

GENERAL TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES TO VOCUS

Effective 20 October 2022

These general terms and conditions (**Terms**) apply to the order by Vocus and supply of Goods and Services by the Supplier to Vocus. No other terms are implied by trade, custom, practice or course of dealing. These Terms, together with any Purchase Order issued under it, constitute the entire agreement between the parties in relation to its subject matter. The Supplier acknowledges that it has not relied on any statement, promise or representation or assurance or warranty that is not set out in these Terms.

1 DEFINITIONS AND INTERPRETATION

1.1 In these Terms:

- (a) **Agreement** means, collectively, these Terms and any Purchase Order issued under it.
- (b) **Business Day** means a day which is not a Saturday, Sunday, public holiday or bank holiday in Melbourne, Victoria, Australia.
- (c) **Background IP** means any Intellectual Property Rights owned or licensed by a party that is used, contributed or made available by that party in connection with these Terms.
- (d) **Confidential Information** means any information marked as confidential or which by its nature the other party knows or ought to know is confidential (regardless of the form and when it was acquired) and includes trade secrets, concepts, designs, plans, technical knowledge, precedents, methods, techniques, processes, procedures, know-how, innovations, ideas, research data, financial data, databases, personnel data, computer software and programs, customer and supplier information, correspondence and papers of every description including all copies or extracts of same relating to the affairs or business of the party, and in the case of Vocus, Sensitive Information.
- (e) **Construction Works** has the meaning given in clause 13.2(a).
- (f) **Delivery Date** means the date for delivery of the Goods or Services as stated in the Purchase Order, or other written document provided by Vocus on or before the date of the Purchase Order, by which delivery of the Goods or Services must be affected by the Supplier.
- (g) **Delivery Point** means the locations or addresses for delivery of the Goods or Services as set out in the Purchase Order or as otherwise directed by Vocus.
- (h) **Force Majeure Event** means any event which prevents, hinders or delays a party from performing any of its obligations under the Agreement, to the extent such event is beyond the reasonable control of the affected party, and includes:
 - (i) any act of God, bushfire, earthquake, storm or other natural disaster;
 - (ii) epidemic, pandemic or other public health and safety emergency;
 - (iii) nuclear, chemical or biological contamination;
 - (iv) war, sabotage, riot, act of terrorism, denial of service attack, insurrection, civil commotion, national emergency (whether in fact or in law), power shortage; or
 - (v) any relevant law coming into force after the date of the Agreement, or any action taken by a government agency, including imposition of embargo, sanctions, blockade or breaking off of diplomatic relations.
- (i) **Goods** means the goods to be supplied by the Supplier as set out in a Purchase Order.
- (j) **GST** means any goods and services tax chargeable under the GST Act, or such other similar tax, however described.
- (k) **GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (l) **Home Affairs Minister** has the meaning given in the *Telecommunications Act 1997* (Cth).
- (m) **Insolvency Event** includes an event where a receiver or receiver and manager is appointed over any of a party's property or assets, an administrator, liquidator or provisional liquidator is appointed to a party, a party enters into any arrangement with its creditors, a party becomes unable to pay its debts when they are due, a party is wound up or becomes bankrupt, or any other analogous event or circumstance occurs under the laws of any jurisdiction.
- (n) **Intellectual Property Rights** means any copyright, trade or service mark, design, patent, semiconductor or circuit layout right, trade, business or company name, indication of source or appellation of origin or other proprietary right, or any right to registration of such rights in Australia and throughout the world.
- (o) **Personal Information** has the meaning given in the Privacy Act.
- (p) **Personnel** means, in relation to a party, any of its employees, staff and other personnel within its employ and control.
- (q) **Privacy Act** means the *Privacy Act 1988* (Cth).
- (r) **Purchase Order** means a purchase order issued by Vocus for the supply of Goods or Services.
- (s) **Representatives** mean, in relation to a party, any of its directors, officers, Personnel, or subcontractors.
- (t) **Security Incident** means a single or series of unwanted or unexpected Information Security Events that have a significant probability of compromising business operations and threatening information security relevant to the Goods or Services.
- (u) **Security Schedule** means the security schedule annexed to these Terms as Annexure A.

- (v) **Sensitive Information** means any information and access to assets comprising Vocus' network, systems, and infrastructure
- (w) **Services** means the services to be supplied by the Supplier as set out in an Order.
- (x) **Tax Invoice** has the same meaning as in the GST Act.
- (y) **TSSR** means the changes to Part 14 of the *Telecommunications Act 1997* introduced by the *Telecommunication and Other Legislation Act 2017*, known as the Telecommunication Sector Security Reforms.
- (z) **Vocus** means Vocus Pty Ltd or its Related Body Corporate named in a Purchase Order.

1.2 In the Agreement, unless the contrary intention appears:

- (a) headings are for convenience only and do not affect the interpretation;
- (b) the singular includes the plural and vice versa;
- (c) other grammatical forms of defined words or expressions have corresponding meanings;
- (d) if something is to be done on a day that is not a Business Day, then it must be done on the next Business Day;
- (e) if a period of time is calculated from a particular day, act or event (such as the giving of a notice), unless otherwise stated, it is to be calculated exclusive of that day, or the day of that act or event;
- (f) the words "in writing" include any communication sent by letter, facsimile transmission or email or any other form of communication capable of being read by the recipient;
- (g) a reference to all or any part of a statute, rule, regulation or ordinance (statute) includes that statute as amended, consolidated, re-enacted or replaced from time to time;
- (h) the Contract must not be construed adversely to a party just because that party prepared it; and
- (i) the words 'such as', 'including', 'particularly' and similar expressions are not words of limitation.

1.3 If the Supplier provides any terms and conditions to Vocus in respect of the Goods or Services, then to the extent permitted by law, those terms and conditions will have no legal effect.

1.4 Where any special conditions included in a Purchase Order conflicts with a provision in these Terms, the special conditions will prevail to the extent of any inconsistency.

2 PROVISION OF GOODS AND SERVICES

2.1 Vocus appoints the Supplier as a supplier of the Goods or Services on a non-exclusive basis.

2.2 The Supplier must provide the Goods or Services in accordance with the Agreement.

2.3 In supplying the Goods or Services, the Supplier must, to the extent applicable:

- (a) be aware of and comply with:
 - (i) all applicable laws, regulations, industry standards and Australian Standards; and
 - (ii) all procedures and directions provided by Vocus, its agents, or any person empowered by law;
- (b) when attending Vocus' premises, ensure that its Personnel supply the Goods or Services in a safe manner and in a way that does not prejudice safe working practices, safety and care of property and continuity of work at the premises;
- (c) provide all information and assistance as Vocus reasonably requires from time to time in connection with the supply of the Goods or Services; and
- (d) provide Vocus with immediate written notice of any actual or likely conflict of interest by the Supplier in relation to the Contract.

2.4 In supplying any Goods, the Supplier must:

- (a) deliver the Goods at the Delivery Point set out in the Order or as advised by Vocus by the Delivery Date; and
- (b) package and pack the Goods appropriately to avoid damage during transit or in storage and to comply with any applicable laws.

3 QUALITY OF GOODS AND SERVICES

3.1 The Supplier must ensure that the Goods and Services:

- (a) match the specifications and description, including any standards and service levels, provided in the Purchase Order or as agreed between the parties,
- (b) correspond to any of the following provided to Vocus prior to issuing the Purchase Order:
 - (i) sample of the Goods; and
 - (ii) demonstration provided or result shown;
- (c) are performed with professional skill, care and diligence expected of a skilled and experienced professional supplier;
- (d) fit for the purpose specified in, or as an experienced professional supplier would reasonably infer from, the Purchase Order;
- (e) are new and of merchantable quality;

- (f) any items or equipment used in conjunction with the Services are of merchantable quality and fit for their usual purpose and comply with any standards and/or purpose specified in the Purchase Order; and
 - (g) carry any applicable manufacturer's warranty. The Supplier must assign to Vocus the benefit of any warranty or guarantee that the Supplier has received from any supplier (whether under contract or by implication or operation of law).
- 3.2 If Vocus discovers a defect with the Goods or Services (other than a defect caused by Vocus' negligence), Vocus may reject the defective Goods or Services, and require the Supplier, at the Supplier's cost, to:
- (a) in the case of Goods, either:
 - (i) replace the Goods free of charge and remove the rejected Goods; or
 - (ii) make good any defect to the defective Goods, andreimburse Vocus for any expenses it incurs in repairing, reperforming or making good (as the case may be) the defective Goods;
 - (b) in the case of Services, re-perform or make good the Services and reimburse Vocus for any expenses it incurs in repairing, reperforming or making good (as the case may be) the defective Services.
- 3.3 If the Supplier does not replace the Goods, re-perform the Services or make good any defects with the Goods or Services, Vocus is not liable to pay the price for such Goods or Services to the Supplier and the Supplier must refund any amounts already paid by Vocus.
- 3.4 Acceptance of defective Goods or Services by Vocus does not bind Vocus to accept any other defective Goods or Services or affect the Vocus' rights under the Agreement or at law.
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4 SUPPLIER OBLIGATIONS

4.1 Training

If the Purchase Order includes training, the Supplier:

- (a) must provide the training at the price specified; and
- (b) warrants that all training will be of a high professional standard and adequate to ensure that Vocus' Personnel, acting reasonably and diligently, will acquire sufficient information to utilise the Goods or Services for the purposes reasonably contemplated under the Agreement.

4.2 Site specification

To the extent specified in the Purchase Order, the Supplier must provide Vocus with particulars of the implementation and environmental requirements of the Goods or Services in order to permit Vocus to prepare the site accordingly.

4.3 Personal Information

- (a) In relation to all Personal Information made available or provided by Vocus at any time in connection with the performance of the Agreement, the Supplier must:
 - (i) comply with the Privacy Act and all other applicable privacy laws as if it were an agency bound by the Privacy Act;
 - (ii) take reasonable steps to protect Personal Information from misuse, interference and loss, and unauthorised access, modification or disclosure;
 - (iii) not disclose Personal Information to any third party (including any subcontractor) without Vocus' prior written consent or as required by law;
 - (iv) immediately notify Vocus on becoming aware of a breach of any obligation concerning security, use and disclosure of Personal Information by itself or its Representatives; and
 - (v) immediately notify Vocus on becoming aware of any complaint alleging an interference with privacy, and co-operate with Vocus in the investigation and resolution of such complaint.
- (b) Without prejudice to clause 4.3(a), the Supplier must comply with any other data protection legislation applicable to it from time to time in connection with all information made available or provided by Vocus to the Supplier.
- (c) The Supplier indemnifies Vocus in respect of any liability, loss or expense incurred by Vocus arising out of or in connection with a breach of the Supplier's obligations arising under the Privacy Act or the legislation referred to in clause 4.3(b).
- (d) This clause 4.3 will survive termination of the Agreement.

4.4 Cooperation with other service providers

- (a) Subject to clause 4.4(b), the Supplier must cooperate with any third-party service provider appointed by Vocus where this is necessary to ensure the integrated and efficient conduct of Vocus' operations. Without limiting the foregoing, the Supplier must provide such reasonable assistance to other service providers as Vocus may request from time to time.
- (b) Nothing in clause 4.4(a) will require the Supplier to disclose its confidential information to a third-party service provider.

4.5 Data security

The Supplier must:

- (a) comply with all Vocus data security requirements in respect of access to and use of data as advised by Vocus, in addition to any statutory obligation relevant to data security;

- (b) prohibit and prevent the Supplier's Representatives who do not have the appropriate level of security clearance from gaining access to data;
- (c) without limiting clause 4.5(b), use reasonable endeavours to prevent any unauthorised person from gaining access to data; and
- (d) notify Vocus immediately and comply with all directions of Vocus if the Supplier becomes aware of any contravention of Vocus' data security requirements.

4.6 Security and Security Incidents

- (a) The Supplier agrees to contribute to the development and provision of any supporting documentation as required by Vocus to notify the Communications Access Coordinator (**CAC**) within the Commonwealth Government Critical Infrastructure Centre (**CIC**) to ensure Vocus meets its obligations under the TSSR.
- (b) Where a response from the CAC to a notification submitted under the TSSR identifies a potential security risk, the Supplier agrees to support Vocus to develop and implement changes to the Goods or Services, to which Vocus makes a decision to implement a treatment.
- (c) The Supplier warrants and represents that the Supplier, Goods and Services will comply with:
 - (i) the Security Schedule; and
 - (ii) any applicable Vocus policies provided in advance to the Supplier.
- (d) The Supplier indemnifies Vocus against all claims, demands or proceedings of any nature and any cost, loss, expense or damages in respect of a breach of this clause 4.6 by the Supplier or its Representative.

4.7 Compliance with laws

The Supplier must in supplying the Goods or performing the Services comply with all applicable laws including safe working practices and lawful directions and orders given by Vocus.

4.8 Vocus' rules and policies

The Supplier must ensure that its Personnel and subcontractors are familiar with Vocus' site rules and policies that are in force from time to time, and fully comply and adhere at all times with these site rules and policies. Vocus is not liable for any failure and neglect by the Supplier to fully comply with Vocus' site rules and policies.

4.9 Subcontracting

The Supplier may not subcontract any part of its obligations under the Agreement without Vocus' prior written consent. The Supplier remains fully responsible and liable for the acts or omissions of each subcontractor as if such acts or omissions were the acts or omissions of the Supplier.

5 PAYMENT

5.1 Payment

- (a) Unless otherwise agreed by Vocus in writing, the price for Goods and Services are:
 - (i) fixed regardless of changes in exchange rates or costs; and
 - (ii) inclusive of all charges, insurance, taxes, taxable supplies, levies and duties, and all other costs incurred by the Supplier for its compliance under the Agreement.
- (b) Subject to clause 5.2, and provided that Vocus has received a GST compliant Tax Invoice, supporting documentation and particulars (where applicable) from the Supplier, Vocus will pay the Supplier the price for the Goods or Services within 30 days of the Tax Invoice.

5.2 Dispute

- (a) If Vocus disputes any item or items in a Tax Invoice, Vocus will notify the Supplier specifying the reasons and withhold payment of the disputed item or items until settlement of the dispute. Vocus will pay the undisputed portion of the Tax Invoice.
- (b) Vocus may query any Tax Invoice and/or require correction of any error, regardless of whether or not payment has already been made in relation to that Tax Invoice.

5.3 Set off

Without limiting Vocus' rights under any other provision of the Agreement or generally, all moneys due from Supplier to Vocus and all losses, costs, charges, damages or expenses which Vocus may have incurred or paid and for which Supplier is liable, may be deducted by Vocus from any amount due under the Agreement to Supplier.

6 TIME

6.1 Time is of the essence

Time is the essence of the Supplier's obligations under the Agreement. The Supplier must complete delivery of the Goods and Services to the Delivery Point by the Delivery Date.

6.2 Extension of time

An extension of time to deliver the Goods or Services may be granted at Vocus' sole discretion, in which case, time will remain of the essence in respect of the extended time.

6.3 Failure to comply

If the Supplier is unable to make delivery within the time stipulated in the Purchase Order or any extension of time granted, Vocus may:

- (a) unless the delay results from Vocus' act or omission, either:
 - (i) cancel the Purchase Order without prejudice to any right or remedy which has accrued or may thereafter accrue to Vocus; or
 - (ii) make special arrangements for transport to Vocus' site at which the Goods are required; and
- (b) deduct from amounts payable to the Supplier the transport and related expenses incurred over and above those which would have been incurred had delivery not been delayed.

6.4 Extending Delivery Date

- (a) The Delivery Date will be extended commensurately with the period of any actual delay to delivery due to any act, default or omission of Vocus.
- (b) Notwithstanding that the Supplier is not entitled to an extension of time, Vocus may, in its absolute discretion, extend the Delivery Date at any time by written notice.

7 WARRANTIES

7.1 The Supplier warrants and represents that:

- (a) the Supplier has the right to sell and transfer title to the Goods or Services to Vocus;
- (b) the Goods will:
 - (i) be free from any liens, restrictions, reservations, security interests, charges, encumbrances or any party interest of any kind and that Vocus will enjoy quiet possession of the Goods;
 - (ii) be new on delivery to Vocus, unless specified otherwise in the Purchase Order;
 - (iii) be fit for the purpose stated in the Agreement, or if no purpose is stated, the purpose for which the Goods would ordinarily be used;
 - (iv) conform to any description or sample provided by the Supplier;
 - (v) conform with the requirements of the Agreement;
 - (vi) conform to any legally applicable standards or other published recommendation of the original materials manufacturer;
 - (vii) be of good merchantable quality; and
 - (viii) be safe, free from defects (including defects in design, materials, workmanship and installation) or faults;
- (c) the Services will:
 - (i) conform to the requirements of the Agreement;
 - (ii) conform to any legally applicable standards or other published recommendation of the original materials manufacturer;
 - (iii) comply with all relevant specifications;
 - (iv) be performed with due care, skill and diligence; and
 - (v) be performed by persons who have the qualifications, licences, experience and expertise to perform the Services;
- (d) where the Goods have been procured by the Supplier from a third party, the Supplier assigns to Vocus, to the extent practicable and permitted by law, the benefits of the warranties given by that third party. This assignment does not in any way relieve the Supplier of the obligation to comply with warranties offered directly by the Supplier under the Agreement;
- (e) no virus will be introduced into Vocus' systems as a result of the supply of a Good which contains a virus, or any negligent or wilfully wrong act or omission by the Supplier in providing a Service;
- (f) the Supplier will not vary the specifications, configuration, characteristics, design or shape of the Goods without Vocus' prior written consent;
- (g) where the Purchase Order specifies trade name products, in accordance with the specifications as to the type and minimum quality of such Goods or Services required, the Supplier will not supply substitute or equivalent Goods or Services without Vocus' prior written consent;
- (h) the Supplier has represented that it can comply with all obligations under the Agreement and acknowledges that Vocus has relied upon such representation in entering into the Agreement;
- (i) the Supplier has:
 - (i) made proper allowance in the price for all matters which might impact upon the Supplier's ability to deliver the Goods and Services within any particular time, cost or quality constraints and all risks associated with the delivery of the Goods and Services;
 - (ii) informed itself as to all matters which might impact on the delivery of the Goods and Services;

- (iii) has carefully examined the documents forming part of the Agreement, and that there are no ambiguities or discrepancies in those documents; and
- (j) the Supplier is not suffering from an Insolvency Event.

8 INSURANCE

- 8.1 The Supplier must maintain in force the following non-cancellable policies, unless otherwise required by Vocus:
- (a) workers' compensation insurance in accordance with applicable legislation;
 - (b) professional indemnity insurance for not less than A\$20,000,000 in respect of each occurrence and in the aggregate; and
 - (c) public liability insurance with a limit of liability not less than A\$20,000,000 per occurrence and unlimited in the aggregate.
- 8.2 The Supplier must deliver to Vocus a copy of any policy certificate of currency upon written request from Vocus.

9 INTELLECTUAL PROPERTY

9.1 Vocus Intellectual Property Rights

The Supplier acknowledges that Vocus retains the Intellectual Property Rights relating to its documentation, and any modifications or derivative works performed.

9.2 Intellectual Property Rights granted to Vocus

Intellectual Property Rights arising as a result of the performance of the Services by the Supplier shall vest in and belong to Vocus. The Supplier will do all acts and things required to give effect to this clause.

9.3 Supplier warranty

- (a) The Supplier warrants that the performance of the Services does not infringe the Intellectual Property Rights of any person and that the Supplier has the right to assign Intellectual Property Rights to Vocus in accordance with clause 9.2 above.
- (b) The Supplier fully indemnifies Vocus and each of Vocus' Representatives against any loss, costs, expenses, demands or liability, whether direct or indirect, arising out of a claim by a third party against Vocus or any of Vocus' Representatives alleging that the Services infringes any such Intellectual Property Rights.

9.4 Background IP

Unless otherwise agreed in writing, nothing in the Agreement operates to transfer ownership of any Background IP Rights from any party or any third party to the other party. All such Background IP Rights are and remain owned by the relevant party or third party. The Supplier grants or shall procure the granting to Vocus or a Vocus Company of a non-exclusive, royalty-free licence, to use any Background IP Rights in connection with the Goods or Services and for the use, repair, maintenance, support, upgrade or modification of any Goods or Services.

10 CONFIDENTIAL INFORMATION

10.1 Confidentiality

Where the Supplier develops or gains Confidential Information as a result of supplying the Goods or Services, or receives Confidential Information from or on behalf of Vocus, the Supplier must:

- (a) keep the Confidential Information confidential;
- (b) not use, disclose or reproduce the Confidential Information for any purpose other than to perform its obligations under the Agreement;
- (c) not, without Vocus' prior written consent, disclose Confidential Information to any third party;
- (d) establish and maintain effective security measures to safeguard the Confidential Information from unauthorised access, use, copying or disclosure;
- (e) immediately notify Vocus if it becomes aware or suspects that any Confidential Information may have been accessed by or disclosed to any unauthorised party; and
- (f) upon request by Vocus or termination of the Agreement, promptly delete, destroy, or return (at the election of Vocus) all written, physical, and/or electronic copies of Confidential Information in the custody, control, or possession of the Contractor. The Supplier must, within 5 Business Days of written request by Vocus, deliver a statutory declaration certifying the completion of its obligations in this clause.

10.2 Permitted disclosures

Notwithstanding clause 10.1, the Supplier may use or disclose Confidential Information to a third party but only to the extent necessary to:

- (a) obtain professional advice in relation to matters arising under or in connection with the Agreement, provided always that any such professional advisor agrees to be bound by the confidentiality obligations as detailed in these Terms;
- (b) comply with any law, binding directive of a regulator or a court order; or
- (c) comply with the listing rules of any stock exchange on which its securities or any of its parent entity's securities are listed.

10.3 Obligation survives termination

The Supplier's obligations under this clause 10 will survive termination of the Agreement.

11 TITLE AND RISK

11.1 Title in the Goods will pass to Vocus upon payment by Vocus to the Supplier for the Goods.

11.2 Risk of loss or damage to the Goods will pass to Vocus when Vocus takes delivery of the Goods at the Delivery Point, except where the Services include installation of the Goods, in which case risk of loss or damage to the Goods will pass to Vocus upon acceptance of the installation services.

12 WORK HEALTH AND SAFETY

12.1 In this clause 12:

- (a) **WHS Regulations** means all relevant work or occupational health and safety laws applicable in jurisdiction where works under the Agreement are carried out, including any regulations and other instruments under it, and any codes of practice in force; and
- (b) **WHS Policies** means all work or occupational health and safety policies, procedures and requirements of Vocus, including any emergency procedures, provided or made available to the Supplier from time to time.

12.2 The Supplier is responsible for the safety of its Personnel and for providing a safe system of work for its Personnel.

12.3 The Supplier must, and must ensure that its Personnel, comply with WHS Regulations and WHS Policies in carrying out its obligations under the Agreement.

12.4 The Supplier must not, and must ensure that its Personnel do not, perform any function where safety or health may be endangered.

12.5 In support of Vocus' commitment to a safe working environment, the Supplier must:

- (a) upon engagement immediately familiarise itself and its Personnel with WHS Policies;
- (b) prequalify its management system in accordance with Vocus' procedure as provided or made available to the Supplier from time to time;
- (c) on request:
 - (i) meet with Vocus to discuss the Suppliers' work health and safety governance and performance;
 - (ii) provide performance updates and key performance indicator data;
 - (iii) provide a copy of its safety management plan or safe work procedures relevant for the provision of the Goods or Services; and
 - (iv) demonstrate compliance with all WHS Regulations;
- (d) promptly respond to and rectify any breaches or non-compliance with the occupational health and safety requirements identified through the normal course of work, including, as required, completing a corrective action plan;
- (e) follow the direction of safety officers, fire wardens and anyone else in charge of occupational safety and health issues and follow their directions in the event of an emergency evacuation drill and procedure;
- (f) in the event of any accident, injury or property damage which occurs during the carrying out of its obligations under the Agreement, promptly notify Vocus and report the incident into the Vocus 'WHS Reporting Portal' within the timeframes outlined in the Vocus 'WHS Incident Management Procedure'.

13 CONSTRUCTION WORKS

13.1 This clause 13 only applies to the extent the Supplier performs Construction Works under a Purchase Order.

13.2 In this clause 13:

- (a) **Construction Work** means any construction work in or around the Delivery Point, as 'construction work' is defined in the WHS Regulations, and includes any construction, alteration, repair, maintenance or demolition works;
- (b) **Contractor's Construction Work** means any Construction Work carried out by or on behalf of the Supplier, including as an agent for Vocus;
- (c) **SWMS** means the safe work method statement, which sets out the high-risk construction work activities to be carried out at a workplace, the hazards arising from these activities and the measures to be put in place to control the risks, prepared by the Supplier;
- (d) **WHS Management Plan** means the plan or series of plans prepared by the Supplier setting out the arrangements to manage work health and safety on a construction project; and

13.3 Vocus appoints the Supplier the principal contractor for any Construction Work performed by the Supplier for the purposes of the WHS Regulations (**Principal Contractor**).

13.4 As Principal Contractor, the Supplier:

- (a) is responsible for the Contractor's Construction Work at all times until such Construction Work is completed;
- (b) warrants that it and its Personnel are fully trained and qualified to perform the Services;
- (c) has prepared, or will prepare prior to commencement of the Supplier's Construction Work, the SWMS;

- (d) must ensure that the Contractor's Construction Work is carried out in accordance with the requirements of the WHS Regulations and the SWMS;
 - (e) must ensure that each person carrying out the Contractor's Construction Work is aware of the contents of the SWMS, any revisions of the SWMS and their right to inspect the SWMS;
 - (f) must keep a copy of the SWMS until all the Contractor's Construction Work is completed, and if a notifiable incident occurs while the Contractor's Construction Work is being carried out, the SWMS must be kept for at least 2 years after the incident occurs; and
 - (g) complies with and ensures that its employees, agents, licensees and subcontractors comply with the WHS Management Plan.
- 13.5 For the purposes of this clause 13 and subject to the Supplier's express obligations under the Agreement, Vocus authorises the Supplier to undertake such steps as are necessary to discharge the Supplier's responsibilities as Principal Contractor under the WHS Regulations.
- 13.6 The Supplier's appointment and authority as Principal Contractor for the Contractor's Construction Work under this clause 13 will commence on the commencement of the Contractor's Construction Work and will end on the completion of the Contractor's Construction Work or such later time as applies under the WHS Regulations.
- 13.7 This clause 13 overrides any other provision of the Agreement to the extent of any inconsistency.
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14 TERMINATION

14.1 Termination for cause

Without limiting any other remedies available to it, Vocus may, by notice in writing to the Supplier terminate a Purchase Order, with effect from the date contained in the notice, if the Supplier:

- (a) commits a breach of the Agreement;
- (b) fails to deliver the Goods or perform the Services by the Delivery Date or as otherwise agreed between the parties;
- (c) delivers non-conforming Goods or Services;
- (d) does something which Vocus, in its absolute discretion, thinks is likely to damage Vocus' reputation or standing or its business;
- (e) suffers, or is likely to, in Vocus' reasonable opinion, suffer an Insolvency Event;
- (f) has, in Vocus' absolute discretion, become incapable of performing the Services; or
- (g) ceases to hold any licence, qualification, approval, authority or consent required for the Supplier to comply with its obligations under the Agreement;
- (h) fails to report a Security Incident, in which case Vocus is not obligated to pay the Supplier for Services not yet delivered subject to the Agreement; or
- (i) if directed to by the CIC and/or the Home Affairs Minister (or their equivalents), in which case Vocus is not obligated to pay the Supplier in relation to services not yet delivered subject to the Agreement.

14.2 Termination by notice

Vocus may terminate a Purchase Order at any time by written notice providing 30 days' notice to the Supplier without the need to furnish reasons for such termination.

14.3 Consequences of termination

If a Purchase Order is terminated for any reason:

- (a) each party retains its rights under the Agreement and at law in respect of any breach by the other party;
- (b) the Supplier must immediately return to Vocus, all Vocus' items, materials and equipment, documents, data, information, materials, records and other property used or produced by the Supplier in connection with the Agreement (**Material**) including all Material which contains any Confidential Information or incorporates, comprises or embodies any Intellectual Property Rights;
- (c) Vocus must, subject to its set off rights, pay the Supplier:
 - (i) in the case of Goods, for materials manufactured or supplied in accordance with the Purchase Order up to the date of termination and for costs of other items ordered in connection with the Goods which the Supplier is legally bound to pay. Upon such payment, title to and property in all those materials and other items will pass to Vocus; or
 - (ii) in the case of Services, for Services (or part thereof) performed by the Supplier up to the date of cancellation. If Vocus has paid the Supplier any fees in advance, the Supplier must refund a pro-rated amount of the fees less any amount directly connected with the Services already performed (with written proof from the Supplier) to satisfaction of Vocus;
- (d) the Supplier is not entitled to any other payment or any compensation as a result of termination; and
- (e) the Supplier must pay any amounts which is payable to Vocus under the Agreement.

- 14.4 If a Purchase Order is terminated in accordance with clause 14.1, Vocus may employ or engage other persons to complete or re-supply the Goods or Services to Vocus, and the Supplier will be liable for and must pay to Vocus immediately upon demand without deduction or set-off, the difference between the charges payable pursuant to a Purchase Order by Vocus to

the Supplier for the supply of the Goods or Services and all the costs of having other persons complete or re-supply the Goods or Services.

15 INDEMNITIES

- 15.1 The Supplier indemnifies Vocus, its Related Bodies Corporate and their officers, employees and agents against any losses, liabilities or damages (including legal costs on a full indemnity basis) incurred or suffered by Vocus however caused in connection with:
- (a) the Supplier's breach of the Agreement;
 - (b) the enforcement of the Agreement;
 - (c) any claim or allegation against Vocus in connection with the supply of Goods or Services;
 - (d) any claim made against Vocus by a third party for actual or allegation of infringement a third party's Intellectual Property Rights or moral rights arising out of or in connection with the Goods or Services;
 - (e) any claim made against Vocus by a third party for death, personal injury or damage to property arising out of or in connection with defective Goods (to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors);
 - (f) any claim of any employee, sub-contractor or agent of the Supplier to payments, entitlements or benefits under any contract, arrangement or applicable law;
 - (g) any act or omission of the Supplier (including fraud), its officers, employees or agents; and
 - (h) failure to comply with any law or regulation by the Supplier or its Representatives in relation to the supply of Goods or Services (including Construction Works).

16 MODERN SLAVERY

16.1 Definitions

In this clause 16, **Modern Slavery** means any activity, practice or conduct that would constitute an offence in relation to slavery, forced labour, involuntary servitude, debt bondage, human trafficking, forced or servile marriage, the sale and exploitation of children and other slavery-like exploitation as prohibited or defined as a modern slavery offence under anti-slavery and human trafficking laws, statutes and codes from time to time in force including the *Criminal Code Act 1995* (Cth), Sch1 Divisions 270 and 271 and the *Modern Slavery Act 2018* (Cth), and any conditions or practices similar to those prohibited under those laws, regulations and codes.

16.2 Representations and warranties

The Supplier represents, warrants and undertakes that, throughout the Term:

- (a) neither it nor its Representatives engage in Modern Slavery;
- (b) it complies with all Modern Slavery reporting requirements applicable to it;
- (c) it has and maintains its own policies and procedures intended to ensure compliance with Modern Slavery laws;
- (d) it will take reasonable steps to require each of its contractors and/or suppliers directly involved in the provision of goods or services to Vocus to have, and maintain throughout the term of the Supplier's contract with such contractor or supplier, policies and procedures designed to ensure that no form of Modern Slavery is used in the relevant contractor's or supplier's business, or by its Representatives; and
- (e) it will notify Vocus promptly upon becoming aware of any incident, complaint or allegation that it, or any entity in its supply chain, has engaged in Modern Slavery.

16.3 Confirmation of compliance

On reasonable request by Vocus, the Supplier will, within a reasonable period of time and at its expense, confirm in writing that it has complied with its obligations under clause 16.1 and provide any information reasonably requested by Vocus in support of such compliance.

16.4 Appointment of auditor

If Vocus has reasonable grounds to suspect a breach of clause 16.2, Vocus may, at its sole cost, appoint auditors to verify the Supplier's compliance with the representations, warranties and undertakings set out in clause 16.2. The Supplier must comply with the reasonable requests of the auditor in relation to an audit under this clause. The auditor will provide a copy of any final audit report to both parties.

16.5 Notice of breach

If the Supplier becomes aware or suspects that:

- (a) any of the representations, warranties and undertakings in clause 16.2 are false; or
- (b) it or its Representatives breaches or may have breached the representations, warranties and undertakings in clause 16.2,

then the Supplier must immediately notify Vocus in writing, setting out adequate particulars of the breach or suspected breach, and at Vocus' request, provide details of the steps it is taking to investigate such breach or potential breach.

16.6 Termination

Without affecting any other right or remedy available to it, Vocus may terminate a Purchase Order with immediate effect by providing written notice to the Supplier if the Supplier is in breach of clause 16.2, or Vocus has reasonable grounds to suspect such a breach.

17 MISCELLANEOUS

17.1 Assignment

The Supplier must not assign its rights or transfer its obligations under the Agreement without Vocus' prior written consent. Vocus may assign its rights and/or transfer its obligations under the Agreement without the Supplier's prior written consent.

17.2 Severability

The invalidity or enforceability of any one or more of the provisions of the Agreement will not invalidate, or render unenforceable, the remaining provisions of the Agreement.

17.3 Notice

Notices may be delivered by hand, mail, email or facsimile to the addresses notified by the parties. Notice will be deemed given:

- (a) if hand delivered, upon written acknowledgment of receipt by a Representative of the receiving party;
- (b) if sent by post, 3 days after dispatch;
- (c) if sent by email, the date and time the email is sent from the sender; and
- (d) if sent by facsimile, upon receipt of transmission if received on a Business Day, or if not, at the commencement of the first Business Day following transmission.

17.4 Relationship between the parties

Except as expressly stated to the contrary, each party enters the Agreement as an independent contractor and neither party is the partner, agent, employee or representative of the other party and neither party has the power to incur any obligations on behalf of, or pledge the credit of, the other party.

17.5 Law and jurisdiction

The Agreement is governed by the laws applicable in the State of Victoria, Australia and the parties hereby submit to the exclusive jurisdiction of the Courts of the State of Victoria, Australia.

17.6 Waiver

No failure to exercise and no delay in exercising any right, power or remedy under the Agreement will operate as a waiver, nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.

17.7 Variation

The Agreement may only be amended or varied by agreement in writing and signed by the parties.

17.8 Force Majeure

- (a) Where any failure or delay by a party (**Affected Party**) in the performance of its obligations (except payment obligations) under a Purchase Order is caused, directly or indirectly, by a Force Majeure Event:
 - (i) the Affected Party must as soon as practicable give the other party written notice of that fact;
 - (ii) the Affected Party is not liable for that failure or delay; and
 - (iii) the Affected Party's obligations under the Agreement is suspended, to the extent to which they are affected by the relevant Force Majeure Event, for the duration of the Force Majeure Event.
- (b) If the Force Majeure Event continues for more than 30 consecutive days, the non-affected party may, at its sole discretion, terminate the relevant Purchase Order by giving written notice to the Affected Party, in which case clause 14.3 will apply.

ANNEXURE A SECURITY SCHEDULE

The Supplier will maintain appropriate administrative, physical, and technical safeguards to protect the security, confidentiality and integrity of Vocus Information.

The Supplier acknowledges and agrees that this Security Schedule has been prepared in reliance upon any security questionnaire completed by the Supplier (if applicable), and a material deviation by the Supplier from this Security Schedule will be considered a 'breach' for the purposes of clause 14.1(a) of the Terms.

In this Security Schedule:

- **Vocus Customer Information** means Confidential Information that relates to and/or identifies Vocus' customers; and includes Personal Information of Vocus' customers; and
- **Vocus Information** includes Confidential Information, Personal Information, Vocus Customer Information, data and information not generally in the public domain at a level not materially less protective than as described in this Security Schedule, and ICT Systems used to handle process or store aforementioned information.

A. SUBCONTRACTING

The Supplier must not subcontract any of its obligations under the Agreement without Vocus' prior written consent.

B. SUPPLIER'S OBLIGATIONS IN RESPECT OF SECURITY (AUDIT)

The Supplier must permit Vocus and any other persons authorised in writing by Vocus, to audit the progress and compliance of the Goods or Services with respect to this Security Schedule, the Security Policies and any other security requirements, the Agreement, and applicable laws, policies or standards to the extent provided under the Agreement (**Security Audit**). If the Security Audit reveals that some or all of the Goods or Services have not or are not being performed in accordance with this Security Schedule, the Security Policies and any other security requirements contemplated by the Agreement and/or applicable laws, policies or standards, then the Supplier must rectify and/or remedy the issue at its own cost and in accordance with a remediation plan mutually agreed by Vocus and Supplier.

The Supplier agrees to cooperate with Vocus in the exercise of its rights to the Security Audit including, without limitation, assisting with any investigation and providing Vocus with access to Information Systems and facilities, employees, records, logs and any other materials required during the course of the Security Audit.

C. SUPPLIER'S STAFF

If, in the course of carrying out its obligations under the Agreement, the Supplier's Representatives are required to have access to Vocus Information, the Supplier must demonstrate suitable employment screening having been conducted to assess, manage and monitor the ongoing suitability of the Representatives to have and retain access to such information.

D. INFORMATION SECURITY

1) Compliance

The Supplier must take all reasonable steps to ensure Vocus Information is protected against misuse, loss, unauthorised access, modification or disclosure by itself or its Representatives, including complying with Vocus information security policies and complying with standards shared previously or any Australian Standard or International standard relating to data security techniques (as defined in the ISO/IEC 27001:2013), including the following (which may be subject to change from time to time via written amendment):

- (a) ISO/IEC 27001:2013 (Information technology - Security techniques - Information security management systems - Requirements);
- (b) ISO/IEC 27002:2013 (Information technology - Security techniques – Code of Practice for Information Security Controls);
- (c) FIPS PUB 200 (Minimum Security Requirements for Federal Information and Information Systems);
- (d) NIST Cyber Security Framework v1.1 – (Framework for Improving Critical Infrastructure Cybersecurity);
- (e) NIST Special Publication 800-53 Rev 4. – (Security & Privacy Controls for Federal Information Systems and Organisations);
- (f) Australian Government Information Security Manual (ISM).

2) Supplier Security Representative

The Supplier must designate a 'Supplier Information Security Manager' to be responsible for ensuring:

- (a) the implementation of specific information security controls and solutions to meet the requirements of the Services;
- (b) the provision and maintenance of agreed information security policies, standards, procedures and solutions;
- (c) the provision of support and advice to the Supplier's Personnel to implement the levels of security in line with the Agreement;
- (d) the Supplier notifies Vocus by emailing infosec@vocus.com.au when planning new equipment or technology to be used in connection with the Goods and/or Services to ensure appropriate security standards are agreed prior to implementation and use;
- (e) the Supplier's Personnel understand why security is needed and what their responsibilities are; and
- (f) act as a single point of contact to Vocus for information security related matters.

3) Data Sovereignty & Geographies

The Supplier must not relocate or transfer employees and/or subcontractors who are undertaking work under the Agreement and/or have access to Confidential Information, to geographies outside of the sovereign borders of Australia without the prior consent of the Vocus Representative and the Chief Information Security Officer, or their delegate.

The Supplier must not disclose any Vocus Customer Information outside of the sovereign borders of Australia without prior approval from the Vocus Representative and the Chief Information Security Officer, or their delegate.

4) Data Backup

The Supplier must backup Vocus Information at regular intervals agreed with Vocus and in consideration of:

- (a) off-site storage of backup copies;
- (b) security of backup media whilst in storage and in transit; and
- (c) encryption of Vocus Information whilst stored on backup media.

5) Access Controls

The Supplier must implement appropriate physical and logical access controls to ensure Vocus Information, Information Systems and information processing facilities are protected and to address the following requirements:

- (a) positively identify all users;
- (b) only authorised users have access;
- (c) users have access only to the information and areas that they have a genuine business requirement to access;
- (d) use secure authentication processes (e.g. strong passwords, multi-factor authentication and account lock-out for information systems and zoning and physical access controls for facilities);
- (e) review and monitoring of access; and
- (f) audit mechanisms to ensure access control processes can't be accidentally or intentionally misused.

6) Vulnerability Management & Security Testing

Where internet facing applications or infrastructure form the basis of the Services (or anything else done in connection with Vocus under the Agreement), the Supplier must perform penetration testing and any other security and vulnerability testing on the applications and infrastructure on an annual basis and as a result of significant changes. The Supplier must notify Vocus with a summary of the number and criticality of the vulnerabilities/defects identified, provide a date that identified vulnerabilities/defects are to be remedied and ensure all vulnerabilities/defects assessed as being critical and/or high in nature are remedied within 5 business days.

The Supplier must implement a vulnerability management program and remediate or mitigate all security defects and vulnerabilities identified by such testing.

7) Security Incident Management & Reporting

The Supplier must ensure it is able to identify, respond to and investigate Security Incidents.

The Supplier must report any Security Incident to Vocus as soon as practicable, but in any event no later than 48 hours, after becoming aware of an incident occurring or has occurred. Security Incidents include:

- (a) loss or unauthorised disclosure of Vocus Information;
- (b) unauthorised access to Information Systems, Vocus Information or physical locations hosting or storing such information;
- (c) virus attack or malicious code;
- (d) equipment loss, where such equipment has been used to store, transmit or process Vocus Information; and
- (e) any other incident that could reasonably damage, harm or impact Vocus reputation or regulatory compliance obligations.

The Supplier must:

- (f) maintain, at a minimum, a log of all security events, system, application and privileged user access events; and
- (g) immediately, at its own expense and with as much assistance as practicable from Vocus, commence an investigation to identify, prevent and mitigate the effects of any such Security Incident.

The Supplier's investigation must detail the circumstances of any alleged Security Incident, including at a minimum:

- (h) a description of the nature of the alleged Security Incident;
- (i) the type of information involved;
- (j) who may have obtained Vocus Information;
- (k) what steps the Supplier has taken or will take to investigate the Security Incident;
- (l) what steps the Supplier has taken or will take to mitigate any negative effect of the Security Incident;
- (m) what corrective action the Supplier has taken or will take to prevent future similar unauthorised use or disclosure; and
- (n) a point of contact for additional information.

The Supplier must investigate Security Incidents and document the results of those investigations in a report and provide a copy to Vocus as soon as practicable but in any event no later than 10 Business Days of becoming aware of an incident occurring or has occurred. After the initial report, the Supplier must confer with the Vocus Representative regarding the future

course of the investigation and risk mitigation. Vocus reserves the right to conduct an independent investigation of any Security Incident, and if Vocus chooses to do so, the Supplier must cooperate fully by making resources, personnel, and access to solution available to Vocus and/or its authorised representative.

8) Monitoring and Validation

The Supplier must, at its own expense, regularly review, measure, document and provide evidence of the Supplier's implementation of, and compliance with strong security practices, various clauses contained in the Agreement and/or applicable laws, policies and standards.

9) Cloud Service Providers (CSP)

This paragraph applies where the Supplier is a Cloud Service Provider (**CSP**).

All CSPs, and each of their directors, officers, employees, and agents are bound by the same obligations, including confidentiality obligations as all other Suppliers. Upon termination of this agreement or during operations, CSPs must comply with Vocus Disposal/Re-use policy OR specify how the CSP proposes to securely dispose of physical media damaged or replaced and data sanitisation. This is subject to approval by Vocus and/or Vocus' authorised representative.

At a minimum, Vocus data shall be logically separated from the data of any other CSP client. Further, Vocus telemetry data harvested by CSP must not be shared with any third party, without the written approval of Vocus and/or Vocus' authorised representative.

10) US Records and DCs

This paragraph applies where:

- (a) the Vocus Information held by the Supplier contains any information used, processed, or maintained in the ordinary course of business related to the services offered by Vocus within the United States (**US Records**); and/or
- (b) the Supplier has access to communications originating or terminating from the United States (**DC**).

The Supplier must disclose to Vocus, within 48 hours of discovery, any of the following:

- (c) data breach of any US Records or DC, or any loss of US Records or DC, whether from a data breach or other cause; and
- (d) critical exposure, threats, and vulnerabilities associated with the products or services provided to Vocus that are the result of the insertion of counterfeits, unauthorised production, tampering, theft, or insertion of malicious software and hardware into such products or services or into the Supplier's supply chain.