

# Sureline Business Services Agreement

This Agreement is made between Sureline Communications Ltd (Sureline) and the Customer, for the provision of Services by Sureline to the Customer.

## 1. DEFINITIONS

- 1.1 In this Agreement, the following words and phrases shall, unless the context otherwise requires have the following meanings:-
- 1.1.1 **“Acceptable Use Policy”** or “AUP” means Sureline’s Acceptable Use Policy the current version of which is available on the Sureline Website, as amended from time to time;
  - 1.1.2 **“Additional Charges”** means unforeseen costs relating to the Set-up and/or installation/consultation associated with the provision of a service;
  - 1.1.3 **“Affected Service Component”** means the individual Service Component that is experiencing a Problem;
  - 1.1.4 **“Agreement”** has the meaning set out in Clause 2.1;
  - 1.1.5 **“Beta Trial”** means the trial of a Service by a Customer before its official release as a Service by Sureline;
  - 1.1.6 **“Cancellation Fee”** means those fees set out in Clause 3;
  - 1.1.7 **“Change”** means a standard, planned or emergency addition, modification or removal of anything that could have an effect on the Service Component or Components;
  - 1.1.8 **“Change Control Form”** means a form which shall be provided to the Customer to reflect any changes to the Services, as previously agreed between the Party’s, and shall hereby be incorporated into the terms of the Agreement. If such resultant change shall incur Fees to the Customer, then a

new Order Form shall be provided to the Customer which does not alter the existing Master Services Agreement;

- 1.1.9 **“Sureline”** means Sureline Communications Limited (Company No.06531753) of 28 Gamnel, Tring, Herts, HP23 4JL, United Kingdom;
- 1.1.10 **“Sureline Equipment”** means any hardware, cabling, peripherals, software or any other equipment that Sureline shall provide the Customer as part of the Services, whether owned by Sureline or a third party supplier but specifically excludes any such equipment that has been sold to the Customer;
- 1.1.11 **“Sureline Website”** means the website operated by Sureline currently at URL [www.Sureline.net](http://www.Sureline.net) (such URL’s may change from time to time);
- 1.1.12 **“Colocation”** means the Sureline management of space and power in which a customer may install and manage their own hardware, operating systems and applications;
- 1.1.13 **“Commencement Date”** means the date on which this Business Services Agreement is signed by the parties;
- 1.1.14 **“Confidential Information”** means all confidential information (however recorded or preserved) disclosed by a party or its employees, officers, representatives or advisers (together its Representatives) to the other party and that party’s Representatives in connection with this Agreement including any information relating to the business, affairs, customers, clients and suppliers of the disclosing party (or of any Group Company of the disclosing party) and any information relating to the services, product information, know-how, designs, trade secrets or software of the disclosing party (or of any Group Company of the disclosing party);
- 1.1.15 **“Connectivity Services”** means DSL, Leased Line, Ethernet or any form of service provided by Sureline to the Customer that allows the transmission of data between two points;
- 1.1.16 **“Consultancy Services”** means the professional Service provided by Sureline whereby the Customer is provided with a resource or resources who may advise on a variety of subjects;
- 1.1.17 **“Customer”** means the person, group of people, or company, who receives the Service from Sureline under the terms of this Agreement, as identified in the Order Form;
- 1.1.18 **“Customer Equipment”** means any hardware, cabling, peripherals, software or any other equipment that the Customer owns, leases or licences and which it uses as part of the Services, other than the Sureline Equipment;
- 1.1.19 **“Fees”** means the fees and charges payable by the Customer for the Services and all other fees and charges payable by the Customer to Sureline in accordance with this Agreement;

- 1.1.20 **“Force Majeure Event”** means any circumstances beyond the reasonable control of either party to this Agreement including but not limited to adverse natural events such as fire, storm, flood and extreme weather conditions; the outbreak of hostilities, riot, civil disorder or commotion; acts of terrorism; industrial disputes or acts or defaults of any local or central government or other competent authority;
- 1.1.21 **“Group Company”** means any holding company or subsidiary of either party to this Agreement, or any subsidiary of any such holding company as such terms are defined in section 1159 of the Companies Act (2006) (as amended);
- 1.1.22 **“Incident”** means an unplanned interruption to a service, or a reduction in the quality of a service that causes the Service Component or Components to fail to meet its respective specifications as detailed in the Order Form and/or Service Description;
- 1.1.23 **“Initial Term”** means in relation to a Service, 12 months from the Service(s) Commencement Date, or such other period as set out in the Order Form;
- 1.1.24 **“International Service”** means a service provided by Sureline to a Customer point outside of the United Kingdom, as set out in the Order Form and/or the Service Description, to be provided by Sureline to the Customer pursuant to this Agreement;
- 1.1.25 **“Live”** means when Sureline has delivered the Services as set out in Service Description and shall refer only to Surelines' obligations as set out in the Service Description.
- 1.1.26 **“Business Services Agreement”** or **“BSA”** means these terms and conditions;
- 1.1.27 **“Managed Delivery”** means the delivery by Sureline of defined services on target installation dates as set out in the Service Description.
- 1.1.28 **“Managed Hosting”** means the Sureline management of space, power and hardware on which a Customer would manage its own operating system and applications.
- 1.1.29 **“Managed Application Hosting”** means the Sureline management of space, power, hardware, operating systems, application engines and the Customer's application.
- 1.1.30 **“Minimum Written Notice”** is the period of notice given by the Customer to Sureline prior to the end of the Initial Term and/or Renewal Term in order to terminate the provision of a Service. Unless otherwise specified on the Order Form, the period is 90 days. The notice is subject to clauses 12.1 and 12.2. If Minimum Written Notice is not provided by the Customer to Sureline as specified in clauses 12.1 and 12.2, a Renewal Term will commence on expiry of the current term.
- 1.1.31 **“Order Form”** means the form(s) in the format provided by Sureline (and as amended by Sureline from time to time) which lists the Service requested by the Customer;

- 1.1.32 **“Parties”** means Sureline and the Customer and "party" means either of them;
- 1.1.33 **“Private Cloud”** means an infrastructure provided to a Customer that supports multiple Virtual Machines as described in the relevant Service Description document.
- 1.1.34 **“Problem”** means a cause of one or more incidents that causes the Service Component or Components to malfunction or to fail to meet its respective specifications as detailed in the Order Form and/or Service Description. The cause is not usually known at the time a problem occurs;
- 1.1.35 **“Project Management”** is defined as the provision by Sureline to the Customer of a named Project Manager. Project Management will generally be charged on a per-day basis, for a duration agreed with the Customer prior to work commencing.
- 1.1.36 **“Premises”** means the premises owned and/or operated by the Customer where the Services or any Sureline Equipment shall be installed;
- 1.1.37 **“Renewal Term”** means the period of 12 months commencing on the expiry of the Initial Term, and each successive period of 12 months thereafter (or such other period as is set out in the Order Form) (each being a “Renewal Term”);
- 1.1.38 **“Replacement Services”** means Services that Sureline provides to the Customer from time to time to replace or supplement existing Services;
- 1.1.39 **“Service”** means a service set out in the Order Form and/or the Service Description, to be provided by Sureline to the Customer pursuant to this Agreement;
- 1.1.40 **“Service Commencement Date”** means the date on which a Service or component of Service is made available for use to the Customer in accordance with the provisions of this Agreement;
- 1.1.41 **“Service Description”** means the description of the Services which are to be provided as listed in the Order Form and appropriate associated documentation;
- 1.1.42 **“Service Deliverables”** means any materials, equipment, software, deliverables or other items of any type developed, created or supplied (whether alone or jointly) by Sureline or any Sureline Group Company in the course of the provision of the Services;
- 1.1.43 **“Service Term”** means, in relation to each of the Services, the period from the Service Commencement Date to the expiry or termination (for any reason) of such Service(s) pursuant to this Agreement;
- 1.1.44 **“Set-up Fee”** means the Fees payable for the set-up of the Service, set out in the Order Form;

- 1.1.45 **“SLA”** means the Service Level Agreement applicable to the Service provided to the Customer under this Agreement;
- 1.1.46 **“Solution”** means one or more Services, as set out in the Service Description(s) and/or applicable SOW;
- 1.1.47 **“SOW”** means the Statement of Work, which may be provided by Sureline, if applicable, along with the confirmation of the Order referred to in Clause 3.1.3;
- 1.1.48 **“Target Installation Date”** means the estimated date provided by Sureline or any third party supplier for the installation of the Service;
- 1.1.49 **“Virtual Server”** means a software implementation of a server.
- 1.1.50 **“Working Day”** means 09.00 to 18.00, Monday to Friday excluding UK Public Holidays.

1.2 In this Agreement, unless the context otherwise requires:

- 1.2.1 clause, schedule and paragraph headings shall not affect the interpretation of this Agreement;
- 1.2.2 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.3 words in the singular shall include the plural and vice versa;
- 1.2.4 a reference to one gender shall include a reference to the other gender;
- 1.2.5 a reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time taking account of any amendment or re-enactment;
- 1.2.6 a reference to “writing” or “written” includes mail, faxes and e-mail;
- 1.2.7 any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to what most nearly approximates to the English legal term in that jurisdiction; and
- 1.2.8 any phrase introduced by the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

## 2. THE AGREEMENT

- 2.1 This Agreement consists of this Business Services Agreement, Order Form and Acceptable Use Policy and may contain any of the following: if applicable SOW, Service Description or SLA. The terms of this Agreement refer to the Service(s) which the Customer has requested and Sureline has agreed to provide in accordance with the procedure set out in Clause 3.1.

- 2.2 Any conflict or inconsistency between any provisions of the documents referred to in Clause 2.1 shall be resolved in accordance with the following order of precedence:
- 2.2.1 Order Form and Service Description;
  - 2.2.2 Statement of Works (SOW);
  - 2.2.3 SLA;
  - 2.2.4 Business Services Agreement;
  - 2.2.5 Acceptable Use Policy (AUP);
- 2.3 This Agreement shall take effect on the Commencement Date and shall continue unless and until terminated in accordance with the provisions of Clause 8.
- 2.4 Sureline may make any changes to this Agreement (including to this BSA, Acceptable Use Policy, Service Description or SLA) as it deems necessary from time to time to take into account operational and technical matters (including the terms on which its third party providers provide Sureline with services) and changes to any applicable laws and regulations. Such changes shall be notified to the Customer by posting the changes to the Sureline Website and shall be deemed to be incorporated into this Agreement and be legally binding on the parties with effect from the date such posting is made. Sureline will endeavour to give 30 days' notice of any such changes but any failure to give such notice shall not act to prevent such changes having full contractual effect.

### **3. ORDERING AND PROVISION OF SERVICES**

- 3.1 The Customer may request Services from Sureline in accordance with the following procedure(s):-
- 3.1.1 The Customer shall request Services by signing and submitting an Order Form in respect of such Services. The Order Form shall constitute a written offer by the Customer to enter into a legally binding contract with Sureline for the provision of such Services and such offer shall remain valid for a period of 14 calendar days from the date that the Order Form is submitted to Sureline;
  - 3.1.2 If Sureline declines to accept any Order Form submitted by the Customer, it shall notify the Customer of its decision after receiving the Order Form, as soon as reasonably practicable thereafter and no longer than within 14 calendar days;
  - 3.1.3 If Sureline agrees to accept the Order Form, Sureline shall send confirmation of acceptance to the Customer [together with any applicable SOW] and the Customer shall be obliged to accept, the provision of the Services, subject always to the provisions of this Agreement.

- 3.2 The Customer will not be entitled to alter or change the Services during the Service Term without the prior written agreement of Sureline. Any such alteration may be subject to the payment of additional Fees as determined by Sureline.
- 3.3 Sureline will use all reasonable endeavours to comply with the Customer's requests in relation to the installation of the Services. However, Sureline's decision relating to the availability of the Services (or part thereof) will be final and binding.
- 3.4 Sureline will endeavour to install the Services in accordance with the Target Installation Date. However, Sureline shall not be liable for any failure to meet such dates as all dates referred to in relation to the Target Installation Dates and the Service Commencement Dates are estimates.
- 3.5 If required by Sureline, the Customer shall prepare the Premises in accordance with Sureline's instructions and provide Sureline (or its third party suppliers) with reasonable access to the Premises at times to be agreed.
- 3.6 At any time during or at the end of the Service Term, Sureline has the right to upgrade and/or migrate Customers to a different level or type of service if, in the opinion of Sureline, the existing Services being provided to the Customer are or become inappropriate or insufficient to meet the Customer's requirements and as a result Sureline considers the Customer requires different Services which are more appropriate to the Customer's needs. Sureline may consult with the Customer if Sureline wishes to exercise its rights under this Clause.
  - 3.6.1 If the Customer agrees to change the Services in accordance with Sureline's recommendation, the Customer may be liable for the higher fees and costs associated with the upgraded and/or migrated Services and any termination or cancellation fees associated with the terminated Services.
  - 3.6.2 If the Customer does not agree to the upgraded and/or migrated Services, Sureline shall be entitled to terminate the provision of the existing Services on providing a 30 day notice in writing. In the event that the Customer chooses not to upgrade and Sureline allows the Customer to continue using the existing Services, any applicable SLA ceases to apply.
- 3.7 Sureline may from time to time give directions about the use of the Services to the Customer which Sureline thinks is reasonably necessary in the interests of safety or the quality of service to Sureline's other customers. The Customer shall comply with all such directions.
  - 3.7.1. Sureline will notify all Managed Hosting and Managed Applications customers on the release of any operating system critical patching as suggested by the operating system supplier. It is the responsibility of the customer to request the installation of patches through the Sureline solution support team. Patches will not be deployed without the explicit permission of the customer or Agent working on behalf of the customer. Should the customer fail to request these patches it is taken entirely at their own risk.
- 3.8 As part of its Service offering, Sureline may have to move the location of certain Sureline Equipment and/or Customer Equipment. The Customer agrees that upon receipt of prior notice from Sureline, Sureline shall be free to move any such Equipment as it sees fit and wherever possible Sureline will endeavour to minimise

any adverse impact on the Services or incremental costs to the Customer associated with relocation.

- 3.9 Sureline reserves the right to alter any third party suppliers used to supply the Services.
- 3.10 The Customer may cancel the Services in full prior to the Target Installation Date by providing prior written notice to Sureline and payment of the Cancellation Fee set out in Clause 3.11 below.
- 3.10.1 The Contract Delivery Date is the date when Sureline commits to delivering the Service. In the event that the Customer cancels the order for convenience after being issued with a Contract Delivery Date, Sureline will be automatically entitled to be paid a cancellation fee equivalent to 5% of the total contract value. This does not affect any other rights and remedies available to Sureline under clause 3.11.
- 3.11 If the Customer terminates the Services before the Target Installation Date in accordance with Clause 3.10, the Customer must pay the Cancellation Fee to Sureline calculated as follows:
- 3.11.1 Where notice is given 30 Working Days' or more prior to the Target Installation Date: 25% of that Service's total contract value;
- 3.11.2 Where notice is given between 10 Working Days and 30 Working Days prior to the Target Installation Date: 80% of that Service's total contract value;
- 3.11.3 Where notice is given less than 10 Working Days prior to the Target Installation Date: 100% of that Service's total contract value.

## 4. CUSTOMER OBLIGATIONS

- 4.1 It is a condition of this Agreement that the Customer shall at all times use the Services in accordance with the Acceptable Use Policy.
- 4.2 The Customer shall not, nor knowingly permit any other person to, use the Services:
- 4.2.1 to send, knowingly receive, upload, download, display or use any material which:
- (a) is abusive, indecent, obscene, defamatory, racist, offensive, menacing or infringing of any obligation as to confidential information or copyright or any other Intellectual Property Rights;
  - (b) contains unlawful security devices, viruses, worms, trojan horses or similar;
  - (c) contravenes any laws or regulations; or
  - (d) which may harm or damage the Sureline network;



- (e) Attempt to use or gain unauthorized access to data, accounts, hosts, systems or networks of Sureline or any of its customers or suppliers, or those of any other party;
  - (f) Attempt to probe, scan or test the vulnerability of a system or network of Sureline or any of its customers or suppliers, any Sureline product or service, or those of any other party;
  - (g) Interfere, or any attempt to interfere, with service to any user, host or network including, without limitation, mail-bombing, flooding, and attempting to deliberately overload the system;
  - (h) Forge of any TCP-IP packet header or any part of the header information in an e-mail or a newsgroup posting;
  - (i) Falsify address information or other modification of e-mail headers to conceal the sender's or the recipient's identity;
  - (j) Engage in activities that violate any terms or conditions of any other network access provider or Internet service provider; or
  - (k) Engage in activities that violate any applicable law or governmental regulation.
- 4.2.2 in connection with the carrying out of fraud or other criminal offence;
- 4.2.3 to send unsolicited advertising or mail shots of any kind in breach of the Privacy and Electronic Communications Regulations (2003) (or any equivalent regulations);
- 4.2.4 in a way which does not comply with instructions given by Sureline or its agents or contractors.
- 4.3 The Customer will have 3 Working Days from the Services Commencement Date in which to notify Sureline of any defects in the Set-up or the operation of the Service. Unless the Customer provides such notification within that period, the Services will be deemed to have been set up correctly and to have been accepted by the Customer and Sureline shall be permitted to invoice the Customer for the [Set-up Fee and] and Fees for the Services. If Sureline notifies the Customer that the Services are ready for installation but the Customer is not ready to accept such installation, then Sureline will invoice the Customer for the Fees for the Services including the Set-up Fee or Fees.
- 4.3.1 For the avoidance of doubt, Sureline shall invoice the Customer when it has delivered "Live" services notwithstanding delays by the Customer or third parties. In the event of Managed Delivery being chosen by the Customer, the Managed Delivery charge shall still apply to all those services delivered pro-rata, live or otherwise, where Sureline has delivered the Services and through the act or omission of either the Customer or a third party, some part thereof is not live or causes other linked and/or dependent Services to fail to go "Live". When the remainder of the Services go "Live", the non-billed portion of the Managed Delivery charge shall be charged on the next invoice to the Customer.

- 4.4 If the Services being provided are Replacement Services, then the Customer will have 2 Working Days from the Services Commencement Date in which to notify Sureline of any defects in the installation or the operation of the Services. Unless the Customer provides such notification within that period, the Replacement Services will be deemed to have been set up correctly and to have been accepted by the Customer and Sureline shall be permitted to invoice the Customer for the Set-up Fee and Fees for the Replacement Services.
- 4.4.1 If Sureline notifies the Customer that the Services are ready for installation but the Customer is not ready to accept such installation, then Sureline retains the right to invoice the Customer the Fees for the Services including the Set-up Fee or Fees. All rights set out in clause 4.3.1 apply to Replacement Services equally.
- 4.5 If the Customer notifies Sureline of any defect in the installation or operation of the Services (or Replacement Services, as the case may be) within the 2 Working Day period referred to in Clause 4.3 or 4.4 above, Sureline will use its reasonable endeavours to fix such defect and the Customer shall provide Sureline (or its third party supplier) with reasonable assistance or access to the Premises for such purpose. Failure to provide Sureline with reasonable assistance or access to the Premises will be deemed acceptance by the Customer of the Services (or Replacement Services, as the case may be) and shall entitle Sureline to invoice for all applicable Fees before the defect has been rectified. The provisions of this Clause and Clauses 4.3 or 4.4 (as the case may be) shall apply to any re-installation of the Services or Replacement Services and the Service Commencement Date will be amended accordingly. Once acceptance of the Services or Replacement Services has been deemed to have been given by the Customer, invoicing will commence from the Service Commencement Date and the Set-up Fee and Fees shall be due and payable in accordance with this Agreement.
- 4.6 The Customer may request Managed Delivery of the Services and this Managed Delivery shall incur an additional charge as set out in the Order Form and/or Service Description.
- 4.7 If during the Initial Term, after the Customer has completed Sureline's diagnostic procedure as advised by the Sureline support team, any Sureline Equipment is identified as being faulty by the customer, then Sureline shall despatch replacement Sureline Equipment to the Customer. The Customer must despatch the faulty Sureline Equipment back to Sureline within 5 Working Days of agreement by Sureline that the Sureline Equipment is faulty. If such Sureline Equipment is not returned to Sureline within 5 Working Days, then Sureline reserves the right to invoice the Customer for the Sureline Equipment, faulty or otherwise.
- 4.8 Without prejudice to its other rights and remedies, Sureline will be entitled to suspend the Services and/or terminate the Agreement if Sureline in its sole discretion believes or has reason to believe that the Customer is in breach of any provision of this Clause 4.

## 5. FEES FOR THE SERVICES

- 5.1 Sureline shall provide a valid VAT invoice to the Customer for all Fees. The Customer shall pay to Sureline the Fees for the Services in the amount and on the basis specified in the Order Form(s) and or SOW. Save as expressly set out in the

Order Form(s) and or SOW all invoices issued by Sureline under this Agreement shall be paid by the Customer in cleared funds within 14 calendar days of the date of invoice. Sureline's default method of payment is by direct debit. Where the customer opts for non-direct debit payment, Sureline shall charge 1.25% of the total annual recurring fee for payment processing. Where more than one Service is included on any Order Form(s) and or SOW, Sureline may invoice for each of the Services separately including Set-up Fees. In relation to this clause 5.1 the billing terms contained within the Billing Schedule of the SOW take precedence over the billing terms contained within the Master Services Agreement and the Order Form.

- 5.2 Sureline may elect at its discretion to raise a proforma invoice with individual credit terms without prejudice to any of the Terms and Conditions stated herein.
- 5.3 The Services may be subject to installation site surveys. Additional Set-up charges may arise as a result of such surveys ("Additional Charges"). Sureline will notify the Customer of any Additional Charges applicable to the Service(s) as soon as is practicable. If Sureline receives survey results giving rise to Additional Charges for the Service(s) after sending the Customer written confirmation of the Order Form in accordance with Clause 3.1.3, Sureline will notify the Customer of these Additional Charges. For the avoidance of doubt, in the event that the Excess Charges are less than "10%" of the total contract value, the Customer shall be obligated to accept these charges notwithstanding its rights under this clause 5.3. In the event that the Additional Charges are in excess of "10%" of the total contract value, the Customer may cancel the specific Services on the Order Form to which the Additional Charges relate, without penalty, if the Customer notifies Sureline in writing within 5 days of the date of Sureline's notification of the Additional Charges. If Sureline does not receive notice from the Customer within that time, the Additional Charges will be added to the Fees set out in the Order Form.
- 5.4 Sureline may alter the amount of, or payment terms relating to, the Fees (including the Set-up Fees) at any time during the Term for the following reasons:
- 5.4.1 to take account of any increase in the costs incurred by Sureline in the Set-up of the Services (including any increase in the costs or charges of any third party supplier or licensor to Sureline);
  - 5.4.2 to pass on any increase in data centre charges imposed by any third party supplier to Sureline at any time
  - 5.4.3 to pass on any increase in charges imposed by any telecommunications supplier to Sureline at any time

Sureline shall notify the Customer in writing of any such alteration increase and shall endeavour to give the Customer 30 days' prior notice of such charge.

- 5.5 The Fees are non-refundable in any circumstances, except where expressly stated otherwise in this Agreement. If the Customer terminates the Services, Sureline will not refund Fees paid in advance by the Customer save where the provision of the Services by Sureline or this Agreement is terminated by the Customer pursuant to Clause 8.4.
- 5.6 Fees are stated exclusive of Value Added Tax, which shall be paid by the Customer unless otherwise stated.

- 5.7 Fees do not include charges for any third party communications services used by the Customer to connect the Customer to the Services unless otherwise stated.
- 5.8 Where Sureline provides advanced support, custom programming or configuration, or software set up which is not referred to in the Order Form then it may charge the Customer additional Fees which will be calculated on a time and materials basis at Sureline's standard consultancy rates in place from time to time. No such work will be undertaken without the prior written consent of the Customer.
- 5.9 If a Customer reports a Service issue which results in either a Sureline or third party engineer attending the Premises and the Customer has not followed the Sureline support team's procedure for trouble-shooting a Service issue, and it is determined that the issue is due to a Customer error, Sureline may charge the Customer for the engineer's time ("Engineer Fees"). Engineer Fees will be charged at appropriate rate as set out at the time of contract on a per site visit and may be amended from time to time without notice.
- 5.10 Where Sureline is providing the Customer with International Services and the applicable exchange rate for that country increases by more than 5%, then Sureline may increase the Fees to the Customer accordingly on 30 days written notice.
- 5.11 If payment of any Fees is not made in full by the Customer by the due date for payment under the terms of this Agreement, Sureline may at its discretion, without prejudice to its other rights and remedies:
- 5.11.1 charge interest on any overdue amounts at the rate of 5% per annum above Barclays Bank plc base rate for the time being, calculated from the date of the invoice to the date actual payment is received, whether before or after judgment; and/or
- 5.11.2 suspend the provision of the Services to the Customer until such time as all overdue amounts (including any interest due) are paid in full; and/or
- 5.11.3 suspend entitlements of any amounts due under the SLA.
- 5.12 Sureline may charge the Customer administration fees in respect of any cheques and direct debits returned unpaid by the Customer's bank and any credit card payments returned unpaid.
- 5.13 In the event of replacement, upgrading, reconnection or other amendment of services, Sureline reserves the right to issue parallel billing to facilitate the transition between the services. Any derogation from the provisions in 5.14 is at the sole and exclusive discretion of Sureline and includes any "overlap" derogation between the charges for existing services and newly added services.
- 5.13.1 The Customer agrees that when it places an order for new hosting services with Sureline, within 14 days of such service being made available by Sureline for use by the Customer, Sureline will cease billing for the existing hosting service and commence billing for the new hosting service. The Customer agrees that if it fails to move to the new hosting service within 14 days for any reason whatsoever, the Customer will be liable for and will be billed concurrently for the existing and new hosting services.

- 5.14 All amounts due under this Agreement to be paid by the Customer to Sureline shall be paid in full without any deduction or withholding other than that required by law in respect of withholding or deduction of tax and the Customer shall not be entitled to assert any credit set-off or counterclaim against Sureline in order to justify withholding payment of any such amount in whole or in part.
- 5.15 Sureline may at any time require the Customer to issue a deposit or other form of security acceptable to Sureline if:
- 5.15.1 the Customer's financial circumstance or payment history is or becomes unacceptable to Sureline;
- 5.15.2 there is a material change in the Customer's actual or anticipated usage of the Services which results or, in Sureline's sole opinion, may result in an increased risk to Sureline of the Fees not being paid by the Customer.

Upon receipt of a written request for security from Sureline, the Customer shall have 5 Working Days to provide such security and, if the Customer fails to comply with such request in that time period, Sureline may, at its sole discretion, immediately refuse to accept any further Order Forms and /or suspend the delivery of Services and/or terminate this Agreement without further notice and without refund to the Customer of any payments received to date.

- 5.16 Sureline reserves the right to apply RPI-linked annual price increases at any time during the contract duration.

## 6. CONFIDENTIALITY

- 6.1 Each party (the "receiving party") shall hold and keep confidential all Confidential Information of the other party (the "disclosing party") during the Term and thereafter, and shall not disclose any such Confidential Information to any third party without the express written permission of the disclosing party. Without limitation, the terms of any SLA entered into pursuant to this Agreement shall be the Confidential Information of Sureline.
- 6.2 Nothing in this Clause 6 shall prevent the receiving party from disclosing:-
- 6.2.1 any Confidential Information of the disclosing party to any Group Company, consultant, subcontractor or other person provided that such disclosure is reasonably necessary for the purposes of this Agreement and that the receiving party has ensured that the recipients are made aware of and comply with the provisions of this Clause 6 in relation to such Confidential Information;
- 6.2.2 any Confidential Information which is or becomes public knowledge other than by a breach of this Clause 6;
- 6.2.3 any Confidential Information which must be disclosed to any governmental or regulatory body or for any legal or judicial proceedings.

- 6.3 The Customer acknowledges that any Confidential Information obtained from or relating to Sureline or any Sureline Group Company by the Customer in the course of negotiating or in the performance of this Agreement is and shall remain the property of Sureline or the relevant Group Company, as applicable.
- 6.4 Notwithstanding the provisions of this Clause 6, the Customer hereby agrees that Sureline may refer to the Customer, by company or trading name, and to the existence of this Agreement in any marketing or promotional materials of Sureline or any Sureline Group Company (including the Sureline Website).

## 7. OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS

- 7.1 All right, title and interest to and all Intellectual Property Rights in the Service Deliverables remains with Sureline, the Sureline Group Companies and/or Sureline's suppliers and licensors. The Customer shall not do, or omit to do, anything which may jeopardise, limit or interfere in any manner with Sureline's rights (or the rights of its Group Companies, suppliers and/or licensors) in the Service Deliverables.
- 7.2 Without prejudice to Clause 7.1, where in the course of the provision of the Services, Sureline provides any Service Deliverables which are owned or licensed by any third party (which shall include any Sureline Group Company) or in which any Intellectual Property Rights are vested in a third party, the Customer shall comply in full with all licence or other agreements applicable to the use of such third party Service Deliverables (as may be amended from time to time).
- 7.3 If any Sureline proprietary software is provided by Sureline to Customer as part of the Services, Sureline hereby grants a personal, non-transferable, non-exclusive licence for the Term to the Customer to use such software solely for the purposes of the receipt of use of the Services under this Agreement. The Customer agrees to comply with any terms and conditions governing the use of such software provided to it by Sureline from time to time.

## 8. TERM AND TERMINATION

- 8.1 Subject to this Clause 8, each of the Services will commence on the Services Commencement Date and shall continue for the Initial Term. If the Services are specified within the Order Form as being Replacement Services, then a new Initial Term shall apply for the Replacement Services. At the end of the Initial Term, each Service will be automatically renewed for the Renewal Term, and thereafter for consecutive Renewal Terms, unless or until:
- 8.1.1 such Services are terminated pursuant to Clause 8.2 of this Agreement; or
- 8.1.2 this Agreement is terminated, whichever is earlier.
- 8.2 Both Sureline and the Customer may terminate the provision of any of the Services at the end of the Initial Term or any Renewal Term for such Services by providing not less than the Minimum Written Notice to the other party prior to the expiry of the Initial Term or the relevant Renewal Term (as the case may be).

- 8.3 Sureline may terminate this Agreement or the provision of any of the Services under this Agreement at any time immediately upon written notice to the Customer if:
- 8.3.1 the Customer is in material breach of this Agreement which is capable of remedy, and has failed to remedy such breach within 15 days of a written request from Sureline to do so. Any failure by the Customer to pay any sum due under this Agreement by the due date for payment shall, without limitation, be a material breach of this Agreement which is capable of remedy for the purposes of this Clause 8.3.1;
  - 8.3.2 the Customer is in material breach of this Agreement which is incapable of remedy. A breach of Clauses 4, 6 or 7 by the Customer shall, without limitation, be a material breach of this Agreement which is incapable of remedy for the purposes of this Clause 8.3.2;
  - 8.3.3 it becomes unlawful for Sureline (or any other third party supporting the Services) to continue to provide the Services, or any other third party supporting the Services is required to cease the Services by a competent regulatory authority; or
  - 8.3.4 any other third party supporting the Services ceases to provide its services to Sureline or otherwise materially changes the terms on which it provides its services to Sureline, beyond the reasonable control of Sureline;
  - 8.3.5 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or enters into any composition or arrangement with its creditors generally.
- 8.4 The Customer may terminate this Agreement at any time immediately upon written notice to Sureline if:
- 8.4.1 Sureline is in material breach of this Agreement which is capable of remedy, and has failed to take steps to remedy such breach within 60 days of a written request from the Customer to do so; or
  - 8.4.2 Sureline is in material breach of this Agreement which is incapable of remedy.
- 8.5 Either party may terminate this Agreement at any time immediately upon notice in writing to the other party if:
- 8.5.1 the other party suspends, or threatens to suspend, payment of its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act (1986); or
  - 8.5.2 an order is made or resolution is passed, or a notice is issued convening a meeting for the purpose of passing a resolution, or any analogous proceedings are taken for the winding-up, administration or dissolution (other than a members' voluntary liquidation solely for the purpose of solvent amalgamation, reconstruction, reorganisation, dissolution, merger or consolidation) of the other party; or

- 8.5.3 any liquidator, trustee in bankruptcy, receiver, administrative receiver, administrator or similar officer is appointed over, or in respect of, the other party or any part of its business or assets; or
  - 8.5.4 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days.
- 8.6 Upon termination or expiry of this Agreement or the provision of any of the Services:
- 8.6.1 the Customer shall immediately stop using the Services and the Customer's right to use the Services shall immediately cease;
  - 8.6.2 any licences granted by Sureline under this Agreement shall terminate; and
  - 8.6.3 the Customer shall remain liable for all outstanding obligations and Fees including any termination or cancellation fees referred to in this Agreement.
  - 8.6.4 all Sureline Equipment shall be returned to Sureline by the Customer at the Customer's expense. If all such Sureline Equipment is not returned to Sureline within 5 Working Days after termination or expiry of this Agreement then Sureline may invoice the Customer for the replacement value of the Sureline Equipment. Sureline or its agents may enter the Premises to inspect any Sureline Equipment that the Customer may have connected to the Service. These permissions are to remain in force until Sureline or its agents have removed all Sureline equipment, from the premises, even when the agreement has been cancelled or terminated.
- 8.7 The following Clauses shall survive the termination or expiry of this Agreement: 1.1, 1.2, 8.6, 8.7, 10, 11, 12, 14, and 16.

## 9. WARRANTIES

- 9.1 Each party warrants that it has full capacity and authority, and all necessary licences, permits and consents to enter into and perform this Agreement.
- 9.2 Sureline, or any third party suppliers instructed by Sureline, shall provide the Services using reasonable care and skill with due regard to applicable Health and Safety guidelines.
- 9.3 The Services shall be provided in compliance with applicable law and regulation.
- 9.4 Save as expressly set out in this Agreement, all conditions, warranties and representation, express or implied, statutory or otherwise (including the fitness of the Services for a particular purpose) are hereby excluded and warranty payments pursuant to the Service Level Agreement shall not apply where Customers are in default of payment arrangements.

## 10. LIABILITY



- 10.1 The Customer shall indemnify and keep Sureline indemnified against any and all costs, claims, losses, liabilities, proceedings and expenses (including legal fees) which are brought or threatened against Sureline or a Sureline Group Company by any person, arising out of or in connection with the Customer's:
  - 10.1.1 use of the Services; or
  - 10.1.2 breach of this Agreement.
- 10.2 In relation to the indemnity under Clause 10.1 Sureline shall
  - 10.2.1 notify the Customer in writing of any Claim or potential Claim;
  - 10.2.2 make no admission of liability or settlement without the Customer's prior written consent, such consent not to be unreasonably withheld or delayed;
  - 10.2.3 provide the Customer with all information and assistance that the Customer may reasonably require in relation to the Claim (at the Customer's expense); and
  - 10.2.4 allow the Customer control over the litigation and settlement of any Claim. provided that the Customer keeps Sureline fully and regularly informed as to the progress of any Claim and that the Customer conducts such Claim with all due attention and skill. In the event that Sureline is not satisfied with the Customer's conduct of the Claim at any time, Sureline may take over the conduct of the Claim and may settle or defend any such Claim as it thinks fit without requiring the consent of the Customer.
- 10.3 Nothing in this Agreement shall exclude or limit either party's liability for
  - 10.3.1 death or personal injury resulting from its negligence or that of its employees, agents or subcontractors;
  - 10.3.2 fraud or fraudulent misrepresentation; and
  - 10.3.3 any other matter for which liability cannot be excluded or limited as a matter of law.
- 10.4 Subject to Clause 10.3, Sureline shall not be liable to the Customer for any:-
  - 10.4.1 indirect, special or consequential loss of damage; or
  - 10.4.2 loss of profits, business opportunities, revenue, anticipated savings; wasted expenditure, goodwill or for any loss or corruption or destruction of data.
- 10.5 Subject to Clause 10.3 and 10.4, Sureline's total aggregate liability in contract, tort or otherwise (including negligence) howsoever arising out of or in connection with this Agreement shall, in respect of any incident or any one or more connected incidents, not exceed the total Fees received by Sureline from the Customer in the calendar year in which the incident (or series of connection incidents) giving rise to the liability occurs. Notwithstanding the previous provisions of this Clause, Sureline's total aggregate liability under or in connection with this Agreement shall not exceed £2,000,000.

- 10.6 The Customer accepts that Sureline has no control over the information transmitted to or from the Services and that Sureline does not ordinarily examine the use to which Customers put the Services or the nature of the information they are sending or receiving and the Customer agrees that Sureline is a mere conduit in accordance with the Electronic Commerce (EC Directive) Regulations (2002). Sureline hereby excludes all liability of any kind for the transmission or reception of information of whatever nature through the Services.
- 10.7 The parties expressly agree that if any limitation or provision contained or expressly referred to in this Clause 10 is held to be invalid under any applicable statute or rule of law, it shall, to that extent, be deemed omitted. If any party becomes liable for loss or damage which would otherwise have been excluded, that liability shall be subject to the other limitations and provisions set out in this Clause 10.

## 11. DATA PROTECTION

- 11.1 Each party shall comply with its respective obligations under the *Data Protection Act* (1998) (as amended or replaced from time to time) (“DPA”) in respect of any personal data related to either party’s employees, customers and agents which comes into the receiving party’s possession. Neither party shall do or omit to do anything which places the other party in breach of its obligations under the DPA, and nothing in this Agreement shall be deemed to prevent any party from taking the steps it reasonably deems necessary to comply with the DPA.

## 12. NOTICES

- 12.1 Any notice required to be given under or in connection with this Agreement shall be in writing and shall be served by delivering it personally, or by sending it by pre-paid first-class post, recorded delivery or registered post, or by fax or email by the Customer to Sureline at: Sales Administrator, Sureline Communications Limited, The Old Coach House, Mill Yard, Swan Street, West Malling, Kent ME19 6LP, fax: +44 (0) 1732 252004; email [sales@sureline.net](mailto:sales@sureline.net) and by Sureline to the Customer to the address, fax number and/or email address set out on the Order Form (or to such other address as either party may have notified to the other party in accordance with this Clause 12.1).
- 12.2 A notice shall be deemed to have been received:
- 12.2.1 if delivered personally, at the time of delivery;
  - 12.2.2 if delivered by post, 3 Working Days from the date of posting;
  - 12.2.3 if sent by fax or email, the same Working Day of sending.

## 13. FORCE MAJEURE

- 13.1 Neither party to this Agreement shall be liable to the other for any delay or non-performance of its obligations under this Agreement to the extent that such delay or non-performance is due to a Force Majeure Event. The Customer may not rely on a

Force Majeure Event for any delay or non-performance of any obligation to pay Sureline under this Agreement.

- 13.2 Either party may, during the continuance of any Force Majeure Event, terminate this Agreement by written notice to the other party if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than 30 Working Days.

## 14. GENERAL

- 14.1 This Agreement (consisting of this Business Services Agreement, the Order Form, the AUP, and any SOW, Service Description or SLA) constitutes the entire agreement and understanding between the parties in respect of the matters set out in the Agreement and supersedes any previous agreement between the parties in relation to such matters. Any amendments agreed between the parties will be appended to this Agreement as a separate schedule and in the event of any discrepancy between the terms of the schedule and this MSA, then the terms of the schedule shall prevail.
- 14.2 The Customer acknowledges that, in entering into this Agreement, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) except as expressly provided in this Agreement. The only remedy available to the Customer in respect of any such statement, representation, warranty or undertaking shall be for breach of contract under the terms of this Agreement. Nothing in this Clause 16.2 shall operate to exclude any liability for fraud.
- 14.3 A person who is not party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act (1999) to enforce any term of this Agreement. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 14.4 A waiver of any right under this Agreement is only effective if it is in writing and signed by the waiving party, and it applies only to the person to whom the waiver is addressed and the circumstances for which it is given.
- 14.5 Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.
- 14.6 If any provision of this Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 14.7 This Agreement is personal to the Customer and accordingly the Customer shall not assign, or grant any security interest over, any of its rights or obligations under this Agreement without the prior written consent of Sureline. Sureline retains the right to assign this Agreement to any Group Company at any time. Sureline may assign, transfer or otherwise dispose of its interest to any Party whatsoever in contracts involving Sureline Limited customers including and without exception customers whose original contracts were novated, assigned or otherwise acquired by Sureline

Limited. Sureline shall provide notice thereof by posting changes to the website as per Clause 2.4 of the Master Services Agreement and the Customer agrees that this is satisfactory notice for the purposes of novation, assignment or other disposal of Sureline’s interest. Sureline shall be entitled to assign, transfer or otherwise dispose of the benefit and burden of this Agreement and Sureline will not be liable to the Customer for the observance and performance of its obligations under this Agreement

14.8 This Agreement is subject to the laws of England and Wales and both parties hereby submit to the exclusive jurisdiction of the English Courts.

14.9 Signed for and on behalf of:

<b>Sureline Communications Limited</b>	<b>Customer</b>
Authorised Signature:	Authorised Signature:
Name:	Name:
Title:	Title:
Date	Date