

Sure

Data Centre General Terms and Conditions

DATA CENTRE SERVICES PRODUCT DESCRIPTION

Sure (Isle of Man) Limited offer data centre services from data centres in Isle of Man. These services enable Sure to provide You a facility for access to a secure, high quality environment in which to host Your computer or Internet equipment.

Maintenance of the hosted equipment is Your responsibility, achieved using remote access through Sure's fast reliable Internet connections or a Sure private circuit from Your premises. Sure will, however, allow third party access or provide a first line maintenance service at additional cost.

A range of managed services is available, to which Data Centre Service Specific Terms and Conditions apply. The service specific terms and conditions for these services are available on request and will be specific to the service(s) selected.

They should be read in conjunction with these Sure Data Centre General Terms and Conditions. Where there is conflict, the Sure Data Centre Specific Terms and Conditions (as applicable) supersede these Sure Data Centre General Terms and Conditions.

1. DEFINITION AND INTERPRETATION

In these terms and conditions:

"Acceptable Use Policy" or **"AUP"** means the policy governing the use of the Service by You and which can be found at www.sure.com.

"Agreement" means the contract between You and Us incorporating these Data Centre General Terms and Conditions, any relevant Data Centre Specific Terms and Conditions, Our Order Form, Price List and any applicable Service Schedule.

"Authorised User" means anyone permitted by You to use the Service.

"Consumer Code of Practice" means Our published Consumer Code of Practice that can be seen on Our web site at sure.com and is printed in Our telephone directory.

"Contact Details" means the name and telephone number of a person who is Your contact point.

"Data Centre General Terms and Conditions" means these terms and conditions.

"Data Centre Specific Terms and Conditions" means any relevant Sure Service Specific Terms and Conditions that cover specific services provided to You within the data centre.

"En Desastre" means a declaration by the Isle of Man Courts that a person (or company) is unable to pay his/its debts.

"Fault" means any failure of the Service causing continuous total loss of the ability to convey Messages, but does not include the loss of such ability arising as a result of Our suspension of Service under the provisions of this Agreement or any fault arising due to matters which are beyond Our reasonable control.

"Interconnection" means the physical and logical linking of Telecommunication Networks used by the same or a different organisation in order to allow the users of one organisation to communicate with the users of the same or another organisation or to access services provided by another organisation; and services may be provided by the parties involved or other parties who have access to the network.

"Internet" means the global data network comprising interconnected networks using the TCP/IP protocol suite.

"Message" has the same meaning as in the Telecommunications Act 1984 (of Tynwald).

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“Normal Working Hours” means work carried out between 08-00 to 17-00 hours, Monday to Friday (but excluding Public/Bank Holidays in the Isle of Man).

“Order Form” means Our Order Form, signed by You, detailing the Service and other relevant information forming part of this Agreement.

“Other Licensed Operator” means a person other than Us to whom an individual licence has been granted or who is authorised by a class licence to establish, operate or maintain a Telecommunications Network of a class or description specified in the licence, or to provide a telecommunications service of such a class or description, or both in accordance with Telecommunications Act 1984 (of Tynwald) or a law in any other jurisdiction under which a telecommunications licence has been granted.

“Price List” means Our published price list detailing the Service and other relevant information forming part of this Agreement and as may be amended from time to time.

“Service” means a telecommunications service or any facilities provided by Us for You in connection with the Service, as specified in Our Order Form, Price List or any applicable Service Schedule that forms part of this Agreement.

“Service Delivery Date” means the date on which We make Service ready for use.

“Sure” means Sure (Isle of Man) Limited.

“System Administrator” means a person named by You to be the point of contact with Sure for matters relating to the provision of the Service.

“Telecommunications Network” has the same meaning as in the Telecommunications Act 1984 (of Tynwald).

“You” and “Your” means the customer entering into this Agreement.

“We”, “Us” or “Our” means Sure (Isle of Man) Limited.

Words in the singular include the plural and vice versa.

2. PROVISION OF SERVICE

2.1 We shall provide the Service to meet the Service Delivery Date or, if We agree, to meet Your requested delivery date.

2.2 If You ask Us to provide any part of the Service outside Normal Working Hours then We will charge You at Our applicable hourly rate as set out in Our Price List.

3 SPECIAL PROVISION OF SERVICE

3.1 If, in order to meet Your requirements, We need to provide any part of the Service in a non standard or exceptionally expensive manner then We may make additional charges. We will notify You of any additional charges in advance of the provision of such Services and You may cancel Your application for the Service within 14 days of the notice being sent.

3.2 If the special provision of the Service requires additional or amended terms and conditions, then We will notify You of them and You may cancel Your application for the Service within 14 days of the notice being sent.

3.3 We undertake to supply to You the Service as defined in the Service Schedule.

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- 3.4 For operational reasons, We may change the technical specification of the Service used by Us for provision of the Service to You, provided that any change to the technical specification does not materially affect the performance of the Service.
- 3.5 We may suspend the Service for operational reasons such as repair, maintenance or improvement of the Service or because of an emergency. We will, before doing so, give as much notice as possible and whenever practicable will agree with You, when the Service will be suspended. In such event, We will use reasonable endeavours to minimise the duration of any such suspension and any disruption to Your business.
- 3.6 You will nominate a System Administrator and provide Us with full Contact Details for that individual.

4 USE OF SERVICE

- 4.1 We may from time to time give You instructions about the use of the Service that We reasonably believe are in the interests of health, safety or quality of service to You or other customers and You will comply with all such reasonable instructions.
- 4.2 You or any other person may only use the Service in accordance with the Telecommunications Act 1984 (of Tynwald) and any instructions that We may notify to You.
- 4.3 You shall not use the Service or permit any other person to use the Service:
- 4.3.1 for any communication that is grossly offensive or of an indecent, obscene or menacing character;
 - 4.3.2 for the purpose of causing annoyance, inconvenience, grievance or needless anxiety to another by sending messages that are know to be false or of a persistent nature; or
 - 4.3.3 in breach of instructions We have given You under paragraph 4.1 or in breach of the AUP.
- 4.4 In addition to the rights given under Clause 21 & 22, We may give You immediate notice and suspend Service:
- 4.4.1 if it is used in a manner that materially harms the integrity, security or interoperability of the Telecommunications Network;
 - 4.4.2 is used with equipment that is not approved for connection to the Telecommunications Network;
 - 4.4.3 under the direction of a competent authority, if it is used in a manner, or in relation to, the commission of offences against the laws of the Isle of Man; or
 - 4.4.4 if it is used in a manner that breaches clause 4.3 above.

5. CONNECTION OF EQUIPMENT TO THE SERVICE

- 5.1 Any equipment connected to or used with the Service must be connected and used in accordance with any instructions, safety or security procedures applicable to the use of that equipment and as may be notified by Us to You from time to time.
- 5.2 Any equipment that is attached (directly or indirectly) to the Service must be technically compatible with the Service, and approved for that purpose under any relevant legislation.
- 5.3 We will provide equipment and a mains electricity supply as detailed in the Service Schedule applicable to the Service We provide to You under this Agreement.

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6. SECURITY

- 6.1 You are responsible for the security and proper use of all user IDs and passwords used in connection with the Service (including changing passwords on a regular basis) and must take all necessary steps to ensure that they are kept confidential, secure, used properly and not disclosed to unauthorised people.
- 6.2 You must immediately inform Us if there is any reason to believe that a user ID or password has or is likely to become known to someone not authorised to use it or is being or is likely to be used in an unauthorised way.
- 6.3 We reserve the right to suspend user ID and password access to the Service if at any time We consider that there is or is likely to be a breach of security. Notice of such suspension shall be provided to You as soon as possible after such suspension.
- 6.4 We reserve the right (at Our sole discretion) to require You to change any or all of the passwords used by You in connection with the Service.
- 6.5 You must immediately inform Us of any changes to the information You supplied when registering for the Service.
- 6.6 Violations of system or network security are prohibited, and may result in criminal and/or civil liability. We will investigate incidents involving such violations and will involve and will co-operate with law enforcement if a criminal violation is suspected. Examples of system or network security violations include, without limitation, the following:
- 6.6.1 "Probing" - Unauthorised access to or use of data, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without express authorisation of the owner of the system or network;
- 6.6.2 "Sniffing" - Unauthorised monitoring of data or traffic on any network or system without express authorisation of the owner of the system or network;
- 6.6.3 "Denial of Service" - Interference with service to any user, host or network including, without limitation, mail bombing, flooding, deliberate attempts to overload a system and broadcast attacks; and
- 6.6.4 "Spoofing" - The forging of TCP-IP packet header information, or any part of the header information, in an email or a newsgroup posting.
- 6.7 If approached with complaints relating to any violations of this Agreement or Our AUP, We will co-operate and assist the Isle of Man Police and law enforcement bodies with their investigations in order to bring such misuse and violations to an end.

7. THE NETWORK

- 7.1 "Information Content" – You and Your end users acknowledge that We are unable to exercise control over the content of the information passing over Our Telecommunications Network. Therefore, We are not responsible for the content of any message or web site.
- 7.2 "Connectivity" - Our network may be used to link into other networks worldwide and You and Your end users agree to conform to the acceptable use policies of these networks.
- 7.3 "Misuse" - You and Your end users may not circumvent security of any host, network, or account (referred to as "cracking" or "hacking"), nor interfere with service to any user, host, or network

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(referred to as "denial of service attacks"). Without prejudice to the foregoing, We consider that any application, including poorly written or malicious code, which overloads or causes Our Telecommunications Network to malfunction, by whatever means, will be considered as damaging to Our Network and is as such NOT allowed and You will be required to remove any such application or code immediately.

- 7.4 "Disciplinary Action" - You and Your end users who violate systems or network security may incur criminal or civil liability. We will fully co-operate with investigations of suspected criminal violations, violation of systems or network security under the leadership of the Isle of Man law enforcement or relevant Isle of Man authorities. We reserve the right to suspend Your and Your user's accounts pending investigation and may, in any case, terminate Your and Your user's accounts if any clause in this Agreement or in Our AUP is breached by You and Your users.

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1 Where software is provided to enable You to use the Service, We grant You a non-exclusive, non-transferable licence to use the software solely for the purpose for which it is intended and in accordance with this Agreement.
- 8.2 You will not, without Our prior written consent, copy or (except as permitted by law) de-compile or modify the software, nor copy the manuals or documentation.
- 8.3 You will sign any agreement reasonably required by the owner of the copyright in the software to protect the owner's interest in that software.
- 8.4 We may offer updates or modifications to the software or documentation. Any applicable charges for such updates or modifications will be notified to You at the time We offer such updates or modifications.
- 8.5 The words or marks "Sure" and "Sure International" however represented, including stylised representations, all associated logos and symbols, and combinations of any of the foregoing with another work or mark, are the trade marks of Sure or one of the Sure Group companies or third parties. ALL RIGHTS RESERVED.

9. CONFIDENTIALITY

- 9.1 The parties will keep in confidence any information (whether written or oral) of a confidential nature (including software and manuals) obtained under this Agreement and will not disclose that information to any person (other than their employees of any entity in the Sure group) without the written consent of the other party.
- 9.2 This paragraph 9 will not apply to:
- 9.2.1 any information that has been published other than through a breach of this Agreement;
- 9.2.2 information lawfully in the possession of the recipient before the relevant disclosure;
- 9.2.3 information obtained from a third party who the receiving party reasonably believes is free to disclose it; and
- 9.2.4 information that a party is requested to disclose and if it did not could be required by law to do so.

10. ACCEPTABLE USE POLICY

- 10.1 You will comply with Our AUP and will use all best endeavours to monitor, ensure and enforce compliance with Our AUP by Your end users.

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- 10.2 It is prohibited to use the Service fraudulently or in connection with a criminal offence; to send, receive, upload, download, use or re-use any material which is offensive, abusive, indecent, defamatory, obscene or menacing, or in breach of confidence, copyright, privacy or any other rights; to cause annoyance, inconvenience or needless anxiety; or to send unsolicited advertising or promotional material. Failure to adhere to these rules may result in suspension of Service.
- 10.3 Our hosting Services allow content owners to take full control over the content and presentation of material offered over the Service. Consequently, We make no warranty (express or implied) in relation to any information, goods or services delivered over Our network.
- 10.4 Should We have any comments about Your site, or have received any enquiries or complaints about it, We will give the enquirer the contact details of Your System Administrator.

11. EXPORT CONTROL

- 11.1 Delivery of the Service to You may be subject to relevant export control law and regulations. We do not represent that any necessary approvals and licences will be granted. You will provide reasonable assistance to Us to obtain any necessary consent. If, through no fault of Ours, any necessary consent is not granted, then We can terminate this Agreement and the provision of the Service under it (as appropriate) without any liability to You.
- 11.2 You agree to comply with any applicable export or re-export laws and regulations of any country, including obtaining written authority from the US Government if You intend at any time to re-export any items of US origin to any proscribed destination.
- 11.3 For US Government personnel using the Service in the Isle of Man or United Kingdom, US Government restricted rights will apply.

12. FAULT REPAIR

- 12.1 We will aim to provide You with a Fault free Service although this cannot always be guaranteed.
- 12.2 If You detect a Fault in Service then You must report it to Us by telephoning the number specified on Your welcome pack or any other number that We may notify You of. You must provide Us with details of the nature of the Fault, the full details of the Service being provided and Contact Details so that We can inform You of progress.
- 12.3 If We undertake work to correct a reported Fault in Service and find there is none We may charge You for the work at the applicable hourly rate set out in Our Price List.
- 12.4 If We agree to attend a reported Fault in Service outside Our Normal Working Hours then You will be charged at the applicable hourly rate set out in Our Price List or as detailed in Our Service Schedule.

13. TERM OF SERVICE

The Service provided under this Agreement is for an initial term of 1, 2 or 3 years (the "Initial Term") from the Service Delivery Date as specified on Our Order Form or in Our Price List. If the Initial Term of Service is for 1 year, at the end of the Initial Term it will continue, unless terminated under the provisions of paragraph 22 or otherwise. Where the Initial Term is for 2 or 3 years the Agreement will terminate at the end of the Initial Term and a new Agreement will apply. A further Initial Term of service shall apply in respect of each new facility added or change made to the Service at Your request.

14. TEMPORARY SERVICE

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If We accept an application for Service for a term that is less than the normal term for the Service We shall regard the Service as temporary and charge You accordingly.

15. INTERCONNECTION

15.1 If the Service requires Interconnection with Other Licensed Operators then We are only responsible for the part of the Service under Our direct control.

15.2 We may suspend or terminate the Service immediately, without notice, if any other part of the Service is terminated or suspended for reasons that are beyond Our reasonable control.

15.3 You shall be responsible for making any application for Service to Other Licensed Operators. If You request and We agree, then We shall act as Your agent and negotiate and enter into a contract for Service with Other Licensed Operators on Your behalf. You shall be responsible for complying with the terms and conditions of the Other Licensed Operator.

16. CHARGES

16.1 All charges for Service are detailed in Our Price List that can be seen at or obtained from Our main offices or sent to You upon request.

16.2 Published rates include local taxes, where applicable, unless otherwise stated.

17. PAYMENT

17.1 You shall pay to Us on demand all applicable charges for the relevant Service at rates specified in Our Price List.

17.2 Rental for the Service will start on the Service Delivery Date, unless We notify You of a later date for the start of Service when rental will be payable from.

17.3 Rental is normally payable in advance but We may bill You in arrears. Except for temporary Service, You must pay rental in accordance with Our billing cycle. We will apportion rental on a daily basis for incomplete billing periods.

17.4 All amounts due under this Agreement shall be paid in full without any deduction or withholding other than as required by law. You shall not be entitled to assert any credit, set-off or counterclaim against Us in order to justify withholding payment of any such amount in whole or in part.

17.5 We reserve the right to charge interest on any balances which remain unpaid from the due date to the date of payment and/or a late payment fee at rates notified from time to time at www.sure.com.

18. DEPOSITS AND PAYMENTS IN ADVANCE

18.1 We may from time to time require payment of a deposit. If a deposit is required We shall notify You of the amount and You shall pay Us immediately. We may credit the deposit against any charges due to Us or upon discharge of Your liabilities to Us; refund it together with any interest that We may deem appropriate.

18.2 We may ask for payment in advance, which does not exceed the connection charge and rental for the term of Service requested, prior to providing the Service.

19. DEFAULT

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- 19.1 If You:
- 19.1.1 do not pay within 21 days of any charge falling due or break this Agreement in any other material way;
 - 19.1.2 are subject to bankruptcy or insolvency proceedings;
 - 19.1.3 have been declared en désastre: or
 - 19.1.4 use the Service, or do not use all best endeavours as is required by the Agreement to prevent Service being used, in a way prohibited by this Agreement

We can (without losing or reducing any other rights or remedy)

- a) suspend Service (including partially) temporarily without notice, though You remain liable to pay rental during the period of suspension; or
- b) terminate this Agreement and the Service provided under it by immediate notice.

- 19.2 “Bankruptcy or Insolvency proceedings” means bankruptcy proceedings, becoming insolvent, making any composition or arrangements with creditors or an assignment for their benefit, any execution, distress, diligence or seizure; or if You are a company, being the subject of proceedings for the appointment of an administrator, going into liquidation whether voluntary or compulsory (except for the purpose of amalgamation or reconstruction) or having receiver or administrative receiver of any assets appointed.
- 19.3 On termination of this Agreement under paragraph 22.1 or otherwise, You must pay Us the rental or other charges which would have been payable for the remainder of the Initial Term of Service as well as other sums payable up to the end of the Agreement at the rate in force in Our Price List at termination but We will make due allowances for any rental You have paid in advance for a period ending after the end of the Initial Term of Service, and make a repayment where appropriate.
- 19.4 You continue to be liable to pay all charges that are due for the Service during the period in which You do not comply with this Agreement.

20. CANCELLATION

- 20.1 Prior to the Service being provided, this Agreement may be cancelled by:
- 20.1.1 You although We may make a charge for any abortive work undertaken and/or any money spent to meet Your requirements;
 - 20.1.2 Us if paragraph 30 of this Agreement applies.

21. SUSPENSION

We may suspend Service immediately and without notice in an emergency in order to provide or safeguard service to a hospital or to the emergency, or other essential services. We will restore Service as soon as possible after the suspension and use reasonable endeavours to keep any such suspension to a minimum.

22. TERMINATION

- 22.1 We may terminate this Agreement by giving You at least three months notice. If We give You notice then You must pay rental up to the expiry of the notice. We will credit or refund the appropriate proportion of any rental paid in advance for the period after Your liability for rental ceases.

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22.2 You may, by giving notice to Us at least six weeks before the expiry date of the Initial Term of Service, terminate this Agreement on the expiry date. The Initial Term may be one, two or three years as stated on the Order Form. If You terminate this Agreement during the Initial Term of Service, You shall be liable for any outstanding charges for the balance of the Initial Term at the rate in force in Our Price List. Outstanding rental charges shall not be payable if:

22.2.1 The Service is replaced with another Service from Us that We deem to be comparable; or

22.2.2 We materially change the rental charge or terms and conditions of this Agreement to Your detriment.

22.3 After the Initial Term of Service You may terminate this Agreement by giving Us at least 30 days notice in writing.

22.4 Your notice does not avoid any other liability for Service already provided.

23. CALL MONITORING AND RECORDING

We may monitor and record calls made to or by Us. We do this for the protection of You and Us, training, customer service and telemarketing purposes.

24. INFORMATION AND PERMISSIONS

24.1 You must provide to Us when asked any information and /or co-operation that We may reasonably require in order for Us to provide Service under this Agreement.

24.2 You shall promptly inform Us of any changes to any details originally provided to Us in relation to the Service and this Agreement.

24.3 In order to investigate abuse of the Telecommunications Network You must provide to Us, when asked, any information and records relating to the use of the Service or equipment.

24.4 You confirm that in respect of the Service You have obtained all permissions, licences and consents from third parties that are necessary or desirable for the supply of the Service until its termination.

25. COMPLAINTS AND ARBITRATION

All complaints and arbitration shall be dealt with in accordance with Our Consumer Code of Practice.

26. ASSIGNMENT

26.1 We shall have the right to assign or transfer all or any of Our rights and obligations under this Agreement to any person and shall notify You prior to exercising that right.

26.2 You shall have the right to assign or transfer all or any of Your rights and obligations under this Agreement to any person provided You have notified Us in writing and We have agreed in writing, such agreement not to be unreasonably withheld.

27. COPYRIGHT

Copyright of all information supplied to You in connection with the Service shall remain Ours or the copyright owners. Such information shall not be copied, used or disclosed (other than for the purpose for which it was supplied) without Our prior written consent.

28. DURATION AND ENTIRE AGREEMENT

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- 28.1 This Agreement shall come into force immediately and shall continue until Service is terminated.
- 28.2 This Agreement sets out the entire terms and conditions under which We provide Service to You.
- 28.3 Any clause that is expressly or implicitly intended to survive the termination of this Agreement shall survive termination of this Agreement.

29. LIABILITY

- 29.1 Notwithstanding anything herein We do not exclude or restrict liability for death or personal injury resulting from Our negligence.
- 29.2 We are not liable to You either in contract, tort, (including negligence) or otherwise for loss (whether direct or indirect) of profits, business or anticipated savings, or for any indirect or consequential loss or damage whatever.
- 29.3 Our liability to You in contract, tort (including negligence) or otherwise in relation to the Service, or otherwise under this Agreement, is limited to the value of any amounts paid by You to Us under this Agreement in any 12 month rolling period, starting on the Service Delivery Date.
- 29.4 Each provision of this paragraph limiting or excluding liability operates separately. If any part is held unreasonable or inapplicable in any circumstances the other parts shall continue to apply.
- 29.5 We will accept liability for failure to meet any of Our obligations stated in any Service Schedule applicable to the Service but only to the extent stated in this paragraph 29 and as limited in paragraph 30 of this Agreement and in the relevant Service Schedule. In the event of any conflict between the terms and conditions of this paragraph 29 and the applicable Service Schedule the terms and conditions of this paragraph 29 shall prevail.

30. MATTERS BEYOND REASONABLE CONTROL

Neither party is liable for any breach of this Agreement which is caused by a matter beyond the parties reasonable control including but not limited to Act of God, fire, lightning, explosion, war, disorder, flood, industrial disputes (whether or not involving their employees), extremely severe weather or acts of Government or other competent authorities. If We are prevented by restrictions of a legal or regulatory nature from supplying the Service, We will have no liability to You for failure to supply the Service.

31. NOTICE

- 31.1 Notices given under this Agreement must be in writing and delivered by email, hand or sent by facsimile or prepaid post as follows:
- 31.1.1 To Us: at the address of Our office shown on Our Order Form or on Your last bill or any alternative postal or email address that We may notify You of;
- 31.1.2 To You: at the address that You ask Us to send bills or if You are a limited company to Your registered office or any alternative postal or email address that You may notify to Us.

32. USE OF INFORMATION

- 32.1 You warrant that You have and do, and undertake that You will, comply with all applicable data protection legislation including, without limitation, the Data Protection Act 2002.
- 32.2 We warrant that We have and do, and undertake that We will, comply with all applicable data

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protection legislation including, without limitation, the Data Protection Act 2002.

32.3 We will use the information We have about You and Your use of the Service for marketing purposes. We will not do so if You ask Us not to.

32.4 We will process Your billing data and information about Your use of the Service for marketing Our own telecommunications products and services. This enables Us to better inform You about products, services and options that We provide and believe may be of particular interest to You. We will not disclose this information to anyone other than members of the Sure Group. We need Your consent to continue to give You all the benefits that this processing provides and You should indicate if you do not wish to provide us with such consent on the Order Form for the Service.

32.5 We may pass information We have about You to other companies within the Sure Group in order to facilitate the provision of services to You.

33. SEVERABILITY

If any provision of this contract is found to be invalid or unenforceable, the validity and enforceability of the remaining provisions shall not be affected by that finding.

34. VARIATION

We may change the terms or conditions of this Agreement at any time. Where practicable, or if necessary to comply with any regulatory obligation to which We may from time to time be subject, We will publish details of any change in each of Our main offices at least 21 days before the change is to take effect. On-line at www.sure.com, on the next bill that is sent to You or by letter or email, as we deem appropriate.

35. WAIVER

If either party fails to exercise or enforce any right conferred by this Agreement it shall not be deemed to be a waiver of those rights nor bar the exercise or enforcement of them on any later occasion. If We waive a particular breach of this Agreement by You, that waiver is limited to the particular breach.

36. LAW

This Agreement shall be governed by and constructed and interpreted in accordance with the Laws of the Isle of Man, and each party hereby submits to the exclusive jurisdiction of the Isle of Man Courts.