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# Vocus New Zealand

## Supplier Terms and Conditions

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## 1 Definitions and interpretation

### 1.1 Definitions

In this Conditions:

**Business Day** means a day which is not a Saturday, Sunday, public holiday or bank holiday in Auckland, New Zealand;

**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 the Purchase Order;

**Charges** means the fees set out in a Purchase Order;

**Conditions** means these terms and conditions.

**Confidential Information** of a party 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 of the information and when it was acquired) and includes trade secrets, technical knowledge, concepts, designs, plans, precedents, processes, methods, techniques, know-how, innovations, ideas, procedures, research data, financial data, databases, personnel data, computer software and programs, customer and supplier information, correspondence and letters and papers of every description including all copies or extracts of same relating to the affairs or business of the party;

**Construction Works** has the meaning given to it in clause 17.

**Delivery Date** means the date stated in the relevant Purchase Order, or other written document provided by Vocus on or before the date of the Purchase Order, by which delivery of the Goods and / or Services must be effected by the Supplier;

**Delivery Point** means the locations or addresses for delivery of the Goods and/or Services as set out in the Purchase Order or as otherwise directed by Vocus;

**Force Majeure Event** means any event which prevents a party from performing, or delays the performance of, any of its obligations under this Agreement including (without limitation):

- (a) forces of nature, any act of God, fire, storm or explosion;
- (b) any strike, lockout, industrial action, war, sabotage, riot, act of terrorism, any denial of service attack, insurrection, civil

commotion, national emergency (whether in fact or in law), power shortage, epidemic, quarantine, radiation or radioactive contamination;

(c) any action or inaction by any organ of government or government agency; or

(d) a change in any law including any new law; to the extent that act, event or cause is beyond the reasonable control of the affected party.

**Goods** means the goods to be provided by the Supplier set out in a Purchase Order;

**GST** has the meaning prescribed in the GST Act;

**GST Act** means the Goods and Services Tax Act 1985 (as amended);

**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;

**Intellectual Property Rights** includes both in New Zealand and throughout the world, 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;

**Purchase Order** means a document titled "Purchase Order" constituted by this document and to which these Conditions form part of, and are incorporated into and shall include any variation or replacement;

**Related Company** has the meaning given in the Companies Act 1993;

**Services** means the services to be performed by the Supplier set out in a Purchase Order;

**Special Conditions** means the terms detailed in a Purchase Order (if any);

**Tax Invoice** has the same meaning as in the GST Act; and

**Vocus** means Vocus (New Zealand) Limited or its Related Company named on a Purchase Order.

## 1.2 Interpretation

In the Conditions, unless the context requires otherwise:

- 1.2.1 the singular includes the plural and vice versa;
- 1.2.2 other grammatical forms of defined words or expressions have corresponding meanings;
- 1.2.3 if something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day;
- 1.2.4 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;
- 1.2.5 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;
- 1.2.6 these Conditions may not be construed adversely to a party just because that party prepared it; and
- 1.2.7 wherever "include" or any form of that word is used, it must be construed as if it were followed by "(without being limited to)".

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## 2 Conditions and other contracts

- 2.1 The Supplier accepts that these Conditions are the sole basis of the sale of Goods and/or Services to the exclusion of any conditions of sale appearing on any document of the Supplier (including but not limited to as printed on quotations, consignment notes, invoices or other documents).
- 2.2 If the Supplier provides terms and conditions to Vocus in respect of the Goods or Services, to the extent permitted by law, those terms and conditions will have no legal effect and will not comprise any part of the agreement between the Supplier and Vocus in respect of the Goods or Services.
- 2.3 Where there are any Special Conditions included in a Purchase Order issued by Vocus and they are inconsistent with these Conditions, the Special Conditions will prevail to the extent of any inconsistency.

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## 3 No minimum quantity and non-exclusive relationship

- 3.1 Vocus is not obliged to provide any Purchase Order to the Supplier or to order any minimum quantity of Goods or Services from the Supplier.
- 3.2 Vocus does not appoint the Supplier as the exclusive provider of the Goods or Services. Vocus may at any time purchase Goods or Services, or goods or services similar to the Goods or Services, in any way from any person, and Vocus shall not be liable in any circumstances to the Supplier for any direct or indirect losses, including but not limited to consequential loss, loss of prospective profits or any other loss or expense whatsoever claimed or incurred by the Supplier.

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## 4 Provision of goods and services

- 4.1 The Supplier must provide the Goods or Services in accordance with, and as specified in, a Purchase Order and these Conditions.
- 4.2 In supplying the Goods or Services, the Supplier must:
  - 4.2.1 be aware of and comply with and will ensure its personnel are aware of and comply with:
    - (a) all applicable laws, regulations, industry standards or New Zealand Standards;
    - (b) all procedures or directions provided by Vocus to the extent that they relate to the delivery of the Goods or the performance of the Services; and
    - (c) lawful directions or orders provided by Vocus, its agents, or any person empowered by law; and
  - 4.2.2 when attending Vocus' premises, ensure that the Supplier's personnel perform the Services or deliver the Goods 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;
  - 4.2.3 provide all information and assistance as Vocus reasonably requires from time to time in connection with the performance of the Services or the delivery of the Goods;

- 4.2.4 not interfere with Vocus' activities or activities of any other person at Vocus' premises;
- 4.2.5 deliver the Goods at the Delivery Point on the Purchase Order or advised by Vocus by the Delivery Date; and
- 4.2.6 ensure the Goods are packaged and packed appropriately to avoid damage during transit or in storage and to comply with any applicable laws.

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## 5 Quality of goods and services

- 5.1 The Supplier must ensure that the Goods and/or Services (as applicable):
  - 5.1.1 supplied must match the relevant specifications and description provided in the Purchase Order, including any standards and service levels as specified in the Purchase Order or otherwise as agreed between the parties;
  - 5.1.2 correspond to any:
    - (a) sample of the Goods provided to Vocus prior to issuing the Purchase Order; and
    - (b) demonstration provided or result shown to Vocus prior to issuing the Purchase Order, including the nature and quality of the Services demonstrated or result achieved with the services that achieved that result;
  - 5.1.3 are performed with professional skill, care and diligence expected of a skilled and experienced professional supplier;
  - 5.1.4 fit for the purpose specified in, or otherwise an experienced professional supplier would reasonably infer from, the Purchase Order;
  - 5.1.5 are new and of merchantable quality;
  - 5.1.6 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
  - 5.1.7 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).

- 5.2 If Vocus discovers a defect with the Goods or Services (other than a defect caused by the negligence of Vocus) it may:
  - 5.2.1 reject the defective Goods. If this occurs Vocus, at its election, may require the Supplier to either:
    - (a) at the Supplier's cost, replace the Goods free of charge and remove the rejected Goods; or
    - (b) at the Supplier's cost, make good any defect to the defective Goods, and  
reimburse Vocus for any expenses it incurs in repairing, reperforming or making good (as the case may be) the defective Goods; or
  - 5.2.2 reject the defective Services. If this occurs the Supplier must re-perform or make good the Services at its cost and reimburse Vocus for any expenses it incurs in repairing, reperforming or making good (as the case may be) the defective Services.
- 5.3 If the Supplier does not replace the Goods, re-perform the Services or make good any defects with the Goods or Services, the Supplier must refund the price paid by Vocus or otherwise Vocus is not liable to pay the price to the Supplier.
- 5.4 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 these Conditions or at law.

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## 6 Specific responsibilities of the supplier

### Training

- 6.1 The Supplier will provide the training specified in the Purchase Order, at the price specified in the Purchase Order. The Supplier warrants that 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 these Conditions.

## Site Specification

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

## Personal Information

6.3 The Supplier agrees with respect to all information made available or provided by Vocus which comprises personal information within the meaning of the Privacy Act 1993 the Supplier must:

- 6.3.1 co-operate fully with the other party in complying with a person's request to access their personal information;
- 6.3.2 take appropriate technical and organisational measures to avoid unauthorised or unlawful processing of personal information and against accidental loss, damage, disclosure or destruction of the Personal Information; and
- 6.3.3 obtain the consent of the person to collect, use and disclose that person's personal information in order to perform its obligations.

## Cooperation with other Service Providers

6.4 Subject to clause 6.5, 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.

6.5 Nothing in clause 6.4 will require the Supplier to disclose its confidential information to a third party service provider.

## Data Security

6.6 The Supplier must:

- 6.6.1 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;

6.6.2 prohibit and prevent any Supplier personnel who does not have the appropriate level of security clearance from gaining access to data;

6.6.3 without limiting clause 6.6.2, use reasonable endeavours to prevent any unauthorised person from gaining access to data; and

6.6.4 notify Vocus immediately and comply with all directions of Vocus if the Supplier becomes aware of any contravention of Vocus' data security requirements.

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## 7 Payment

### 7.1 Payment

7.1.1 Unless otherwise agreed by Vocus in writing, the price for Goods or Services provided by the Supplier are fixed regardless of changes in exchange rates or costs and inclusive of all charges, insurance, taxes, taxable supplies, levies and duties or other costs incurred by the Supplier for its compliance under the Purchase Order.

7.1.2 Subject to clauses 7.2 and 7.3 and provided 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.

### Dispute of Tax Invoice

7.2 If Vocus disputes any item or items invoices in a Tax Invoice, Vocus shall notify the Supplier specifying the reasons and withhold payment of the disputed item or items until settlement of the dispute. Vocus shall pay the undisputed portion of the Tax Invoice.

7.3 Vocus shall have the right to query any Tax Invoice presented by the Supplier and to require correction of any error notwithstanding that the Tax Invoice may relate to a payment which Vocus has already made.

### Set off

7.4 Without limiting Vocus' rights 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 to the Supplier.

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## 8 Time

### Time is of the Essence

8.1 Time is the essence of the Supplier's obligations under any Purchase Order. The Supplier must complete delivery of the Goods or Services to the Delivery Point specified in the Purchase Order within the time(s) stated in the Purchase Order.

### Extension of Time

8.2 An extension of time to deliver the Goods and Services under a Purchase Order may be granted at the sole discretion of Vocus. If an extension of time in respect of the Purchase Order is granted by Vocus, time will remain of the essence in respect of the extended time.

### Failure to Comply

8.3 If the Supplier is unable to make delivery within the time stipulated in the Purchase Order or within any extension of time granted by Vocus, Vocus will, unless the delay results from Vocus' own act or omission, be at liberty either:

8.3.1 to cancel the Purchase Order without prejudice to any right or remedy which has accrued or may thereafter accrue to Vocus; or

8.3.2 to make special arrangements for transport to Vocus' site at which the Goods are required, and

Vocus may 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.

### Extending Delivery Date

8.4 The Delivery Date will be extended commensurately with the period of any actual delay to delivery due to any breach of these Conditions or the relevant Purchase Order.

8.5 Notwithstanding that the Supplier is not entitled to an extension of time, Vocus may, in its absolute discretion, at any time, by notice in writing to the Supplier, extend the Delivery Date.

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## 9 Compliance with laws

When supplying the Goods or Services, the Supplier must comply with all applicable laws including but not limited to safe working practices and lawful directions and orders given by Vocus' representatives.

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## 10 Vocus' rules and policies

The Supplier must ensure understand and be familiar with Vocus' site rules and policies that are in force from time to time, and fully complies 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.

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## 11 Warranties

11.1 The Supplier warrants and represents to Vocus that:

11.1.1 it has the right to sell and transfer title to the Goods or Services to Vocus;

11.1.2 the Goods will:

- (a) 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;
- (b) be new on delivery to Vocus, unless specified otherwise in the Purchase Order;
- (c) be fit for the purpose stated in the Purchase Order, or if no purpose is stated, the purpose for which the Goods would ordinarily be used;
- (d) conform to any description and sample provided by the Supplier;
- (e) conform with the requirements of these Conditions and the relevant Purchase Order;
- (f) conform to any legally applicable standards or other published recommendation of the original materials manufacturer;
- (g) be safe, free from defects (including defects in design, materials, workmanship and installation) or faults; and
- (h) be of good merchantable quality;

11.1.3the Services will:

- (a) conform to the requirements of these Conditions and the relevant Purchase Order;
- (b) conform to any legally applicable standards or other published recommendation of the original materials manufacturer;
- (c) be performed with due care, skill and diligence;
- (d) comply with all relevant specifications; and
- (e) be performed by personnel who have the qualifications, licences, experience and expertise to perform the Services;

11.1.4where the Supplier supplies Goods that have been procured from a third party, the Supplier assigns to Vocus, to the extent practicable and to the extent permitted by law, the benefits of the warranties given by the 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 these Conditions or a Purchase Order.

11.1.5no virus will be introduced into Vocus' systems as a result of the supply by the Supplier of a Good which contains a virus or as a result of any negligent or wilfully wrong act or omission by the Supplier in providing a Service;

11.1.6it will not vary the specification, design, shape, configuration or characteristics of the Goods without the prior written consent of Vocus;

11.1.7where the Purchase Order specifies trade name products, in accordance with the specifications as to the type and minimum quality of such Goods and/or Services required, it will not supply substitute or equivalent Goods and/or Services without the written consent of Vocus;

11.1.8it has:

- (a) 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;

(b) informed itself as to all matters which might impact on the delivery of the Goods and Services;

(c) has carefully examined any documents provided by Vocus and that there are no ambiguities or discrepancies in those documents; and

11.1.9 it is not suffering from an Insolvency Event.

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## 12 Insurance

### 12.1 Insurance

12.1.1The Supplier must effect and maintain, the following non-cancellable policies unless otherwise required by Vocus:

- (a) Workers' compensation insurance in accordance with legislation;
- (b) Professional Indemnity Insurance for not less than NZ\$5million, in respect of each occurrence; and
- (c) Public Liability Insurance with a limit of liability not less than NZ\$10million, per occurrence and unlimited in the aggregate.

12.1.2The Supplier must deliver to Vocus a copy of any policy certificate of currency upon written request from Vocus.

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## 13 Intellectual property

### 13.1 Vocus' Intellectual Property

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

### 13.2 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 and necessary to give effect to this clause.

### 13.3 Supplier's warranty as to Intellectual Property Rights

13.3.1The 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 13.2 above.

13.3.2 The Supplier must fully indemnify Vocus and each of its officers, employees, agents or 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 its officers, employees, agents or representatives alleging that the Services infringes any such Intellectual Property Rights.

#### 13.4 Background IP

Unless otherwise agreed in writing, nothing in these Conditions or any Purchase Order 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.

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### 14 Confidential information

#### 14.1 Confidentiality

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

- 14.1.1 keep the Confidential Information confidential;
- 14.1.2 not use, disclose or reproduce the Confidential Information for any purpose other than to perform its obligations pursuant to a Purchase Order;
- 14.1.3 not, without Vocus' written consent, disclose Confidential Information to any third party; and
- 14.1.4 establish and maintain effective security measures to safeguard the Confidential Information from unauthorised access, use, copying or disclosure.

#### 14.2 Permitted disclosures

14.2.1 Notwithstanding clause 15.1 above, the Supplier may use or disclose Confidential Information to a third party but only to the extent necessary to:

- (a) comply with any law, binding directive of a regulator or a court order;
- (b) comply with the listing rules of any stock exchange on which its securities or any of its parent entity's securities are listed; or
- (c) obtain professional advice in relation to matters arising under or in connection a Purchase Order.

#### 14.3 Obligation survives termination

The Supplier's obligations under this clause 14 survive termination or expiry of a Purchase Order.

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### 15 Risk

15.1 Title in the Goods passes to Vocus upon payment by Vocus to the Supplier for the Goods.

15.2 Risk in the Goods passes to Vocus when Vocus takes delivery of the Goods at the Delivery Point.

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### 16 Subcontracting

The Supplier may not subcontract the whole of or any part of the Services without Vocus' prior written consent.

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### 17 Work health and safety

17.1 The Supplier shall be responsible for the safety of its personnel and will duly observe and comply with all relevant legislation, regulations and Vocus' requirements governing the safe practice of the tasks performed by them, and shall be responsible for providing a safe system of work for their employees.

17.2 The Supplier must ensure that it, or its personnel, does not perform any function where safety or health may be endangered.

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

17.3.1 upon engagement immediately familiarize itself and its personnel with emergency procedures, and the safe working requirements and policies of Vocus;

17.3.2 follow the direction of safety officers, fire wardens and anyone else in charge

of occupational safety and health issues and follow directions when emergency evacuation drills and procedures arise;

17.3.3 subject to clause 17.4, follow and abide by all Vocus' safety, health and environment policies and procedures whilst engaged by Vocus and take care to protect its own safety and health and that of others in the workplace;

17.3.4 demonstrate compliance with all relevant safety laws and standards;

17.3.5 if requested by Vocus provide a copy of its safety management plan or safe work procedures relevant for the provision of the Goods or Services; and

17.3.6 promptly notify Vocus of any accident, injury or property damage which occurs during the carrying out of the its obligations pursuant to a Purchase Order.

#### 17.4 Additional obligations for Construction Works.

17.4.1 In this clause:

- (a) **Construction Work** means any construction work within or about the Delivery Point which 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 any Construction Work carried out by or on behalf of the Supplier as agent for Vocus;
- (c) **WHS Regulations** means the applicable Occupational Health and Safety laws and regulation or Work Health and Safety laws and regulations in New Zealand.

17.4.2 The Supplier:

- (a) is responsible for the Supplier's Construction Work at all times until the Supplier's Construction Work is completed;
- (b) warrants that it and its employees are fully trained and qualified to perform the Services; and
- (c) must ensure that the Supplier's Construction Work is carried out in

accordance with the requirements of the WHS Regulations.

17.4.3 For the purposes of this clause 17.4 and subject to the Supplier's express obligations under this agreement, Vocus authorises the Supplier to undertake such steps as are necessary to discharge the Supplier's responsibilities under the WHS Regulations.

17.4.4 The Supplier's appointment and authority as Principal Contractor for the Supplier's Construction Work under this clause 17.4 will commence on the commencement of the Supplier's Construction Work and will end on the completion of the Supplier's Construction Work or such later time as applies under the WHS Regulations.

17.4.5 This clause 17.4 overrides any other provision of these Conditions to the extent of any inconsistency.

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#### 18 Termination or cancellation of a purchase order

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

- (a) commits a breach of these Conditions;
- (b) fails to deliver the Goods or perform the Services by the date specified on a Purchase Order or as otherwise agreed between the parties;
- (c) delivers non-conforming Goods;
- (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.

#### Termination by notice

18.2 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.

### **Consequences of Termination**

18.3 If a Purchase Order is terminated for any reason:

18.3.1 each party retains its rights and at law in respect of any breaches by the other party;

18.3.2 the Supplier must immediately return to Vocus, all of Vocus' items, materials and equipment, information, materials, documents, data, records and other property used or produced by the Supplier in connection with this agreement or the Services (Material) including, without limitation, all Material which contains any Confidential Information or incorporates, comprises or embodies any Intellectual Property Rights;

18.3.3 Vocus must, subject to set off rights, make payment to the Supplier:

(a) in the case of Goods, for materials manufactured or supplied in accordance with the Purchase Order up to the date of cancellation 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 shall pass to Vocus; or

(b) in the case of Services, for Services (or part thereof) commenced and performed by the Supplier up to the date of cancellation. For the avoidance of doubt, if no Services (or part thereof) have commenced or been performed, Vocus is not liable to the Supplier.

The Supplier is not entitled to any other payment or any compensation as a result of termination; and

18.3.4 the Supplier must pay any amounts which is payable by the Supplier to Vocus pursuant to a Purchase Order.

18.4 If a Purchase Order is terminated in accordance with clause 18.1 Vocus may employ or engage other persons to complete or re-supply the Services or Goods 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 performance or delivery of the Goods or Services and all the costs of having other persons complete or re-supply the Services or Goods.

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## **19 Indemnities**

19.1 The Supplier is liable for, and indemnifies and shall hold harmless Vocus, its Related Companies and their officers, employees and agents from and against, all loss or damage (including legal costs on a full indemnity basis) incurred or suffered by Vocus however caused in connection with:

19.1.1 any breach of the Purchase Order by the Supplier;

19.1.2 the enforcement of Vocus' rights in connection with any alleged or actual breach of the Purchase Order by the Supplier;

19.1.3 any claim or allegation against Vocus in connection with the Goods or the performance of the Services;

19.1.4 any claim or allegation of infringement of any Intellectual Property Rights or moral rights of any third party which may reside in the Goods or Services provided by the Supplier that infringes the Intellectual Property Rights or other right of any third party;

19.1.5 any claim of any employee, sub-contractor or agent of the Supplier to payments, entitlements or benefits under any contract, arrangement or applicable law;

19.1.6 any act or omission of the Supplier, its officers, employees or agents; and

19.1.7 failure to comply with any law or regulation by the Supplier relevant to the delivery of the Goods or performance of

the Services (including Construction Works), its officers, employees or agents, including but not limited to Work Health and Safety or Occupational Health and Safety laws, privacy laws, environmental protection laws.

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## 20 Notice

### 20.1 Notices

Notices may be delivered by hand, by mail or by facsimile to the addresses notified by the parties. If no addresses are specified the last known addresses or fax number.

### 20.2 Deemed notice

Notice will be deemed given:

20.2.1 in the case of hand delivery, upon written acknowledgment of receipt by an officer or other duly authorised employee, agent or representative of the receiving party;

20.2.2 in the case of email, the date and time the email is sent from the sender;

20.2.3 in the case of posting, three days after dispatch; and

20.2.4 in the case of facsimile, upon receipt of transmission if received on a business day or otherwise at the commencement of the first business day following transmission.

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## 21 Goods and services tax

To the extent that the consideration to be paid or provided pursuant to a Purchase Order is not expressed to be GST inclusive, a party must also pay the GST payable on a taxable supply made to it. The party making the taxable supply must provide a Tax Invoice to the other party at or before the time that the other party is required to pay the GST. Terms used in this clause 21 have the meanings given to them in the GST Act.

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## 22 Miscellaneous

### 22.1 Assignment

The Supplier may not assign its rights or transfer its obligations without the prior written consent of Vocus. Vocus may assign its rights and/or transfer its obligations without the prior written consent of the Supplier.

### 22.2 Severability

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

### 22.3 Relationship between the parties

Except as expressly stated to the contrary, 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.

### 22.4 Law and jurisdiction

These Conditions and any Purchase Order is governed by the laws of New Zealand.

### 22.5 Waiver

No failure to exercise and no delay in exercising any right, power or remedy 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.

### 22.6 Variation

Any variation or amendment may only occur by agreement in writing signed by the parties.

### 22.7 Force Majeure

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:

22.7.1 the Affected Party must as soon as practicable give the other party written notice of that fact;

22.7.2 the Affected Party is not liable for that failure or delay; and

22.7.3 the Affected Party's obligations under this 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.

If the Force Majeure Event continues for more than 30 consecutive days and while it continues, the non-Affected Party may, at its sole discretion, terminate the relevant Purchase Order by giving written notice to the Affected Party and all other parties (if any) and clause 18.3 applies.

