, decompile, reverse-engineer, disassemble or translate all or any part of the Licensed Material.
- 8.4 You must not use the Deliverables other than in accordance with the terms of the Agreement, any documentation provided with the Deliverables and our reasonable instructions.
- 8.5 You must not challenge or impair the validity of our title to, or interest in, any Intellectual Property Rights in the Licensed Material.

Your Material

- 8.6 You or your licensors retain ownership of the Intellectual Property Rights in Your Material. You grant us a royalty-free licence in the Intellectual Property Rights in Your Material to use Your Material for the purpose of performing our obligations under the Agreement including the right to:
 - (a) copy, modify, adapt and make derivative works of Your Material; and
 - (b) permit our subcontractors to use, copy, modify, adapt and make derivative works of Your Material.
- 8.7 We acknowledge that the licence granted in clause 8.6 does not transfer to us any Intellectual Property Rights in any of Your Material.
- 8.8 You indemnify us for any and all loss, damage, liability, costs or expenses incurred by us as a result of a claim that Your Material or its use by us in accordance with the terms of this Agreement infringes any Intellectual Property Rights, or any other rights, of a third party.

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Ownership of Intellectual Property in Deliverables

- 8.9 Unless otherwise agreed, we (or our suppliers) own all Intellectual Property Rights in and to all Deliverables arising out of the provision of the Professional Services and you hereby assign all such Intellectual Property Rights to us on and from the date those rights are created.
- 8.10 You agree to perform any actions and sign any documentation we require in order to give effect to clause 8.9.

9 THIRD PARTIES

- 9.1 Unless otherwise agreed in the Agreement:
- (a) the Professional Services and any Deliverables are provided for your benefit only;
 - (b) you must not use the Professional Services for a third party's benefit or allow a third party to use them; and
 - (c) we are not responsible for the use by a third party or use by you for the benefit of a third party of the Professional Services or any Deliverables.
- 9.2 You indemnify us for any loss, damage, liability, costs or expenses we incur as a result of any use by a third party or use by you for the benefit of a third party of the Professional Services or any Deliverables (unless such use is expressly permitted in the Agreement).
- 9.3 You acknowledge that we may purchase some components of the Professional Services or Deliverables from third party suppliers. If one of our third party suppliers suspends, cancels or terminates a service that we rely on to provide you with a Professional Service or Deliverable, we may:
- (a) replace or modify that Professional Service or Deliverable;
 - (b) suspend or cancel that Professional Service or Deliverable;
 - (c) terminate the affected part of the Agreement; or
 - (d) terminate any affected Statement(s) of Work.
- 9.4 If we exercise our rights under clause 9.3, we will give you as much notice as is reasonably practicable in the circumstances and in the event of cancellation or termination no early termination fees will apply.

10 FEES AND CHARGES

General

- 10.1 Unless otherwise stated, all fees and charges set out in the Agreement are:
- (a) denominated in Australian dollars (\$AUD); and
 - (b) GST exclusive.

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- 10.2 You must pay to us the fees in the amounts and at the times set out in the Agreement.
- 10.3 You must also reimburse us for out-of-pocket expenses reasonably and actually incurred by us in performing the Professional Services, provided that we:
- (a) first obtain verbal approval for each expense from you; and
 - (b) produce a valid invoice or receipt when claiming the expense.

Variation to quoted price

- 10.4 Where the Agreement sets out a price for a Deliverable which is not calculated on a time and materials basis, that price is subject to:
- (a) you providing the Inputs required under the Agreement; and
 - (b) the assumptions and dependencies set out in the Agreement remaining valid and being fulfilled.
- 10.5 Where we believe the quoted price will be impacted as a result of any change to the assumptions and dependencies, or any change or delay in your provision of the Inputs referred to in clause 10.4 above, we will be entitled to charge you additional fees which relate to these factors provided that:
- (a) we notify you as soon as possible after we become aware of one of these factors occurring; and
 - (b) we tell you what additional fees will be charged.
- 10.6 Unless otherwise stated in the Agreement, if the increased price which we notify to you under clause 10.5 above is more than the Adjusted Price you may cancel the supply of Professional Services by notice to us within 5 business days of the date we notify you of the Adjusted Price. Where you exercise this right to cancel, you must pay us for all Professional Services performed up to the date of cancellation and must pay any additional charges specified in the Agreement.

Capped Fees

- 10.7 If your Agreement specifies that fees are capped, and that cap is reached (other than in the circumstances contemplated by clauses 10.4 to 10.6 above, in which case that section applies), then we will:
- (a) notify you in writing and may suspend all work in relation to that Agreement; and
 - (b) inform you of our estimation of the additional time and cost required to complete the Professional Services under that Agreement.
- 10.8 Following a notice under clause 10.7(a), you and we will meet in an effort to agree to a revised cap for the applicable Professional Services and Deliverables.
- 10.9 If a revised cap is not agreed:
- (a) you will be responsible for payment in respect of all work undertaken to the date of a

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- notice under clause 10.7(a) regardless of whether the Professional Services or Deliverables have been completed;
- (b) we will have no further obligation or liability to complete the Professional Services or Deliverables; and
 - (c) we may immediately terminate the part of the Agreement under which we provide Professional Services, including any Statements of Work under it, by notice to you if no agreement is reached for a revised cap within 14 days of the notice under clause 10.7(a).

Payment in advance

10.10 Where the Agreement specifies that you will pay for Professional Services periodically (monthly, for example) in advance for a specified amount of time (days or hours, for example) of Professional Services within that period, then:

- (a) unused amounts of Professional Services time in a period will be forfeited by you and will not be applied to a subsequent period;
- (b) you will not be entitled to a refund for that unused Professional Services time in that period; and
- (c) where we perform Professional Services in addition to the specified time in the Agreement, then we will charge you, and you must pay us for that additional time during that period at our then prevailing rate.

Timesheets

10.11 Where agreed in the Agreement that our Personnel will maintain and submit timesheets, upon receipt of a timesheet from our Personnel, you must, within 2 days:

- (a) sign and return the timesheet to us; or
- (b) notify our Personnel why the timesheet has not been accepted, in which case our Personnel will:
 - (i) confirm the timesheet submitted was accurate; or
 - (ii) submit a revised timesheet.

10.12 Any dispute in relation to timesheets does not affect our rights to bill you, or your obligations to pay, for Professional Services or Deliverables in accordance with this Professional Services section of Our Customer Terms. If the dispute is resolved in your favour and gives rise to an adjustment to fees already paid then we will refund or credit any such adjustment to you.

11 TERMINATION

Terminating the Professional Services

11.1 In addition to a party's other rights under the Agreement, if a party materially breaches the Agreement and does not remedy that breach within 30 days of receiving a notice to do so, then the other party may cancel the affected Professional Services (in whole or in part).

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- 11.2 You may cancel the Professional Services (in whole or in part) at any time by giving us not less than 30 calendar days' prior written notice (or such other notice as may be specified in the Agreement). We must cease work in accordance with that notice.
- 11.3 Upon cancellation of the Professional Services by us or by you (other than for our material breach or failure to continue providing the service in the event included under clause 9.3) you must pay to us the following early termination charges (together, the **Early Termination Charge**):
- (a) for each time and materials component specified under the Agreement:
 - (i) the fees for all Professional Services and Deliverables supplied before the date of cancellation of the Professional Services; plus
 - (ii) the amount of any unavoidable out of pocket expenses; plus
 - (iii) the remainder of the price of any Deliverables which have been delivered prior to the cancellation of the Professional Services; plus
 - (iv) any amortised charges (such as installation, commissioning and site audit charges) that are payable with respect to any Deliverables; and
 - (c) for each fixed price component specified under the Agreement:
 - (i) any unpaid portion of the fixed price fee; plus
 - (ii) the amount of any unavoidable out of pocket expenses; plus
 - (iii) the remainder of the price of any Deliverables which have been delivered prior to cancellation of the Professional Services; plus
 - (iv) any amortised charges (such as installation, commissioning and site audit charges) that are payable with respect to any Deliverables.
- 11.4 We will advise you of the amount of the Early Termination Charge calculated in accordance with clause 11.3 upon request.

12 SPECIAL MEANINGS

Acceptance Test Period means the period set out in the Agreement or Statement of Work, and if no period is specified, a period of 5 business days.

Adjusted Price means a price which is 20% higher than the original price under clause 10.4, unless otherwise specified under the Agreement.

Agreement means:

- (a) an application form; and
- (b) an agreement,

as applicable, entered into between you and us, in relation to Professional Services and Deliverables under this Professional Services section of Our Customer Terms and includes

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each Statement of Work under them.

Authorised Representative means the person with the appropriate authority to enter into a contract on behalf of a party.

Change Request means a written request (in a form specified by us) for a change to any Specifications or to any work to be carried out under the Agreement or a Statement of Work under it.

Customer Request means your request of specific Professional Services to be performed, and Deliverables to be supplied, by us and must contain at least the following information:

- (a) details of your Authorised Representative and your primary contact;
- (b) details of services and deliverables;
- (c) the location(s) of your Premises;
- (d) any and all dependencies and risks that may affect our ability to perform our obligations to you;
- (e) key dates that will or may have a timing impact on our supply of the Professional Services or Deliverables;
- (f) all assumptions used by you in order to create your Customer Request; and
- (g) a description of what technical and non-technical resources and environments you will provide or make available to us so that we may perform our obligations to you.

Defect means any characteristic which makes the whole or any part of the Deliverable materially inoperable or materially inconsistent with the Agreement or Statement of Work (as applicable) and does not include minor or cosmetic inconsistencies.

Deliverable means an item required to be provided to you or a task to be completed by us in accordance with the Specifications but does not include hardware provided or software licensed under separate terms.

Early Termination Charge has the meaning given in clause 11.3.

Input means the goods, services and other assistance to be provided by you as specified in the Agreement or a Statement of Work under it.

Intellectual Property Rights means all current and future registered rights in respect of patents, copyright, designs, circuit layouts, trademarks, trade secrets, domain names, database rights, know-how and confidential information and any other intellectual property rights as defined by Article 2 of the World Intellectual Property Organisation Convention of July 1967.

Licensed Material means Material (excluding hardware, software and any software tools which must be provided by us to you on separate terms) comprised in a Deliverable but does not include Your Material.

Material means all material in any form, including documents, reports, products, hardware,

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information, data, software, software tools and software development methodologies.

Personal Information has the meaning given under the Privacy Act 1988 (Cth).

Personnel means:

- (a) in your case, your employees, agency workers, consultants, agents, subcontractors, suppliers and other personnel engaged by you; and
- (b) in our case, any person, company or other contracting party engaged to provide services to you or on behalf of us under a contract of services, either directly or indirectly (for example, through a third party) and includes employees, agency workers, consultants, agents and suppliers who perform the Professional Services.

Premises means the premises specified in the Agreement or a Statement of Work under it.

Privacy Laws means the Privacy Act, the Spam Act 2003 (Cth), the Telecommunications Act 1997 (Cth), any registered APP Code that binds a party and any other legislation, principles, industry codes and policies relating to the handling of Personal Information.

Professional Services means the professional services described in the Agreement and Statements of Work under it.

Restraint Period means:

- (a) the SOW Term; plus
- (b) an additional period specified in the Statement of Work or Agreement, and if no period is specified, 3 months.

SOW Term means the period described in the Statement of Work.

Specifications means the specifications for a Deliverable set out in the Agreement and each Statement of Work under it.

Statement of Work means the statement of work (or similar document), if any, agreed between you and us under the Agreement.

Territory means the place(s) specified in the Agreement and each Statement of Work under it, or if none is specified, Australia.

Warranty Period means the period described as such in the Agreement or Statement of Work under it, or if no period is specified in the Agreement or Statement of Work, the period ending 2 business days after delivery of the Deliverable to you.

Your Material means Material:

- (a) in which you own the Intellectual Property Rights; or
- (b) in which you are licensed the Intellectual Property Rights by a third party (other than us or our subcontractors),

and excludes the Licensed Material and any improvements to it.