

Simple Supply Agreement

1. DEFINITIONS

'Contract' means the contract between the Supplier and Optus containing these terms and conditions, including the Schedule (where relevant) and the Purchase Order to the Contract.

'Documentation' means:

- (a) the Specifications;
- (b) all user documentation; and
- (c) any other documentation to be provided by the Supplier specified in the Contract.

'Due Date' for the performance of Supplies means the date (if any) specified in the Contract.

'GST' has the meaning given in the *New Tax System (Goods and Services Tax) Act 1999*.

'Incidental Costs' means all costs incurred by the Supplier (including, without limitation, costs for delivery, Taxes excluding any GST) connected with the supply of the Supplies by the Supplier.

'Insolvency Event' means one or more of the following:

- (a) a resolution is passed for the winding up of a party;
- (b) a liquidator, provisional liquidator or receiver or receiver and manager, voluntary administrator; or administrator of a deed of company arrangement is appointed to all or any part of the property of a party;
- (c) a mortgagee takes possession of, all or any part of the business or assets of a party;
- (d) a party makes any composition or arrangement or assignment with or for the benefit of its creditors;
- (e) a party or any creditor appoints a voluntary administrator or a resolution is passed for that party to execute a deed of company arrangement;
- (f) a party ceases, or threatens to cease to carry on its business; or
- (g) a party becomes insolvent within the meaning of section 95A of the *Corporations Act 2001* (Cth).

'Intellectual Property Rights' or 'IPR' means all intellectual property rights and moral rights at any time protected by statute or common law, including, but not limited to:

- (a) patents, copyright, rights in circuit layouts, registered designs, trademarks and any right to have confidential information kept confidential; and
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a).

'Laws' means any statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in the relevant jurisdiction and includes any industry codes of conduct.

'Loss' means any and all direct loss, liability, damages, penalties, costs and expenses including legal fees and disbursements and costs of investigation, litigation, settlement, judgment and interest (regardless of whether they arise in contract, tort (including negligence) or under any statute) including workers' compensation benefits payable under a statutory workers' compensation scheme. Loss excludes any and all indirect loss (subject to clause 9.6).

'Optus' means the Optus Group Company that issues the Purchase Order to the Supplier.

'Optus Group Company' means Optus or a Related Body Corporate of Optus.

'Personal Information' has the meaning given in the *Privacy Act 1988* (Cth), as amended from time to time.

'Personnel':

- (a) of Optus means officers, agents and employees of Optus Group Companies or contractors of any Optus Group Company (other than the Supplier); and
- (b) of the Supplier means officers, agents and employees of the Supplier or any of its Related Bodies Corporate or any of their contractors or subcontractors.

'Price' for Supplies means the amount specified as the price in the Contract and shall include the Incidental Costs.

'Purchase Order' means the Optus-generated form that authorizes the Supplier to commence delivery of the Supplies.

'Regulatory Authority' means the Australian Competition and Consumer Commission, Australian Communications and Media Authority, the Privacy Commissioner of Australia and any other regulator or government or statutory body that has relevant jurisdiction.

'Related Body Corporate' has the meaning given to that term in section 50 of the *Corporations Act 2001*.

'Schedule' means the Simple Supply Schedule attached to this Contract which sets out details of the Supplies. The Schedule must be authorised by Optus and at a minimum must specify the:

- (a) Supplies being ordered;
- (b) Price of the Supplies being ordered;
- (c) GST payable;
- (d) Schedule reference number.

The Schedule does not authorise the Supplier to commence delivery of the Supplies. Only a Purchase Order authorises the Supplier to commence delivery of the Supplies, which may or may not be issued at Optus' absolute discretion.

'Serious Incident' means any incident requiring notification to an authority or regulator under the WHS Laws.

'Software' means any software to be provided by the Supplier as specified in the Contract and modifications of that Software as supplied to Optus as part of the Supplies.

'Specifications' means:

- (a) any specifications included or referred to in the Contract that specifies the quality, functionality, performance, interoperability, testing or other criteria; and
- (b) any of the Supplier's published specifications for Supplies.

'Standards' means the work health and safety standards, policies, procedures and safety control measures of any Optus Group Company as amended from time to time.

'Supplier' means the party specified in the Contract.

'Supplies' means the goods and/or services to be provided by the Supplier from time to time as set out in the Contract and any ancillary related goods and services or Documentation required to provide those agreed goods and services to Optus.

'Tax' includes any tax, withholding tax, charge, rate, duty or impost imposed by any authority at any time, but does not include any GST or taxes on income or capital gains.

'Tax Invoice' has the meaning given in the *New Tax System (Goods and Services Tax) Act 1999*.

'WHS Laws' means applicable legislation dealing with work health and safety in Australian states, territories and the Commonwealth in place from time to time, as well as any regulations, codes of practice and/or advisory standards made under or in connection with the legislation.

2. SUPPLIES

2.1 The Supplier must supply the Supplies in accordance with the Contract and, where applicable, by the Due Date.

2.2 If the Supplies include goods, title to, and risk in those goods passes to Optus upon acceptance of those goods by Optus where acceptance criteria is set out in Schedule, or if no acceptance criteria is set out in the Schedule, upon delivery by the Supplier in accordance with the Specifications.

2.3 Optus may order the Supplies by issuing a Purchase Order to the Supplier. The Purchase Order must include the Schedule reference number (where a Schedule is used) or a Purchase Order requisition number.

2.4 Subject to clause 2.6, no confirmation, shipment or delivery docket, invoice, terms and conditions of supply or other similar document issued by or on behalf of the Supplier (including the terms on any pre-printed purchase order form, quote or shrink wrap licence) will vary, prevail over or form part of the Contract.

2.5 If any document referred to in clause 2.4 issued by or on behalf of the Supplier purports to govern or apply to the

provision of goods and services the subject of a Contract (whether issued prior to or after the formation of the Contract) such document shall be deemed null and void and of no legal effect. This applies even if such document expressly purports to prevail over the terms of the Contract.

2.6 Where a quote is attached to a Purchase Order, only the description of Supplies in that quote will form part of the Contract.

2.7 The Supplier agrees to the Contract by accepting the Purchase Order or commencing delivery of the Supplies.

3. PAYMENT

3.1 Unless expressly stated in the Schedule:

- (a) the Price for Supplies is the maximum price that may be charged under the Contract and is inclusive of Incidental Costs (excluding GST); and
- (b) all Prices stated in the Contract are in Australian dollars and the price is fixed regardless of changes in exchange rates.

3.2 The Supplier may invoice Optus the Price payable for the Supplies when those Supplies are accepted by Optus.

3.3 The Supplier must ensure that each invoice:

- (a) clearly identifies the Supplies to which it relates;
- (b) clearly identifies the number of the Purchase Order to which that invoice relates;
- (c) itemises any GST payable on the provision of those Supplies; and
- (d) is a valid Tax Invoice for GST purposes, if GST is payable.

3.4 Optus must pay each invoice of the Supplier within 30 days after the end of the month in which the invoice is received by Optus unless:

- (a) that invoice does not comply with clause 3.3, in which case the Supplier must issue a complying invoice; or
- (b) Optus disputes the amount of that invoice, in which case Optus must pay the undisputed amount and the parties must resolve the dispute by negotiation.

3.5 If the Supplier or any of its Related Bodies Corporate owes any amount to Optus under the Contract or to any Optus Group Company, Optus may:

- (a) set off that amount against any amounts Optus owes to the Supplier under the Contract; or
- (b) invoice the Supplier for that amount, in which case the Supplier must pay each invoice within 30 days after the end of the month in which that invoice is received by the Supplier.

3.6 Except as expressly provided otherwise in this Agreement, the Supplier shall assume responsibility for and shall hold Optus harmless from payment for all Taxes that may apply at any time under the laws in force in Australia and/or the country of the Supplier, which may become due by reason of the Supplies supplied under the this Agreement, and the Supplier shall execute and deliver such and other further instruments as may be necessary, including the making of payment of any interests or penalties, related to or arising from such Taxes.

3.7 If Optus is required by law to deduct or withhold Taxes from a payment to the Supplier under this Agreement, then Optus may make those deductions or withholdings (or both) to the relevant authorities and reduce its payment to the Supplier by such amount of deduction or withholding accordingly

3.8 If requested, Optus will furnish the Supplier with evidence to establish that the aforementioned withholding tax, if any, has been paid to the relevant tax authority.

3.9 If the Supplier is non- resident of Australia (as defined under Australian tax law) for tax purposes, the Supplier advises Optus that it is not entitled to an Australian Business Number ("ABN") as it is not carrying on an enterprise in Australia.

4. FAILURE OR DELAY IN DELIVERY

4.1 If a Contract includes any Due Dates, the Supplier acknowledges that time is of the essence in delivering the Supplies.

4.2 If the Supplier becomes aware of a potential or actual delay in delivery the Supplier must:

- (a) immediately notify Optus in writing of that actual or potential delay;
- (b) prepare and submit to Optus in writing the steps being undertaken to overcome the delay and, if applicable, a workaround plan; and
- (c) comply with any workaround plans agreed in writing with Optus and all reasonable requests made by Optus to prevent or rectify the delay. Optus may, in its discretion, agree in writing to extend a Due Date.

4.3 If the Supplier fails to meet a Due Date, Optus may at its election by notice to the Supplier do any or all of the following:

- (a) negotiate a variation in accordance with clause 13.4; and
- (b) terminate the Contract in whole or in part.

5. TERM AND TERMINATION

5.1 The term of the Contract is specified in the Schedule unless:

- (a) it is extended by agreement between the parties in writing prior to expiry; or
- (b) it is terminated pursuant to clauses 4.3, 5.2 or 5.3.

5.2 Provided always that the effective date of termination is no earlier than three (3) months from the commencement of this Contract, Optus may terminate the Contract in whole or part for convenience by giving the Supplier no less than 30 days' notice without being liable to the Supplier in damages or otherwise, except for payment of the Price for the Supplies accepted by Optus and any other reasonable costs incurred by the Supplier prior to the effective date of termination.

5.3 Optus may terminate this Contract with immediate effect by giving written notice to the Supplier if:

- (a) the Supplier breaches any material provision of this Contract and that breach is not capable of remedy;
- (b) the Supplier breaches clause 13.8 (Singtel Group Supplier Code of Conduct) or any material provision of this Contract that is able to be remedied and fails to remedy the breach within 30 days after receiving written notice requiring it to do so;
- (c) the Supplier breaches clause 11 (Confidentiality and Privacy);
- (d) the Supplier breaches clause 13.9 (Benefits, Inducements and Rewards); or
- (e) an Insolvency Event occurs in respect of the Supplier.

5.4 Termination of this Contract does not affect any accrued rights or remedies a party may have.

5.5 Regardless of termination or completion of this Contract, clauses 6 (Warranties), 7 (Indemnities), 8 (Insurance), 9 (Liability), 10 (Intellectual Property Rights) and 11 (Confidentiality and Privacy) continue to have effect.

6. WARRANTIES

6.1 The Supplier warrants that:

- (a) all Supplies which are goods:
 - (i) are and will continue during a 90 day period for Software and otherwise for a 12 month warranty period (Warranty Period) to be in good working order;
 - (ii) are free from defects in design, materials, workmanship and installation;
 - (iii) are of acceptable quality and fit for any disclosed purpose and use;
 - (iv) match the description, sample or demonstration model; and
 - (v) have clear title and a right to undisturbed possession, and do not have undisclosed securities;
- (b) all Supplies which are services will be provided in accordance with any relevant and applicable

- Specifications and with due care and skill, by competent and trained personnel;
- (c) the Supplies, and Optus' reasonable and foreseeable use of the Supplies, will not infringe any Intellectual Property Rights or moral rights of any person; and
- (d) all Supplies comply with, and all of its obligations will be carried out in compliance with, all Laws.

6.2 If at any time during the Warranty Period the Supplier becomes aware, or Optus notifies the Supplier of any failure of a supply to comply with any of the warranties given under clause 6.1, the Supplier, at its cost, will promptly correct that failure at no cost to Optus.

6.3 This clause 6 applies notwithstanding anything to the contrary in any documentation accompanying, or provided by the Supplier in connection with the Supplies.

7. INDEMNITIES

7.1 The Supplier indemnifies Optus, each other Optus Group Company and their Personnel ("those indemnified") against all Loss or other damage suffered or incurred by any of those indemnified (including those suffered or incurred as a result of a claim by a third party against any of those indemnified) in connection with:

- (a) any
 - (i) injury to or death of any person whomsoever; or
 - (ii) damage to any property whatsoever, due to any act or omission of the Supplier or the Supplier's Personnel arising out of or in any way relating to this Contract or the Supplies;
- (b) any wilful, fraudulent, unlawful or negligent act or omission of the Supplier or any of the Supplier's Personnel;
- (c) a breach of the obligations of the Supplier under clause 11, including without limitation any amount incurred or paid by Optus as compensation for Loss for an interference with the privacy of an individual under the *Privacy Act 1988* (Cth); or
- (d) any claim, demand, allegation or proceeding by a third party alleging that any of the Supplies, or their use in accordance with this Contract, infringes the Intellectual Property Rights of any person,

including any fines, penalties or other pecuniary liability imposed by any Regulatory Authorities by reason of any of the matters referred to in this clause 7.1.

7.2 Optus holds the benefit of this indemnity on trust for each of those indemnified and can, if requested by any of them, enforce it on their behalf.

7.3 Optus indemnifies the Supplier against all Loss or other damage suffered or incurred by the Supplier (including those suffered or incurred as a result of a claim by a third party against the Supplier) caused by:

- (a) any
 - (i) injury to or death of any person whomsoever; or
 - (ii) damage to any property whatsoever, due to any act or omission of Optus or Optus' Personnel arising out of Optus' performance of the Contract.
- (b) a breach by Optus of clause 11.

8. INSURANCE

8.1 The Supplier must effect and maintain:

- (a) public liability insurance for at least \$5 million per claim;
- (b) if the Supplies include professional, advisory, design, content or consulting services, professional indemnity insurance for at least \$1 million per occurrence; and
- (c) if the Supplies include construction services, contractors all risk insurance of at least \$10 million per claim; and
- (d) all workers compensation insurance required by law.

8.2 The Supplier must ensure that:

- (a) it includes Optus as a co-insured on the Supplier's insurance policies if the Supplier is deemed by Optus as not being financially stable

- (b) it provides to Optus certificates of currency for insurance policies upon request;
- (c) its insurance policies respond to a claim for a period of 7 years after this Contract ends; and
- (d) include an automatic reinstatement clause, such that if the amount of insurance coverage is reduced as a result of a claim, then the level of insurance coverage will automatically be restored to the amount that applied prior to the claim having been made, and the cost of any additional premium shall be met by the Supplier.

8.3 In the event that the Supplier neglects or fails to maintain, or allows or causes any of its sub-contractors not to maintain, the policies of insurance in accordance with this Clause 8, Optus shall have the right (but shall not be obliged) to arrange for such policies of insurance and the Supplier shall bear all costs and expenses (including the premiums) in connection therewith.

9. LIABILITY

9.1 The parties exclude the operation of Part 4 of the Civil Liability Act 2002 (NSW).

9.2 Each party's liability to pay for any Loss to the other party is reduced to the extent the liability was caused by the negligence of the other party or any of its Personnel.

9.3 Except where to do so would contravene any statute or cause any part of this clause to be void or unenforceable:

- (a) subject to clause 9.6, the Supplier limits its aggregate liability for Loss under the Contract to an amount equal to the total contract value to be paid by Optus to the Supplier.
- (b) Optus limits its aggregate liability for Loss under the Contract to an amount equal to 5% of the total amount paid or payable by Optus for the Supplier under the Contract (in addition to and without limiting Optus' obligations to pay for the Supplies in accordance with clause 3), except under an indemnity in clause 7.3 where Optus limits its aggregate liability for Loss under the Contract to an amount equal to the total contract value to be paid by Optus to the Supplier.

9.4 Except where to do so would contravene any statute or cause any part of this clause to be void or unenforceable, Optus excludes liability for indirect loss, any loss of revenue, or any loss of profit.

9.5 Except where to do so would contravene any Law or cause any part of this clause to be void or unenforceable, each party excludes all terms implied, by statute, in fact, at law or otherwise.

9.6 The limitation of liability in clause 9.3(a) does not apply to the Supplier's liability under the indemnity in clause 7.1, any fines, penalties or other pecuniary liability imposed by any Regulatory Authorities or any liability under clause 13.9.

10. INTELLECTUAL PROPERTY RIGHTS

10.1 Optus will own all Intellectual Property Rights in any Supplies that are specifically developed or created for Optus (New IPR) and the Supplier:

- (a) assigns to Optus, and must ensure that each of its Personnel assigns to Optus, any and all New IPR; and
- (b) must do all things necessary to ensure that all rights and title in the New IPR passes to Optus on the date of creation of the Supplies.

10.2 This Contract does not assign any Intellectual Property Rights of any person other than the New IPR.

10.3 To the extent that the Supplies contain material that contains or is constituted by any Intellectual Property Rights of the Supplier or any third party (other than the New IPR), the Supplier grants to Optus an irrevocable, royalty free, perpetual license to copy, use, adapt and modify such material to the extent required to enable the Optus Group Companies to fully utilize the Supplies.

11. CONFIDENTIALITY AND PRIVACY

- 11.1 Each party shall exercise the same degree of care to guard against disclosure or use of the other party's confidential information as it employs with respect to its own confidential information but, in any event, not less than reasonable care. Each party shall not use or disclose the other party's confidential information except to fulfill its obligations under the Contract.
- 11.2 The Supplier:
- must ensure that any collection, use, disclosure or transfer of Personal Information in the course of performing the Contract complies with all applicable laws, rules and regulations in Australia, including without limitation:
 - the Privacy Act 1988 (Cth) and the Australian Privacy Principles; and
 - Part 13 of the Telecommunications Act 1997 (Cth);
 - without limiting the effect of any other provision of this Contract, must not use or disclose Personal Information relating to the customers (whether actual or prospective) or Personnel of any Optus Group Company outside of Australia;
 - must, at its cost, promptly notify Optus of any actual, or suspected data breach relating to Personal Information of Personnel or customers (whether actual or prospective) of any Optus Group Company;
 - must, at its cost, provide all reasonable assistance to Optus in relation to any investigations or requests made by individuals or Australian government authorities relating to Personal Information; and
 - if requested by Optus, promptly return to Optus, or destroy, all copies of Personal Information of Personnel or customers (whether actual or prospective) of any Optus Group Company that relates to this Contract.
- 11.3 The Supplier may be given access to Optus', Optus' employees and Optus' customers' information assets to allow the Supplier to comply with its obligations under the Contract. The Supplier must protect the confidentiality, availability and integrity of Optus', Optus' employees' and Optus' customers' information assets, including but not limited to by:
- implementing appropriate security policies and practices, consistent with the most current version of AS/ISO 17799;
 - complying with all applicable privacy, spam and cyber crime legislation; and
 - upon written request, providing to Optus a copy of the Supplier's information security policy, standards, operating procedures and related documentation. The Supplier authorises Optus to forward this documentation to any Optus customer who is supported by the Supplier.
- 11.4 Except as required by law or the rules of any stock exchange a party may not make any public statement about this Contract unless it has first obtained written consent from the other party.
- 12. WORK HEALTH & SAFETY**
- 12.1 The Supplier must ensure so far as reasonably practicable that its Personnel and any subcontractor it engages in accordance with this Agreement:
- comply with the WHS Laws as applicable; and
 - comply with any relevant Standards where Optus notifies the Supplier that a particular Standard must be complied with.
- 12.2 The Supplier shall notify Optus immediately in writing of any Serious Incident which occurs during the delivery or performance of the deliverables under this Agreement.
- 13. GENERAL PROVISIONS**
- 13.1 The Supplier must not assign or attempt to assign or otherwise transfer any right or obligation arising out of the Contract, without the written consent of Optus, which Optus may not withhold unreasonably. Optus may at any time assign or novate any or all of its rights and/or obligations under the Contract to any of its Related Bodies Corporate without the Supplier's prior written consent. The Supplier must promptly execute all documents reasonably required by Optus to effect such assignment or novation at the Supplier's own cost.
- 13.2 Nothing in the Contract constitutes any relationship of employer and employee, principal and agent or partnership between any Optus Group Company and the Supplier.
- 13.3 If any part of the Contract is illegal or unenforceable, the rest may be enforced to the extent possible.
- 13.4 Any variations to the Contract must be evidenced in writing signed by both parties.
- 13.5 Notwithstanding anything in this Contract, Optus may, in its sole discretion, reserve the right to enter into any negotiations, arrangements or agreements with any person and entity (other than the Supplier) for the purchase or supply of the same or similar supplies contained or referred to in this Contract without being liable to Supplier in any way whatsoever.
- 13.6 This Contract is governed by the laws of New South Wales and each party submits to the jurisdiction of the courts of that State.
- 13.7 This Contract constitutes the entire agreement between the parties as to its subject matter, and in relation to that subject matter, supersedes all previous agreements, arrangements and representations between the parties in relation to that subject matter.
- 13.8 The Supplier shall (and shall use its reasonable endeavors to procure that its Personnel shall) at all times comply with the Singtel Group Supplier Code of Conduct (a copy of which is available at: <http://info.singtel.com/about-us/tenders>) ("SCC"), as may be updated or varied from time to time, which includes but is not limited to the protection of the environment, employee health and safety, labour, and employment practice. Optus may from time to time require the Supplier and/or its subcontractors (if any) to perform a self-assessment, and/or engage a third party to conduct an on-site evaluation and/or inspection of the Supplier's systems, processes, operations and/or facilities and/or of its subcontractors (if any) ("Evaluation") to ensure compliance of the SCC. The Evaluations shall be performed no more than once in any two (2) year period, and the cost of the Evaluation shall be borne by Optus if the Evaluation reveals that the Supplier complies with the SCC. In the event the Supplier and/or its Personnel breach the SCC, the Supplier shall promptly notify Optus and give full details of such breach. Without prejudice to the other rights and remedies of Optus hereunder, at law or in equity, if the Supplier breaches the SCC, Optus may terminate the Contract pursuant to clause 5.3(b).
- 13.9 Optus shall be entitled to terminate this Contract and the Supplier shall fully indemnify Optus for the full amount of any Loss, damages, costs and expenses resulting from such termination, if the Supplier offers or gives or agrees to give to any person any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not done any action in relation to the obtaining or execution of this Contract with Optus or for showing or not showing favour to any person in relation to any agreement with Optus, or if like acts are by any person employed by the Supplier or acting on its behalf (whether with or without the knowledge of the Supplier) or if in relation to any agreement with Optus, the Supplier or any person employed by the Supplier or acting on its behalf breaches, abets or attempts to breach any of the applicable Australian laws relevant to bribery and corruption.

SIMPLE SUPPLY AGREEMENT – SCHEDULE						
OPTUS DETAILS						
Company Name						
Company ABN						
OPTUS CONTRACT REPRESENTATIVE						
Name						
Telephone						
Mobile						
Email						
Address						
SUPPLIER DETAILS						
Company Name						
Company ABN						
Trading Name						
SUPPLIER CONTRACT REPRESENTATIVE						
Name						
Telephone						
Mobile						
Email						
Address						
Postal Address						
FEES AND CHANGES						
Monthly Fees (ex. GST)						
Minimum Period (Months)						
Total Contract Value (ex. GST)						
Total GST						
Total Contract Value (incl. GST)						
ITEM	MATERIAL NUMBER	DESCRIPTION	SUPPLIER PART NUMBER	QUANTITY	UNIT PRICE	TOTAL
TOTAL LINE ITEM PRICE (AUD)						\$
DETAILS OF SUPPLIES (CONTRACT DESCRIPTION – EG. SUPPLY OF LABELS)						
SUPPORT PERIOD						
SERVICE PERIOD						
The Supplies will be provided for a period of [] months, commencing [Effective Date] and ending on [date] (Expiry Date)						
PERFORMANCE STANDARDS AND MEASURES (IF ANY)						
RESPONSE AND RESTORATION TIMES (IF APPLICABLE)						
PROJECT PLAN WITH TIME OF MAJOR DELIVERABLES AND MILESTONES						
FACILITIES AND ASSISTANCE TO BE PROVIDED BY OPTUS (IF ANY)						
DOCUMENTATION TO BE PROVIDED TO OPTUS (IF ANY)						
KEY PERSON TO BE PROVIDED BY THE SUPPLIER						

This Schedule does not authorise the Supplier to commence delivery of the Supplies, which may only be authorised by a Purchase Order.

The terms and conditions of the Simple Supply Agreement apply to this Schedule and the provision of the Supplies.