



BUSINESS SERVICES AGREEMENT VARIATION

VARIATION AGREEMENT 19

YOUR DETAILS

Name Data Action Pty Ltd (you or your)
ABN 32 008 102 690
Address 55 Currie Street,
Adelaide SA 5000


OUR DETAILS

Name Telstra Corporation Limited (ABN 33 051 775 556) (we, us or our)
Address for Notices General Manager, Contract Management
Locked Bag 6502, Sydney NSW 2001
Fax Number 1300 886 281

- A. The parties entered into a Business Services Agreement for the provision of telecommunication services dated 30 June 2014 (**Agreement**).
 - B. The parties agree that from the date this Variation Agreement is signed by the last party, the Agreement will be varied in accordance with the terms of this Variation Agreement. Subject to the variations, the Agreement will continue in full force and effect.
 - C. Terms used in this Variation Agreement have the same meaning as terms defined in the Agreement.
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AGREED BY YOU

Signed for you by your authorised representative:

Signature  Date 28-Oct-2021
Print Name Jarrod Sawers Position Acting Chief Executive Officer

AGREED BY US

Signed for us by our authorised representative:

Signature  Date 28-Oct-2021
Print Name Rob Frost Position GM Enterprise and SA

The terms of the Agreement are varied as follows:

CLAUSE	VARIATION
Schedule 15 - Integrated Expense Management Service	Insert the new Schedule 15 Integrated Expense Management Service and related attachment appended to this Variation Agreement immediately following Schedule 14 and related attachments.

SCHEDULE 15 – INTEGRATED EXPENSE MANAGEMENT SERVICE

SERVICE START DATE: The date the last party signs Variation Number 19 to the Agreement.

SERVICE SCHEDULE TERM: 24 months (unless extended under this Schedule or a Statement of Work)

SERVICE TERMS

1 SERVICE DESCRIPTION

- 1.1 The Integrated Expense Management Service is a range of services which allow you to have greater visibility and control over your overall telecoms expenses from Telstra (**Services**).
- 1.2 We will supply and you will purchase from us Services on the terms of this Service Schedule and the Statement of Work.
- 1.3 The Services consist of asset and invoice lifecycle management services as described in the relevant Statement of Work, and may include Services such as bill reporting and analytics, consulting services and support services to manage your telecoms solutions.
- 1.4 You may request Services from time to time during the Service Schedule Term in accordance with the order process set out below.

2 ORDER PROCESS

- 2.1 Unless otherwise agreed by you and us in writing, the order process will be as follows:
 - (a) You will prepare a Work Request. Before a Work Request is issued to us it must be approved by Your Authorised Representative;
 - (b) As soon as practicable after receipt of the Work Request, Our Primary Contact will contact Your Primary Contact either to confirm our intention to respond to your Work Request or decline your Work Request;
 - (c) Following a notification of our intention to respond to your Work Request, Our Primary Contact will compile a proposed Statement of Work and return it to Your Primary Contact;
 - (d) Your Authorised Representative may:
 - (i) accept the proposed Statement of Work by signing and returning it to Our Primary Contact together with your Purchase Order (where it is required by you); or
 - (ii) reject the proposed Statement of Work and withdraw the Work Request; or
 - (iii) reject the proposed Statement of Work and ask that it be amended and resubmitted (which request for amendments may be accepted or rejected by us at our discretion).
 - (e) Following receipt of a signed Statement of Work from you, Our Authorised Representative will countersign the Statement of Work and return a copy to Your Primary Contact.
- 2.2 A Statement of Work is not legally binding unless and until it is signed by you and us.
- 2.3 You agree that all work undertaken in connection with a Statement of Work will be on the terms of this Agreement and any terms attached to your Purchase Order will not apply.

CHANGES TO A STATEMENT OF WORK

- 2.4 Where either party wishes to make a change to the Services, Commissioned Deliverables or any other aspect of the Statement of Work, the parties must follow the process set out in the Change Process.
- 2.5 No change to the Services, Commissioned Deliverables or any other aspect of the Statement of Work will be effective until it is agreed and signed by both parties.
- 2.6 In relation to any proposed changes to the Services, Deliverables or any other aspect of the Statement of Work, we will:
- (a) assess the impact, costs, benefit and risk;
 - (b) discuss the impact, costs, benefit and risk with you; and
 - (c) document all changes according to the steps (if any) set out in the Change Process.

3 SERVICE AND DELIVERABLES

- 3.1 You must provide Your Inputs by the dates specified in the Statement of Work or where no dates are specified immediately upon our request.
- 3.2 We will perform the Services and deliver to you the Deliverables according to the Specifications.
- 3.3 We aim to meet each relevant Delivery Date but we do not guarantee to meet it.

DELAY IN DELIVERY

- 3.4 In respect of any delay which is not caused solely by us:
- (a) we will not be responsible for any delay in delivering a Deliverable or a subsequent Deliverable which depends on that Deliverable;
 - (b) the Delivery Date or due date for Deliverables will automatically be extended by a period equal to the period of delay; and
 - (c) you must pay us any fees as detailed in the Statement of Work together with all additional Expenses incurred by us as a consequence of the delay.

4 TITLE AND RISK

- 4.1 Risk in a Deliverable passes to you upon delivery of that Deliverable.
- 4.2 Subject to clause 9, property in and title to a Deliverable resides with us until you have paid us in full the Fee for that Deliverable.
- 4.3 You must not pledge or encumber a Deliverable until title has passed to you.

5 ACCEPTANCE OF DELIVERABLES

- 5.1 The Statement of Work will set out in respect of each Deliverable under that Statement of Work whether the Acceptance Process will apply to that Deliverable.

ACCEPTANCE PROCESS

- 5.2 During the Acceptance Test Period, you may assess the Deliverable to ensure that it contains no Defects.

- 5.3 If there are no Defects in the Deliverable, you must issue to us a Notice of Acceptance on or before expiry of the Acceptance Test Period.
- 5.4 If the Deliverable contains a Defect, you must issue a Notice of Rejection on or before expiry of the Acceptance Test Period. The Notice of Rejection must contain sufficient information regarding the Defect to enable us to identify and repair the Defect or in the case of documentation list any errors or omissions identified.
- 5.5 If you issue a Notice of Rejection in relation to a Deliverable we will rectify the Defect and re-submit the rectified Deliverable for testing in accordance with the Acceptance Process. Clauses 5.2 to 5.6 will apply to the resubmitted Deliverable and the relevant Acceptance Test Period will be the same as the original Acceptance Test Period for that Deliverable.
- 5.6 Acceptance of a Deliverable occurs on the earliest of:
- (a) for a Deliverable where the Statement of Work does not specify that the Acceptance Process applies, the date of delivery; or
 - (b) the date you issue a Notice of Acceptance; or
 - (c) the date you use the Deliverable in any way (except for test purposes); or
 - (d) expiry of the Acceptance Test Period unless you have issued us with a valid Notice of Rejection which identifies at least one Defect.
- 5.7 Acceptance of a Deliverable does not affect any rights you may otherwise have under any law or elsewhere in this Service Schedule to have defects in a Deliverable corrected.

6 DEFECTS

- 6.1 We do not represent or warrant to you that each Deliverable will be free from Defects.
- 6.2 If a Deliverable has a Defect then subject to clause 6.4, your sole remedy for that Defect is that we must at no cost to you:
- (a) at our discretion, repair, replace or rectify, any Defect which occurs in a Deliverable and notified to us within the Warranty Period or, if no Warranty Period is specified in the Statement of Work, within 2 days of delivery; and
 - (b) deliver the repaired, replacement or rectified Deliverable to you.
- 6.3 We have no liability and clause 6.2 does not apply where Your Input and/or Your Material has resulted in a Defect in a Deliverable or where a Defect occurs as a result of misuse or intentional damage other than by us.
- 6.4 If the Deliverable has a Defect during the Warranty Period, you must contact Our Primary Contact.

7 OUR PERSONNEL

- 7.1 Where Our Personnel perform the Services at Your Premises, you must ensure that Your Premises comply with all health, safety, environment and community laws and regulations.
- 7.2 If applicable health, safety, environment and community laws and regulations are of a different standard or quality to our health, safety, environment and community requirements, you must comply with the most stringent requirement. We can provide you with our health, safety, environment and community requirements on request.
- 7.3 You will obtain any consent and fund any site access and induction fees to enable Our Personnel to access Your Premises for the purpose of providing the Services to You.

- 7.4 You must not, and must ensure that your related bodies corporate do not, during the term of each Statement of Work and for 3 months after the completion of that Statement of Work (or such other period as set out in the Statement of Work), seek to employ or engage the services of any employee or contractor involved in providing the Services to you. This does not apply in relation to a person who responds to a genuine published advertisement.
- 7.5 You acknowledge that the restraint in clause 7.4 is reasonable in its extent and goes no further than is reasonably necessary to protect our interest in maintaining our personnel.

8 PAYMENT

- 8.1 Unless otherwise stated, all prices set out in any Statement of Work are:
- (a) denominated in Australian dollars (\$AUD); and
 - (b) GST exclusive.
- 8.2 You will pay to us the Fixed Price Fee and/or Time and Materials Fee plus any Expenses in the amounts and instalments set out in the Statement of Work. You must reimburse us for all out-of-pocket expenses reasonably and actually incurred by us in performing the Services, provided that we:
- (a) first obtain verbal approval for each expense from Your Primary Contact; and
 - (b) produce a valid invoice or receipt when claiming the expense.

TIME AND MATERIALS BUDGET LIMIT

- 8.3 If a Time and Materials Budget Limit applies to a Statement of Work and the Time and Materials Budget Limit is reached then we will:
- (a) notify Your Primary Contact in writing and may suspend all work in relation to the Statement of Work; and
 - (b) inform Your Primary Contact of our estimation of the time and budget remaining of completing the Services under the Statement of Work.
- 8.4 Following a notice under clause 8.3, the parties will agree to a revised Time and Materials Budget Limit. The total amount which results from any increase under this clause 8.4 will be deemed to be the Time and Materials Budget Limit.
- 8.5 If a revised Time and Materials Budget Limit is not agreed:
- (a) you will be responsible for payment in respect of all work undertaken to the date of a notice under clause 8.3 regardless of whether the Services or Deliverables have been completed;
 - (b) we have no further obligation or liability to complete the Services and/or Deliverables; and
 - (c) we may immediately terminate the Statement of Work by notice to you if no agreement is reached within 14 days of the notice under clause 8.3.

TIMESHEETS

- 8.6 Where agreed in a Statement of Work, we will maintain and submit timesheets. Upon receipt of a timesheet from Our Personnel, Your Primary Contact must, within 2 days:
- (a) sign and return the timesheet to Our Primary Contact; 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.

8.7 Any dispute in relation to timesheets will be dealt with in accordance with the dispute resolution procedures set out in the Agreement Terms. For the avoidance of doubt, any such dispute does not affect our rights to bill you, or your obligations to pay, for Services in accordance with this Agreement. 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.

9 MATERIALS

DEVELOPED MATERIAL AND LICENSED MATERIAL

- 9.1 We grant to you a non-exclusive, non-sub-licensable and non-transferable license to use, adapt and reproduce the Developed Material and any Licensed Material incorporated in a Deliverable in the Territory solely for your internal business purposes.
- 9.2 As between you and us, we retain all right, title and interest (including Intellectual Property Rights) in and to the Developed Material and Licensed Material, and you acquire no interest in or to the Developed Material or Licensed Material, other than the license set forth in clause 9.1.
- 9.3 Except to the extent expressly permitted by applicable law, you must not, and must not permit others to, copy, reproduce, adapt, merge with other software, modify, decompile, reverse-engineer, disassemble or translate all or any part of the Deliverables including any Developed Material or Licensed Material.
- 9.4 You must not use the Deliverables other than in accordance with the terms of this Agreement, any documentation provided with the Deliverables and our reasonable instructions.
- 9.5 You must not challenge or impair the validity of or our title to or interest in any Intellectual Property Rights in the Developed Material or Licensed Material.

YOUR MATERIAL

- 9.6 You or your licensors retain the Intellectual Property Rights in Your Material. You grant us a royalty-free license to use Your Material for the sole purpose of performing our obligations under this Service Schedule including the right to:
 - (a) copy, modify, adapt and make derivative works of Your Materials; and
 - (b) permit our subcontractors to use, copy, modify, adapt and make derivative works of Your Materials.
- 9.7 We acknowledge that the licence granted in 9.6 does not transfer to us any ownership rights (including Intellectual Property Rights) in any of Your Materials.
- 9.8 You warrant and represent that:
 - (a) you have and will during the Service Schedule Term have full power and authority to grant the rights in respect of Your Material; and
 - (b) no rights of any third party will be infringed by our use of any of Your Materials in accordance with this Agreement.

RESPONSIBILITY FOR YOUR MATERIALS/YOUR INPUTS

- 9.9 You must pay any loss, damage, liability, costs or expenses incurred by us as a result of a claim that Your Material and/or Your Inputs or their use by us in accordance with the terms of this Agreement and the Statement of Work infringes the Intellectual Property Rights of any person.

10 LIABILITY

- 10.1 Unless expressly agreed in the Statement of Work, we are not responsible for the use by a third party or use by you for the benefit of a third party of the Services or any Deliverables.
- 10.2 You must pay any loss, damage, liability, costs or expenses incurred by us as a result of any use by a third party or use by you for the benefit of a third party of the Services or any Deliverables (unless such use is expressly permitted in the Statement of Work).

11 TERM AND TERMINATION

- 11.1 This Service Schedule begins on the Service Start Date and continues for the Service Schedule Term unless terminated or renewed.
- 11.2 Each Statement of Work commences on the date specified in the relevant Statement of Work and unless a minimum term applies to a particular Service as set out in the Statement of Work, continues until all the Services are completed and all Deliverables are delivered unless terminated earlier.
- 11.3 Upon expiry of the Service Schedule Term, if there is any Statement of Work which has not been completed or terminated, it will continue on the terms set out in the Agreement Terms, this Service Schedule and relevant Statement of Work until it is completed or terminated.

TERMINATING A STATEMENT OF WORK

- 11.4 You may terminate a Statement of Work 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 Statement of Work. We must cease work in accordance with that notice.

12 EARLY TERMINATION CHARGE

- 12.1 If you or we terminate a Statement of Work before the SOW End Date, other than for our material breach and unless otherwise set out in this Service Schedule, we may charge you an early termination charge (ETC) calculated using the formula set out in Part 2 of the Statement of Work.
- 12.2 You acknowledge that the ETC amount is a genuine pre-estimate of the loss we are likely to suffer.

13 DEFINITIONS

- 13.1 The following definitions apply in this Service Schedule, in addition to the definitions in the Agreement Terms, unless the contrary intention appears.

Acceptance Process means the process set out in clauses 5.2 to 5.6 or such other process set out in the Statement of Work.

Acceptance Test Period means the period set out in the Statement of Work or if no period is specified 14 days from the date the Deliverable is delivered.

Agreement means your Business Services Agreement and Variations as they are amended from time to time.

Agreement Terms means the section of this Agreement with that title, to which this Service Schedule is attached.

Change Process means the process so described in the Statement of Work or, if no process is set out in the Statement of Work, as agreed between the parties.

Defect means any characteristic which makes the whole or any part of the Commissioned Deliverable materially inoperable or materially inconsistent with the Work Order.

Deliverable means an item (including, without limitation, any software or hardware) required to be provided to you or a task to be completed by us for you as specified in the Statement of Work.

Delivery Date means the date as specified in the Statement of Work for the completion of the development of, and the delivery to you of a Deliverable or provision of Services.

Developed Material means all Material created or developed, including by way of a Modification to existing Material, by or on our behalf for you as specified in the Statement of Work and which is included in a Deliverable but excluding all Underlying Material.

Expenses means all expenses specified in the Statement of Work.

Fees mean the fees and charges set out in the Statement of Work.

Fixed Price Fee means the sum of all amounts payable to us as set out in a Fixed Price Statement of Work.

Fixed Price Statement of Work means a Statement of Work where the amount payable under that Statement of Work is a specified fixed amount.

Licensed Material means all Material comprised in a Deliverable, including Underlying Material, supplied by us to you under this Service Schedule excluding Developed Material and Your Material.

Material means material in any form, including documents, reports, products, equipment, information, data, software, software tools and software development methodologies.

Modification includes an alteration, enhancement, development, maintenance or repair, and Modify and Modified have corresponding meanings.

Notice of Acceptance means a written notice issued by you confirming that you accept the Deliverable.

Notice of Rejection means a written notice setting out the Deliverable(s) that you do not accept and setting out the reasons for rejection.

Our Authorised Representative means the person designated by us to sign a Statement of Work on our behalf.

Our Personnel means any person, company or other contracting party engaged to provide services to or on behalf of us under a contract of services, either directly or indirectly (for example, through a third party) and includes agency workers, consultants, agents and suppliers who perform the Services.

Our Primary Contact means the person designated by us as responsible for managing the Statement of Work on our behalf.

Purchase Order means a purchase order in respect of either a Fixed Price Statement of Work or a Time and Materials Statement of Work. Where applicable, the Purchase Order will be attached to the Statement of Work.

Services means the professional services described in the relevant Statement of Work.

Specifications mean the specifications for a Deliverable which is set out in the Statement of Work.

Statement of Work or **SOW** means a work order in a form substantially similar to that set out in Attachment 1 to this Service Schedule (as updated or amended by us from time to time) and which has been signed by both parties.

Territory means the place(s) specified in the Statement of Work, or if none specified, is Australia.

Time and Materials Budget Limit means the maximum amount of Time and Materials Fee payable by you in connection with a Time and Materials Statement of Work, as specified in such Work Order, unless varied in accordance with this Service Schedule.

Time and Materials Fee means the amount payable by you in connection with a Time and Materials Statement of Work calculated by reference to the Fees and, where requested, timesheets, plus Expenses.

Time and Materials Statement of Work means a Statement of Work where the amount payable under that Statement of Work is on a time and materials basis.

Underlying Material means all tools, techniques, methodologies and general production mechanisms for outputs (including the outputs).

Warranty Period means the period described in the Statement of Work from delivery of the Deliverable to you.

Work Request means your request of specific work to be performed by us and containing at least the following information:

- (a) details of Your Authorised Representative and Your Primary Contact;
- (b) details of services and deliverables requested including the name of any related application(s);
- (c) Work location(s);
- (d) any and all dependencies and risks that may affect the completion of the proposed Statement of Work;
- (e) key dates that will and may have an impact on the project schedule;
- (f) all assumptions used by you in order to create your Work Request;
- (g) a description of what technical and non-technical resources and environments you will provide or make available to us so that we may complete work under the proposed Statement of Work.

Your Authorised Representative means the person with the appropriate financial authority designated by you to sign a Statement of Work on your behalf.

Your Input means the goods, services and other assistance to be provided by you as specified in the Statement of Work.

Your Material means all Material you must provide so that we can perform our obligations under this Service Schedule.

Your Premises means a building, site or location other than ours.

Your Primary Contact means the person designated in the Statement of Work as responsible for managing your obligations under a Statement of Work on your behalf.