

Terms and Conditions

1. INTERPRETATION

The following definitions and rules of interpretation apply in this agreement:

Acceptance: the acceptance or deemed acceptance of the Services by the Customer pursuant to clause 4.

Acceptance Test Period: the period in which the Acceptance Tests fall to be completed as set out in the Proposal/Scoping Document. Acceptance Tests: the tests to be carried out as set out in clause 4 and as described in the Proposal/Scoping Document.

Business Day: any day (other than a Saturday or Sunday) when banks are generally open for normal business in London. Change Control Procedures: the Procedures set out in clause 14. Charges: the charges in respect of the Services set out in the Proposal/Scoping Document, together with any charges arising from the Change Control Procedures.

Confidential Information: all information, whether technical or commercial (including all specifications, drawings and designs, disclosed in writing, on disc, orally or by inspection of documents or pursuant to discussions between the parties), where the information is identified as confidential at the time of disclosure or ought reasonably to be considered confidential.

Content: the text, information, image, audio or visual material provided to Sure Communication by the Customer from time to time for incorporation in the Site. Effective Date: the date of this Agreement. Force

Majeure Event: any event arising which is beyond the reasonable control of the affected party (including any industrial dispute affecting any third party, governmental regulations, fire, flood, disaster, civil riot or war).

Intellectual Property Rights : all intellectual property rights wherever in the world arising, whether registered or unregistered (and including any application), including copyright, know-how, confidential information, trade secrets, business names and domain names, trade marks, service marks, trade names, patents, petty patents, utility models, design rights, semi-conductor topography rights, database rights and all rights in the nature of unfair competition rights or rights to sue for passing off.

Materials: the content provided to Sure Communication by the Customer for incorporation in the site.

Non-Sure Communication Defects: the defects described in clause 4.3.

Order Form: the Order Form submitted by the Customer and accepted by Sure Communication/received by Sure Communication.

Proposal/Scoping Document: the Proposal/Scoping Document submitted by Sure Communication in response to the Customer's request for the provision, development and for support of the Customer's telephone numbers and associated services and having the same identity number as the Order Form. Server: a computer service administered by Sure Communication as more particularly described in the Proposal/Scoping Document. Services: the design, development, support hosting and related services as described in the Proposal/Scoping Document to be provided pursuant to this agreement. Site: the website/system specified in this document to be hosted by Sure Communication or relevant third party pursuant to this agreement. Site Software: Sure Communication's proprietary software used in connection with the Site. Site Specification: the specification for the Site set out in the Proposal/Scoping Document. Third Party Products: third party software products set out in the Proposal/Scoping Document supplied by Sure Communication together with the Services/Site Software.

1.1 Clause headings do not affect the interpretation of this agreement.

1.2 In the event of any conflict between the Proposal/Scoping Document and Order Form; and these terms and conditions, the Proposal/Scoping Document shall prevail.

1.3 Words in the singular include the plural and in the plural include the singular.

1.4 References to including and includes(s) mean respectively including without limitation and include(s) without limitation.

1.5 Clause headings do not affect the interpretation of this agreement.

1.6 In the event of any conflict between the Proposal/Scoping Document and Order Form; and these terms and conditions, the Proposal/Scoping Document shall prevail.

1.7 Words in the singular include the plural and in the plural include the singular.

1.8 References to including and includes(s) mean respectively including without limitation and include(s)

without limitation.

2. SERVICES

Subject to clause 3, Sure Communication shall perform its obligations in accordance with the Proposal/Scoping Document.

3. CUSTOMER RESPONSIBILITIES

3.1 The Customer shall co-operate with Sure Communication in a timely manner in all matters relating to the Services.

3.2 The Customer shall obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services and the use of Material insofar as such licences, consents and legislation relate to the Customer's business.

3.3 The Customer shall be responsible for the accuracy and completeness of the Materials on the system.

3.4 Sure Communication shall not be liable for any delays in implementing the services outlined, resulting from the Customer's failure to fulfil any of its obligations set out in this agreement. Sure Communication reserves the right to invoice the Customer for any additional expenses incurred by Sure Communication as a result of such delays.

3.5 For the avoidance of doubt it is acknowledged that, subject to its obligations under the provisions of this Agreement, the Customer shall not at any time arrange for any similar services to be provided by any third party unless Sure Communication confirms that it is unable to provide such services.

4. ACCEPTANCE

4.1 The Acceptance Tests shall test compliance of the services with the Specification. Acceptance of the Services shall occur when the Services/Site has passed the Acceptance Tests or as set out in Clause 4.4.

4.2 The Customer shall run the Acceptance Tests. The customer shall notify Sure Communication when the Acceptance Tests have been passed and provide the results of the Acceptance Tests to Sure Communication in writing with sufficient detail for Sure Communication to be able to identify and remedy any defects. If the Services/Site fails the Acceptance Tests other than in circumstances set out in Clause

4.3 then Sure Communication shall have an opportunity to remedy any defects so that the Acceptance Tests can be re-run.

4.3 If any failure to pass the Acceptance Tests results from a defect which is caused by an act or omission of the Customer, or by someone for whom Sure Communication has no responsibility (Non- Sure Communication Defect), the Services/Site shall be deemed to have passed the Acceptance Tests notwithstanding such Non-Sure Communication Defect. Sure Communication shall provide assistance reasonably requested by the Customer in remedying any Non-Sure Communication Defects by supplying additional services or products. If so requested, the Customer shall pay Sure Communication in full for all such additional services and products at Sure Communication's then current fees and prices.

4.4 Acceptance of the Services/Site shall be deemed to have taken place upon the occurrence of the earliest of any of the following events:

- (a) the Customer using any part of the Services/Site in a live environment;
- (b) the Customer uses any part of the Services/Site for any revenue-earning purposes or to provide any services to third parties other than for test purposes;
- (c) the expiration of the Acceptance Test Period; or
- (d) the Customer unreasonably delays the start of the relevant Acceptance Tests or any retests for a period of five (5) Business Days from the date on which Sure Communication is ready to commence running the Acceptance Tests or retests.

5. PROJECT MANAGEMENT

Each party shall appoint a project manager and they will regularly discuss the Services and matters regarding them. The project manager shall have the necessary expertise and authority to commit the relevant party.

6. CHARGES AND PAYMENT

6.1 Sure Communication shall issue invoices and VAT invoices in respect of the Charges as stated in the Proposal/Scoping Document, and the Customer shall pay amounts due within thirty (30) days of the date of Sure Communication's invoice.

6.2 If the Customer fails to pay any amount payable by it under this agreement, Sure Communication shall:

- (a) be entitled to charge the Customer interest on the overdue amount. Such interest shall be payable by the Customer on demand, from the due date up to the date of actual payment at the rate of 4% per annum above the base rate for the time being of HSBC Plc. Such interest shall accrue on a daily basis and be compounded quarterly. Sure Communication reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and
- (b) have the right to immediately suspend the provision of Services to the Customer without notice until all outstanding amounts as set out in the Proposal/Scoping Document are received in cleared funds by Sure Communication.

6.3 Sure Communication shall have the right to increase the Charges at any time by providing written notice to the Customer. Any increase shall be limited to 25% with the exception of a ruling by Ofcom and or BT or any third party supplier to Sure Communication who provide services relevant to the Services/Site.

6.4 If paying by direct debit, please note that Sure Communication (sur.co.uk) Limited has appointed the BACS Approved Direct Debit Bureau, Eazy Collect Services Limited (www.eazycollect.co.uk), to collect your payments and **Eazy Collect** will be shown on your bank statement.

7. WARRANTIES

7.1 Each party warrants to the other that it has the ability to enter into and perform this agreement.

7.2 This agreement sets out the full extent of Sure Communication's obligations and liabilities in respect of the supply of the Services. All conditions, warranties or other terms concerning the Services which might otherwise be implied into this agreement or any collateral contract (whether by statute or otherwise) are hereby expressly excluded to the fullest extent permitted by law.

8. LIMITATION OF REMEDIES AND LIABILITY

8.1 Sure Communication shall not be liable to the Customer whether in contract, tort (including negligence), breach of statutory duty or otherwise for indirect or consequential damage or loss, including loss of business opportunity or profits.

8.2 Subject to clause 8.1, Sure Communication's aggregate liability in respect of claims based on events in any calendar year arising out of or in connection with this agreement or any collateral contract, or whether in contract or tort (including negligence, breach of statutory duty) or otherwise, shall in no circumstances exceed an amount equal to two times the total Charges payable by the Customer to Sure Communication under this agreement.

9. THIRD PARTY PRODUCTS

9.1 Any Third Party Products shall be supplied in accordance with the relevant licensor's standard terms.

9.2 The Customer shall not be entitled to receive any financial recompense in excess of that received by Sure Communication under any guarantee or warranty enforced by Sure Communication against a Third Party.

10. INTELLECTUAL PROPERTY RIGHTS

10.1 Sure Communication or its licensor retains all Intellectual Property Rights in the Services/Site Software and grants the Customer a non-exclusive licence for the purpose of operating the Services/Site.

10.2 All Intellectual Property Rights in any works created in connection with the performance of the Services by Sure Communication (Works) shall be the property of Sure Communication and Sure Communication hereby grants to the Customer a non-exclusive license to use the Works. All Intellectual Property Rights in all items and materials given to Sure Communications by the Customer for the performance of the Services shall remain the property of the Customer.

10.3 The Customer shall indemnify Sure Communication against all damages, losses and expenses arising as a result of any action or claim that the Materials infringe any third party Intellectual Property Rights.

10.4 Sure Communication undertakes to defend the Customer from and against any action or claim to the extent that the use or possession of the Works or any part of them excluding Content infringes the Intellectual Property Rights of any third party ("Sure Communication IPR Claim") and shall indemnify the Customer against any losses, damages, costs ("Loss") incurred by the Customer as a result of any Sure Communication IPR Claim to the extent that any such Loss is agreed, settled or awarded by a Court of competent jurisdiction against the Customer. Sure Communication shall have no liability to the Customer under this clause 10.4 if the

Customer:

- (a) does not notify Sure Communication in writing of the full details of any claim of which it has notice as soon as reasonably practicable;
- (b) makes any admission of liability or agrees any settlement or compromise of a Sure Communication IPR Claim without the prior written consent of Sure Communication;
- (c) does not let Sure Communication, at its request and expense have conduct of all negotiations and litigation arising from the relevant Sure Communication IPR Claim; or
- (d) does not, at Sure Communication's request and expense, give Sure Communication all reasonable assistance.

10.5 If any Sure Communication IPR Claim is made against the Customer, then Sure Communication shall at its own expense either:

- (a) procure for the Customer the right to continue using the Works; or
- (b) modify or replace the infringing part of the Works without prejudice to the function of the Works as specified in the Specification. The undertaking and indemnity given by Sure Communication under clause 10.4 shall not apply to any infringement arising from any modification to the Works or the Services/Site made by the Customer or connected third party.

11. TERM AND TERMINATION

11.1 This agreement shall commence on the Effective Date and shall (subject to earlier termination pursuant to this clause 12) continue for the initial period set out in the Proposal/Scoping Document ("Initial Term") and shall continue thereafter from year to year until terminated upon either party in accordance with the Terms of this Agreement.

11.2 The Customer may terminate this agreement upon giving not less than 12months' notice in writing to expire on the annual anniversary of the Effective Date.

11.3 Either party may terminate this agreement immediately at any time by written notice to the other party if:

- (a) that other party commits any material breach of its obligations under this agreement which (if remediable) is not remedied within 30 days after the service of written notice specifying the breach and requiring it to be remedied; or

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- (b) that other party: ceases to trade (in whole, or part), becomes insolvent or unable to party, or notice of an intention to appoint such a person is given or documents relating to such an appointment are filed with any court, or

(c) the ability of that party's creditors to take any action to enforce their debts is suspended, restricted or prevented or some or all of that party's creditors accept an amount of less than the sums owing to them in satisfaction of those sums; or

- (d) any process is instituted which could lead to that party being dissolved and its assets being distributed to its creditors, shareholders or other contributors (other than for the purposes of solvent amalgamation or reconstruction).

11.4 On termination of this agreement by Sure Communication all licences granted by Sure Communication under this agreement shall terminate immediately.

11.5 On expiry or termination of this agreement Sure Communication shall at the request and expense of the Customer return to them or destroy the Materials and/or Confidential Information and provide such assistance as is reasonably requested by the Customer to transfer the Services/Site to the Customer or another service provider, subject to payment of Sure Communication's expenses reasonably incurred.

12. CHANGE CONTROL

12.1 Any proposed change, amendment or alteration of the Proposal shall specify any effects the same shall have, if any, on the Charges, the Timescales including any phase of the Services/Site Development or any further Development, or Sure Communication specifications. ("Change")

12.2 Any Change requires the written approval of both parties prior to implementation.

13. FORCE MAJEURE

A party who becomes aware of a Force Majeure Event which is likely to give rise to any failure or delay in performing its obligations under this agreement shall forthwith notify the other and shall inform the other of the

period for which it is estimated that such failure or delay will continue. The affected party shall take reasonable steps to mitigate the effect of the Force Majeure Event.

14. CONFIDENTIALITY

14.1 Each party shall protect the Confidential Information of the other against unauthorised disclosure.

14.2 Where Confidential Information is disclosed by a party to its employees, affiliates or professional advisers, provided the recipient must be bound in writing to maintain the confidentiality of the Confidential Information received.

14.3 The obligations set out in this clause 16 shall not apply to Confidential Information that:

- (a) is or has become publicly known other than through breach of this clause 6;
 - (b) was already in the possession of the receiving party;
 - (c) was received by the receiving party from an independent third party with full right of disclosure; or
 - (d) was required to be disclosed by law.
- 15.4 The obligations of confidentiality in this clause 16 shall not be affected by the expiry or termination of this agreement.

15. NOTICES

15.1 A notice given under this agreement shall be sent for the attention of the person, and to the address or e-mail address given in the Order Form (or such other person, address or e-mail address as the receiving party has notified to the other)

15.2 A notice is deemed to have been received:

- (a) if delivered personally, at the time of delivery;
- (b) in the case of e-mail at the time of transmission;
- (c) in the case of pre-paid first class post, recorded delivery or registered post, 48 hours from the date of posting; and
- (d) if deemed receipt under clause 16.2 a-c is not between 9.00 to 17.30 Monday to Friday on a day that is not a public holiday, on the next business day.

16. ASSIGNMENT

Neither party may assign or transfer any of its rights or obligations under this agreement in whole or part, without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.

17. ENTIRE AGREEMENT

This agreement constitutes the entire agreement and understanding between the parties and supersedes any previous agreement between the parties relating to this agreement. The parties acknowledge and agree that in entering into this agreement, and the documents referred to in it, they shall not rely on and shall have no remedy in respect of any statement of fact or opinion not recorded in this agreement (whether negligently or innocently made).

18. THIRD PARTY RIGHTS

This agreement is made for the benefit of the parties to it and is not intended to benefit, or be enforceable by, any other person.

19. VARIATION AND WAIVER

A variation or waiver of this agreement shall be in writing and signed by or on behalf of both parties to this agreement.

20. SEVERANCE

If any provision (or part of a provision) of this agreement is found by any court of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

21. NON-SOLICITATION

Except as otherwise expressly agreed between the parties in writing, neither party during the term of the agreement or for a period of twelve (12) months after completion of Services shall, directly, by or through itself, its affiliate, its agent or otherwise, whether for its own benefit or for the benefit of any other person:

- (a) solicit or induce, or endeavour to solicit or induce any employee of the other party; or

(b) employ or engage or offer to employ or engage a employee of the other party without the written consent of the other party save that either party may employ or engage any employee of the other party who has responded directly to a bona fide recruitment drive, either through an agency or advertisement in the press and not directly or indirectly as a result of any solicitation or inducement by the other party. For the purpose of this clause “solicit or induce” means the soliciting or inducing of such employee with a view to engaging such employee as an employee, director, sub-contractor or independent contractor.

22. GOVERNING LAW AND JURISDICTION

This agreement is governed by and shall be construed in accordance with the law of England and Wales, and the parties submit to the exclusive jurisdiction of the Courts of England.