

O2 Standard Purchase Order Terms and Conditions

RECITALS

- (a) The Supplier has developed, and is continuing to develop, products and services.
- (b) The Purchaser wishes to use the Supplier's products and services, both for its own use and for re-sell and provision to its customers.
- (c) The Purchaser has issued a Purchase Order to the Supplier to provide products and services to the Purchaser, both for its own use and for re-sell and provision to its customers.
- (d) The Purchase Order issued by the Purchaser to the Supplier is governed by these terms and conditions.

1 Appointment as Reseller

- 1.1 On and from the Start Date and effective throughout the Term:
 - (a) the Supplier appoints the Purchaser and the Purchaser Group Entities as authorised, non-exclusive resellers of the Supplies to third parties (Customers), and the Purchaser, including on behalf of the Purchaser Group Entities, accepts such appointment;
 - (b) The Purchaser and Purchaser Group Entities may use the Supplies as if they were a Customer, market, promote and sell the Supplies to Customers and are free to enter into any contracts, arrangements, agreements or understandings with any Customer in connection with the Supplies and on terms and conditions (including price) as they solely determine; and
 - (c) The Purchaser and Purchaser Group Entities may resell the Supplies to their Customers alone or in combination with other products and services that the Purchaser or Purchaser Group Entities offer.
- 1.2 The Supplier acknowledges that termination of this Agreement (or Purchase Order) for any reason will not impact any existing contracts between the Purchaser and its Customers (or Purchaser Group Entities and their Customers) for the Supplies or a Customer's right to continued possession and use of the Supplies under such contracts.
- 1.3 Except to the extent required by any law or as expressly permitted in this Agreement, the Supplier may only communicate directly with Customers as reasonably required in relation to the Supplies and as agreed in writing by the Purchaser
- 1.4 A Purchaser Group Entity may freely sell or sub-licence (or, as relates to software, distribute) (**Resale**) the Supplies directly to other Purchaser Group Entities at such prices for the Supplies as it determines and without further consideration to the Supplier (**Internal Resale**). For the avoidance of doubt, end user licence agreements and Customer-specific terms (**EULAs**) will not apply in relation to Internal Resale and the Supplier acknowledges that Purchaser Group Entities will not be bound by EULAs.
- 1.5 The rights of Resale granted by this agreement will apply to any Purchaser Group Entity that receives the Supplies.

2 Ordering

- 2.1 The Purchaser has ordered Supplies from the Supplier under the Purchase Order.
- 2.2 The Purchase Order, together with these terms and conditions, constitutes a binding agreement between the Purchaser and the Supplier.
- 2.3 The Agreement commences, and the Supplier accepts these terms and conditions, on the date the Purchase Order is received by the Supplier (or such other commencement date set out in the Purchase Order) and, unless terminated earlier, continues until the Purchase Order has been fully performed.
- 2.4 The Supplier must not perform (or charge the Purchaser for) any Supplies unless the Purchaser has approved those Supplies under the Purchase Order.
- 2.5 The Supplier must not include terms which are inconsistent with this Agreement (**Inconsistent Terms**) in any Purchase Order, quote or Specifications. If the Supplier fails to comply with this requirement, the Inconsistent Terms will be of no effect and will be severed from the Purchase Order, quote or specifications (to the extent possible). For the avoidance of doubt, the Purchaser expressly rejects any Inconsistent Terms and the Supplier agrees that the Inconsistent Terms do not form part of this Agreement and do not govern any aspect of the relationship between the parties.
- 2.6 The Supplier agrees that the Purchaser is free to offer and/or acquire and sell the same or similar Supplies to/from any third party.

3 Delivery, Purchaser Rights, Title and Risk

- 3.1 The Supplier must:
 - (a) deliver the Supplies on a DDP basis to the Place of Delivery by the Delivery Date as specified in these terms and conditions and/or the applicable Purchase Order;
 - (b) supply the Purchaser with all information and comply with such other requirements set out in this clause 3;
 - (c) deliver the Supplies only during the relevant delivery schedule approved by the Purchaser; and
 - (d) obtain signed receipt of delivery of such Supplies from the Purchaser,in accordance with these terms and conditions, the Purchase Order and as otherwise reasonably directed by the Purchaser.
- 3.2 The Supplier must:
 - (a) provide the Purchaser with reasonable advance shipping notice prior to delivery of each shipment of the Supplies;
 - (b) provide the Purchaser with reasonable prior written notice of all circumstances and information which might delay or prevent successful Delivery of the Supplies; and
 - (c) provide the Purchaser with all unlock codes (if applicable), shipping documentation and other information required to enable the Purchaser to receipt, distribute, market, sell, make full use of and activate the Supplies without delay.
- 3.3 Without limiting the Purchaser's other rights, where some or all of the Supplies in the Purchase Order are not Delivered in compliance with clauses 3.2 and 3.3 and these terms and conditions or for such Supplies that don't pass acceptance testing under clause 3.5, the

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Purchaser may:

- (a) exercise any relevant Performance Indicator Rights;
 - (b) in consultation with the Supplier, either:
 - (i) accept the non-compliant Supplies, provided that the Supplier remedies such non-compliance within the timeframe specified by the Purchaser;
 - (ii) reject any non-compliant Supplies, but accept delivery of the remainder of the Supplies under the Purchase Order; or
 - (iii) after giving the Supplier five Business Days to remedy such non-compliance, terminate the Purchase Order in whole or in part and reject any or all Supplies under the Purchase Order (including Supplies that have already been delivered); or
 - (c) do both (a) and (b).
- 3.4 Any Supplies that the Purchaser rejects pursuant to clause 3.3 or 3.5 will be returned to the Supplier at the Supplier's cost and expense. Without limiting the Purchaser's other rights and remedies, the Supplier must promptly refund or credit all Charges paid by the Purchaser for any rejected Supplies, and no further Charges will be payable by the Purchaser in connection with any rejected Supplies.
- 3.5 The Purchaser may undertake acceptance testing of any of the Supplies in order to determine whether the Supplies comply with the Specifications, its documentation and/or other requirements of these terms and conditions and/or the Purchase Order, and the Purchaser may reject any Supplies that don't pass the Purchaser's acceptance testing requirements.
- 3.6 Title to and risk in any Supplies passes to the Purchaser on Delivery. Where the Purchaser elects to return Supplies under a clause that entitles it to do so, title to and risk in those Supplies reverts to the Supplier when those Supplies are delivered to a carrier for return.
- 3.7 The Supplier must provide the Supplies free of any encumbrances.

4 Charges and payment

- 4.1 The Supplier will, after Delivery of the Supplies to the Purchaser, issue an aggregate invoice for all the applicable Charges under the relevant Purchase Order (including applying any required discounts).
- 4.2 Subject to the Supplier's compliance with clause 4.1, the Purchaser must (unless it disputes the invoice) pay the amount of each correctly rendered invoice within 30 days (plus up to two Business Days to allow for bank transfers) after the end of the calendar month in which that invoice is received by the Purchaser. Unless otherwise required by the Purchaser, all payments made by the Purchaser under these terms and conditions will be made by the method specified in the Purchase Order.
- 4.3 The Purchaser may, by giving prior written notice to the Supplier, set-off any amount payable by the Purchaser to the Supplier under these terms and conditions or any other agreement against any amount payable by the Supplier to the Purchaser under these terms and conditions or any other agreement.
- 4.4 Except to the extent otherwise stated in the Purchase Order, all Charges and other amounts stated in these terms and conditions and under all Purchase Orders are:
 - (a) inclusive of, and the Supplier must pay and bear, all Incidental Costs;
 - (b) are in Australian currency;
 - (c) are fixed regardless of changes in exchange rates or costs; and
 - (d) are inclusive of all costs and expenses of the Supplier in supplying the Supplies and complying with these terms and conditions and the Purchase Order, and the Supplier must pay and bear, all costs incurred in connection with Delivery of Supplies, including shipping, delivery and insurance costs, customs duties and Taxes.
- 4.5 The Supplier acknowledges that any payment made to it by the Purchaser does not imply or constitute an admission on the part of the Purchaser that the Supplies have been properly Delivered or adequately performed or a waiver or release of the Supplier's obligations under this Agreement.

5 Taxes

- 5.1 If one party (supplying party) makes a taxable supply and the consideration for that supply does not expressly include GST, the party that is liable to provide the consideration (receiving party) must also pay an amount (GST amount) equal to the GST payable in respect of that supply.
- 5.2 Subject to first receiving a tax invoice or adjustment note as appropriate, the receiving party must pay the GST amount when it is liable to provide the consideration.
- 5.3 If one party must indemnify or reimburse another party (**payee**) for any loss or expense incurred by the payee, the required payment does not include any amount which the payee (or an entity that is in the same GST group as the payee) is entitled to claim as an input tax credit, but will be increased under clause 5.1 if the payment is consideration for a taxable supply.
- 5.4 If an adjustment event arises in respect of a taxable supply made by a supplying party, the GST amount payable by the receiving party under clause 5.1 will be recalculated to reflect the adjustment event and a payment will be made by the receiving party to the supplying party, or by the supplying party to the receiving party, as the case requires.
- 5.5 In this Agreement:
 - (a) terms used that are defined in the GST Act have the meaning given in that Act, unless the context makes it clear that a different meaning is intended;
 - (b) consideration includes non-monetary consideration, in respect of which the parties must agree on a market value, acting reasonably; and
 - (c) in addition to the meaning given in the GST Act, the term "GST" includes a notional liability for GST.
- 5.6 If at any time the Purchaser is required by law to make a Tax Deduction from any amount paid or payable to the Supplier, the Purchaser will:

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- (a) notify the Supplier of the obligation as soon as the Purchaser becomes aware of it (failure to notify does not affect the Purchaser's right to withhold);
 - (b) ensure that the deduction, withholding or payment does not exceed the minimum amount required by law; and
 - (c) pay to the relevant taxing authority the full amount of the deduction, withholding or payment by the due date and where requested by the Supplier, promptly deliver to the Supplier a copy of any receipt, certificate or other proof of payment.
- 5.7 If the Purchaser is required by law to make a Tax Deduction from a payment, no additional payment will be made to the Supplier. Where there is an obligation to withhold under clause 5.6, the Purchaser may make the Tax Deduction from any amounts that are paid or payable to the Supplier, including amounts that are paid or payable after the initial obligation to withhold arises.
- 5.8 Except to the extent otherwise stated in this clause 4.1, all Charges in these terms and conditions (including under any Purchase Order) are inclusive of all Taxes.
- 5.9 If the Supplier is resident of a country other than Australia (**Foreign Country**), at the date of this Agreement, and each time a supply is made by the Supplier under this Contract, the Supplier represents and warrants that:
- (a) it is a resident of that Foreign Country for the purposes of any tax treaty between Australia and that Foreign Country (**Applicable Tax Treaty**);
 - (b) it is entitled to the benefits under the Applicable Tax Treaty; and
 - (c) the Supplies are not made through a permanent establishment of the Supplier outside the Foreign Country.

6 Quality, Environment and Occupational Health and Safety

6.1 Compliance

- (a) The Supplier must ensure that all Supplier personnel are appropriately inducted, trained and supervised in relation to:
 - (i) the risks associated with the performance of the Services;
 - (ii) the procedures they need to follow to manage those risks; and
 - (iii) their OHSE obligations as applicable in each relevant State and Territory.
- (b) The Supplier must demonstrate to the Purchaser on demand, including by the provision of any relevant information, that:
 - (i) it has taken all reasonably practicable steps to ensure that the Supplies are constructed or manufactured so as to be, so far as is reasonably practicable and when used in accordance with accompanying information provided to the purchaser, safe and without risks to the health and safety of any person or the environment; and
 - (ii) the manufacturer or original supplier of the Supplies has carried out research, testing and examination necessary to discover, and to eliminate or minimise, any risk, to the health or safety of persons or to the environment that may arise from the condition of the Supplies.

6.2 Management systems

- (a) The Supplier must have in place and fully comply with until completion of the Supplies:
 - (i) an environment management system which is consistent with Australian/New Zealand Standard AS/NZS ISO14001; and
 - (ii) an occupational health and safety management system that is consistent with Australian/New Zealand Standard AS/NZS 4801.
- (b) The Purchaser may require the Supplier to provide documentation evidencing its compliance with this clause.

6.3 Incident reporting

- (a) The Supplier must immediately notify the Purchaser of Incidents that occur during the performance of the Supplies.
- (b) For the purposes of this clause:
 - (i) "Incident" means a death, serious injury or illness or dangerous incident
 - (ii) "serious injury or illness" has the meaning given to it under the *Work Health and Safety Act 2011* (Cth);
 - (iii) "dangerous incident" has the meaning given to it under the *Work Health and Safety Act 2011* (Cth).
- (c) The Supplier must not disturb the Site where the Incident occurred unless authorised to do so by an inspector as defined under the *Work Health and Safety Act 2011* (Cth) or equivalent as defined under the Relevant Laws.

6.4 Right to verify, audit and inspect

The Supplier must permit the Purchaser to enter any Site controlled by the Supplier, upon reasonable notice, to review, inspect, audit compliance or otherwise observe the quality, OHSE management systems, work practices and procedures applicable to the Supplier's performance of this agreement.

6.5 Supplier not relieved of obligations

- (a) The Supplier acknowledges and agrees that:
- (b) The Purchaser does not purport in any way to be an expert on quality, environmental or occupational health and safety issues or management systems;
 - (i) any review by the Purchaser of the Supplier's performance of its obligations under this agreement does not constitute acceptance of the adequacy of the matters reviewed or a waiver by the Purchaser of any of its rights or the Supplier's obligations under this agreement; and
 - (ii) the Supplier has no right of action against the Purchaser, or any defence to any action or claim by the Purchaser arising from any review, alleged verification, approval or acceptance of any of the Supplier's systems, work practices or procedures.

6.6 Supplier must comply with Ethical Code of Conduct

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- (a) The Supplier must comply with the Ethical Code of Conduct.
- (b) To the extent that the Supplier's Representatives contribute to the provision of Supplies under this Agreement, the Supplier must ensure that its Representatives comply with the Ethical Code of Conduct.

7 Confidentiality, Privacy and Data Security

- 7.1 The Receiving Party may only use, and must keep secure, the Confidential Information of the Disclosing Party for the purposes of performing its obligations under this Agreement and, subject to clauses 7.2 and 7.3, must keep the Disclosing Party's Confidential Information confidential.
- 7.2 The Receiving Party may disclose the Confidential Information of the Disclosing Party to the extent required by law, or with the prior written consent of the Disclosing Party.
- 7.3 Upon termination or expiration of this Agreement, the Receiving Party must immediately return to the Disclosing Party or destroy all Confidential Information of the Disclosing party in the Receiving Party's possession or control.
- 7.4 Each party must:
 - (a) comply with all Privacy Laws in relation to the other party's Personal Information as if it were an entity regulated under those Privacy Laws;
 - (b) only collect, store, use, disclose or otherwise deal with the other party's Personal Information as directed by the other party, except to the extent that compliance with the direction would cause it to breach a Privacy Law;
 - (c) only use or disclose the other party's Personal Information for the purposes of providing the Supplies or as expressly permitted under this Agreement;
 - (d) assist the other party to comply with the other party's obligations under any Privacy Law as they relate to the other party's Personal Information;
 - (e) take such steps as are reasonable in the circumstances to ensure that the other party's Personal Information it uses or discloses in providing the Supplies is up-to-date, complete and relevant having regard to the nature of the Supplies;
 - (f) ensure that any person to whom it discloses the other party's Personal Information is aware of and complies with its obligations under this clause 7.4; and
 - (g) not do any act, engage in any practice, or omit to do any act or engage in any practice that:
 - (h) would result in a breach of a Privacy Law if the Privacy Law applied to those things done, engaged in or omitted to be done by it; or
 - (i) would cause the other party to breach or be taken to breach a Privacy Law.
- 7.5 The Supplier must:
 - (a) comply with all security policies, standards and procedures notified by the Purchaser to the Supplier in relation to the Purchaser Data, including in relation to the encryption of Purchaser Data;
 - (b) treat Purchaser Data as Confidential Information;
 - (c) implement, maintain and enforce appropriate and industry best practice security procedures and safeguards in order to protect any Purchaser Data in the Supplier's possession and control against any misuse, loss, interference unauthorised access, modification or disclosure;
 - (d) ensure that the Purchaser has access at all times to the Purchaser Data while it is in the Supplier's possession or control and provide that Purchaser Data to The Purchaser at The Purchaser's request;
 - (e) if any Purchaser Data is lost, damaged, corrupted or otherwise unable to be accessed as a result of any act or omission by the Supplier or the Supplier's Representatives, take all measures available to the Supplier to immediately recover and restore that Purchaser Data;
 - (f) immediately notify the Purchaser of any suspected or actual (i) unauthorised access to, or unauthorised disclosure of, Personal Information (a **Data Breach**) or (ii) loss of Personal Information in connection with a Data Breach (a **Loss of Data**), and comply with any reasonable direction from the Purchaser (including permitting access to its systems and permitting Purchaser audits) with respect to remedying or addressing such breach or loss (including restoring lost, destroyed or damaged Purchaser Data at the Supplier's cost);
 - (g) inform and co-operate with the Purchaser in the event of any breach or risk regarding the security of Purchaser Data; and
 - (h) ensure that any person who is authorised by Supplier to have access to Purchaser Data complies and agrees to comply with this clause 7.5 to the same extent as Supplier.

8 Intellectual Property Rights

- 8.1 Ownership of, and right, title and interest in, Supplies provided by the Supplier under this Agreement transfers to the Purchaser upon Delivery. the Purchaser is free to resell ownership of, and right, title and interest in, such Products to Customers after Delivery.
- 8.2 The Supplier grants to the Purchaser (and each Customer, excluding the right to sub-licence) a perpetual, irrevocable, worldwide, non-exclusive, royalty-free, fully paid up licence (including the right to sub-licence to Customers) to use the Supplier Software (including any updates or modifications and all associated documentation) embedded within or provided in connection with any Products.
- 8.3 The Purchaser will own all intellectual property rights arising from the performance of the Services for the Purchaser, except to the extent otherwise agreed in a Purchase Order. The Supplier hereby assigns such rights to the Purchaser, and agrees to execute any document reasonably required by the Purchaser to evidence or perfect such ownership. The Purchaser grants to the Supplier a non-exclusive, non-transferable licence to use such intellectual property rights to the extent necessary for, and for the sole purpose of, performing the Supplier's obligations under this agreement.
- 8.4 The Supplier grants to the Purchaser a perpetual, irrevocable, worldwide, non-exclusive, royalty-free, fully paid up licence of all intellectual property rights owned by the Supplier and not transferred, assigned or licensed under clauses 8.1 to 8.3, to enable the Purchaser, Purchaser Group Entities and Representatives to use, modify, maintain and repair the Products and enjoy the benefit of the Supplies. The Purchaser may sub-licence those rights to a Customer to whom it resells the Supplies.
- 8.5 The Supplier warrants to the Purchaser that:

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- (a) the Supplier will, at the time of delivery of the Supplies, be the legal and beneficial owner of the intellectual property rights in the Supplies and any modifications or updates to them;
 - (b) the Supplier has not granted any rights inconsistent with the rights granted under this agreement;
 - (c) the manufacture, importation, sale, supply and support of the Supplies, and the Purchaser's (and Customer's) reasonably foreseeable use of them (including, without limitation, the marketing, resale or support of those Supplies by the Purchaser), will not infringe any intellectual property right or moral rights of any third party;
 - (d) it has not received notice of, and is not otherwise aware of, any third party infringement claim in connection with the intellectual property rights of the Supplies; and
 - (e) it will notify the Purchaser promptly after the Supplier receives notice of, or otherwise becomes aware of, any third party infringement claim in connection with the intellectual property rights of the Supplies.
- 8.6 The Supplier indemnifies the Purchaser, its related entities and their respective representatives against all and any liability, loss, damage, cost or expenses (including legal costs on a full indemnity basis and defence and settlement costs) incurred or suffered arising from or in connection with any breach of clause 8.5 or Third Party Claims.
- 8.7 Without limiting the Purchaser's other rights and remedies under this agreement or otherwise (and in addition to its obligations under clause 8.6), if a Third Party Claim occurs, the Supplier must, at its own expense and at the option of the Purchaser
- (a) procure for the Purchaser (and its Customers) all rights required to continue the purchase, sale, supply, license, use or other exploitation of the Supplies (as applicable) by the Purchaser (and its Customers, as applicable),
 - (b) modify the Supplies in a manner acceptable to the Purchaser in order so the use, promotion and sale (as applicable) of the Supplies by the Purchaser or by Customers cannot be prevented by a third party,
 - (c) provide a substitute of equal or better quality for the Supplies reasonably acceptable to the Purchaser, and if the Supplier cannot in a reasonable time fulfil the foregoing, the Purchaser may terminate the Agreement (and all affected Purchase Orders) by written notice to the Supplier and (after permitting Supplier to collect Delivered Supplies) the Supplier must provide a full refund of all Charges paid in connection with affected Supplies.

9 Marketing and branding

- 9.1 The Supplier agrees that:
- (a) the Supplies are provided to the Purchaser for the purposes of its own use and/or resale to Customers;
 - (b) the Purchaser may bundle the Supplies for resale to Customers with other products and services (including third party products and services); and
 - (c) the Purchaser may market, promote and sell the Supplies using both the Purchaser's brand and the Supplier's brand.
- 9.2 The Supplier grants to the Purchaser a non-exclusive, royalty-free, non-transferable right and licence to use and reproduce any trade marks, names or logos of the Supplier and any documentation and other promotional material related to the Supplies) in connection with the resale of the Supplies, for the purposes of the Purchaser performing its obligations and exercising the rights granted to it under this agreement during the Term.
- 9.3 The Supplier must, at its own cost and expense, provide any reasonably requested promotional assets (e.g. digital artwork or other materials), reasonable training and other marketing support and sales assistance to the Purchaser to support the Purchaser in marketing and re-selling the Supplies to Customers, including as required in a Purchase Order. This may include providing a reasonable number of trial or demonstration Supplies to the Purchaser.

10 Warranties and Defect obligations

- 10.1 The Supplier warrants that:
- (a) all Supplies:
 - (i) comply with the Specifications and will, for the warranty period specified in the Purchase Order, perform as described in the Specifications;
 - (ii) are new and of good and merchantable quality;
 - (iii) and are fit for their purpose and use as described in the Specification or as would reasonably be expected by a supplier of the Supplies; and
 - (b) all Supplies will be provided in accordance with the Specifications and with due care and skill, by competent and trained personnel;
 - (c) in supplying the Supplies the Supplier will comply with all Relevant Laws; and
 - (d) it will keep and maintain sufficient stock of new equivalent replacement Supplies and spare parts for all Supplies provided to the Purchaser in order to promptly rectify Defects in accordance with its warranty obligations during the Term.
- 10.2 Without limiting the Purchaser's other rights and remedies under this agreement or at law, if the Supplier breaches any of clause 10.1, the Purchaser may reject the Supplies and/or terminate the Purchase Order.
- 10.3 The Supplier must, at no cost or expense to the Purchaser, repair or rectify any Defect that becomes apparent during the warranty period specified in the Purchase Order (regardless of when the Supplier is notified or otherwise becomes aware of that Defect).
- 10.4 The Supplier must, at no cost or expense to the Purchaser, rectify Defects and provide any Software updates to the Purchaser (and if applicable, for Customers but subject to the applicable terms of any EULA) during the Term, including during any Manufacturer's Warranty period, including any Software updates provided "over the air".
- 10.5 This clause 10 applies despite anything to the contrary in any documentation provided by the Supplier in connection with Supplies.

11 Manufacturer's Warranty

- 11.1 From the date the Supplies is purchased by the Customer and without limiting the Supplier's other obligations under this agreement, the Supplier must provide a Manufacturer's Warranty directly to the Customer of each Supplies which must:

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- (a) provide a minimum warranty period as specified in the Purchase Order;
- (b) provide a minimum warranty period as specified in the Purchase Order for batteries (if any) accompanying any Supplies;
- (c) specify that the warranty period for Supplies that is repaired or replaced under the Manufacturer's Warranty will continue for the longer of (i) the remainder of the original warranty period for those Supplies; or (ii) 12 months from the date on which those Supplies was last repaired or replaced;
- (d) be given in writing in the form of a printed warranty card; and
- (e) comply with the ACL and all other Relevant Laws.

12 Australian Consumer Law

- 12.1 Without limiting the Supplier's obligations under the ACL or otherwise under this agreement, where a Customer seeks to exercise a right or remedy under the ACL in relation to the Supplies, the Supplier:
- (a) must promptly assess the claimed Defect and determine whether the Customer is entitled to a right or remedy under the ACL;
 - (b) must offer that customer and the Purchaser any remedy that the Supplier is required to provide under the ACL; and
 - (c) if the Supplier unreasonably delays in such assessment or provision of remedy (or both), authorises the Purchaser to provide such assessment and / or remedy (as applicable) at the Supplier's cost; and
 - (d) where the Supplier does not comply with clause 12.1, or the Purchaser is otherwise required to offer a Customer a remedy under the ACL for which the Supplier would be liable under the ACL, the Supplier must promptly reimburse the Purchaser for any loss in accordance with the ACL (including compensation paid by the Purchaser to the customer) that the Purchaser incurs as a result of providing that assessment and / or remedy.

13 Supplier indemnities and insurance

- 13.1 The Supplier indemnifies the Purchaser, its related entities and their respective Representatives against any and all loss and damage incurred or suffered by any of them caused or contributed by any:
- (a) wilful or unlawful acts or omissions of the Supplier or its representatives;
 - (b) loss or damage to property, real or personal, or death or personal injury arising out of or in connection with the Supplies or caused or contributed by the Supplier or its representatives;
 - (c) breach of clauses 6, 7 or 12 by the Supplier or any of its representatives; and
 - (d) non-compliance of the Supplies with Relevant Laws (including associated fines or penalties imposed by a regulator).
- 13.2 Unless otherwise agreed in the Purchase Order, the Supplier must at its cost take out and maintain, and on request produce evidence of currency of, the following insurance on an occurrence basis:
- (a) public and product liability insurance with a minimum coverage of \$5 million for each occurrence of bodily injury and property damage;
 - (b) workers compensation, employee liability and comprehensive motor vehicle insurance; and
 - (c) professional indemnity insurance with a minimum coverage of \$2 million,
- during the Term (and for professional indemnity insurance, during the Term and for a period of 2 years from the date the agreement and all Purchase Orders expire or are terminated).

14 Limitation of liability

- 14.1 Subject to clause 14.3, in no event will either party's liability include any amount for indirect, special or consequential loss or damage arising out of or in connection with this agreement. Nothing in clause 14.1 will preclude the recovery by the Purchaser of loss or damage which may reasonably be considered to arise naturally, that is according to the usual course of things, from the breach or other act or omission giving rise to the relevant liability.
- 14.2 Subject to clauses 14.3, a party's aggregate liability to the other for any and all claims and losses or damages (but excluding any costs and expenses of the recovery of those damages) arising out of or in connection with this Agreement (whether in contract, tort (including negligence) or otherwise) will not exceed the greater of:
- (a) twice the sum of moneys paid or to be paid by the Purchaser to the Supplier under this agreement and all Purchase Orders; or
 - (b) \$1 million.
- 14.3 The limitations of liability in clauses 14.1 and 14.2 do not apply to:
- (a) the indemnities in clauses 8, 13.1 or any other indemnity provided by the Supplier to the Purchaser; or
 - (b) a breach by the Supplier of clauses 6, 7, 8, 9, 11 or 12.

15 Term and termination

- 15.1 This agreement commences on the Start Date and expires at the end of the Term nominated on the front page of this agreement, unless terminated earlier in accordance with this agreement.
- 15.2 Without limiting its other rights and remedies under this agreement or at law, the Purchaser may immediately terminate this Agreement by written notice to the Supplier if the Supplier:
- (a) breaches any material obligations under this Agreement and, where the breach is capable of being remedied, the Supplier fails to remedy the breach within 14 days after receiving notice from the Purchaser to do so;
 - (b) breaches any material obligations under this Agreement and the breach is not capable of remedy;
 - (c) the Supplier commits multiple or recurring breaches of any obligation under this Agreement, whether or not remedied (including, for example, multiple or recurrent failures to meet Delivery Dates or KPIs); or
 - (d) the Supplier is reasonably likely to be subject to insolvency claims or proceedings or is otherwise insolvent.
- 15.3 The Purchaser may terminate this Agreement by giving 14 days' notice, in which event the Purchaser will be liable to pay only for Supplies provided up to the date on which termination takes effect. On termination the Supplier must provide all Supplies for which the

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Purchaser is liable to pay.

- 15.4 A Purchase Order placed during the Term will continue on and subject to these terms and conditions beyond termination or expiry of the Agreement until the Purchase Order is fully performed (unless the relevant Purchase Order separately expires or is terminated). For clarity, notwithstanding the exercise of any termination rights by either party under this agreement, relevant rights, licences and authorisations survive termination or expiry for the purposes of the Purchaser re-selling or otherwise disposing of any and all Supplies provided by the Supplier under the Purchase Order (prior to expiry or termination) to Customers (except to the extent the Supplier agrees to, at its cost and expense, collect such existing stock of Supplies from the Purchaser and provide a full refund of the Charges for such Supplies to the Purchaser).

16 Purchaser Policies

- 16.1 The Supplier must comply with any of the Purchaser's policies and procedures that are specified in this Agreement or that the Purchaser has notified to the Supplier on and from 20 Business Days after the policy or process is notified or made available.

17 Subcontracting

- 17.1 The Supplier must not subcontract the performance of any of its obligations under this Contract without the Purchaser's prior written consent (which must not be unreasonably withheld).
- 17.2 The Supplier is liable to the Purchaser for the acts and omissions of its subcontractors and agents and employees of its subcontractors, as fully as if they were the acts or omissions of the Supplier.

18 Miscellaneous

- 18.1 The Supplier must keep full and proper records, financial information and other supporting documentation relating to the performance of the Supplier's and any of its subcontractors' obligations under this agreement (including relating to any failure, repair or rejection of any supplies during the Contract Term and any warranty period) (**Records**) during the Term and for 7 years after the termination or expiry of this agreement, in a format reasonably approved by the Purchaser.
- 18.2 Upon the Purchaser's written request, the Supplier will allow the Purchaser (and its Representatives) to audit the Supplier's compliance with its obligations under this Agreement. The Supplier must provide reasonable co-operation (including access to premises, records and personnel) used in connection with the Supplies in connection with any such audit.
- 18.3 This agreement is governed by the laws of the State of Victoria and each party submits to the exclusive jurisdiction of the courts of that State.
- 18.4 The rights and obligations under clauses 0 (to the extent necessary to give effect to clause 15.3); 3 (to the extent necessary to give effect to clause 15.3); 7; 8; 9 (to the extent necessary to give effect to clause 15.3); 11; 12; 13, 14; 15.3; 17; 18 and any other clauses which expressly or by necessary implication survive termination or expiry of this Agreement continue in full force after this agreement ends.
- 18.5 The rights and remedies:
- (a) provided in this agreement are in addition to other rights and remedies provided by law independently of this Agreement; and
 - (b) accrued by a party before this Agreement ends continue after this Agreement ends.
- 18.6 A party must not assign or otherwise deal with its rights or novate its obligations under this Agreement without the other party's prior written consent (which must not be unreasonably withheld).
- 18.7 No waiver of a right or remedy under this Agreement is effective unless it is in writing and signed by the party granting it. It is only effective in the specific instance and for the specific purpose for which it is granted.
- 18.8 Time is of the essence in relation to this Agreement.
- 18.9 Notwithstanding the existence of a dispute, the parties must continue to perform their obligations under this Agreement to the extent that such obligations are not the subject matter of the dispute.
- 18.10 If any part of this Agreement is illegal or unenforceable, the remainder of the agreement will be enforced to the extent permitted by law.
- 18.11 Subject to clause 2.5, any inconsistency in this Agreement will be resolved in the following order of precedence:
- (a) the Purchase Order; and
 - (b) clauses 1 to 19.
- 18.12 This Agreement cannot be varied except by agreement of both parties

19 Definitions and Interpretation

- 19.1 In this agreement unless otherwise indicated:

ACL means the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Agreement means these terms and conditions and the Purchase Order.

Aggregate Spend Threshold means the aggregate of all Charges paid or payable by the Purchaser in respect of all Supplies on and from the Start Date during the Term.

Business Days means any weekday other than a public holiday recognised in Victoria Australia.

Charges means the charges set out in the relevant Purchase Order in connection with the Supplies.

Confidential Information means any information of whatever kind disclosed or revealed by one party (the "**Disclosing Party**") to the

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other party (the “**Receiving Party**”) under or in relation to this agreement that:

- (a) is by its nature confidential;
- (b) is designated by the Disclosing Party as confidential; or
- (c) the Receiving Party knows or reasonably ought to know is confidential,

but does not include information that:

- (d) is published or has otherwise entered the public domain without a breach of this agreement;
- (e) is obtained from a third party who has no obligation of confidentiality to the Disclosing Party; or
- (f) is independently developed or obtained without breach of this agreement.

Customers has the meaning provided in clause 1.1.

DDP means “delivered duty paid”, as that term is defined in the International Chamber of Commerce INCOTERMS 2010 Edition.

Defect means in respect of the Supplies:

- (a) any fault, failure, degradation, deficiency or error or non-conformance with the applicable Specifications, documentation or other provisions of this agreement;
- (b) any functionality or performance below or not in accordance with the applicable Specifications, documentation or other provisions of this agreement;
- (c) any partial performance or non-performance; and
- (d) any other characteristic which makes the whole or any part of the Supplies inoperable or inconsistent with the applicable Specifications, documentation or other provisions of this agreement.

Delivery means supply and delivery of Products to the Purchaser or its nominee at the destination specified in the Purchase Order and completion of the Services for the Purchaser or its nominee.

Delivery Date means the date specified in the Purchase Order on which the Supplies must be delivered by the Supplier (and if no date is specified, within 3 days of the Purchase Order).

Disclosing Party has the meaning set out in the definition of Confidential Information.

Ethical Code of Conduct means:

- (a) Telstra’s Supplier Code of Conduct as published by Telstra at: http://www.telstra.com.au/uberprod/groups/webcontent/@corporate/@aboutus/documents/document/uberstaging_255984.pdf; and
- (b) Telstra’s Whistle Blowing Process as published by Telstra at: <http://www.telstra.com.au/aboutus/our-company/supplying-to-telstra/sustainable-procurement/>.

Excluded Tax means:

- (a) any tax imposed on, or calculated having regard to, net income; and
- (b) Australian GST.

GST means the tax imposed by the GST Act and the related imposition Acts of the Commonwealth.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), as amended from time to time.

Incidental Costs means costs incurred by the Supplier in supply and Delivery of the Products and Services under this agreement, including without limitation freight, customs duties, GST and other taxes.

Manufacturer’s Warranty means a voluntary warranty against defects in materials, design and workmanship given by the Supplier to the end customer of the Supplies, which must be consistent with the requirements described in the Purchase Order. **OHSE** means occupational health, safety and environment.

Performance Indicator Rights means a right that the Purchaser may exercise for the Supplier’s failure to meet a KPI, as set out in the Purchase Order.

Personal Information means:

- (a) information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not and whether the information or opinion is recorded in a material form or not; and
- (b) information or a document that relates to the affairs or personal particulars of another person (such as a company or a business), which is received or learnt by a party from any source as a consequence of or in the performance of its rights and obligations under this agreement..

Personnel means a party’s employees, secondees, directors, officers, contractors, professional advisers and agents.

Place of Delivery means location where the Purchaser requires Supplies to be delivered as set out in the Purchase Order.

Privacy Laws means the *Privacy Act 1988* (Cth), the *Spam Act 2003* (Cth), the *Telecommunications Act 1997* (Cth), any registered APP Code that binds a party, the privacy policy issued by Telstra from time to time (available at www.telstra.com.au/privacy), and any other legislation, principles, industry codes and policies relating to the handling of Personal Information.

Purchase Order means a purchase order issued and approved by the Purchaser to the Supplier for Supplies.

Purchaser means the person on whose behalf the Purchase Order has been issued, being O2 Networks Pty Ltd (ABN 55 100 551 317) unless another purchaser is specified in the Purchase Order.

Purchaser Data means data of any kind of a Purchaser Group Entity or of any customer or supplier of a Purchaser Group Entity (other

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than the Supplier) that the Supplier accesses, stores or handles in the course of carrying out its obligations under this Contract, and includes all data that is:

- (a) Personal Information;
- (b) the Purchaser's Confidential Information; or
- (c) corporate proprietary or financial information.

Purchaser Group Entity means any of the following entities:

- (a) the Purchaser;
- (b) Telstra;
- (c) a Related Body Corporate of Telstra;
- (d) a body corporate, trust, unincorporated joint venture or other business association controlled by Telstra or a Related Body Corporate of Telstra; or
- (e) an unincorporated joint venture or business association controlled by Telstra or a Related Body Corporate of Telstra.

For the purposes of paragraphs (d) and (e) above, one body corporate will be deemed to control another when at the relevant time it has a shareholding, equity or participation interest of at least 30%.

Receiving Party has the meaning set out in the definition of Confidential Information.

Relevant Laws means all applicable laws, standards and codes relating to the manufacturer, promotion, distribution, sale and use of the Supplies, including such laws and standards relevant to the heritage, telecommunications, quality, protection of the environment or health and safety of persons using or in connection with the Supplies, and includes Privacy Laws.

Representative means an officer, director, employee, agent, contractor or subcontractor of a party.

Security Audit means an audit conducted by the Purchaser, or the Supplier or a third party in accordance with the Purchaser's directions, in accordance with clause 7.4 to examine the controls, integrity and protection of Purchaser Data and other Purchaser Confidential Information, privacy and security standards and procedures used by the Supplier, and to verify the Supplier's compliance with its obligations under clause 7.4.

Security Weakness means a flaw or vulnerability of any kind in the security controls or other measures used to protect the Purchaser Data.

Site means the lands and places at which the Services will be carried out as detailed in this agreement or as specified by the Purchaser from time to time and may include a the Purchaser site or a third party site.

Specifications means:

- (a) the Supplier's published descriptions of and technical specifications for the Supplies (except to the extent that they are inconsistent with the items listed in paragraphs (b) and (c) below);
- (b) any legal requirements applicable to the Supplies; and
- (c) any other specifications, service levels or standards, and descriptions of Supplies, contained or referred to in the Purchase Order.

Software means any software embedded, provided or provided with any of the Supplies by the Supplier.

Supplier means the party specified in the Purchase Order as the supplier who will provide the Supplies.

Supplies mean the products and/or services (as applicable) described in the Purchase Order.

Tax Deduction means a deduction or withholding for or on account of Taxes from a payment.

Taxes means taxes, levies, imposts, duties, excise, and charges, deductions or withholdings, however described, imposed by law or government authority or agency, together with any related interest, penalties, fines, or other charges or other expenses, other than an Excluded Tax.

Telstra means Telstra Corporation Limited (ABN 33 051 775 556), a related body corporate of the Purchaser.

Third Party Claims means any actual, threatened or potential claim, demand, proceeding, suit, objection or other challenge that any of the Supplies (including any components) infringe the intellectual property rights of any third party.

Term has the meaning set out in the agreement details.

Waste includes things having or potentially having a material impact on the environment including:

- (a) any substance (whether solid, liquid or gaseous) that is discharged, emitted or deposited in the environment in such volume, constituency or manner as to cause an alteration in the environment;
- (b) any discarded, rejected, unwanted, surplus or abandoned substance; or
- (c) any otherwise discarded, rejected, unwanted, surplus or abandoned substance intended for sale or for recycling, processing, recovery or purification by a separate operation from that which produced the substance.

19.2 In this agreement:

- (a) the singular includes the plural, and vice versa;
- (b) "includes", "including", "for example", "such as" and similar terms are not words of limitation; and
- (c) "\$" refers to the lawful currency of Australia.