



SURGE
MEDIA

Powerful Online Solutions

Terms – Video Production

Surge Media Pty Ltd

Document Control

Release history

Author	Date	Version
Aegir Brands	01 June, 2015	1.1

Confidentiality

The information contained in this document is confidential and proprietary to Surge Media Pty Ltd. This document is submitted by Surge Media with the understanding that it will be held in strict confidence and will not be disclosed, duplicated or used, in whole or in part, for any purpose other than the evaluation of Surge Media's qualifications, without prior written consent of Surge Media. Surge Media classifies this document as Commercial in Confidence.

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Definitions

As used herein and throughout this Agreement:

Client means the client identified in the Proposal.

Client Content means any other materials, audio, script, project brief, information, photography, writings and other creative content provided by Client for use in the preparation of and/or incorporation in the Deliverables.

Copyrights means the property rights in original works of authorship, expressed in a tangible medium of expression, as defined and enforceable under the *Copyright Act 1968* (Cth).

Creative Content means all creative content developed or created by Surge Media, or commissioned by Surge Media, exclusively for the Project and incorporated into and delivered as part of the Final Deliverables, including and by way of example, not limitation, any and all visual designs, visual elements, graphic design, illustration, video footage, photography, animation, sounds, typographic treatments and text.

Deliverables means the services to create the video product specified in the Proposal to be delivered by Surge Media to Client.

Final Deliverables means the final versions of Deliverables provided by Surge Media and accepted by Client.

Pre-Production means work required in relation to project brief, script, production schedule, location scouting and securing, prop, set and wardrobe identification and preparation and any other inputs required before the confirmed production dates.

Production means the process of shooting the video footage or recording the audio to be included in the Deliverable.

Proposal means any proposal, quotation or statement of works prepared by Surge Media identifying the scope of the project and the Deliverable and detailing the price of the works.

Post-Production means the work required in editing video footage, editing the soundtrack, adding sound effects and music, adding titles and graphics, colour and exposure correction, adding special effects.

Project means the scope and purpose of the Client's identified usage of the work product as described in the Proposal.

Services mean all services to be provided to Client by Surge Media in the creation of the Deliverable as described and otherwise further defined in the Proposal.

Surge Media means Surge Media Pty Ltd.

Third Party Materials means proprietary third party materials, which are incorporated into the Final Deliverable, including without limitation music, audio, logos, trademarks, photography or illustrations.

Trademarks means trade names, words, symbols, designs, logos or other devices or designs used in the Final Deliverables to designate the origin or source of the goods or services of Client.

1 Proposal

1.1 Terms of Proposal

In the event this agreement is not accepted by the Client within 30 days of its submission to the Client, Surge Media may withdraw or amend the Proposal at its discretion.

1.2 Order of precedence

In the event of any inconsistency between these Terms and the Proposal, the Proposal shall prevail to the extent of that inconsistency.

2 Fees & Charges

2.1 Fees

In consideration of the Services to be performed by Surge Media, Client shall pay Surge Media fees in the amounts and according to the Proposal document and the Payment Schedule in clause 2.2, and all applicable GST.

2.2 Payment Schedule

The Quotation Amount shall be payable as follows:

- (a) Forty percent (40%) of the total Quotation Amount shall be payable by way of a deposit prior to commencement of project.
- (b) Thirty percent (30%) of the total Quotation Amount shall be payable as progress claim when sixty percent (70%) of the project has been completed; and
- (c) The remaining thirty percent (30%) shall be billed when work is completed but prior to final delivery of the Deliverables.

In case of a short notice project, the Client may receive final delivery by sending Surge Media a bank transfer confirmation evidencing the relevant funds transfer.

2.3 Invoices and collection

All invoices are payable within 7 days of receipt. A monthly service charge of 1.5% is payable on all overdue balances. Payments will be credited first to late payment charges and next to the unpaid balance.

Client shall be responsible for all collection or legal fees necessitated by lateness or default in payment.

2.4 Retention of title

Surge Media reserves the right to withhold delivery and any transfer of ownership of any current work if accounts are not current or overdue invoices are not paid in full.

All grants of any license to use or transfer of ownership of any intellectual property rights under this Agreement are conditional upon receipt of payment in full which shall be inclusive of any and all outstanding additional charges, taxes, expenses, and fees or the costs of any changes.

3 Changes

3.1 General Changes

Unless otherwise provided in the Proposal, and except as otherwise provided for herein, Client shall pay additional charges for changes requested by Client which are outside the scope of the Services on a time and materials basis, at Surge Media's standard hourly rate of \$150 per hour. Such charges shall be in addition to all other amounts payable under the Proposal, despite any maximum budget, contract price or final price identified therein. Surge Media may extend or modify any delivery schedule or deadlines in the Proposal and Deliverables as may be required by such Changes.

3.2 Substantive Changes

If Client requests or instructs Changes that, in the reasonable opinion of Surge Media, amount to a revision of at least 15% of the time required to produce the Deliverables, and or the value or scope of the Services, Surge Media shall be entitled to submit a new and separate Proposal to Client for written approval. Work shall not begin on the revised services until a fully signed revised Proposal and, if required, any additional retainer fees are received by Surge Media.

4 Timeframes

4.1 Production Commencement

Surge Media will commence the provision of the Services and book a shooting date once the Client executes and returns the Proposal and pays the initial deposit.

4.2 Parties obligations as to timing

Surge Media will prioritize performance of the Services as may be necessary or as identified in the Proposal, and will undertake commercially reasonable efforts to perform the Services within the time(s) identified in the Proposal.

Client acknowledges and agrees that Surge Media's ability to meet any and all schedules is entirely dependent upon Client's prompt performance of its obligations to provide materials and written approvals and/or instructions pursuant to the Proposal and that any delays in Client's performance or Changes in the Services or Deliverables requested by Client may delay delivery of the Deliverables. Any such delay caused by Client shall not constitute a breach of any term, condition or Surge Media's obligations under this Agreement.

4.3 Feedback Timeframes

The Client must provide any feedback within 4 weeks of receiving the draft Deliverable for review and feedback, including notifying Surge Media, in writing, of any failure of such Deliverable to comply with the specifications set forth in the Proposal, or of any other objections, corrections, changes or amendments Client wishes made to such Deliverable. Any such written notice must be sufficient to identify with clarity any objection, correction, change or amendment.

5 Rescheduling and Cancellations

5.1 Client Cancellations

Where the Client wishes to cancel any scheduled production (including but not limited to shooting, capturing or production work) it must provide at least 5 business days' notice. The Client acknowledges that the dates for any rescheduled production will be dependent upon Surge Media's availability.

A failure to provide notice within the required timeframe will incur a fee of 25% of the total amount quoted for the production phase. The Client acknowledges that

this amount is a genuine pre-estimate of the loss that Surge Media will incur as a result of the cancellation, including loss of opportunity.

The cancellation fee(s) will be added to the total project cost and will be payable prior to the delivery of the Final Deliverable.

5.2 Surge Media Cancellations

In certain circumstances, Surge Media may cancel a scheduled production date, in which case it will contact the Client to reschedule the date.

If cancellation is due to a technical fault that results in the accidental loss or non-recording of unique, one-off footage, Surge Media will return the Client's paid deposit. The Client agrees that no other claims will be made against Surge Media, its staff, partners, associates or subcontractors.

5.3 Force majeure

Where cancellation and/or loss of footage occurs as a result of unforeseen circumstances beyond a party's control (including but not limited to force majeure, inclement weather, death, illness, criminal activities such as theft or damage), neither party shall have any claim against the other.

6 Client responsibilities

6.1 Communication

The Client will select up to two people within its organisation to be the main contact point for the entirety of the project. All communication, feedback and input must be directed via those nominated individuals.

6.2 Pre-production

The Client acknowledges that the Client is responsible for providing the input and/or Client Content specified in the Proposal. The Client will provide that input or Client Content within 6 weeks of receiving a request from Surge Media to

provide it (or, if the urgency of the project requires a shorter period – that shorter period). If the Client has not provided the input or Client Content or any input before the confirmed shoot date, the project may be put on hold until Surge Media receives the necessary details.

Failure to provide the required input or Client Content on or before the deadline may, at the discretion of Surge Media, result in the Deliverable being finished “as-is”. In such circumstances, the Client will still be responsible for payment of the full amount quoted in the Proposal.

Client acknowledges that Client Content shall be provided in a form suitable for reproduction or incorporation into the Deliverables without further preparation, unless otherwise expressly provided in the Proposal.

6.3 Production

The script, location, talent, art department, catering, crew, equipment and any other items necessary for the filming must be arranged and/or confirmed by the Client at least 10 days before the booked shoot date (refer to Proposal for allocation of production responsibilities).

The Client is responsible for verifying any person involved in the filming on behalf of the Client has agreed to be recorded. Surge Media recommends the use of a talent release form.

6.4 Post production

Within one month of filming, if the Client has not provided a brief or input before the commencement of post-production, the Deliverable and other project material will be archived and a fee will be charged to retrieve it.

7 Ownership of Copyright

7.1 Copyright in Final Deliverable

Upon receiving final payment of all monies due to it under this agreement, Surge Media assigns all right title and interest in and to the Final Deliverable to the

Client. The Client hereby grants an irrevocable, royalty-free, worldwide licence to Surge Media to right to reproduce, publish and display the Final Deliverable in its portfolios and websites, and in galleries, design periodicals and other media or exhibits for the purposes of recognition of creative excellence or professional advancement, and to be credited with authorship of the Final Deliverable in connection with such use.

7.2 Copyright in Creative Content

Surge Media retains all right title and interest in and to the Creative Content except to the extent otherwise stated in the Proposal.

7.3 Third Party Materials

Each party warrants that it has the right to use any Third Party Materials supplied by it for the purposes of the project. Surge Media may seek reimbursement of any costs incurred by it in obtaining licences to use any Third Party Materials in the Deliverable.

8 Confidential information

Each party acknowledges that in connection with this Agreement it may receive certain confidential or proprietary technical and business information and materials of the other party (“Confidential Information”). Each party, its agents and employees shall hold and maintain in strict confidence all Confidential Information, shall not disclose Confidential Information to any third party, and shall not use any Confidential Information except as may be necessary to perform its obligations under the Proposal except as may be required by a court or governmental authority. Notwithstanding the foregoing, Confidential Information shall not include any information that is in the public domain or becomes publicly known through no fault of the receiving party, or is otherwise properly received from a third party without an obligation of confidentiality.

9 Relationship of the parties

9.1 Independent Contractor

Surge Media is an independent contractor, not an employee of Client or any company affiliated with Client. Surge Media shall provide the Services under the general direction of Client, but Surge Media shall determine, in Surge Media's sole discretion, the manner and means by which the Services are accomplished. This Agreement does not create a partnership or joint venture and neither party is authorized to act as agent or bind the other party except as expressly stated in this Agreement. Surge Media and the work product or Deliverables prepared by Surge Media shall not be deemed a work for hire as that term is defined under Copyright Law. All rights, if any, granted to Client are contractual in nature and are wholly defined by the express written agreement of the parties and the various terms and conditions of this Agreement.

9.2 Agents

Surge Media shall be permitted to engage and/or use third party contractors or other service providers as independent contractors in connection with the Services ("Production Agents"). Notwithstanding this, Surge Media shall remain fully responsible for Production Agents' compliance with the various terms and conditions of this Agreement.

9.3 No Solicitation.

During the term of this Agreement, and for a period of six (6) months after expiration or termination of this Agreement, Client agrees not to solicit, recruit, engage or otherwise employ or retain, on a full-time, part-time, consulting, work-for-hire or any other kind of basis, any Surge Media, employee or Production Agent of Surge Media, whether or not said person has been assigned to perform tasks under this Agreement. In the event such employment, consultation or work-for-hire event occurs, Client agrees that Surge Media shall be entitled to an agency commission to be the greater of, either (a) 25 percent of said person's starting salary with Client, or (b) 25 percent of fees paid to said person if engaged by Client as an independent contractor. In the event of (a) above, payment of the commission will be due within 30 days of the employment starting date. In the event of (b) above, payment will be due at the end of any

month during which the independent contractor performed services for Client. Surge Media, in the event of nonpayment and in connection with this section, shall be entitled to seek all remedies under law and equity.

9.4 No Exclusivity

The parties expressly acknowledge that this Agreement does not create an exclusive relationship between the parties. Client is free to engage others to perform services of the same or similar nature to those provided by Surge Media, and Surge Media shall be entitled to offer and provide design services to others, solicit other clients and otherwise advertise the services offered by Surge Media.

10 Warranties & Representations

10.1 By Client

Client represents, warrants and covenants to Surge Media that

- (a) Client owns all right, title, and interest in, or otherwise has full right and authority to permit the use of the Client Content,
- (b) to the best of Client's knowledge, the Client Content does not infringe the rights of any third party, and use of the Client Content as well as any Trademarks in connection with the Project does not and will not violate the rights of any third parties,
- (c) Client shall comply with the terms and conditions of any licensing agreements which govern the use of Third Party Materials, and
- (d) Client shall comply with all laws and regulations as they relate to the Services and Deliverables.

10.2 By Surge Media

- (a) Surge Media hereby represents, warrants and covenants to Client that Surge Media will provide the Services identified in the Agreement in a professional and workmanlike manner and in accordance with all reasonable professional standards for such services.
- (b) Surge Media further represents, warrants and covenants to Client that (i) except for Third Party Materials and Client Content, the Final Deliverables shall be

the original work of Surge Media and/or its independent contractors, (ii) in the event that the Final Deliverables include the work of independent contractors commissioned for the Project by Surge Media, Surge Media shall have secure agreements from such contractors granting all necessary rights, title, and interest in and to the Final Deliverables sufficient for Surge Media to grant the intellectual property rights provided in this Agreement, and (iii) to the best of Surge Media's knowledge, the Final Deliverable provided by Surge Media and Surge Media's subcontractors does not infringe the rights of any party, and use of same in connection with the Project will not violate the rights of any third parties. In the event Client or third parties modify or otherwise use the Deliverables outside of the scope or for any purpose not identified in the Proposal or this Agreement or contrary to the terms and conditions noted herein, all representations and warranties of Surge Media shall be void.

(c) Except for the express representations and warranties stated in this agreement, Surge Media makes no warranties whatsoever. Surge Media explicitly disclaims any other warranties of any kind, either express or implied, including but not limited to warranties of merchantability or fitness for a particular purpose or compliance with laws or government rules or regulations applicable to the project.

11 Indemnification/Liability

11.1 By Client

Client agrees to indemnify, save and hold harmless Surge Media from any and all damages, liabilities, costs, losses or expenses arising out of any claim, demand, or action by a third party arising out of any breach of Client's responsibilities or obligations, representations or warranties under this Agreement. Under such circumstances Surge Media shall promptly notify Client in writing of any claim or suit;

(a) Client has sole control of the defence and all related settlement negotiations; and

(b) Surge Media provides Client with commercially reasonable assistance, information and authority necessary to perform Client's obligations under this

section. Client will reimburse the reasonable out-of-pocket expenses incurred by Surge Media in providing such assistance.

11.2 By Surge Media

Subject to the terms, conditions, express representations and warranties provided in this Agreement, Surge Media agrees to indemnify, save and hold harmless Client from any and all damages, liabilities, costs, losses or expenses arising out of any finding of fact which is inconsistent with Surge Media's representations and warranties made herein, except in the event any such claims, damages, liabilities, costs, losses or expenses arise directly as a result of gross negligence or misconduct of Client provided that:

- (a) Client promptly notifies Surge Media in writing of the claim;
- (b) Surge Media shall have sole control of the defence and all related settlement negotiations; and
- (c) Client shall provide Surge Media with the assistance, information and authority necessary to perform Surge Media's obligations under this section.

Notwithstanding the foregoing, Surge Media shall have no obligation to defend or otherwise indemnify Client for any claim or adverse finding of fact arising out of or due to Client Content, any unauthorized content, improper or illegal use, or the failure to update or maintain any Deliverables provided by Surge Media.

11.3 Limitation of Liability.

The services and the work product of Surge Media are sold "as is." In all circumstances, the maximum liability of Surge Media, its directors, officers, employees, production agents and affiliates, to Client for damages for any and all causes whatsoever, and client's maximum remedy, regardless of the form of action, whether in contract, tort or otherwise, shall be limited to the fees charged by Surge Media under this agreement. In no event shall Surge Media be liable for any lost data or content, lost profits, business interruption or for any indirect, incidental, special, consequential, exemplary or punitive damages arising out of or relating to the materials or the services provided by Surge Media, even if Surge Media has been advised of the possibility of such damages, and notwithstanding the failure of essential purpose of any limited remedy.

12 Term & Termination

12.1 Agreement Term

This Agreement shall commence upon the Effective Date and shall remain effective until the Services are completed and delivered. This Agreement may be terminated at any time by either party effective immediately upon notice, or the mutual agreement of the parties, or if any party:

- (a) becomes insolvent, files a petition in bankruptcy, makes an assignment for the benefit of its creditors; or
- (b) breaches any of its material responsibilities or obligations under this Agreement, which breach is not remedied within 10 days from receipt of written notice of such breach.

12.2 Compensation

In the event of termination, Surge Media shall be compensated for the Services performed through the date of termination in the amount of (a) any advance payment, (b) a prorated portion of the fees due, or (c) hourly fees for work performed by Surge Media or Surge Media's agents as of the date of termination, whichever is greater; and Client shall pay all Expenses, fees, out of pockets together with any Additional Costs incurred through and up to, the date of cancellation.

12.3 Termination by Client

In the event of termination by Client and upon full payment of compensation as provided herein, Surge Media grants to Client with title to those Deliverables provided to, and accepted by Client as at the date of termination.

12.4 Confidential Information

Upon expiration or termination of this Agreement: (a) each party shall return or, at the disclosing party's request, destroy the Confidential Information of the other party, and (b) other than as provided herein, all rights and obligations of each party under this Agreement, exclusive of the Services, shall survive.

13 General

13.1 Modification/Waiver

This Agreement may be modified by the parties. Any modification of this Agreement must be in writing, except that Surge Media's invoices may include, and Client shall pay, expenses or costs that Client authorizes by electronic mail in cases of extreme time sensitivity. Failure by either party to enforce any right or seek to remedy any breach under this Agreement shall not be construed as a waiver of such rights nor shall a waiver by either party of default in one or more instances be construed as constituting a continuing waiver or as a waiver of any other breach.

13.2 Notices

All notices to be given hereunder shall be transmitted in writing either by facsimile or electronic mail with return confirmation of receipt or by certified or registered mail, return receipt requested, and shall be sent to the addresses identified below, unless notification of change of address is given in writing. Notice shall be effective upon receipt or in the case of fax or email, upon confirmation of receipt.

13.3 No Assignment

Neither party may assign, whether in writing or orally, or encumber its rights or obligations under this Agreement or permit the same to be transferred, assigned or encumbered by operation of law or otherwise, without the prior written consent of the other party.

13.4 Force Majeure

Surge Media shall not be deemed in breach of this Agreement if Surge Media is unable to complete the Services or any portion thereof by reason of fire, earthquake, labor dispute, act of God or public enemy, death, illness or incapacity of Surge Media or any local, state, federal, national or international law,

governmental order or regulation or any other event beyond Surge Media's control (collectively, "Force Majeure Event"). Upon occurrence of any Force Majeure Event, Surge Media shall give notice to Client of its inability to perform or of delay in completing the Services and shall propose revisions to the schedule for completion of the Services.

13.5 Governing Law and Jurisdiction

The laws of Queensland govern the Contract. You submit to the nonexclusive Jurisdiction of the Queensland Courts.

13.6 Severability

Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall nevertheless remain in full force and effect and the invalid or unenforceable provision shall be replaced by a valid or enforceable provision.

13.7 Headings

The numbering and captions of the various sections are solely for convenience and reference only and shall not affect the scope, meaning, intent or interpretation of the provisions of this Agreement nor shall such headings otherwise be given any legal effect.

13.8 Integration

This Agreement comprises the entire understanding of the parties hereto on the subject matter herein contained, and supersedes and merges all prior and contemporaneous agreements, understandings and discussions between the parties relating to the subject matter of this Agreement. In the event of a conflict between the Proposal and any other Agreement documents, the terms of the Proposal shall control. This Agreement comprises this Basic Terms and Conditions document and the Proposal.

By their execution, the parties hereto have agreed to all of the terms and conditions of this Agreement effective as of the last date of signature, and each

signatory represents that it has the full authority to enter into this Agreement and to bind her/his respective party to all of the terms and conditions herein.