

# OUR CUSTOMER TERMS CLOUD SERVICES SECTION

## PROFESSIONAL SERVICES

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Certain words are used with the specific meanings set in Part A (General) of the Cloud Services section at <http://www.telstra.com.au/customer-terms/business-government/cloud-services/> of Our Customer Terms, or in the General Terms of Our Customer Terms at <http://www.telstra.com.au/customer-terms/business-government/index.htm>

### 1 ABOUT THIS PART

- 1.1 This is Part I (Professional Services) of the Cloud Services section of Our Customer Terms. Depending on the nature of the products and services you are receiving under this Cloud Services section, provisions in other parts of the Cloud Services section, as well as in the General Terms of Our Customer Terms at <http://www.telstra.com.au/customer-terms/business-government/index.htm>, may apply.
- 1.2 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.
- 1.3 See section one of Part A (General) of the Cloud Services section for more detail on how the various parts of the Cloud Services section are to be read together.

### 2 PROFESSIONAL SERVICES

#### Our services

- 2.1 We supply a range of Professional Services under the following categories:
  - (a) Cloud Services (formerly Network Computing Services);
  - (b) Managed ICT Services (Hosting).

#### Availability

- 2.2 These terms only apply to Professional Services acquired from us before 24 March 2016. For Professional Services acquired on and from 24 March 2016, the applicable terms and conditions can be found here: <https://www.telstra.com.au/customer-terms/business-government/other-services/professional-services>.
- 2.3 The Professional Services are not available to Telstra wholesale customers or for resale.

### 3 SERVICES AND DELIVERABLES

- 3.1 Your application form will set out the details of your Professional Services and any Deliverables to be provided by us.
- 3.2 Your application form will also set out the details of any materials and inputs to be provided by you. You must provide these materials and inputs by the dates specified in your application form or, where no dates are specified, upon our reasonable request.
- 3.3 We will perform the Professional Services and deliver the Deliverables to you.

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- 3.4 We aim to meet the scheduled timeframes and delivery dates set out in your application form but cannot guarantee to do so. The time estimates in your application form are based on Telstra's previous experience, assumptions as to the nature of your internal environment, the availability of our consultants at the time of contract and the timeliness of your inputs and materials. As a result, any indications given by us with respect to the delivery dates are estimates only and may vary.

#### Delay in delivery

- 3.5 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 subsequent Deliverable which depends on that Deliverable; and
  - (b) the delivery date or due date for the Deliverable and any subsequent Deliverables will automatically be extended by a period equal to the period of delay.

#### Title and risk

- 3.6 Risk in a Deliverable passes to you when we deliver the Deliverable to you.
- 3.7 Property in and title to a Deliverable (excluding any intellectual property rights in a Deliverable) resides with us until you have paid us in full for that Deliverable.

#### Change management

- 3.8 Either of us may request changes to the scope of Professional Services or the Deliverables to be provided to you.
- 3.9 If we both agree on the proposed changes then we will provide you with a document setting out the impact of the changes on the scope of your Professional Services (including price, Deliverables and resources) unless these details are already set out in your change request.
- 3.10 If, in our reasonable opinion, we will need to undertake material effort to analyse and document the impact of the changes then we may charge you for undertaking this work. We will agree the prices for doing so with you separately prior to beginning work.
- 3.11 If you agree on the impacts of the change request, we will perform the Professional Services as varied by the requested change.

#### Acceptance of Deliverable

- 3.12 Your application form 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 of 5 business days 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 your application form;
  - (c) if the Deliverable is materially consistent with the requirements in the application

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form, you must issue us with an acceptance notice before the end of the acceptance test period; and

- (d) if the Deliverable is not materially consistent with the requirements in the application form (a Defect), you must provide us with a written defect notice before the end of the acceptance period which provides us enough information to enable us to identify the defects and repair that Deliverable. We will then re-submit to Deliverable to you and the accepting testing will begin again. To avoid doubt, a minor or cosmetic difference to the requirements which does not have any substantive effect on the Deliverable will not be regarded as a Defect for the purposes of this clause.
- (e) 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 other agreed, we are not required to carry out any repairs or to re-submit the Deliverable while we attempt to resolve the dispute.

3.13 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
- (c) you use the Deliverable in any way other than for testing purposes.

3.14 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.

#### Warranty

3.15 We aim to, but cannot guarantee, that each Deliverable will be free from defects or errors. Also, we cannot guarantee that the Professional Services will produce particular results or outcomes for you (such as achieving external certification, accreditation or industry standards).

3.16 If your application form sets out a warranty period for a Deliverable, then we will correct any material defect in the Deliverable which is notified to us during the warranty period. Nothing in this clause affects any rights you may otherwise have under any law or elsewhere in these terms to have defects corrected.

3.17 We do not accept responsibility or liability for defects in a Deliverable which result from your inputs and/or materials or which are caused by misuse of or intentional damage to the Deliverable (other than by us).

#### Intellectual property rights

3.18 As between you and us, we retain all intellectual property rights in and to our material which we incorporate into your Deliverables and any material we develop for you in carrying out the services.

3.19 Unless otherwise set out in your application form, we grant to you a perpetual, non-

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exclusive, non-sub-licensable and non-transferable license in Australia to use, adapt and reproduce solely for your internal business purposes our material which is incorporated into a Deliverable and any material we develop for you in carrying out the services.

- 3.20 Unless otherwise agreed in your application form, the Professional Services and any Deliverables are provided for your benefit only. You must not use them for a third party's benefit or allow a third party to use them.

#### Our personnel

- 3.21 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.
- 3.22 You will obtain any consents 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.

#### 4 FEES AND CHARGES

- 4.1 Unless otherwise stated, all fees and charges set out in your application form are:
- (a) denominated in Australian dollars (\$AUD); and
  - (b) GST exclusive.
- 4.2 You must pay to us the fees in the amounts and at the times set out in your application form.
- 4.3 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

- 4.4 Where your application form sets out a price for a Deliverable which is not calculated on a time and materials basis, that price is subject to you providing your inputs and materials as required by this section of Our Customer Terms and to the assumptions and dependencies set out in your application form remaining valid and being fulfilled.
- 4.5 Where the quoted price will be impacted as a result of any change to the factors above, we will be entitled to charge you reasonable additional fees which relate solely 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.
- 4.6 If the increased price which we notify to you above is more than 20% higher than the

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original 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 increased price. Where you exercise this right to cancel, you must pay us for all Professional Services performed before up to the date of cancellation and must pay any additional charges set out in your application form.

- 4.7 A fixed price may also be varied as a result of an agreed change as set out under Change management above.

## 5 GENERAL

### Confidentiality

- 5.1 Each of us will treat as confidential information all information provided by the other relating to the provision of the Professional Services including:
- (a) your application form; and
  - (b) technical, operational, billing, pricing and commercial information in relation to the supply of the Professional Services.
- 5.2 Neither of us will disclose the other's confidential information to any person except:
- (a) to our respective employees, lawyers, accountants and sub-contractors on a 'need-to-know' basis provided that those persons first agree to observe the confidentiality required under these terms;
  - (b) with the other's prior written consent;
  - (c) if required by law, any regulatory authority or stock exchange; or
  - (d) if it is in the public domain.

### Responsibility for your inputs

- 5.3 You are responsible for any loss, damage, liability, costs or expenses incurred by us as a result of a claim that any inputs or material provided by you or its use by us in accordance with your Professional Services infringes the intellectual property rights of any person.

### Your rights to cancel your Professional Services

- 5.4 You may cancel your service at any time by giving us not less than 14 calendar days prior written notice (or such other notice as may be specified in your application form). We will cease work in accordance with that notice. We will charge you for all Professional Services performed up to your cancellation.
- 5.5 Upon cancellation of your service, we may charge you an early termination charge as set in your application form (if any).