

# Professional Services Terms

Last Updated 13/12/2016

## 1. Terms

These terms must be read in conjunction with our [General Terms](#). Definitions contained in this document have the same meaning as those in the General Terms, unless stated otherwise in writing.

## 2. Dictionary

In these Product Terms, unless the context suggests otherwise:

**Ad Hoc Request** means a written request for Ad Hoc services.

**Ad Hoc Work** means the services contemplated in clause 5.

**Authorised Representative** means a person who is authorised to represent a party.

**Business Day** means a day that is not a Saturday, Sunday or public holiday observed in Victoria, Australia.

**Business Hours** means between the hours of 9am to 5pm AEST on a Business Day.

**Change Request** means a written request by either one of us to alter a Statement of Work.

**Milestone** means a key event contained in a Milestone Schedule, such as the completion of work or part of some work.

**Milestone Schedule** means a timetable of key events in the execution of a production of the deliverables or provision of the services as set out in a Statement of Work.

**Pre-Existing IP** means, all software (in both source and object code versions), scripts, applications, designs, graphics, icons, documents, tools and other intellectual property, which is owned or licensed by us, which existed prior to the provision of the services to you or which came into existence outside the scope of a Service Agreement.

**Project IP** means the Intellectual Property which is created under a Service Contract but excludes Pre-existing IP.

**Rates Schedule** means a schedule of our standard fees and charges located at: <https://help.schoolbox.com.au/homepage/1301>.

**Statement of Work** means a document agreed between the parties containing the matters set out in clause 3.3

**\$** means, unless specified otherwise in a Service Order, currency will be listed in Australian dollars (AUD).

## 3. Services

### 3.1. Statements of Work

Except in the case of Ad Hoc Work, we will provide you with the services set out in Statements of Work – in the case of Ad Hoc Work, we will provide the services set out in the Ad Hoc Request.

### 3.2. Consultation on draft Statement of Work

If you require professional services from us, the parties will consult on a draft Statement of Work.

### 3.3. Draft Statements of Work

A draft Statement of Work must be [substantially in our prescribed form](#) and include:

- 3.3.1. information about the project that the services relate to;
- 3.3.2. a description of the professional services to be provided by us;
- 3.3.3. a description of particular characteristics, and detail and scope of the deliverables to be provided as part of the services;
- 3.3.4. the name and contact details of your Authorised Representative;
- 3.3.5. any dependencies or assumptions that apply to the professional services or the deliverables; and
- 3.3.6. any special conditions.

## 4. **Service Agreements**

### 4.1. Service Agreements

- 4.1.1. When a draft Statement of Work is in a form that the parties agree to, they will sign it. Once a draft Statement of Work has been signed by us:
  - 4.1.1.1. the draft Statement of Work becomes a Statement of Work under these Product Terms;
  - 4.1.1.2. there is a contract ('Service Agreement') for the supply of services in accordance with the Statement of Work and our General Terms; and
  - 4.1.1.3. the terms of Service Agreement comprises the Statement of Work (including any special conditions), and anything else specified in our General Terms.
- 4.1.2. In the case of Ad Hoc Work, when the Ad Hoc Request has been accepted in writing by us:
  - 4.1.2.1. the Ad Hoc Request has subject to this clause, the same status as a Statement of Work (except for the requirements under clause 3.3) under these Product Terms;
  - 4.1.2.2. there is a contract ('Service Agreement') for the supply of services in accordance with the Ad Hoc Request; and
  - 4.1.2.3. the terms of Service Agreement comprises the Ad Hoc Request (including any special conditions) and our General Terms.
- 4.1.3. For the purposes of these Product Terms, a reference to a Statement of Work includes an Ad Hoc Request in the case of Ad Hoc Work.

### 4.2. Independent contract

Each Service Agreement is an independent contract.

## 5. **Service Delivery Approaches**

### 5.1. We employ various methods of delivering professional services:

- 5.1.1. Ad Hoc Work;
- 5.1.2. Time and Materials; and
- 5.1.3. Fixed Cost;

## 6. **Ad Hoc Work**

### 6.1. Ad Hoc Work:

- 6.1.1. is intended to cover small jobs such as performing maintenance or updates to an existing project, providing technical support, asset retrieval, project management services, consulting, training, creative services, general small requests for services; and
- 6.1.2. does not exceed \$5,000 in value.

### 6.2. Subject to clause 32 of our General Terms and to the extent permitted by law, the only warranties that apply to Ad Hoc Work are (a) for a period of 30 days from completion of the Ad Hoc Work; and (b) those warranties implied by law – acceptance testing does not apply to Ad Hoc Work, unless we agree otherwise in writing.

## 7. **Time and Materials**

### 7.1. Methodology

Where we use time and materials methodology, professional services will be provided, in a manner determined by us but meeting the scope set out in a Statement of Work.

### 7.2. Billing

- 7.2.1. Time and materials projects will be billed in accordance with clause 10.
- 7.2.2. Prior to the commencement of work, we will provide a Service Order containing a cost Estimate (in accordance with clause 9) to you for the time and materials work.

### 7.3. Completion and Acceptance

- 7.3.1. If it becomes apparent to us that the time required to complete the work agreed in the Statement of Work substantially exceeds the estimated time, we will discuss with you, the need to revise the cost estimate and request approval for the additional cost before

proceeding. If you do not approve the revised estimate, this does not affect our entitlement to be paid for services already provided.

7.3.2. We will notify you upon the completion of time and materials services, and the work will be deemed to have been completed at the expiration of 7 days from the notification.

7.3.3. Unless a Statement of Work states otherwise, no warranty period applies to all time and materials work. The rectification of any defects encountered will be treated on a time and materials basis

#### 7.4. Prepayment

In addition to any other right we have, we may invoice you for or request the payment of a security deposit prior to the commencement of work.

### 8. Fixed Cost

8.1. The cost of fixed cost services (including development) work is based on a cost estimate and scope of work (and in some instances project milestones) contained in a Statement of Work.

8.2. Once we reach a milestone by completing work, you must within 14 Business Days (unless we agree on alternate timing in a Statement of Work) of receiving a completion notice from us either:

8.2.1. agree in writing that the milestone has been achieved, and that we are entitled to payment; or

8.2.2. advise in writing if the milestone has not been achieved and specify full particulars of why it is incomplete.

8.3. If you:

8.3.1. do not do either of the things in clause 8.2.1 or 8.2.2 within 14 Business Days of a completion notice in clause 8.2, the milestone described in the completion notice is deemed to be complete; or

8.3.2. advises that a milestone has not been achieved (in accordance with clause 8.2.2), then the milestones and Milestone Schedule may be extended by us for a period which it considers reasonably necessary after consultation with you.

8.4. The Completion Date of a milestone is the earlier of the:

8.4.1. notice in clause 8.2.1;

8.4.2. period in clause 8.3.

8.5. For the purposes of fixed cost and scope of professional services, any warranty period (where applicable) commences on the Completion Date of the last milestone in a Statement of Work.

8.6. Subject to anything to the contrary in a Statement of Work, the default warranty period is 60 days from the date in clause 8.4.

### 9. Project Changes

9.1. Changes to requirements

9.1.1. You may, at any time, request a change to a Statement of Work by issuing a Change Request.

9.1.2. Where we encounter unforeseen additional work, changes or difficulties, then we may issue you with a Change Request.

9.1.3. If the change is agreed between the parties, the Statement of Work will be deemed to be amended in accordance with the agreed change.

9.1.4. An amendment to a Statement of Work does not affect:

a. payments made to us; or

b. our entitlement to be paid for services provided – up to the date of amendment.

9.2. Upon service of a Change Request from us, you must:

9.2.1. either accept the Change Request; or

9.2.2. reject the Change Request by written notice outlining the basis of the rejection.

- 9.3. If you:
- 9.3.1. reject a Change Request, then you must meet with us within 14 Business Days of your rejection to attempt to resolve any issues with the Change Request in good faith;
  - 9.3.2. do not respond to a Change Request in writing within 14 Business days, then you are deemed to have accepted the Change Request.
- 9.4. If within 14 Business Days of meeting under clause 9.3.1, the parties cannot reach agreement, then either party may terminate the Service Agreement (on 7 days written notice) which was subject to the Change Request – termination under this clause will not affect your liability to pay for work undertaken by us up to the date of termination.

## 10. Fees and expenses

### 10.1. Fee estimate

- 10.1.1. Estimates may be either time and materials or fixed cost - and are estimates only and are not binding.
- 10.1.2. We use our experience and historic data to calculate the total effort required to deliver the scope or services specified in a Statement of Work.

### 10.2. Fees

The fees for services are calculated based on the:

- 10.2.1. amount of time our personnel spend providing the services; and
- 10.2.2. rates for those personnel as specified in the Statement of Work or, where no rates are specified, as contained in the [Rates Schedule](#).

### 10.3. Expenses

You must reimburse us for any reasonable out-of-pocket expenses incurred by us in providing the services, these include bank fees, third party licence fees and any other disbursements. Where reasonably practicable, we will obtain your approval prior to incurring reasonable out-of-pocket expenses. We may charge a margin on out-of-pocket expenses to cover processing and handling. The margin on out-of-pocket expenses shall not be greater than 25%.

### 10.4. Invoicing

We may invoice you in Australian dollars whenever fees have accrued, but normally invoices are rendered monthly or at the times specified in a Statement of Work.

### 10.5. Payment

You must pay all invoices in full within 30 days of its date, regardless of the date upon which you actually receive the invoice.

### 10.6. Default in payment

If a payment is overdue, we may, in addition to its other rights:

- 10.6.1. withhold delivery of services until payment is made; and
- 10.6.2. take collection action, in which case you will be liable for the costs.

### 10.7. Default Rates

In the absence of any pricing in a Statement of Work then we may bill you in accordance with the [Rates Schedule](#).

### 10.8. Round Up

If the total chargeable time in any month is more than no chargeable time but less than 1 hour of time, then we may charge you for 1 hour of time.

### 10.9. Deposits and Prepayments

We may require a deposit or prepayment of fees and expenses at any time – where such request is made, it is a term of your Service Agreement with us.

### 10.10. Changes in Fees

We may change our fees and [Rates Schedule](#) at any time, where we notify you in writing. Increases do not apply to Statements of Work that are currently in progress.

## 11. **Intellectual property**

### 11.1. Pre-existing IP

Nothing in these Product Terms or a Service Agreement affects the ownership of Pre-existing IP.

### 11.2. Project IP

Unless a Service Agreement states otherwise (and then only as far as it states), all Project IP belongs to us and you will have no legal or equitable right, title or interest in any Project IP, subject only to clause 11.3.

### 11.3. Licence of Project IP

Upon full payment of fees, we grant to you a worldwide, perpetual, royalty-free, non-transferable and non-exclusive licence to use, modify, reproduce and adapt Project IP for your internal business purposes and any other purpose expressly stated in the relevant Service Agreement.

### 11.4. No commercialisation

The licence granted under clause 11.3 does not include the right to commercialise the Project IP.

## 12. **Service Levels**

12.1. We may offer you a support or service level agreement for the provision of services.

12.2. Where we offer a support or service level agreement:

12.2.1. additional terms and conditions may apply; and

12.2.2. we may charge in accordance with our [Rates Schedule](#).

12.3. Service levels do not apply to the provision of any Services, unless we expressly offer service levels in writing under a Statement of Work.