



Version Date: 18 January 2017

# Optus Group Master Supply Agreement

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**GOODS AND SERVICES MODULE**

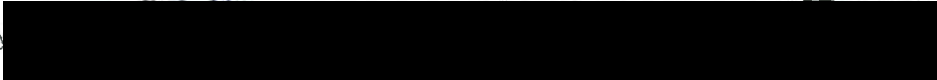
**OPTUS GROUP MASTER SUPPLY AGREEMENT**

This **Module** is made **between** the party identified below for and on its own behalf and for the benefit of all other Supplier Group **Companies**, and Optus Administration Pty Ltd ABN 79 055 136 804 (**Optus**) of 1 Lyonpark Road, Macquarie Park, NSW 2113, for and on its own behalf and for the benefit of **all** other Optus Group **Companies**.

This **Module** forms part of a Supply Contract in accordance with the terms of the Base Terms (MSA Ref #:CW104105) **between** the parties set out below.

The date of this **Module** shall be the date on which it is signed by the last party to sign.

This **Module** is **signed by** the parties by their **respective** duly authorized **representatives**:-

By 

Date: *20/04/2018*

Date: *16/10/2018*

Name of Signatory: *ANDREW KALLEN*

Name of Signatory: *BEN WHITE*

Title of Signatory: *MANAGING DIRECTOR*

Title of Signatory: *MD MARKETING & PRODUCT*

For and on behalf of

For and on behalf of

**Loyalty Corp Australia Services Pty Ltd**

**Optus Administration Pty Ltd**

**ABN 39 615 958 873**

**ABN 79 055 136 804**

Correspondence **Address(es)** of the Company (if **different** from **Registered Address**): **[Insert]**

\* Please insert the particulars of all parties if the Supplier consists of more than 1 party.

## 1. Application

The terms and conditions of this Module apply to, and are incorporated in, all Supply Contracts which reference this Module.

## 2. Definitions and Interpretation

### 2.1 In this Module:

**'Disaster'** means an incident (including a Force Majeure Event) that significantly disrupts, or is likely to or may significantly disrupt:

- (a) the Customer's ability to receive; or
- (b) the Supplier's ability to supply,

any or all of the Services (including interruption, destruction or other loss of operational capacity).

**'Disaster Recovery Plan'** means a disaster recovery plan that is prepared (and updated) by the Supplier in accordance with Clause 12 and approved in writing by the Customer.

**'Disengagement'** means the act of transferring the responsibility for one or more of the Goods and/or Services from the Supplier to the Customer or a third party as instructed by the Customer, at the end of a Supply Contract, upon termination or otherwise.

**'Disengagement Assistance'** means the assistance the Supplier is to provide to the Customer upon Disengagement as set out in Clause 11, in a Supply Contract (if applicable) and as further detailed in the Disengagement Plan (where requested by the Customer).

**'Disengagement Period'** means the time period for Disengagement Assistance to be carried out as specified in the Supply Contract, or if no time period is specified, the period that is mutually agreed by the parties but if the parties are unable to agree, such period until the Disengagement Assistance is completed.

**'Disengagement Plan'** means the plan setting out the actions and obligations to be undertaken by the Supplier in the event of Disengagement (in addition to the Supplier's other obligations under the Supply Contract in relation to Disengagement).

**'Existing Network'** means all of the existing telecommunications networks owned or operated by any Optus Group Company from time to time regardless of the technologies which are used in those networks.

**'Key Personnel'** means any Personnel of the Supplier who is identified as a 'Key Personnel' in a Supply Contract or who fulfils a role or function identified as a 'Key Personnel' in a Supply Contract.

**'Outsourcing Services'** means the Services (and all other tasks, functions, activities and responsibilities) which are, or are to be, outsourced to the Supplier under a Supply Contract, and also includes the provision of any physical items or deliverables provided, or required to be provided, by the Supplier in the course of performing those Services (except to the extent such items are provided under the Goods Module, if applicable). A reference to "Services" in this Module (or other part of the Supply Contract) also includes the Outsourcing Services.

**'Service Level'** means a service level (or other performance requirement) specified in the Supply Contract, or otherwise agreed in writing between parties, for a particular Service.

**'Service Start Date'** for a Service means the date on which the Supplier must commence provision of that Service as set out in the applicable Supply Contract or Purchase Order (which, in the case of an Outsourcing Service with a Transition, will be the date immediately following the completion of the Transition).

**'Transition'** means the transition of responsibility for the provision of the Outsourcing Services (or the items the subject of the Outsourcing Services) from the Customer, another Optus Group Company or a third party supplier to the Supplier.



'Transition Plan' means the plan for Transition as specified in the Supply Contract or otherwise agreed between the parties in writing.

'Warranty Period' in relation to any Work (under Clause 4) undertaken, by the Supplier shall mean the warranty period (if any) set out in the Statement of Works, which commences on the date when the Customer issues a 'Certificate of Practical Completion' under Clause 4.

- 2.2 Capitalised terms used in this Module that are not defined in this Module have the meanings given to those terms in the Base Terms.

### 3. Provision of the Goods and Services

- 3.1 **Delivery:** The Supplier shall Deliver all Goods and Services to the Sites in compliance with the Due Dates, the Specifications and in the manner set out in the Supply Contract.
- 3.2 **Packaging Requirements:** The Supplier shall ensure that the Goods are packed and delivered to the Customer in the manner set out in the Supply Contract and, in any case, not less than in accordance with such industry standards as may be relevant and ensure that the Goods are received by the Customer in good condition.
- 3.3 **Non-conforming Goods:** In the event that any Delivered Goods do not comply with the requirements set out in the Supply Contract or the Specifications, the Customer shall have the right but not the obligation to return the non-conforming Goods, upon written notification to the Supplier and the Supplier shall replace such Goods immediately upon receipt of the Customer's written notification at the Supplier's expense.
- 3.4 **Testing:** Where the Statement of Works sets out acceptance tests, procedures or requirements which the Goods or Services must pass or meet in order to be Accepted by the Customer, then unless expressly specified otherwise in that Statement of Works, if the Goods or Services fail to pass or meet those tests, procedures or requirements on two (2) or more occasions:
- 3.4.1 the Customer may by notice in writing to the Supplier terminate the Supply Contract(s) under which the Goods or Services are, or are to be, supplied; and
- 3.4.2 if the Customer issues a termination notice under Clause 3.4.1, the Supplier must within ten (10) business days refund to the Customer all amounts paid by the Customer in connection with those Goods or Services without prejudice to any other rights and/or remedies under the Supply Contract at law or in equity that the Customer may have.
- 3.5 **No Deemed Acceptance:** The Customer will not be deemed to have Accepted any Goods or Services in any circumstances.
- 3.6 **On-Supply of Goods:** The Customer may on-supply any Goods to any party, including without limitation to any of its own customers or to any other Optus Group Company ("On-Supplied Goods") except as specifically agreed otherwise in writing by the Customer and the Supplier. All of the Warranties apply to the On-Supplied Goods and the benefits of those Warranties may, at the option of the Customer, be extended or passed on to any of the Customer's own customers or to any other Optus Group of Companies.
- 3.7 **Removal of Services:** The Customer may notify the Supplier in writing at any time that specific Services are to be removed from the scope of the Supply Contract in which case:
- 3.7.1 the Supplier's obligations under the Supply Contract will be reduced in accordance with a variation agreed by the parties in writing;
- 3.7.2 the Price may be adjusted to reflect the removal, in accordance with a variation agreed by the parties in writing; and
- 3.7.3 the Supplier will provide Disengagement Assistance as applicable to the discontinued Services.
- 3.8 **Instruction:** The Supplier will, promptly on the request of the Customer and at no additional charge, provide the Customer or its nominated personnel with such instruction and training as the Customer reasonably

considers **necessary** to enable the proper and **effective** utilisation of the Services (in addition to any other training requirements set out in the Supply Contract).

## 4. Network Construction Work

4.1 This **Clause 4** applies if the **Services include** any construction work, which includes **without** limitation the assembly, installation or **modification** of any **equipment** or structure on a Site, or **testing activities** or Site preparation **carried out** in connection with such work (**Work**). **References** in this Module or the Base Terms to the **Services includes** the Work.

4.2 In this **Clause 4**:

**"Construction Manual"** means a **manual** which **comprises**: (a) as-built drawing package; (b) survey drawings; (c) **access drawings**; (d) **all certifications** that are **required** by Law to be **obtained** for the Work; and (e) such **other documents** are **required** under a **Statement of Works**.

**"Practical Completion"** means the stage in the **execution** of the Work at a Site when:

- (a) the Work is **complete**;
- (b) the Site has been **equipped** in **accordance** with all **relevant standards**, codes, **practices** and in **accordance** with the **relevant Statement of Works**;
- (c) all **commissioning** and other tests which are **required** to be **carried out** and **passed** before the Work can be **regarded** as **having reached** the stage of **practical completion** have been **carried out** and **passed**;
- (d) the Site is in a clean and tidy state; and
- (e) the **Supplier** has done **everything** it is **required** to do for **practical completion** under the **relevant Statement of Works**.

4.3 The **Supplier** is solely **responsible** for all **construction means, methods, techniques, sequences** and **procedures** to be **adopted** in **executing** the Work.

4.4 The **Supplier must**, at its cost, unless **agreed otherwise** in a **Statement of Works**:

4.4.1 **manage** and **co-ordinate** all **design, fabrication** and **delivery** to the Site;

4.4.2 **conduct** all Site **services searches** to **confirm** and identify location of underground and **overhead services** not shown on any **survey drawing**; and

4.4.3 carry out all **erection** and **installation, including**:

4.4.3.1 **installation** of head frames, turret mounts, panel antenna mounts and microwave mounts and **associated sundries** as **required**;

4.4.3.2 **scaffolding, hoarding, crange** and cherry picker as **required** to **undertake** the Work;

4.4.3.3 **upgrade** of **existing services** at the Site where **required** to **support** the new **installation** including **air conditioning, mains power connections** and **floor strengthening**.

4.5 The **Supplier must perform** the Work at each Site in **accordance** with the **applicable Statement of Works** including, **without limitation**:

4.5.1 by the time **specified** for **completion** of the Work;

4.5.2 in **accordance** with the **agreed Site design**;

4.5.3 in **accordance** with the standards and other requirements set out in the **Specifications**; and

4.5.4 using **best work practices** for each of the trades.



- 4.6 The **Supplier** must **organise** and obtain **all inspections**, approvals and **certifications** required for the Work at each Site (unless **otherwise** agreed in the **Statement of Works**).
- 4.7 The **Supplier** must take **all necessary** steps to **prevent** loss or damage to the Work and/or Site. The **Supplier** must **promptly** make good any loss or **damage** including **full satisfaction** of **all** claims that arise out of or in connection with such damage.
- 4.8 The **Supplier** must:
- 4.8.1 at **all** times take **all necessary** precautions to ensure that the safety of the public on or near a Site is not **compromised** by the Work at that Site;
  - 4.8.2 **comply** with the Site rules or safety **policies** as notified to the **Supplier** by the **Customer** (or the Site owner or their **representative**) from time to time;
  - 4.8.3 prevent **nuisance** and **interference** and **minimise inconvenience** to all adjoining or **affected owners, tenants, occupiers**, activities being **carried** on in areas **surrounding** the Site and **passing** members of the public;
  - 4.8.4 **provide, erect, maintain** and **remove** (when no longer **required**) **adequate barricades, guards, fencing, signs, lighting, hoardings** and other safety devices lawfully **required** by any **authority**, or any applicable **Statement of Works** or as **necessary** to **protect people and property**.
- 4.9 The **Supplier** will not be **entitled** to any **extension** of time or **compensation** in addition to the Price if any latent **conditions** are **discovered** at any Site, unless (and only to the extent) **expressly** agreed **otherwise** in the **Statement of Works**.
- 4.10 The **Supplier** must notify the **Customer** in writing:
- 4.10.1 at least fifteen (15) business days before the date it **anticipates** that **Practical Completion** will be **reached** for a Site; and
  - 4.10.2 on the day it **considers** that **Practical Completion** was **reached**.
- 4.11 The **Supplier** must **compile** and issue to the **Customer** copies of the **Construction Manual** by the date which is ten (10) days prior to the **Due Date** for **Practical Completion**.
- 4.12 Once the **Customer** is **satisfied** that **Practical Completion** for any Work at a Site has been **achieved**, the **Customer** must issue a '**Certificate of Practical Completion**' to the **Supplier**. In **relation** to the Work, the **Warranty Period** will **commence** once the **Customer** issues a '**Certificate of Practical Completion**'.
- 4.13 Without **restricting** or **limiting** the **Customer's** rights at common law in **relation** to defective work and **materials**, the **Customer** may, at any time before the end of the **applicable Warranty Period**, direct the **Supplier** to rectify any **defects** or **failures** of the Work to **conform** with the **requirements** of the **relevant Statement of Works**. The **Supplier** must, at its cost, rectify those **defects** and **failures** and must, as **required** by the **direction**:
- 4.13.1 carry out the work **necessary** to rectify any **defective design**;
  - 4.13.2 **remove** the **defective material** or **demolish** work;
  - 4.13.3 **rebuild, replace** or **correct** the **defective material** or work; and
  - 4.13.4 **otherwise** rectify the defect or failure in the **manner directed**.
- 4.14 If the **Supplier** fails to **correct** any defect or failure in **accordance** with **Clause 4.13** within thirty (30) days after **receiving** a **direction** from the **Customer** to rectify a defect or a failure under **Clause 4.13**, then, **without affecting** any other rights the **Customer** may have, the **Customer** may:
- 4.14.1 carry out, or have a **qualified** third party carry out, **whatever** work is **reasonably necessary** to **correct** that defect or failure; and
  - 4.14.2 **deduct** the costs of **correction** from **moneys payable** to the **Supplier**, as a debt due from the **Supplier** to the **Customer**.

- 4.15 The Customer may, within one (1) month after completion of rectifying a defect or performing that remedial work, notify the Supplier that any applicable tests are to be conducted on the rectification or remedial work specified in the relevant Statement of Works and the Supplier must conduct those tests at no cost to the Customer.

## 5. Project Management

- 5.1 Project Management by Supplier: The Supplier shall (in addition to performing any project management obligations specified in the Supply Contract):
- 5.1.1 do everything necessary to project manage the supply of all Services under the Supply Contract so that the Services are supplied by the Supplier for the Price and by the Due Dates;
  - 5.1.2 perform its project management obligations to a standard of a prudent project manager for deliverables, services or a combination of deliverables and services similar to the Goods and Services; and
  - 5.1.3 manage the Customer's performance of its obligations under each Supply Contract in a manner which allows the Supplier to perform its obligations under each Supply Contract.
- 5.2 Supplier to provide notice to Customer: The Supplier shall give each relevant member of the Customer Personnel and any relevant third party notice of:
- 5.2.1 the inputs the Supplier requires that Customer Personnel and third party to supply in relation to supply of the Services under the Supply Contract, including any Purchase Order to be issued for those Services; and
  - 5.2.2 the timeframe in which the inputs are required,
- with sufficient lead time to enable that the Customer Personnel or third party (as the case may be) to supply the inputs by the required date (taking into account the Customer's internal processes, supplier lead times and operational history). However, the Supplier will not be relieved of any responsibility for the successful completion of its obligations under a Supply Contract as a result of any failure by the Customer Personnel or third party to provide any such input, apart from an extension of time under Clause 6.4 of the Base Terms.
- 5.3 Cooperation with other Service Providers: The Supplier must:
- 5.3.1 cooperate with all third party suppliers to the Optus Group who provide any goods or services that the Customer advises are relevant to any of the Services provided by the Supplier (Relevant Third Parties); and
  - 5.3.2 provide all reasonable assistance to the Customer to ensure that all of the Goods and Services provided by the Supplier and the goods and services provided by Relevant Third Parties are able to be supplied and performed in a coordinated, effective and timely manner,
- including by:
- 5.3.3 allowing reasonable access for Relevant Third Parties to facilities used to perform or provide the Services;
  - 5.3.4 providing any information about the Services that is reasonably necessary for the Relevant Third Parties to perform or provide their goods and services to the Optus Group; and
  - 5.3.5 providing all other assistance which the Relevant Third Parties reasonably require to perform or provide their goods and services for the Optus Group.

## 6. Personnel

- 6.1 Personnel generally: The Supplier must ensure that:



- 6.1.1 all **Supplier Personnel** involved in the **provision** of the **Services** comply with all **policies, procedures** and **reasonable directions** notified by the **Customer** to the **Supplier** from time to time in connection with the **Services**, and with all **Laws**; and
- 6.1.2 It takes all **reasonable** steps (including without limitation hiring additional **Personnel** or training existing **Personnel** in different **disciplines**) to **minimise** the risk of any **disruption** to the continuity of the **Services** that may be **caused** by the removal, **replacement** or **departure** of any **Personnel** involved in the provision of the **Services**.
- 6.2 **Key Personnel**: The **Supplier** must:
- 6.2.1 not **appoint** or **remove** an **individual** as a **Key Personnel** without the **Customer's** prior **written** approval;
- 6.2.2 **promptly** remove an **individual** as a **Key Personnel** if **requested** by the **Customer** in writing (and **promptly** replace them with **another person acceptable** to the **Customer**);
- 6.2.3 without limiting **Clause 6.2.2**, **immediately** remove any **Supplier Personnel** from any involvement with the **Services** if the **Supplier** determines, or the **Customer** reasonably **believes**, that the **Personnel** has not complied with any of the **obligations** in **Clause 6.1** or has **otherwise engaged** in any conduct which is **illegal, unethical** or **inappropriate** having regard to the nature of the **Personnel's** role; and
- 6.2.4 **ensures** that each **Key Personnel** is **actually involved** in the **provision** of the **Services** and dedicates the amount or proportion of their time and effort to the provision of the **Services** as may be **specified** in the **Supply Contract**.

## 7. Warranty on Goods and Services

- 7.1 **Warranty on Goods**: The **Supplier** warrants that:
- 7.1.1 the **Goods** will be of **acceptable** quality;
- 7.1.2 the **Goods** will be free of defects in **design, materials** and workmanship;
- 7.1.3 the **Goods** will **correspond** in all respects to any **sample** or **demonstration** given;
- 7.1.4 the **Goods** will pass in title free from any **charge** or **encumbrance**;
- 7.1.5 the **Goods** will **interoperate** with, be **compatible** with, **integrate** with and do not **interfere** with the other **equipment, networks, software** and **systems** which the **Goods** must **interface, integrate** or **interoperate** with, **without interruption** or **degradation** in the **performance** of the other **equipment, networks, software** or **systems**; and
- 7.1.6 the **Goods** will be new and not have been used by any **person** (**except** with the prior written **agreement** of the **Customer**) and not have been **re-conditioned** or **refurbished**.
- 7.2 **Warranty on Services**: The **Supplier** warrants that:
- 7.2.1 all **Services** will be in **accordance** with any **agreed procedures, Service Levels** and **methodologies** and all **generally accepted practices** appropriate to the **activities** undertaken without **limiting** any other **obligations** of the **Supplier** under the **Supply Contract**.

## 8. Chronic Defects

- 8.1 **Chronic Defects**: If:
- 8.1.1 the same **Defect** affects:
- (a) a **percentage** of **Goods** that is equal to or above the **threshold** specified in the **Statement of Works**; or
- (b) if no **percentage** is specified, a significant number of **Goods**.



(Affected Part), whether or not within the Warranty Period for any of those Goods; and

8.1.2 that Defect is not of a type that should reasonably be expected to occur in Goods of the age of the Affected Part;

(Chronic Defect), the Supplier must, if requested to do so by the Customer, at the Supplier's cost remedy that Chronic Defect by:

8.1.3 conducting an immediate investigation into the Chronic Defect and provide a report of the results to the Customer;

8.1.4 propose a retrofit program, where applicable; and

8.1.5 take any remedial actions specified by the Customer (and within such time as may be reasonably specified by the Customer), which may include repairing, replacing or resupplying the Affected Part and/or supplying additional spare parts to the Customer.

If the Supplier does not remedy the Chronic Defect in accordance with this Clause, the Customer may without prejudice to any other rights and/or remedies under the Supply Contract at law or in equity, to terminate the Supply Contract and to purchase the Affected Part from other sources or to make good any damage, Defect or deficiency in any manner it deems fit and claim all costs thereby incurred from the Supplier by deduction from any monies due or to become due from the Customer to the Supplier or recover it as a debt in civil action.

## 9. Spare Parts

9.1 **Spare Parts:** The Supplier shall maintain, both during and for a period of five (5) years after the Warranty Period, a supply of spare parts for use in repair or replacement of the Goods or any component of the Goods that needs repairing or replacing. However, the costs for supplying such spare parts during the Warranty Period specified in the Supply Contract by the Customer shall be borne by the Supplier.

## 10. Service Quality

10.1 **Failure to Meet Service Levels:** If the Supplier fails to meet a Service Level under a Supply Contract, the Supplier will provide to the Customer the applicable service credits specified in that Supply Contract. The Supplier will promptly provide the Customer with all such information as may be required by the Customer to calculate (or confirm the calculation of) the service credits payable by the Supplier. The parties agree that such service credits:

10.1.1 are reflective of the diminution in value of the Services actually provided by the Supplier;

10.1.2 do not represent liquidated damages and do not amount to a penalty;

10.1.3 do not limit, prejudice or otherwise affect any other rights or remedies the Customer may have under the Supply Contract or at law or in equity in including without limitation the Customer's right to claim Damages in respect of the failure to meet the Service Level and/or, if there is a Persistent Service Level Failure, to:

(a) terminate the Supply Contract;

(b) draw down on the whole or any part of the Security Deposit; and

(c) obtain supply of the Goods and/or Services from other sources and recover Damages from the Supplier in respect of obtaining such supply from other sources.

In this clause, unless otherwise defined in the Supply Contract, 'Persistent Service Level Failure' means a failure to meet any one (1) or more of the Service Levels three (3) or more times in any three (3) month period.

10.2 **Action Plan for Failure to Meet Service Levels:** Without limiting the Customer's rights in Clause 10.1, if the Supplier fails to meet any Service Level three (3) or more times during the term of a Supply Contract, the

Supplier must provide to the Customer for approval within seven (7) days from the occurrence of the third (3rd) failure an action plan to be promptly implemented that will prevent the failure from occurring again.

10.3 **Rectifying Service failures:** Without limiting the Customer's rights in Clause 10.1, if the Supplier fails to meet any Service Level (**SLA Failure**), the Supplier must promptly, at the Supplier's expense:

10.3.1 investigate the SLA Failure and use its best efforts to preserve any data indicating the cause of the SLA Failure;

10.3.2 report the failure to the Customer;

10.3.3 take whatever action is necessary, regardless of cause or fault, to correct, minimise the impact of, the SLA Failure, and resume meeting the Service Levels; and

10.3.4 take all action necessary to prevent any recurrence of the SLA Failure and advise the Customer of the status of such efforts,

provided that if compliance with any of its obligations in this Clause 10.3 would cause the Supplier to otherwise breach any of its obligations under a Supply Contract, it will first obtain written approval from the Customer.

## 11. Disengagement Assistance

11.1 **Supplier to Provide Disengagement Assistance:** If requested by the Customer, the Supplier shall provide Disengagement Assistance to the Customer, or any third party required by the Customer, during the Disengagement Period.

11.2 **Form of Disengagement Assistance:** The Disengagement Assistance provided by the Supplier is to include at least the following:

- (a) all things necessary to effect Disengagement as efficiently as possible, including providing access to resources and information;
- (b) a generic timetable and process for effecting Disengagement that will have the Disengagement completed as quickly as possible without disrupting the quality of the Goods and/or Services and the business and operational performance of any Optus Group Company; and
- (c) if requested by the Customer, the Supplier will provide a Disengagement Plan within one (1) month from such request.

11.3 **Disengagement Costs:** The costs of the Disengagement Assistance shall be borne by the Supplier.

## 12. Disaster Recovery

12.1 **Interpretation and Application:** This Clause 12 applies unless the Statement of Works expressly specifies that the Outsourcing Services being supplied under that Supply Contract do not require Disaster Recovery.

12.2 **Disaster Recovery Plan:** The Supplier must:

12.2.1 take all necessary steps to manage and prepare for Disasters and minimise their effect on the Outsourcing Services to the extent that they occur;

12.2.2 unless a Disaster Recovery Plan is attached to the Supply Contract, by the time specified in the Transition Plan, or, if Transition is not required, no later than fourteen (14) days prior to the Service Start Date for the Outsourcing Services, develop and submit to the Customer a Disaster Recovery Plan that:

- (a) specifies the circumstances in which the plan is to be activated;
- (b) specifies the steps to be taken, and the communications to be implemented, when the Disaster Recovery Plan is activated;



- (c) includes procedures and processes to avoid or minimise the impact of a Disaster on the Outsourcing Services and the Customer, and to restore any affected Services;
- (d) specifies and addresses all other matters requested by the Customer;
- (e) is specifically tailored for the Customer; and
- (f) if requested by the Customer, is consistent with any disaster recovery plan used by one or more Optus Group Companies;

12.2.3 implement the activities set out in the Disaster Recovery Plan at the times and in accordance with the procedures set out in the Disaster Recovery Plan; and

12.2.4 revise and update the Disaster Recovery Plan at least once each calendar year and submit that updated plan to the Customer for approval.

12.3 **Allocation of resources:** If as a result of a Disaster, it is necessary for the Supplier to allocate limited resources between or among several customers, the Supplier must not give any other customer priority over the Customer in the allocation of those resources (unless that customer is another Optus Group Company).

## 13. Step-In

13.1 **Step-in rights:** Unless the Statement of Works expressly states that this Clause 13 Step-in rights does not apply, where:

13.1.1 the Customer reasonably forms the view that the Supplier will delay Delivery (or otherwise breach the Supply Contract) and the Supplier fails to satisfy the Customer that the potential delay or breach will not occur after receiving written notice from the Customer; or

13.1.2 the Supplier breaches a Supply Contract and fails to remedy the breach after receiving written notice from the Customer to remedy the breach within fifteen (15) business days or such other period (if any) as may be specified in the Statement of Works,

and such potential or actual delay or breach will have an adverse impact on the business or operations of any Optus Group Company ("Failure"), then the Customer may, without limiting or prejudicing any other rights which the Customer may have under the Supply Contract, at Law or in equity, step in and perform the Services affected by that Failure ("Affected Services") itself or procure a third party to supply the Affected Services ("Step-In Rights"). However, the Customer will not procure a third party to supply the Affected Services unless that third party has signed a reasonable confidentiality agreement protecting the Supplier's Confidential Information.

13.2 **Access and cooperation:** If the Customer exercises the Step-In Rights, the Supplier must co-operate fully with the Customer and its Personnel and provide all assistance reasonably required by the Customer as soon as possible, including:

13.2.1 providing access to all relevant equipment, premises and software under the Supplier's control as required by the Customer (or its nominee); and

13.2.2 ensuring that the Supplier's Personnel normally engaged in the provision of the Affected Services are available to the Customer (or its nominee) to provide assistance which the Customer may reasonably request.

13.3 **Duration of Step-in:**

13.3.1 The Customer will hand back to the Supplier the responsibility for performing the Affected Services when the Supplier is able to reasonably demonstrate to the Customer that the Supplier is capable of resuming provision of the Affected Services in accordance with the Supply Contract and that the Failure giving rise to the right to exercise the Step In Rights will not recur.

13.3.2 If the Supplier has not demonstrated its capability in accordance with Clause 13.3.1 within thirty (30) days of the commencement of the exercise of the Step-In Rights or such longer period notified by the Customer to the Supplier, the Customer may at any time, without liability to the Supplier,



terminate the **Supply Contract** under which the **Affected Services** are, or are to be, **supplied**, in whole or in part by **providing written notice** to the **Supplier**.

13.4 **Costs:** The Customer is not **required** to pay the **Supplier** that portion of the Price which **relates** to the **Affected Services** for the period in which the Customer exercises its Step-In Rights. In addition, the Supplier will reimburse the Customer for the following **reasonable** costs incurred by the Customer and any other Optus Group Company in exercising the Step-In Rights under this **Clause 13:**

13.4.1 any **payments** the Optus Group Companies make to a third party in **connection** with the provision of the **Affected Services**; and

13.4.2 the costs and **expenses incurred** by the **Customer** or any other Optus Group Company as a result of the Customer exercising its Step-In Rights.

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