



Sure (Diego Garcia) Limited
Diego Garcia
British Indian Ocean Territory
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General Terms and Conditions for the Provision of Telecommunications Services

This document details the Terms and Conditions for the provision of the Services offered by “Sure (Diego Garcia) Limited” (“Sure”) to Customer. The Customer and Sure are deemed to have accepted the Terms and Conditions below.

1. Definition and Interpretation

1.1 In these General Terms and Conditions of Service, the following words and expressions shall have the following meanings:

“Account” means any account of a Customer with Sure with respect to the provision of any Service;

“Bill” means any bill, invoice or statement issued or rendered by Sure of any charge, fee or other sum stated therein as due or payable to Sure and/or of the sum or sums or balance due or payable to or from Sure in respect of any Service or on any Account;

“BIOT” means the British Indian Ocean Territory, an Overseas Territory of the United Kingdom, of which Diego Garcia is a part;

“Customer” means any person who applies or subscribes for or utilizes any Service (in the case of a Customer which is a corporation, means the corporations comprising the Customer and its related corporations);

“Customer Agreement” means an agreement between Sure and the Customer relating to any Service or Sure Equipment, including the General Terms and the Specific Terms, if any, relating thereto;

“Customer Request” means any request, order or instruction of the Customer to Sure (whether with respect to any Service additional to the Service described in the Customer Agreement or otherwise);

“Sure” means Sure (Diego Garcia) Limited, whose registered office is located at “Cumberland House, 9th Floor, 1 Victoria Street, Hamilton HM11, Bermuda”.

“Sure Equipment” means any equipment or thing owned, operated, installed and/or hired out by Sure (including, where the context so admits, any software installed therein or used by Sure in conjunction with the operation of such equipment or thing);

“Sure Intellectual Property” means all patent, copyright, trademark and other intellectual property subsisting in any Service or any telecommunications system operated by Sure or any Sure Equipment;

“Sure Software” means any computer program, software or other materials installed or provided by or on behalf of any Sure for the purpose of using any Sure Equipment or any Service and including any software installed in any Sure Equipment;

“Due Date” means the date which is 30 days from Customer’s receipt of the Bill;

“Charges” means the fees for the Service(s) as set forth in the Customer Agreement;

“End-User” means any third party to which Customer is providing service, being subject to any specific terms and conditions related to the service being provided as stipulated in the Customer Agreement ;

“End User Premises” means the End User’s premises or place at which the Services are used during the term of the Customer Agreement;

“Force Majeure” has the meaning set out in condition 11;

“General Terms” means these General Terms and Conditions;

“Intellectual Property” means all rights in inventions, patents, copyrights, design rights, semiconductor topography and chip design rights, trade marks and trade names, database right, domain names, service marks, trade secrets, know-how and other intellectual property rights (whether registered or unregistered) and all applications and registrations for and extensions and renewals of such rights or any of them, anywhere in the world;

“Law” means the laws and ordinances of the British Indian Ocean Territory;

“Party” means either the Customer or Sure as the context may require and “Parties” shall be construed accordingly;

“Payment Terms” means terms and conditions by or subject to which the Charges become due and payable, as set forth herein;

“person” includes any association, partnership, firm or corporation;

“Prescribed Rate” means 3% above the base rate from time to time of the Bank of England;

“Service” means any telecommunications or other service (including the supply, rental or installation of any equipment and any service comprised in any Customer Request) offered or provided by Sure from time to time;

“Service Agreement” has the same meaning as Customer Agreement ;

“Service Number” means any number or alphanumeric symbols or characters assigned by Sure or selected by the Customer for the purpose of the provision to or utilisation by the Customer of any Service and/or Sure Equipment including telephone number, mailbox number, e-mail number or address, network user identity, password and circuit reference number;

“Specific Terms” means the terms and conditions of the Customer Agreement agreed between the Customer and Sure with respect to the provision of the Service ; and

“telecommunications equipment” means any equipment used for the purpose of telecommunications or which facilitates telecommunications or the provision of any telecommunications service.

1.2 Where the context so admits, the singular shall include the plural and words in the masculine gender shall include the feminine gender and/or neuter gender and vice-versa.

1.3 Any reference in the General Terms to any condition shall be construed as a reference to the condition in the General Terms unless otherwise expressly stated.

2. Application of General Terms

2.1

a. The General Terms shall apply to the Services provided to the Customer hereunder and the Specific Terms except to the extent, if any, expressly excluded in the Specific Terms provided nevertheless: only to the extent that such conflict or inconsistency cannot be so resolved, the provision of the Specific Terms shall prevail over the provision of the General Terms; and

b. that all rights conferred on Sure under the General Terms with respect to any matter or event shall be additional to the rights conferred on Sure under the Specific Terms.

2.2 The Customer Agreement shall remain in full force and effect until terminated pursuant to condition 7 of these General Terms.

2.3 The Customer undertakes to procure that the End-User complies with the Customer’s obligations under the Customer Agreement. The Customer accepts overall responsibility for compliance with such obligations and shall indemnify Sure against any claim, damage, loss, liability, cost or expense (including reasonable legal costs) suffered or incurred by Sure as a result of any act or omission of the End-User and any damage to Sure Equipment by the End-User.

3. Charges, Payment Terms, Interest and Taxes

3.1 Sure may, subject to compliance with the applicable provisions of the Law, impose Charges and the Payment Terms as set forth herein.

3.2 The Customer shall only be charged Charges in respect of the Services that are set forth in the Customer Agreement and in respect of any services provided pursuant to a Customer Request.

3.3 The Customer shall promptly pay Sure the Charges as set forth in the Customer Agreement as invoiced to Customer on the Due Date in accordance with the Payment Terms.

3.4 Sure shall be entitled to charge the Customer interest on any amount due or payable to Sure from the Customer and not paid by the Due Date at the Prescribed Rate.

- 3.5 All sums due to Sure under the Agreement are exclusive of all taxes applicable for the delivery of the Services to the Customer as are in force and chargeable at the Commencement Date. Any other taxes, fees, levies, imposts or other charges which become legally applicable from time to time shall be charged in addition at the relevant time in accordance with the relevant law in force at the time of making the taxable supply and shall be paid by the Customer. In addition, the Parties hereto agree to cooperate to minimize the consequences of complying with relevant withholding tax laws (the "Withholding Taxes") and enter into arrangements, wherever possible and commercially reasonable in each Party's sole discretion, to do so. To the extent the Parties cannot agree to a mutually agreeable arrangement or payment to be made with respect of any invoice subject to a Withholding Tax from a foreign taxing jurisdiction, and notwithstanding anything to the contrary herein, Customer shall make payment to Sure of the amount owing on the invoice, less a deduction for the Withholding Tax, and shall account directly to the relevant taxing authority for the withheld tax. Payment of the net sum to Sure and the Withholding Tax to the relevant taxing authority shall constitute for purposes of the Agreement, full settlement of the amount owing under the applicable invoice. Customer will furnish any necessary evidence that is reasonably requested by Sure regarding Customer's payment of the Withholding Tax to the relevant taxing authority.
- 4. Bills**
- 4.1 Sure will render a Bill in respect of Services monthly and any Monthly Charge for the Service as set forth in the Customer Agreement shall be paid within thirty (30) days following the receipt of the Bill.
- The Customer shall have the right to dispute any Charges invoiced to them. In the event of any such dispute, the Parties will refer to the dispute procedure as set out in clause 17. The Customer shall promptly provide Sure with all information and assistance reasonably requested by Sure to investigate and verify any such assertion of the Customer. Sure shall provide a written response to the Customer within 15 days of its receipt of Customer's written notice of a billing dispute.
- 4.2 A Customer who pays a Bill, and subsequently chooses to dispute any amount, item, entry or matter stated therein, must give Sure a written notice of such dispute not later than six months from the date of such Bill and in the event that the Customer serves any such written notice on Sure with respect to any Bill within the six month period, Sure will conduct a complete and objective review of such disputed amount, item, entry or matter and will provide a written response to the Customer within 15 days of its receipt of such written notice.
- 4.3 In case of disputes over any usage of the Services or the Charges, Sure decision based on its usage records and those of any third party in providing the Services shall be final and binding on the Customer.
- 4.4 Any overpayment by the Customer with respect to any amount, item, entry or matter stated in the Bill shall be credited by Sure (without interest) to the relevant Account after Sure has completed its investigations and is satisfied as to the error or inaccuracy of that amount, item, entry or matter.
- 4.5 The Charges for any Services not Billed to Customer within six months following the provision of the Services are waived by Sure.
- 5. Customer Request**
- 5.1 All applications for any additional Services not set forth herein shall be subject to review and acceptance by Sure. Sure shall not be obliged to provide, carry out or implement any Customer Request in the absence of any express agreement or confirmation by Sure that it will do so.
- 5.2 Any Customer Request which Sure has agreed or confirmed it would provide, carry out or implement shall be provided, carried out and implemented by Sure subject to the General Terms and Specific Terms relating thereto and such other terms as Sure may stipulate and are agreed to by Customer, if any, and within such time or period as Sure may determine having regard to the circumstances and the resources available, notwithstanding any time or period that may have been stipulated therefore by the Customer. Any delivery date for the provision of service is an estimate unless informed in writing otherwise.
- 6. Access to End User Premises and Charges for Attendance and Inspection**
- 6.1 The Customer shall ensure that Sure, its representatives and agents have access to the End User Premises in accordance with End User's safety and security procedures as is reasonably necessary for the provision of Services under the Agreement.
- 7. Term, Suspension and Termination of Service**
- 7.1 The Customer Agreement shall commence on the commencement date as stipulated in the Customer Agreement and shall continue in force, unless terminated or suspended in accordance with this clause 7 under the same terms until terminated by either Party, with no termination liability.
- 7.2 Sure may suspend (indefinitely or for such period as Sure may consider appropriate) or terminate any Service at any time by giving not less than thirty (30) days' written notice and opportunity to cure within such 30 day notice period, to the Customer and stating its reason(s) for the suspension or termination of the Services, if, in the reasonable opinion of Sure:
- the Customer, or the End User has used the Service or Sure Equipment subscribed by the Customer (whether with or without the authorisation and/or permission of the Customer) in contravention of any Law or the Customer Agreement; or
 - the Customer has breached any material obligation (including for the avoidance of doubt the obligation to pay the Charges) in the Customer Agreement with Sure and failed to remedy such breach (if capable of remedy) within thirty (30) days of Sure serving notice of such breach;
- 7.3 Either Party may immediately terminate upon giving written notice to the other Party any or all Services at any time if the other Party suffers any of the following events:
- any resolution is passed by the shareholders of the Party or any proceeding is commenced before any court of competent jurisdiction for the bankruptcy, judicial management, winding-up, liquidation of the Party or the appointment of any receiver over any of the assets of the Party or the Party suspends payment of its debts or makes any proposal or offer of arrangement or composition to all or any class of its creditors with respect to its debts;
 - any action is taken by any creditor of the Party to recover, realise or enforce any security over any assets of that Party or to enforce any judgment against the Party;
 - the Party causes any failure, interruption, disruption or congestion of or in any telecommunications network, system or services (whether of the other Party or any other person);
 - the Party has perpetrated a fraud on the other Party;
 - if in the opinion of any relevant regulatory authority or law enforcement body, it is not in the public interest to continue the Customer Agreement.
 - any gift or consideration of any kind was offered or given to any officer, employee, agent or contractor of a Party as an inducement or reward in connection with the Customer Agreement in violation of Law.
- 7.4 The suspension or termination of any Service shall not affect the rights of either Party under the Customer Agreement.
- 7.5 Nothing in this condition 7 shall prejudice or affect any right of Sure to suspend or terminate any Service conferred by the Specific Terms.
- 7.6 In the event that any Service is terminated due to the acts of Customer as set forth in this Section 7:
- all sums due or accruing due or payable to Sure with respect to that Service and/or the use of any Sure Equipment up to the date of termination shall upon termination become immediately due and payable to Sure;
- 7.7 Where any Service has been suspended due to the wrongful acts of Customer as set forth herein, the Customer shall continue to pay those Charges in respect of that Service for the period during which the Service has been suspended and, in the event the Service is reconnected or reinstated, in respect of all reconnection or reinstatement charges as agreed by Customer.
- 7.8 Sure may, at its absolute discretion and subject to any Customer Agreement relating thereto and any other terms which Sure may impose, reinstate any Service which has been suspended or terminated subject always to the terms of the Customer Agreement thereto.
- 7.9 The rights conferred on Sure to terminate or suspend any Service shall be exercised subject to such restrictions, limitations and prohibitions in the Law as are applicable.
- 7.10 Early Termination of Service Order Supporting Government Contract In the event that all Services entered into by Customer under the Customer Agreement shall be in support of a government contract, and in the event that the government terminates its contract or order with Customer, Customer shall have the right to terminate the corresponding Service as set forth herein with no termination liability. Customer and Sure agree that Sure will accept a termination for convenience only in the event a like termination for convenience is issued by the government End User customer to Customer.
- 7.11 Service in Support of Government Contracts. Notwithstanding anything else to the contrary in the Agreement, if a Service Statement is entered into by Customer in support of a government contract, at a minimum, the U.S. Government Flow-Down Clauses set forth in Attachment A shall apply to that Service and in the event of a conflict between the provisions of the Service and Attachment A, the provisions of Attachment A shall control.
- 8. Service Number and Intellectual Property and other Rights**
- 8.1 The Customer shall not acquire any right or interest in:
- any Service Number notwithstanding the duration for which such Service Number may have been assigned or used by the Customer or any payment which may have been made by the Customer for it; or
 - any and all Sure Intellectual Property.
- 8.2 Sure may at any time terminate the availability of any Service Number or change, re-assign or replace any Service Number without giving any reason therefore.
- 8.3 The Customer shall not use any Sure Intellectual Property or permit any person to use any Sure Intellectual Property.
- 9. Indemnity and Liability**
- 9.1 Subject to the limit on liability set out in clause 10.3, each Party (the "Indemnifying Party") agrees to indemnify, defend and hold harmless the other (the "Indemnified Party"), from and against any and all losses, expenses, liabilities, claims, damages and costs that the Indemnified Party may incur or suffer arising out of or in relation to any claims or allegations by a third party against the Indemnified Party that any item(s) provided by the Indemnifying Party to the Indemnified Party under the Customer Agreement, infringes or is likely to infringe a third party's Intellectual Property (an "Infringing Item").

- 9.2 Sure is not liable to Customer to the extent a claim under clause 9.1 is based on (a) the use of the Services in combination with any service facilities, equipment or software not owned, provided or procured by Sure or (b) modification of the Equipment or Services by Customer or the End User not authorised by Sure.
- 9.3 In addition to the obligation to indemnify under clause 9.1, in respect of any Infringing Item, the Indemnifying Party will at its own expense:
- (a) Obtain a license and/or other necessary rights permitting the continued exercise of the rights conferred by or pursuant to the Customer Agreement with respect to such Infringing Item; or
 - (b) Replace or modify the Infringing Item to make it non-infringing and still in compliance with the applicable Specifications and other requirements of the Customer Agreement, while permitting the continued exercise of the rights conferred by or pursuant to the Customer Agreement with respect to such Infringing Item.
- 9.4 In relation to any indemnity under the Agreement, the Indemnified Party will provide the Indemnifying Party with: (i) prompt written notice of any claims; (ii) the right to control and direct the investigation, defence and settlement of such claims; and (iii) reasonable co-operation in connection with such investigation, defence and settlement. The foregoing shall not restrict the right of either Party to participate via its own counsel at its own expense.

10. Exclusion and Limitation of Liability

- 10.1 Nothing in the Agreement shall exclude or restrict either Party's liability for (i) death or personal injury resulting from the negligence of the Party, its employees, assigns or agents while acting in the course of their employment (ii) or for fraud.
- 10.2 Neither Party shall be liable to the other Party hereunder whether arising in contract, tort, (including negligence) misrepresentation (other than fraudulent misrepresentation), breach of statutory duty or otherwise, for any special, indirect or consequential loss or damage howsoever arising.
- 10.3 Subject to clause 10.1 and 10.2, the total liability of either Party in connection with the Agreement (whether based in contract, delict, tort or otherwise) shall in all cases be limited to an amount equivalent to the Charges paid or payable (whichever is higher) by the Customer in the 12 months immediately prior to the date on which the liability arose.

11. Force Majeure

- 11.1 Neither Party shall be liable to the other under the Agreement for and each is excused from any failure or delay in the performance of its obligations under the Agreement, which is due to any cause beyond the first Party's reasonable control including without limitation any act of God, inclement weather, failure or shortage of power supplies, flood, drought, lightning or fire, strike, lock-out, trade dispute or labour disturbances, the act or omission of Government, highway authorities, other telecommunications operators or other competent authority, the obstruction by a third party of line of sight between microwave installations, war, military operations, or riot, difficulty, delay or failure in manufacture, production or supply by third parties of the Equipment (a "Force Majeure Event"). Notwithstanding anything to the contrary, if the failure in performance of a Party's obligations under the Agreement due to a Force Majeure Event continues for more than fourteen (14) days after its occurrence, either Party may immediately terminate the Agreement without penalty. Customer's payment obligations for any affected Service(s) shall be suspended during the period of any such Sure-declared Force Majeure Event.
- 11.2 If either Party becomes aware of a Force Majeure Event which gives rise to or which is likely to give rise to a failure to perform its obligations in the Agreement, it shall immediately notify the other Party and shall inform the other Party of the period during which it is estimated that such failure or delay shall occur.

12. Amendment and Variation

- 12.1 No variation or amendment of the Customer Agreement will be effective unless made in writing, signed by or on behalf of the Parties and expressed to be a variation.

13. Communications

- 13.1 For the purposes of the Customer Agreement, the address and contact details for each Party shall be as set out in the Service Agreement.
- 13.2 Any notice which either Party is required or authorised by the Agreement to give or make to the other shall be made in writing and:
- (a) delivered personally; or
 - (b) sent by first class pre-paid postal mail; or
 - (c) sent by facsimile transmission, confirmed by first class prepaid postal mail; and

in each case, addressed to the other Party at the address set out above or such other address subsequently notified in writing by either Party to the other and shall be deemed for the purposes of the Agreement to have been given or made when first received.

14. Waiver and severability

- 14.1 No failure to exercise or enforce, and no delay on the part of either Party in exercising or enforcing its rights under any Customer Agreement shall operate as a waiver thereof nor shall such failure or delay in any way prejudice or affect the right of either Party at any time thereafter to act strictly in accordance with its rights and powers under such Customer Agreement.
- 14.2 If any provision of the Customer Agreement is found to be invalid or unenforceable, the validity and enforceability of the remaining provisions shall not be affected by that finding.

15. Confidentiality

- 15.1 Except as otherwise provided in the Agreement, Sure and Customer each undertakes that it shall:
- (a) only use Confidential Information disclosed by the disclosing Party for the purposes of the Agreement;
 - (b) not disclose to any third party Confidential Information received from the disclosing Party without the prior written consent of the disclosing Party save that the receiving Party (the "Recipient") may disclose Confidential Information disclosed to it by the Disclosing Party on a need-to-know basis to its employees or agents, consultants and sub-contractors (collectively "Receiving Parties") to enable the Recipient to perform its obligations in the Agreement where the Receiving Parties have first undertaken in writing to treat the Confidential Information as confidential under the same terms and conditions as contained in the Agreement; and
 - (c) provide reasonable precautions to ensure that all Confidential Information disclosed to it by the disclosing Party is treated as confidential and not disclosed.
- 15.2 The provisions of clause 15.1 shall not apply to any information which:
- (a) is or becomes public knowledge other than by breach of this clause;
 - (b) is in the possession of the Recipient without restriction in relation to disclosure before the date of receipt from the disclosing Party;
 - (c) is received by either Party from a third party not under a duty of confidence;
 - (d) is required to be disclosed by law or a government, court or regulatory authority but only to the extent required by law or such government, court or regulatory authority provided that prior notice of such disclosure is given to the other Party; or
 - (e) Sure (in advance and in writing) confirms the Customer may disclose to actual or potential End Users in the course of Customer's promotion and/or provision of its services to such End Users.
- 15.3 The obligations relating to Confidential Information shall survive the expiration or termination of the Agreement.
- 15.4 Each Party may identify the other as a provider to it, or a recipient from it, of the Services, but shall not make any further disclosure. With the exception of the circumstances described in this clause, neither Party shall make any press announcements or otherwise publicise the Agreement, or disclose its contents, to any third party.

16. Assignment

- 16.1 Neither Party shall assign, transfer or encumber any or all of its rights, interests and obligations under the Customer Agreement with respect to any Service or Sure Equipment without the prior written consent of the other Party.

17. Disputes

- 17.1 Any dispute or claim arising from or relating to a Customer Agreement, including any dispute or claim regarding the applicability of this provision, shall be resolved as follows: Any dispute between the Parties arising out of or relating to the Agreement will be escalated as follows:
- 17.1.1 within seven (7) Working Days of either Party giving the other notice of the dispute, representatives from the Parties' first level of management will meet in an effort to resolve the dispute;
 - 17.1.2 if the dispute is not resolved by those representatives within three (3) Working Days (or any other agreed period), the dispute will be referred to representatives from the Parties' second level of management, who will meet in an effort to resolve the dispute within three (3) Working Days of its referral to them.
- All representatives nominated under this clause 17 will be fully authorized to settle the dispute
- 17.1.3 If the escalation process in clause 17 is exhausted and the dispute has not been resolved, either party may refer the matter to the courts. Nothing in this clause 17 will prevent either Party from seeking initiating proceedings or applying for or obtaining emergency interlocutory relief.

18. Third party rights

18.1 Unless expressly stated and save for each party’s respective successors and assigns, a person who is not party to the Customer Agreement shall not be entitled to enforce its terms.

19. Applicable Laws and Jurisdiction

19.1 The Customer Agreement shall be subject to and construed in accordance with the laws of the British Indian Ocean Territory with respect to any and all claims and disputes between Sure and the Customer relating to or arising from the Customer Agreement.

ATTACHMENT A

This Attachment A is an integrated part of every Service entered into by Customer and Sure in support of a U.S. Government contract .

U.S. GOVERNMENT FLOW-DOWN CLAUSES: FEDERAL ACQUISITION REGULATION

This Agreement incorporates the following Federal Acquisition Regulation (FAR) Clauses by reference, with the same force and affect as if they were given in full text. "Contractor" shall mean Sure and "Government" and "Contracting Officer" shall mean Customer and Customer’s Contracts Manager or his/her representative, except where the clause(s) require that "Government" or "Contracting Officer" retain its initial definition as defined by the clause(s).

52.219-8	10/00	Utilization of Small Business Concerns
52.222-26	2/99	Equal Opportunity
52.222-35	4/98	Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era
52.222-36	6/98	Affirmative Action for Workers with Disabilities
52.242-15	8/89	Stop-Work Order
52.243-1	8/87	Changes – Fixed Price, w/ Alternates I and II
52.244-6	1/01	Subcontracts for Commercial Items and Commercial Components
52.249-2	9/96	Termination for Convenience of the Government (Fixed-Price)
52.249-8	4/84	Default (Fixed-Price Supply and Service)

END OF GENERAL TERMS & CONDITIONS