





- (f) A reference to any legislation or to any provision of any legislation includes any amendment, consolidation or replacement of it, and all regulations and statutory instruments issued under it;
- (g) A reference to conduct includes, without limitation, any omission, statement or undertaking, whether or not in writing;
- (h) A reference to a party is a party to this agreement or any person who executes a deed of accession to this agreement;
- (i) Terms defined in the Companies Act have the same meaning in this agreement, unless the context expresses otherwise;
- (j) If any payment by a party under this agreement is due on a day which is not a business day, the due date will be the next Business Day in the same calendar month or, if none, the preceding business day; and
- (k) If an obligation must be performed by 2 or more persons it binds them jointly and individually

### **3. SERVICE SCHEDULE**

- 3.1 The Customer may obtain a Service Schedule in respect of each Service supplied to the Customer from the Vocus website: [www.vocus.co.nz](http://www.vocus.co.nz).
- 3.2 A Service Schedule will be binding in respect of all supplies of the services to which the service relates to and will continue in force for as long as SurgePoint continues to supply the relevant service.

### **4. SERVICE ORDER**

- 4.1 SurgePoint must provide the Customer with a Service Order in respect of each individual supply of a Service.
- 4.2 SurgePoint reserves the right to conduct feasibility studies, surveys or other service qualifications following execution of the Service Order
- 4.3 In the event SurgePoint discovers that the provision of the services will, in SurgePoint's opinion, be uneconomic, SurgePoint may terminate a Service Order or any part of it by giving to the Customer prior written notice before the RFS date (Define RFS).
- 4.4 Termination of a Service Order does not automatically terminate these terms and conditions or any applicable Service Schedule, which will each continue in force until terminated in accordance with these terms and conditions.

### **5. INTERACTIONS BETWEEN THESE TERMS AND CONDITIONS, THE SERVICE SCHEDULE AND THE SERVICE ORDER**

- 5.1 If there is an inconsistency between these terms and the terms and conditions (Service Schedule and Service Order) the following will apply:

Supply of a Service, the following order of priority applies:

- (a) First the Service Order; then
- (b) Then the Service Schedule; then
- (c) The third party (EULA's) (if any); then
- (d) The Service Level Agreement; and lastly
- (e) These terms and conditions.

For the avoidance of doubt, look for the interpretation section in this agreement

## **6. SUPPLY OF SERVICES**

### **6.1 Supply by SurgePoint**

SurgePoint must supply services specified in a Service Order in a professional and workmanlike manner in accordance with industry standards and the applicable Service Schedule.

### **6.2 Service Levels**

SurgePoint must provide the services in accordance with the relevant service levels specified in the Service Level Agreement. The Customer's sole remedy for SurgePoint's failure to meet a service level is the service level rebates specified in the service level agreement, and the Customer waives any right to any additional remedy.

### **6.3 Use of Services**

The Customer must only use the services in accordance with the terms specified in the agreement and any applicable law.

### **6.4 Additional Services**

If the Customer requires any additional services a new Service Order (and, if required, Service Schedule) must be completed and signed by the parties.

### **6.5 Scheduled Installation**

- (a) Vocus will advise the Customer of the scheduled delivery date which Vocus plans to install and deliver the services, having regard to the service delivery targets in the service level agreement (if any), and shall use reasonable efforts to commence installation as close as practicable to the service delivery targets.
- (b) Notwithstanding the above paragraph, the service delivery targets and the scheduled delivery date are estimates only and SurgePoint will not be liable for any failure to commence installation by the scheduled delivery date.

### **6.6 Functionality of Services**

The Customer acknowledges that SurgePoint does not warrant or represent the performance, accuracy, reliability or continued availability of the SurgePoint infrastructure or the service beyond the service level agreement or that the service will be compatible with or will inter-operate with any particular computer system or item of equipment, software applications (including Customer software applications), operating systems or required data formats except where provided by SurgePoint, except where otherwise expressly set out in this Agreement.

### **6.7 Third Party Services**

- (a) Where the services provided by SurgePoint requires services from a supplier, charges may apply in addition to fees quoted or agreed in the Service Order. All charges payable in respect of services from a supplier will be billed to the Customer upon delivery of those services by the supplier.
- (b) Any additional charges from suppliers will be provided to the Customer for approval and any service dependant on the supplier's services will be placed on hold pending payment of those additional charges. Where the Customer approves the additional charges, within any validity period imposed by the supplier for the additional charges, provisioning of the service will recommence and additional charges will be

billed to the Customer upon delivery of the services by the supplier. Where the Customer does not approve the additional charges, the service involving the supplier's services will be cancelled and clause 30.1(a) applies.

## **7. PAYMENT TERMS**

### **7.1 Payment of Charges**

- (a) Unless otherwise specified in a Service Schedule or Service Order, SurgePoint must invoice the Customer monthly in advance for the services to be provided to the Customer for the following month.
- (b) The Customer must pay the invoiced charges by the 20<sup>th</sup> day of each month (as per the dated invoice that will be provided to the Customer) in cleared funds and without set-off, counterclaim or deduction and free and clear of and without deduction for or on account of any taxes, levies, imports, duties, charges (including intermediary bank charges), fees and withholdings of any nature.
- (c) SurgePoint may start to invoice a Customer for a service from the RFS Date whether or not the Customer has used the service since that date.

### **7.2 Fixed Term Charges**

- (a) Subject to clause 7.2(b) as to instalment payment terms, where the Customer purchases a fixed term service, the fixed term charge is payable on the RFS Date and constitutes a debt due to SurgePoint as from that date.
- (b) The Customer may pay the fixed term charge in equal monthly instalments over the initial term for as long as the Customer complies with the terms of this agreement, the Service Order and any Service Schedule.
- (c) SurgePoint must issue invoices to the Customer in respect of each monthly instalment of the fixed term charge in advance.  
  
If either:
  - (i) The Customer terminates one or more services prior to expiry of their initial term (other than pursuant to clause 30.1); or
  - (ii) SurgePoint terminates one or more services prior to the expiry of their initial term pursuant to clauses 31.1 (a), 31.1 (b), 31.1 (c) and 13.1(f) (where caused by Customer), then any unpaid part of the fixed term charge outstanding in respect of those services becomes immediately due and payable.

## **8. DISPUTED INVOICES**

8.1 If the Customer disputes any part of an invoice submitted by SurgePoint, the Customer must:

- (a) Notify SurgePoint in writing within 14 days of receipt of the invoice of the reasons for disputing the invoice; and
- (b) Pay the undisputed amount on or before the due date for payment.

8.2 The parties must endeavour to resolve the disputed amount between themselves within 10 days of the notification being given by the Customer. If the parties do not resolve the dispute within 10 days of notification in writing by the Customer, the dispute resolution procedure set out in clause 49 applies.

## **9. SURGEPOINT GROUP INVOICING**

9.1 Invoices in respect of any of the services provided under this agreement by any member of the SurgePoint group of companies may be rendered by any other member of the SurgePoint group, and will be deemed issued in respect of the services so provided.

## **10. ADDITIONAL CHARGES FOR REGULATORY CHANGES**

10.1 SurgePoint reserves the right to vary any charges where SurgePoint' cost of supply increases as a result of any additional regulatory costs, imposts, penalties or taxes imposed by any governmental or regulatory body, including without limitation, any costs, imposts, penalties or taxes arising as a result of any carbon tax or power levy.

## **11. COMMISSION AND REFERRAL FEES PAYABLE**

11.1 The Customer acknowledges and accepts that SurgePoint may pay commissions to any dealer or referral fees to any person who introduced the Customer to SurgePoint.

## **12. CUSTOMER'S OBLIGATIONS**

12.1 General obligations

The Customer must:

- (a) If relevant, provide and maintain its own network and network security;
- (b) Comply with any operational procedures and technical specifications specified in any Service Schedule, documentation or otherwise provided by SurgePoint, or other reasonable directions given by SurgePoint from time to time;
- (c) Comply with any applicable law and the requirements or directions of government agencies;
- (d) Provide SurgePoint with all information, assistance and co-operation reasonably requested by SurgePoint in order to enable SurgePoint to meet its obligations under this agreement;
- (e) Not do, or omit to do, anything which the Customer is aware or ought reasonably be aware, could have an adverse effect on the operation or maintenance of the SurgePoint infrastructure;
- (f) Provide SurgePoint and its suppliers, contractors, agents and employees with prompt and safe access to the Customer's premises and to the Customer's personnel, equipment, data and information as is reasonably required for the purpose of delivering the services;
- (g) Provide all reasonable assistance and take all safety precautions as may be reasonably necessary or otherwise requested by Vocus to ensure safe and proper performance by Vocus of all work at the Customer's premises;
- (h) Provide all necessary space and utility services (including electricity, earthing and air-conditioning) as reasonably required by Vocus for the installation, provision and proper operation of the Vocus equipment and for the provision of the Service
- (i) Ensure that, prior to the connection of any cabling to the Customer's premises:

- (i) Cabling at the premises has been installed by a registered cabling service provider;
  - (ii) the Customer's premises cabling meets minimum technical requirements as determined by the New Zealand telecommunications forum; and
  - (iii) the Customer has obtained all necessary consents from the owner of the premises.
- (j) Obtain and maintain all permits, licences, approvals or authorisations required for the installation and operation of any equipment or Vocus Equipment at the Customer's Premises; and
  - (k) Provide all necessary assistance to obtain all permits, licences, approvals or authorisations required for Vocus to provide the services.

### **13. ACCESS**

13.1 Where Vocus' employees are given access to the Customer's premises to provide a service, Vocus must ensure that its employees comply with any reasonable direction given by the Customer or its employees in relation to maintenance of health and safety at the Customer's premises.

### **14. CUSTOMER ACKNOWLEDGMENTS**

14.1 The Customer acknowledges that:

- (a) Where the service is a carriage service, Vocus may be required to intercept communications over or using the service as directed by an authorised government agency; and
- (b) SurgePoint may monitor the Customer's usage and communications sent over the service for the purposes of billing, network monitoring and management, or otherwise required by any applicable law or as directed by an authorised government agency.

### **15. CUSTOMER USE OF THE SERVICE**

15.1 Use of Service

- (a) The Customer accepts full risk and responsibility for all use of the service and is responsible for all charges due in relation to use of the service, whether or not such use was authorised by the Customer.
- (b) The Customer must not use the service:
  - (i) For any improper or unlawful purpose or allow others to do so;
  - (ii) To create, for the purpose of or in a manner that transmits, publishes or communicates material which is defamatory, offensive, abusive, indecent, discriminatory, menacing, unwanted, in breach of confidence, illegal or which brings SurgePoint or any of SurgePoint' agents into disrepute;
  - (iii) In any way which damages or interferes with SurgePoint infrastructure or the supply of the service to other SurgePoint customers; or
  - (iv) To host or transmit information which contains viruses or other harmful code or data designed to interrupt, damage, destroy or limit the functionality of any software, hardware or equipment.

### **16. PERSONAL INFORMATION AND PRIVACY**

16.1 Use and disclosure of personal information

- (a) By providing the Customer, customer users' and end users' personal information to SurgePoint and obtaining the services, the Customer acknowledges and consents to the collection, use, storage and disclosure of the Customer's, customer users' and end users' personal information:

For purposes relating to the supply of the service to the Customer. This includes:

- (i) For billing and account management purposes, product and service development, managing the Customer's relationship with SurgePoint and marketing SurgePoint's services to the customer;
- (ii) Disclosure to a government agency to assist in the investigation of crime or the enforcement of any laws;
- (iii) Disclosure to SurgePoint's suppliers or any related bodies corporate of SurgePoint or SurgePoint's suppliers, and any dealer, agent or contractor for purposes relating to the supply of services to the Customer;
- (iv) Disclosure to any third party as required by law; or
- (v) Otherwise in accordance with Vocus' privacy policy (see <https://www.vocus.co.nz/privacy-policy>).

## **17. SUPPLIED EQUIPMENT**

### **17.1 Supply of Supplied Equipment**

- (a) This clause 17 only applies if the Customer purchases or rents supplied equipment from Vocus.
- (b) SurgePoint will supply to the Customer the supplied equipment as described in the Service Order. The Customer agrees and acknowledges that supplied equipment provided on a rental basis may not be new and is only required to be in operational condition at the time of delivery.
- (c) The Service Order indicates whether the supplied equipment will be supplied on an outright purchase basis or on a rental basis.

## **18. RISK AND TITLE**

- 18.1 Where the supplied equipment is to be purchased by the Customer, title in the supplied equipment will only pass to the Customer upon full payment in cleared funds of the equipment fee.
- 18.2 Where the Service Order does not expressly indicate the supplied equipment will be purchased by the Customer, then the supplied equipment will be rented by the Customer from Vocus, and title will remain with Vocus at all times.
- 18.3 Vocus retains title to any supplied equipment until title in the supplied equipment passes to the Customer under clause 18.1 and while Vocus retains title to the supplied equipment, the Customer agrees to hold the supplied equipment in a fiduciary capacity as bailee for Vocus.
- 18.4 Risk of loss or damage to the supplied equipment passes to the Customer upon delivery of the supplied equipment to the Customer premises.

## **19. EQUIPMENT WARRANTIES FOR PURCHASE**

- 19.1 This clause 19 only applies if the Customer purchases supplied equipment from Vocus.



- 19.2 Any supplied equipment purchased by the Customer from Vocus is subject to the warranties given by the manufacturer in respect of the supplied equipment (if any apply at the time).
- 19.3 To the extent that Vocus is lawfully able to do so, will assign to the Customer the benefit of any warranties given to Vocus by the manufacturer of the supplied equipment purchased by the Customer from Vocus under the service order.
- 19.4 To the fullest extent permitted by Law, Vocus does not provide any warranties to the Customer in respect of the supplied equipment in addition to those set out in clauses 19.2 and 19.3.

## **20. INSURANCE**

- 20.1 If the supplied equipment is delivered to the Customer premises before title passes to the Customer pursuant to clause 18.1, then until title passes to the Customer, or at all times while the supplied equipment is rented by the Customer, the Customer must insure and keep the supplied equipment insured with an insurer of recognised standing for their full replacement value against loss or damage by fire, theft, accident and such other risks as are insured against by prudent persons engaged in a similar business to the Customer.
- 20.2 The Customer must promptly provide Vocus with evidence of the currency of the insurance described in this clause 20.1 upon Vocus' request.

## **21. PERSONAL PROPERTIES SECURITIES INTEREST**

- 21.1 Where any bailment of supplied equipment constitutes a security interests for the purposes of the Personal Property Securities Act 1999 ("PPSA") then:
- (a) Vocus may perfect its security interest by registering a finance statement in the Personal Property Securities Register; and
  - (b) This clause will constitute a security agreement for the purposes of the PPSA.

## **22. SURGEPOINT EQUIPMENT**

- 22.1 Risk and Title
- (a) The Customer is responsible for any damage to, or destruction or theft of the Vocus equipment. The Customer must keep the Vocus equipment in good repair and condition, excluding fair wear and tear and shall not sell, assign or permit any charge, lien, mortgage or encumbrance to be created in relation to it.
  - (b) Unless otherwise agreed, the Customer must:
    - (i) Allow Vocus to service, modify, maintain, repair or replace the Vocus equipment; and
    - (ii) Do all things reasonably required by Vocus to make clear the identity of the owner of the Vocus equipment.

## **23. TRAINING**

### **23.1 Provision of Training**

If expressly stated in the Service Order, SurgePoint will provide to the Customer the training.

## **24. FAULT REPORTING AND RECOVERY**

### **24.1 Fault reporting and restoration**

- (a) The Customer must report any faults in relation to the services to the SurgePoint network operations centre as soon as reasonably practicable after it becomes aware of them.
- (b) Before reporting a fault, the Customer should take all reasonable steps to ensure that the fault is with the service and not caused by any Customer equipment, Customer software applications, Customer content or communications services not supplied or provided by SurgePoint.
- (c) If no timeframe for resolution of a particular fault is specified in the service level agreement for the service, then SurgePoint will use reasonable efforts to rectify that fault within a reasonable time.
- (d) SurgePoint is not responsible for rectifying faults where the fault arises in or is caused by its third party software licensors or third party software outside of SurgePoint's reasonable control. SurgePoint will request that the third party software licensors rectify such faults.
- (e) The Customer is responsible for repairing faults relating to any Customer equipment, Customer software applications and communications services not supplied by Vocus.

## **25. CHARGES FOR RESTORATION**

25.1 The Customer is liable for all costs incurred by SurgePoint in restoring a service where the fault arises as a result of:

- (a) Any fault in any equipment, software or any network unit which does not form part of the SurgePoint equipment;
- (b) Defects in Customer equipment or its installation, arising out of Customer software applications, Customer content or communications services not supplied or provided by SurgePoint; or
- (c) Any act or omission of the Customer or any of its employees, consultants, contractors, agents or representatives.

## **26. CONFIDENTIALITY**

### **26.1 Confidentiality Obligation**

Each party (Recipient) which receives confidential information of the other party (Disclosing Party) under this agreement acknowledges that all confidential information provided to it or to which it is exposed is confidential to the Disclosing Party.

### **26.2 Loss suffered**

The Recipient acknowledges and agrees that the confidential information is, by virtue of its special nature, valuable property of the Disclosing Party and that the Disclosing Party may suffer damage or loss by any disclosure by the Recipient of the confidential information.

### **26.3 Non-Disclosure**

The Recipient must:

- (a) Treat all confidential information as confidential and not make public or disclose to any other person that confidential information unless it has first obtained the written consent of Disclosing Party to do so;
- (b) Prevent third parties from gaining access to the confidential information; and
- (c) Deliver and surrender to Disclosing Party upon request all records of confidential information held by it.

## **27. DISCLOSURE REQUIRED**

27.1 The Recipient may disclose confidential information if required to do so by a government agency or any law or court order, or the rules of any applicable securities exchange after first giving notice to Disclosing Party and after taking all practicable steps to cooperate with Disclosing Party to prevent the disclosure to the maximum extent permitted by law.

## **28. REFERENCE TO CUSTOMER**

28.1 SurgePoint may acknowledge that the Customer is a customer of SurgePoint and use the Customer's logo (in accordance with Customer's reasonable guidelines provided by the Customer to SurgePoint) in any press release, marketing, sales, or stock exchange reporting materials. Any other reference to the Customer by SurgePoint requires the Customer's prior written consent.

## **29. TERM AND TERMINATION**

### **29.1 Term**

- (a) This agreement commences on the commencement date detailed in the key Service Schedule details and will continue in full force and effect for the initial term and will automatically renew for successive 12 month periods unless this agreement is terminated earlier in accordance with its terms.
- (b) After the initial term expires, the Service Order remains in force on a month to month basis (Extended Term) until terminated by either party giving the other not less than 30 days written notice of termination. Any special offers do not apply to the extended term unless otherwise agreed in writing.
- (c) These terms and conditions and any relevant Service Schedule or Service Order remains in force in respect of any service supplied to a Customer, for as long as SurgePoint continues to supply that service to the Customer.

## **30. CUSTOMER TERMINATION**

30.1 The Customer may terminate these terms and conditions, or an individual Service Schedule or Service Order (as the case may be) by notice in writing to SurgePoint, if:

- (a) In respect of a Service Order, the Customer gives to SurgePoint prior written notice before the RFS date to terminate that Service Order and pays to SurgePoint all infrastructure, equipment and installation costs incurred by SurgePoint in connection with preparation for the provision of the service including, without limitation, costs payable to SurgePoint's suppliers;
- (b) SurgePoint has committed a material breach of these terms and conditions, the Service Schedule or Service Order (as the case may be) and either:
  - (i) The breach is not remedied within 14 days of the date written notice of the breach is given to SurgePoint; or
  - (ii) The breach is not capable of remedy; or
  - (iii) SurgePoint suffers an insolvency event.

## **31. SURGEPOINT TERMINATION**

31.1 SurgePoint may terminate these terms and conditions, or an individual Service Schedule or Service Order (as the case may be) by notice in writing to the Customer if:

- (a) The Customer has committed a material breach of these terms and conditions, the Service Schedule or Service Order (as the case may be), and:
  - (i) The breach is not remedied within 14 days of the date written notice of the breach is given to the party;
  - (ii) The breach is not capable of remedy;
- (b) The Customer fails to pay any amount due under this Agreement within 14 days of written notice from SurgePoint requiring payment;
- (c) The Customer suffers an insolvency event;
- (d) A supplier failure occurs which impairs or prevents SurgePoint from delivering the services in accordance with these terms and conditions, a Service Schedule or a Service Order (as the case may be);
- (e) Any permit, licence, lease or consent required for the provision of the Services cannot reasonably be obtained or retained by SurgePoint; or
- (f) SurgePoint is required to do so to comply with any law or direction of any government agency.

31.2 SurgePoint may terminate a broadband service resupplied to an end user with immediate effect if the end user's broadband service is:

- (a) Used to transmit, refile or aggregated domestic or international traffic; or
- (b) Used in connection with equipment that switches or reroutes traffic; or
- (c) Used for, or in connection with, any purpose that it is similar to or in furtherance of the conduct set out in sub-clauses 31.2(a) or (b).

## **32. FAILURE TO PAY**

32.1 In addition to the right to terminate this agreement under clause 31.1.3(b) if the Customer fails to make a payment due under this agreement when called upon to do so, SurgePoint may do any one or more of the following:

- (a) Suspend the provision of the services if the Customer fails to pay any amount due under this agreement within 5 business days of written notice from SurgePoint requiring payment;
- (b) Invoice the Customer for any fixed term;
- (c) Charge due in respect of the service for the remainder of the initial term;
- (d) Charge the Customer interest on the overdue amount from the due date for payment up to the date of actual payment at the interest rate;
- (e) Where services include rack rentals in a data centre, suspend all Customer access to the data centre;
- (f) Use or disclose any personal information collected and recorded in relation to the Customer to a third party to assist SurgePoint in the process of debt recovery; or
- (g) Enter the Customer's premises, or any premises where the rented supplied equipment or SurgePoint equipment is located, to recover possession of the rented supplied equipment or SurgePoint equipment.

### **33. SUSPENDED SERVICES**

33.1 If SurgePoint suspends the provision of any services under clause 32 SurgePoint may reinstate those services if all amounts due (including interest) are subsequently paid. In that event, SurgePoint may charge a reconnection fee equal to SurgePoint' reasonable costs incurred in suspending and reconnecting the services and reconnection will not occur until those costs have been paid.

### **34. ACTIONS ON TERMINATION**

34.1 On termination of these terms and conditions, a Service Schedule or Service Order:

- (a) All unpaid sums owing by each party will immediately become due and payable to the other party;
- (b) In addition to any other rights it may have, SurgePoint may:
  - (i) Retain any moneys paid to it in respect of services provided;
  - (ii) Invoice the Customer in respect of any services provided prior to the date of termination which have not been invoiced.

34.2 The Customer must:

- (a) Immediately return to SurgePoint all confidential information of SurgePoint, all access codes and keys of any type and any other materials in the Customer's possession relating to SurgePoint;
- (b) Where the Customer has equipment in a Vocus data centre, at SurgePoint' request remove all such equipment. If the Customer fails to remove the equipment within 2 business days of written request from SurgePoint to do so, the Customer waives any proprietary rights it may have in that equipment, and Vocus may remove that equipment and do anything (including sell, dispose of or dump) that equipment at its absolute discretion.
- (c) The Customer authorises SurgePoint to recover any outstanding sums from any over payment the Customer has made at the time of termination;
- (d) SurgePoint shall have reasonable access upon notice to the Customer premises for the purpose of disconnecting, dismantling and removing the service (as the case may be) and any SurgePoint equipment in a reasonable manner (without any obligation to repaint, redecorate or repair) and the Customer will provide to SurgePoint all reasonable assistance; and
- (e) SurgePoint will continue to provide the Customer with any service which have not been terminated (unless that termination make it technically unviable to do so).

### **35. RETURN OF SUPPLIED EQUIPMENT**

35.1 At the expiry or termination of the relevant service, the Customer must return to SurgePoint, at Vocus' depot which is located closest to the Customer as nominated by SurgePoint, all supplied equipment which the Customer rented from SurgePoint from the Customer's premises at the Customer's cost within 30 days of the effective date of termination or expiry.

35.2 SurgePoint will inspect the rented supplied equipment returned by the Customer and in the event any rented supplied equipment is not in good repair and condition in accordance with clause 17.1), SurgePoint may issue a purchase notice to the Customer requiring the Customer to purchase the supplied equipment at the market value

of the relevant rented supplied equipment as advised by the vendor of that equipment. On receipt of the notice the Customer must pay as a debt immediately due to SurgePoint.

- 35.3 If the Customer fails to return the rented supplied equipment within 30 days of the effective date of termination or expiry, the Customer must provide SurgePoint full access at the Customer's costs, as required by SurgePoint, to the Customer's premises or a premises where the rented supplied equipment is located, in order to enable SurgePoint to recover the rented supplied equipment.

#### **36. RATES AND SERVICE CHARGES**

- 36.1 The rates and service charges in connection with the SurgePoint broadband services are initially as set out in **Annexure A (Pricing)** to this agreement and can be varied by SurgePoint from time to time.

- 36.2 For the avoidance of doubt, the Customer must pay the rates and service charges to SurgePoint in accordance with the agreement.

#### **37. SURGEPOINT BROADBAND SERVICES**

- 37.1 SurgePoint broadband services provide internet access types allowing end users to access the internet (Broadband Service).

#### **38. ACCESS TYPES**

- 38.1 Customer's may be able to order different access types of residential broadband services from SurgePoint for supply to an end user. These access types may include:

- (a) UFB (UltraFast Broadband)

- 38.2 The Customer acknowledges and agrees that it must ensure that it selects plans that are appropriate for each specific end user type (either business or business and residential) as defined by the Local Fibre Company(LFC).

#### **39. SERVICE LIMITATIONS**

- 39.1 Network capacity is not guaranteed and is subject to availability at time of ordering.

- 39.2 This service does not come with electronic mail (email) or domain name/hosting related services.

#### **40. NO REPRESENTATION OR WARRANTY**

- 40.1 SurgePoint does not make any representation or warranty in relation to:

- (a) The accuracy, completely or timeliness or any information or other content accessible by the end user;
- (b) Having any control over the content or other information accessible by the end user; and
- (c) The ability of the end user to download or receive any information or other content, in connection with the broadband services.

#### **41. SPEED**

- 41.1 SurgePoint plan speeds are the theoretical maximum speeds at which Customer's end users may be able to send data or receive data. broadband service plan speeds may be affected by a variety of factors, including, without limitation:

- (a) Network congestion;

- (b) End user's geographical location;
- (c) End user's distance from the relevant exchange;
- (d) The equipment and software used by the end user in connection with the broadband service (for example, the end user's internet browser, internet filters and computer);
- (e) General internet traffic; and
- (f) The quality, nature and capability of the underlining infrastructure.

41.2 Because SurgePoint relies on other upstream providers to deliver data to or from Vocus network SurgePoint are unable to guarantee that these speeds will be available to Customer's end user.

41.3 Other factors beyond SurgePoint's control may also result in Customer's end user being unable to connect, or to send or receive data at those speeds. SurgePoint cannot guarantee that SurgePoint's broadband services will always be available or that they can always be utilised for any particular purpose.

41.4 Other factors may influence the particular speeds or latency Customer's end user can achieve to servers nationally and internationally. SurgePoint's control of these speeds is limited to its own network. Connections to servers outside the SurgePoint network are on a "best effort" basis and it may not be possible for Customer to achieve Customer's desired or expected speeds or latency where Customer is connecting to Non-SurgePoint equipment outside SurgePoint's control.

41.5 Unlimited plans are intended for use by a single end user and broadband connectivity services must not be resold by the Customer or end users. Running server farms or sharing a connection across multiple end users is prohibited. The Customer is responsible for ensuring that its end users do not make prohibited use of the broadband services.

41.6 If an end user is on an "unlimited plan", the total amount of data that can be uploaded or downloaded is unlimited. SurgePoint may use traffic prioritisation policies.

## **42. PLAN TYPE SPEED**

- (a) UFB 100-20 provides download speeds of up to 100Mbps and upload speeds of up to 20Mbps.
- (b) UFB Max/500 (Res) provides download speeds of up to 100Mbps and upload speeds of up to 500Mbps.

## **43. MINIMUM TERM CONTRACT**

43.1 Minimum term contracts may apply to some broadband services, as notified to Customer from time to time.

## **44. EARLY TERMINATION**

44.1 Early termination charges ("ETC") applies for termination within the minimum term of a contract, calculated as the monthly charge multiplied by the remaining months of the contract.

## **45. IP ADDRESSES**

45.1 Any public or private IP address allocated for Customer to use as a part of the services will remain allocated to Customer until:

- (a) The Customer releases IP addresses using the functionality service portal;

- (b) The Broadband Service Schedule is terminated for any reason; or
- (c) Vocus decides to change any IP address, which it may do at any time and in its sole discretion.

45.2 Upon termination of the agreement, the Customer may no longer use any IP addresses or address blocks that SurgePoint provided for the Customer's use in connection with the services.

#### **46. SUPPORT**

46.1 SurgePoint helpdesk support is included however the Customer is expected to provide level one (1) support to the end user.

46.2 The Customer must ensure to not call the SurgePoint support desk directly. Faults can be followed up with e-mails to the help desk.

#### **47. SERVICE OUTAGES**

47.1 From time to time, SurgePoint or its relevant upstream supplier may perform maintenance or upgrade work that may affect the broadband service.

47.2 Any disruption caused to the broadband service will not constitute a breach of SurgePoint's obligations under this agreement. Where planned maintenance is to be undertaken by SurgePoint in relation to the SurgePoint network or broadband services, it will exercise best endeavours to provide the Customer with at least five (5) working days' notice of such work. For the avoidance of doubt, failure by SurgePoint to meet this notice requirement will not give rise to a termination right for the Customer.

47.3 Where planned maintenance is to be undertaken by suppliers in relation to the supplier network, SurgePoint will exercise reasonable endeavours to provide the service provider with as much notice as possible of such work bearing in mind it will be reliant on suppliers.

47.4 If the Customer becomes aware of any unplanned outage before it receives notice from SurgePoint, the Customer must use reasonable endeavours to notify SurgePoint as soon as possible.

#### **48. ACKNOWLEDGEMENTS**

48.1 Without limiting the acknowledgements provided by the Customer in any other clause of this agreement, the Customer acknowledges and agrees that:

- (a) SurgePoint does not warrant that SurgePoint or its relevant supplier will be able to supply the broadband service (to any extent or at all);
- (b) If the actual volume of end user activations and end user deactivations in connection with the broadband service exceeds the volume set out in the volume forecasts provided by the Customer, then SurgePoint or its relevant supplier may not be able to give effect to an end user activation or end user deactivation and neither SurgePoint nor its relevant supplier will have liability to the Customer, any end user, any potential end user or any other person for any resulting degradation in the quality in the or level of the broadband service; and
- (c) SurgePoint or its relevant supplier may intercept the broadband service or data being transmitted through the broadband service for the purpose of complying with obligations at Law.



**49. DISPUTES**

- 49.1 **Dispute resolution prior to litigation:** The parties must exhaust the provisions of this clause 49 before initiating any legal proceedings in court.
- 49.2 **Senior representative resolution:** The parties must use their best endeavours and act in good faith to resolve any dispute arising in connection with this Agreement by negotiation.
- 49.3 **CEO Resolution:** If senior managers of the parties have not resolved any dispute within 20 Business Days of notification of the dispute, the dispute must be escalated to the CEO of each part (where applicable) for resolution.
- 49.4 **Litigation:** If the CEOs of the parties fail to resolve the dispute within a further 20 Business Days of notification of the dispute, either party may take such additional action as it deems necessary to resolve the dispute, including initiating legal proceedings.
- 49.5 **Interlocutory relief:** Nothing in this clause 49 prevents any party from seeking urgent interlocutory relief from a court at any time.

# ANNEXURE 1: PRICING

## 1. ADDITIONAL COSTS

1.1 The Customer acknowledges and agrees that SurgePoint will not be liable to supply, or pay the cost of, any, equipment infrastructure or other services that are required in connection with the end users activation or use of the broadband service by the end user (such as compatible central splitters and network termination devices).

The Customer must ensure that the end user has all necessary equipment, infrastructure and additional services to access and use the broadband service to an acceptable standard and that such equipment, infrastructure and services are:

- (a) Compatible with the Define DSL (DSL) exchange equipment, the relevant network and the broadband service generally; and
- (b) Are approved by SurgePoint for use with the relevant Broadband Service (which approval will not be unreasonably withheld).

## 2. UNLIMITED BROADBAND

2.1 All plans configured with 2.5Mbps High Priority upload and download unless specified otherwise.

Pricing for Broadband Services

		LFC Access Supplier
Plan Type	Description	Chorus
Residential ONLY	UFB 300-100	\$79.95
	UFB Max/500	\$89.95

Pricing for Static IP Addresses

Description	Charge
Static IP Monthly Reoccurring Fee	\$5.00

## 3. INSTALLATION

3.1 Charges listed here are for guidance only, installation charges<sup>1</sup> will not be fully known until after a service is installed.

3.2 Installation charges are billed approximately one (1) month after connection.

<sup>1</sup> Installation charges include GST

**UFB Installation Charges**

Description	Residential Installations	Business Installations
Standard Installation	\$0.00	Equivalent of 1 Months Rental
Non-Standard Installation	Price on Application	Price on Application

**XDSL Installation Charges**

Installation Type Description	Charge <sup>2</sup>
Remote Connections	\$9.00
Exchange/ Cabinet Visits	\$58.00
Site Visit	\$168.00
Connection and Wiring	\$267.00
New Router Purchase	\$149.00
Courier Fee	\$18.00

**50. ANCILLARY CHARGES**

All ancillary charges<sup>3</sup> are pass thru at cost plus 5% gross margin from upstream suppliers.

**50.1 UFB Ancillary Charges**

Description	Charge
Transfer of Service from another RSP	\$29.00
Plan Change	\$20.00
Relocate ONT	\$135.00
No Fault Found	\$127.00

<sup>2</sup> Prices are subject to change

<sup>3</sup> Ancillary charges include GST