

Zen Home Talk and Zen Business Talk Specific Terms and Conditions



1. DEFINITIONS

In these Zen Home Talk and Zen Business Talk Terms and Conditions (the "Terms"), the following words and phrases shall have the following meanings:

"Agreement" means these Terms, the Order, the Price List and the Product User Guide all of which, taken together, constitute the agreement between us for the supply of the Equipment and/or Services;

"Customer" means the person, group of persons or other entity whose name and address is or are set out in the Order;

"Equipment" means the equipment specified on the Order (if any);

"Force Majeure Event" has the meaning given to it at clause 15;

"Law" means the laws of England and Wales, in force from time to time;

"Minimum Cancellation Notice Period" means 30 days;

"Minimum Service Period" means 30 days;

"Order" means the order for the supply by us of the Equipment and/or Services and which is completed by, or in accordance with an order from, you;

"Password" means any password issued by us to the Customer in connection with the Services;

"Price List" our price list relating to the Equipment and/or Services, the current version of which is set out on the Web site, as amended from time to time;

"Service" means the Zen Home Talk or the Zen Business Talk services provided by us in accordance with this Agreement;

"Service Period" means each 30 day period

"us" or "we" means Zen Internet Limited of Sandbrook Park, Sandbrook Way, Rochdale OL11 1RY and references to "our" shall be construed accordingly;

"User Name" means any user name allocated to you by us in connection with to the Services;

"you" means the Customer, and references to "your" shall be construed accordingly; and

"Web site" means the Web site at <http://www.zen.co.uk>, and references to "our Web site" shall be construed accordingly.

Headings do not affect the interpretation of these Terms.

References to the singular include the plural and vice versa. References to one gender include all other genders and vice versa.

2. THE SERVICES

- 2.1. We shall provide you with the Services and any Equipment subject to the terms of this Agreement.
- 2.2. You can place your order for the Services and/or Equipment:
 - 2.2.1. online via our Web site;
 - 2.2.2. by sending us an Order by post or by fax to the address or fax number set out on our Web site; or
 - 2.2.3. by telephoning our sales team on the number set out on our Web site.
- 2.3. Your Order is an offer from you to enter into a binding contract, which we are free to accept or decline at our absolute discretion. We will not be obliged to provide the Services and/or Equipment to you unless and until;

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- 2.3.1. we have sent written notice to you (either by post, fax or e-mail) of our acceptance of your Order; and
 - 2.3.2. we have received any initial Charges due from you in respect of the Services and/or Equipment (if any).
 - 2.4. Please check that the details in these Terms and in your Order Form are complete and accurate before you commit yourself to the contract. If you think that there is a mistake, please make sure that you ask us to confirm any changes in writing, as we only accept responsibility for statements and representations made in writing by our authorised employees and agents.
 - 2.5. Please ensure that you read and understand these Terms before you sign and submit the Order, because you will be bound by the Terms once a contract comes into existence between us, in accordance with clause 2.3
 - 2.6. If any of these Terms are inconsistent with any term of the Order, the Order shall prevail.
 - 2.7. Any descriptions or advertising we issue, and any descriptions or illustrations contained in our brochures and other literature are issued or published solely to provide you with an approximate idea of the Services and/or Equipment that they describe. They do not form part of the contract between you and us or any other contract between you and us for the supply of the Services.
 - 2.8. You acknowledge that each item listed on the Order is a single order for each item. Cancellation and/or acceptance of any individual item contained in the Order shall not mean that the remaining items are cancelled and/or accepted by us.
 - 2.9. Subject to your cancellation rights at clause 3, acceptance of the Services and/or Equipment by you indicates your acceptance of the terms and conditions of the Agreement.
 - 2.10. We will notify you as soon as possible if either we or our agents, employees, representatives or anyone else involved in providing the Services and/or the Equipment require access to your premises to:
 - 2.10.1. install the Services and/or the Equipment; or
 - 2.10.2. carry out repairs, maintenance or upgrades.
 - 2.11. Where such notice is received by you, you agree to grant us and/or such other persons referred to above, access to your premises to carry out the installation and/or the repairs, maintenance or upgrades. We will meet your reasonable requirements, and you agree to meet ours, concerning the safety of people on your premises.
- ### 3. DISTANCE SELLING – YOUR CANCELLATION RIGHTS
- 3.1. The following clauses apply to Zen Home Talk customers only, apart from clause 3.6 which shall apply to both Zen Business Talk and Zen Home Talk customers.
 - 3.2. If you ordered the Services and/or the Equipment from us either over the internet, by telephone or by any other distance selling method you may cancel the Contract in accordance with the Consumer Protection (Distance Selling) Regulations 2000 (“Regulations”) at any time up to 10 working days after (a) (in the case of Equipment) receiving any Equipment or (b) (in the case of Services) the date upon which the contract is concluded between us, in each case, provided that you have received a copy of these Terms. If you have not received a copy of these Terms, the 10 working days shall commence on the date that you receive them.
 - 3.3. If you have commenced using any Service after receiving these Terms, or if you agree to us commencing the provision of the Services

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(including placing an order with any of our suppliers for the provision of the Services) you will be deemed to have accepted these Terms and agree that you will also lose your statutory right of cancellation under the Regulations.

- 3.4. If you have purchased Equipment and you wish to exercise your right to cancel the Contract pursuant to this clause, you must return the Equipment to us by special delivery. The Equipment must be undamaged and in its original packaging.
- 3.5. We will issue you with a refund within 30 days of us receiving any Equipment. This refund will only apply to the purchase price of the Equipment; we will not refund the cost of returning Equipment to us unless it is faulty. If you do not return all the Equipment that you have received, we shall be entitled to charge you for the costs we incur in collecting them from you.
- 3.6. The charges for cancellations received prior to the installation date (but after the 10 day period referred to at clause 3.2 for Zen Home talk customers) are contained in the schedule of charges set out in the Service User Guide. This clause shall apply to both Zen Business Talk and Zen Home Talk customers.

4. QUALITY OF THE SERVICES AND/OR EQUIPMENT

- 4.1. Unless we are prevented from doing so by a Force Majeure Event, we warrant to you that on delivery, the Equipment (if any) shall:
 - 4.1.1. conform in all material respects with its description;
 - 4.1.2. be of satisfactory quality; and
 - 4.1.3. be fit for any purpose we say the Equipment is fit for or for any reasonable purpose for which you use the Equipment.

- 4.2. Unless we are prevented from doing so by a Force Majeure Event, we warrant to you that the Services shall:
 - 4.2.1. conform in all material respects with their description;
 - 4.2.2. be of satisfactory quality;
 - 4.2.3. be fit for any purpose we say the Services are fit for or for any reasonable purpose for which you use the Services; and
 - 4.2.4. be carried out with all reasonable skill and care;
 - 4.2.5. are free from material defects in design, material and workmanship;
 - 4.2.6. comply with all applicable statutory and regulatory requirements for supplying the Services in the United Kingdom.
- 4.3. The warranties contained at clauses 4.1 and 4.2 are in addition to your legal rights in relation to Equipment and/or Services which are faulty or which otherwise do not conform with these Terms. Zen Home Talk customers should contact their local authority Trading Standards Department or Citizens' Advice Bureau for further information about their legal rights.
- 4.4. These Terms also apply to any replacement Services we supply to you in the unlikely event that the original Services do not conform with these Terms.
- 4.5. We will make every effort to complete the Services on time but there may be delays due to circumstances beyond our control. In this case we will complete the Services as soon as reasonably possible.

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5. DEFECTIVE SERVICES AND/OR EQUIPMENT

- 5.1. In the unlikely event that the Services and/or Equipment do not conform with these Terms, please let us know as soon as possible after we have carried them out, or delivered them to you (as the case may be). We will:
- 5.1.1. provide you with a full or partial refund, depending on what is reasonable in the circumstances; or
 - 5.1.2. re-perform the Services; or
 - 5.1.3. replace the Equipment (in the case of faulty Equipment).
- 5.2. These Terms will also apply to any replacement Services and/or Equipment that we supply to you.

6. SERVICE PERIOD

- 6.1. We will activate the Services, as soon as possible after we have accepted your Order and we have received any initial Charges due, as per clause 2.3.
- 6.2. Subject to Clause 6.3, the Services will be provided for the Minimum Service Period from the date of activation unless:
- 6.2.1. we agree otherwise; or
 - 6.2.2. the Services are terminated or suspended earlier in accordance with the terms of this Agreement.
- 6.3. On expiry of the Minimum Service Period the Services will, unless terminated earlier, automatically renew for subsequent Service Periods equal to the Minimum Service Period until they are terminated in accordance with this Agreement.

7. CHANGES

- 7.1. We will use our reasonable endeavours to provide the Services for the relevant Service

Period. However, we may have to suspend your access to the Services if we have to deal with technical problems, or to make improvements to the Service. We will let you know in advance where this occurs, unless the problem is urgent or an emergency.

- 7.2. We may also have to change the terms and conditions of these Terms. Where this is necessary we will contact you and/or publish details of all changes on our Web site at least 30 days before they take effect. However, if we need to make changes earlier for security, regulatory or legal reasons, we may be unable to give you 30 days notice. In those circumstances, we will let you know about any changes as soon as we can.
- 7.3. If we have made a change to your significant disadvantage you may terminate this Agreement early. In this case, the Minimum Cancellation Notice Period will not apply and you will not have to pay any Charges in relation to the Services after the date of termination.

8. CONDITIONS OF USE

- 8.1. You agree that you will promptly provide us with all information that we may reasonably require in order to provide the Services and to perform our other obligations under this Agreement. If you do not, or if you provide us with incomplete, incorrect, late or inaccurate information or instructions, we may cancel the Order by giving you written notice, or we may make an additional charge of a reasonable sum to cover any extra work that is required.
- 8.2. You agree that you will be responsible for all use of the Services and, where appropriate, you will be responsible for any additional equipment and/or services (including any telephones connected to the Services where such equipment has not been supplied by us as part of the Equipment); and for obtaining any permits and/or licences which may be

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- necessary for connecting to, and accessing, the Services.
- 8.3. You are responsible for ensuring that the Services and/or Equipment are used in accordance with the Agreement. If you breach the Agreement we may, in our sole discretion:
- 8.3.1. suspend or terminate the Agreement and/or any of the Services without notice or refund; and/or
 - 8.3.2. make an additional charge; and/or
 - 8.3.3. block access to any part of the Services.
- 8.4. If, while using the Services, you discover that another person is using them in contravention of this Agreement, you agree to tell us immediately.
- 8.5. You agree that you will only use the Services and/or the Equipment in compliance with all Laws.
- 8.6. In addition to Clause 8.5, you agree that you will not use, and will take all reasonable precautions to ensure that nobody else uses, the Services and/or the Equipment:
- 8.6.1. fraudulently or in connection with any criminal offence;
 - 8.6.2. to cause annoyance, inconvenience or anxiety;
 - 8.6.3. in any way which, in our reasonable opinion, is or is likely to be detrimental to the provision of services to you or any of our customers, or to our business and/or reputation;
 - 8.6.4. in contravention of any licences or third party rights; or
 - 8.6.5. in a way that does not comply with any instructions provided to you.
- 8.7. You may use the Services to link to other networks world-wide, provided that you comply, at all times, with any policies and/or terms and conditions imposed by the operators of such other networks.
- 8.8. Where a User Name and/or Password is issued to you, you agree to:
- 8.8.1. keep any records of your User Name and/or Password in separate places and take all necessary steps to ensure their security;
 - 8.8.2. keep your User Name and/or Password private and confidential and ensure, at all times, that it (or they) do not become known to anyone else.
- 8.9. You agree that you will notify us immediately if you become aware of any change in circumstances which may lead you to believe that your User Name and/or Password have become known to anyone else.
- 8.10. You agree that we may, from time to time, and, where possible, on giving you reasonable notice, suspend and/or change your User Name and/or Password.
- 8.11. Title to any Equipment which we have agreed to sell to you will remain with us unless and until you have paid all sums due to us in respect of such Equipment.
- 8.12. You agree to report to us any fault with the Services and/or the Equipment as soon as possible.
- ## 9. CHARGES
- 9.1. Except as otherwise provided in the Agreement, all Charges and other sums due from you in respect of the Services and/or Equipment shall be set out in the Price List and/or the invoice relating to such Equipment and/or Services.
- 9.2. You shall pay the Charges (without any set off or deduction of any kind) on either a monthly, quarterly or annual basis as stated in the Price List and/or the invoice relating to such Equipment and/or Services.

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- 9.3. For business customers, all amounts payable by you in accordance with the Agreement shall be payable by direct debit (in the event that a credit account has not been granted to you) and shall be exclusive of Value Added Tax ("VAT"), or any other applicable tax or duty, which shall be charged at the prevailing rate and shall be payable in addition to all such amounts due from you.
- 9.4. For residential customers, all amounts payable by you in accordance with the Agreement shall be payable by direct debit and shall be inclusive of Value Added Tax ("VAT"), or any other applicable tax or duty, which shall be charged at the prevailing rate.
- 9.5. Where credit status is granted to you, you shall pay each invoice submitted to you, in full and in cleared funds, within 30 days of the date of such invoice to a bank account nominated in writing by us. Where credit status is not granted, you agree to pay each invoice submitted to it immediately upon receipt.
- 9.6. You agree that you will notify us as soon as possible of any change in your credit/debit card or bank account details. If this Agreement terminates (for any reason), it is your responsibility to terminate any standing order or direct debit with your bank.
- 9.7. We may increase the amount payable by you for Services and/or Equipment by giving you one month's notice in writing.

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1. The copyright, design right and all other intellectual property rights in any materials and other documents or items that we prepare or produce for you in connection with the Services and/or Equipment will belong to us absolutely.

- 10.2. You may not use the materials, documents or other items detailed in clause 10.1 for any commercial purpose.

11. LIABILITY

- 11.1. Neither we nor any of our agents, contractors, licensees, employees or information providers involved in providing the Services, give any guarantee that the Services will be uninterrupted or free from error.
- 11.2. Subject to clause 11.3, if either of us fails to comply with these Terms, neither of us shall be responsible for any losses that the other suffers as a result, except for those losses which we or you could reasonably foresee would result from the failure to comply with these Terms.
- 11.3. Neither of us shall be responsible for losses that result from our failure to comply with these Terms including, but not limited to, losses that fall into the following categories:
 - 11.3.1. loss of income or revenue;
 - 11.3.2. loss of business;
 - 11.3.3. loss of, or damage to, goodwill and/or reputation;
 - 11.3.4. loss of anticipated savings; or
 - 11.3.5. loss of, or corruption to, data,however, this clause shall not prevent claims for foreseeable loss of, or damage to, your physical property.
- 11.4. This clause does not include or limit in any way our liability for:
 - 11.4.1. death or personal injury caused by our negligence; or
 - 11.4.2. fraud or fraudulent misrepresentation; or
 - 11.4.3. any breach of the obligations implied by section 12 of the Sale of Goods

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Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

- 11.4.4. losses for which it is prohibited by section 7 of the Consumer Protection Act 1987 to limit liability; or
- 11.4.5. any other matter for which it would be illegal or unlawful for us to exclude or attempt to exclude our liability.

11.5. In any event:

- 11.5.1. our liability to you for any failure of the Services and/or the Equipment in any Service Period shall not exceed the Charges payable in respect of such Service Period.
- 11.5.2. our aggregate liability to you of any sort (including for breach of contract and negligence) in connection with the Agreement shall not exceed the amount of Charges paid by you to us in accordance with the Agreement.

12. YOUR RESPONSIBILITIES

- 12.1. You agree that you will be responsible for and hold us and our agents, contractors, licensees, employees and information providers, involved in providing the Services and/or Equipment, harmless from and against any and all losses, claims, damages, costs, demands, expenses and other liabilities which we suffer as a result of any breach by you of the terms of this Agreement,
- 12.2. You agree to pay all costs, damages, awards, fees (including legal fees), judgments and other sums awarded against, or agreed to be paid by, us in relation to such claims referred to at Clause 10.1 above. You further agree that you will, as soon as possible, notify us of, and forward to us all correspondence received by you in relation to, such claims.
- 12.3. You also agree that we shall have full authority to defend, compromise or settle such

claims referred to at Clause 12.2 above, and that you will, at your expense, provide us with all reasonable assistance necessary to defend such claims.

- 12.4. You agree that you are entirely responsible for any form of automated dialling system which you have set up (including, but not limited to, the reliability of such system and any call costs which may be incurred as a result of its use).
- 12.5. You agree that the configuration of your internal network remains your responsibility. Any interruption to the Services resulting from the operation or configuration of your internal network shall not be regarded as an interruption in or suspension of the provision by us of the Services.
- 12.6. You agree that any equipment connected to or used with the Services will bear the BAPT mark and you will be responsible for ensuring that you do not exceed the appropriate REN value for your Service. You will be responsible for ensuring that all such equipment is technically compatible with the Services and is used in compliance with all relevant instructions and safety and security procedures.

13. SUSPENSION AND TERMINATION

- 13.1. In order to maintain the quality and safety of the Services, and any other services which we provide to our customers, we may from time to time:
 - 13.1.1. suspend, close down or restrict the whole or any part of the Services in order to carry out emergency or other repairs, maintenance and/or improvements; and/or
 - 13.1.2. to prevent overload of the network or to preserve the safety, security or integrity of the Services (although we will give you as much notice as is

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- reasonably practicable before doing so and will use our reasonable endeavours to carry out such works during the relevant scheduled maintenance periods as published by us); and/or
- 13.1.3. give you instructions on how to use the Services and/or the Equipment and you agree to comply with any instructions we may give you in accordance with this Clause.
- 13.2. You agree that we may suspend or terminate the Services and/or terminate the Agreement at any time, without prior notice or refund to you, and without affecting any of our accrued rights or claims, either:
- 13.2.1. where we reasonably believe that the Services are being used in breach of Clauses 8.5 or 8.6;
- 13.2.2. for non-payment (when due) of the Charges or any other sum due from you under the Agreement or any other agreement with us;
- 13.2.3. for any other material breach of the Agreement by you;
- 13.2.4. where you have breached the Agreement in any other way on three or more occasions; or
- 13.2.5. where you are a Zen Business Talk customer, if you become insolvent or suffer any distress or execution or other legal process to be levied or enforced or sued upon or against any part of your property, assets or revenue and which is not discharged or stayed within 7 days, or you cease or threaten to cease to carry on business.
- 13.3. You also agree that where the Agreement is terminated for any reason the Services will automatically terminate.
- 13.4. You agree that, notwithstanding the provisions of Clauses 6 and 13.1 (but without affecting our other rights to terminate under this Agreement), we may terminate all or any of the Services at any time, on 30 days notice. We will repay to you a proportion of the Charges which reflects the period agreed for provision of the Service(s) which has yet to expire at the point of termination. Any refund that is due to you, will be made by us following the cancellation of the Service(s), and will be made direct to your credit card or bank account (notified to us for this purpose) by BACS transfer. Should you fail to provide suitable bank or credit card details to allow a refund to be made, you will lose the right to such refund.
- 13.5. Any suspension of the Services by us in accordance with this Agreement will not constitute a termination of the Agreement
- 13.6. You may terminate all or any of the Services, at any time after the Minimum Service Period, subject to the Minimum Cancellation Notice Period. Where you terminate within the Minimum Service Period or a subsequent Service Period you will be liable to pay the Charges due in respect of that Minimum Service Period or subsequent Service Period as the case may be.
- 13.7. We may terminate all or any of the Services by notice equal to the Minimum Cancellation Notice Period (to expire at any time on or after the Minimum Service Period) without our incurring any liability.
- 13.8. Where necessary for commercial, technical or other reasons
- 13.8.1. a network or service provider connected to the Services may suspend or terminate its connection to the Services; and
- 13.8.2. the Services may suspend or terminate their connection to another network or service provider.

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13.9. You agree that any such suspension or termination referred to at clause 13.8 will not constitute a breach by us of the Agreement and that, unless otherwise specified by us, the Services are provided on an "as is" basis without guarantee of any kind.

13.10. You further agree that we will not be held liable for any costs, expenses, losses, damages or other liabilities (howsoever arising) which you may incur as a result of a suspension of the Services in accordance with clause 13.8 above.

14. PERSONAL DATA

14.1. We will only use the personal information you provide to us to provide the Services and/or Equipment, or to inform you about similar services and/or equipment which we provide, unless you tell us that you do not want to receive this information.

14.2. You agree that in order for us to provide the Services and/or Equipment we may, in certain circumstances, need to supply your personal information to our suppliers. In such cases, your personal data will only be processed by our suppliers to allow them to provide and maintain the Equipment and/or Services.

14.3. You acknowledge that we may, from time to time, be required under regulations and/or legislation to co-operate with and/or disclose data to, government or other bodies and/or authorities

14.4. You also acknowledge and agree that we may pass your details to credit reference agencies.

15. EVENTS OUTSIDE OF OUR CONTROL

15.1. We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under these Terms that is caused by events outside our reasonable control (a "Force Majeure Event").

15.2. A Force Majeure Event includes any act, event, non-occurrence, omission or accident beyond our reasonable control and includes, in particular (without limitation), the following:

15.2.1. strikes, lock-outs or other industrial action; or

15.2.2. civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war; or

15.2.3. fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster; or

15.2.4. impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport; or

15.2.5. impossibility of the use of public or private telecommunications networks.

15.3. Our obligations under these Terms are suspended for the period that the Force Majeure Event continues, and we will extend the time to perform these obligations for the duration of that period. We will take reasonable steps to bring the Force Majeure Event to a close or to find a solution by which our obligations under these Terms can be performed despite the Force Majeure Event. If the Force Majeure event continues for more than 90 days, then either we or you may terminate the Agreement upon giving written notice to the other.

16. ASSIGNMENT

16.1. You may not transfer any of your rights or obligations under these Terms to another person without our prior written consent, which we will not withhold unreasonably. We can transfer all or any of our rights and obligations under these Terms to another organisation,

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but this will not affect your rights under these Terms.

stamped and placed in the post and, in the case of an e-mail, that the e-mail was sent to the specified e-mail address of the addressee.

17. WAIVER

17.1. If we fail, at any time while these Terms are in force, to insist that you perform any of your obligations under these Terms, or if we do not exercise any of our rights or remedies under these Terms, that will not mean that we have waived such rights or remedies and will not mean that you do not have to comply with those obligations. If we do waive a default by you, that will not mean that we will automatically waive any subsequent default by you. No waiver by us of any of these Terms shall be effective unless we expressly say that it is a waiver and we tell you so in writing.

18. VARIATION

18.1. No variation of the Agreement or these Conditions will be valid unless it is in writing and signed by, or on behalf of, each of the parties.

19. NOTICES

- 19.1. You agree to keep the contact details which you have provided to us up to date.
- 19.2. Any notice to be served on us must be in writing and sent either by pre-paid first class post to our registered office or to such other address and/or email address as may be specified by us to you for this purpose from time to time. We may give notice to you at either the e-mail or postal address you provide to us in your Order Form.
- 19.3. Notice will be deemed received and properly served 24 hours after an e-mail is sent or three days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that the letter was properly addressed,

20. ENTIRE AGREEMENT

20.1. The Agreement represents the entire agreement and understanding between you and us with regard to the supply of the Equipment and/or Services, to the exclusion of all prior agreements, arrangements and understandings. The Agreement contains express promises and obligations on our part. You agree that any other term which might be implied or incorporated into the Agreement, by statute, at common law or otherwise, is excluded, to the fullest extent permitted by law.

21. SEVERANCE

21.1. If any court or competent authority decides that any of the provisions of these Terms are invalid, unlawful or unenforceable to any extent, the term will, to that extent only, be severed from the remaining terms, which will continue to be valid to the fullest extent permitted by law.

22. NO PARTNERSHIP OR AGENCY

22.1. Nothing in the Agreement is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

23. THIRD PARTY RIGHTS

23.1. A person who is not party to these Terms shall not have any rights under or in connection with them under the Contracts (Rights of Third Parties) Act 1999, but this does not affect any

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right or remedy of any third party which exists or is available apart from that Act.

24. GOVERNING LAW AND JURISDICTION

24.1. These Terms shall be governed by English law and you and we both agree to the non-exclusive jurisdiction of the English courts