

LEVEL 1 FACILITY AGREEMENT

The detail below is a copy of the full Data Shared Agreement. By reading this it does not commit you to this level. In order to officially agree to a Shared Data Agreement you will need to visit the [Myzone Owner 2.0 Dashboard](#) where you can select and sign your identified Level. It is important that you take action before May 25th 2018.

FACILITY LICENCE AGREEMENT - LEVEL 1 - NO DATA SHARING

Background

1. Interpretation

1.1. The following definitions and rules of interpretation apply in this Agreement.

1.2. Definitions:

Agreement the agreement comprising these Terms for the licensing by Myzone of the Facility's use of the Myzone Materials and the Myzone System but excludes any provisions regarding the sharing of personal data belonging to Users and recorded via the Myzone System equipment;

Applicable Law means

- (a) any law, statute, regulation, byelaw or subordinate legislation in force from time to time to which a party is subject and/or in any jurisdiction that the services are provided to or in respect of;
- (b) the common law and laws of equity as applicable to the parties from time to time;
- (c) any binding court order, judgment or decree;
- (d) any applicable industry code, policy or standard; or
- (e) any applicable direction, policy, rule or order that is binding on a party and that is made or given by any regulatory body having jurisdiction over a party or any of that party's assets, resources or business;

Data Protection Laws means any Applicable Law relating to the processing, privacy, and use of Personal Data, as applicable to Myzone and/or the services, including:

- (a) in the United Kingdom and in the Isle of Man:
 - (i) the Data Protection Act 1998 (UK) and the Privacy and Electronic Communications (EC Directive) Regulations 2003, SI 2003/2426, and any laws or regulations implementing Directive 95/46/EC (**Data Protection Directive**) or Directive 2002/58/EC (**ePrivacy Directive**); and/or
 - (ii) the General Data Protection Regulation (EU) 2016/679 (**GDPR**), and/or any corresponding or equivalent national laws or regulations (**Revised National DP Law**);
- (b) in the Isle of Man:
 - (i) the Data Protection Act (Isle of Man) 2002; and/or
 - (ii) the revised Data Protection Act (Isle of Man) 2002;
- (c) in member states of the European Union: the Data Protection Directive or the GDPR, once applicable, and the ePrivacy Directive, and all relevant member state laws or regulations giving effect to or corresponding with any of them; and
- (d) any judicial or administrative interpretation of any of the above, any guidance, guidelines, codes of practice, approved codes of conduct or approved certification mechanisms issued by any relevant Supervisory Authority;

Documentation the user manuals and other documentation supplied with the System;

Equipment Myzone System equipment supplied to a Facility;

Facility any commercial fitness centre, corporate facility, educational facility, retailer or other concern using the Myzone system and Support Services;

Facility Authorised User any person (including a coach, trainer, or employee) granted permission to access the Myzone System by a Facility Controller;

Facility Controller	the person that has authority to contractually bind the Facility;
Facility Data	means Personal Data collected by the Facility regarding the User, <u>independent</u> of Myzone, i.e. User contact information collected in the course of registering a User's membership with a Facility;
Intellectual Property Rights	means any and all copyright, rights in inventions, patents, know-how, trade secrets, trade marks and trade names, service marks, design rights, rights in get-up, database rights and rights in data, semiconductor chip topography rights, the right to sue for passing off, utility models, domain names and all similar rights and, in each case: whether registered or not; including any applications (and the right to apply) to protect or register such rights; including all renewals and extensions of such rights or applications; whether vested, contingent or future; and wherever existing;
Licence	the licence entitling the Facility to use the System Software on the Equipment on the terms set out in Clause 5;
Licence Charges	the charges payable to Myzone by the Facility in respect of the grant of the Licence;
Malware	any software, code, file or programme including worms, trojan horses, viruses and other similar things or devices which may prevent, impair or otherwise adversely affect the proper operation of any computer software, hardware or network, or prevent, impair or otherwise adversely affect properly authorised access to or operation of any programme, system or data;
Myzone	Any one or more, as relevant to the use of the Equipment, of Myzone Limited and its subsidiaries and affiliates which includes Myzone (UK) Limited and Myzone (Worldwide) Limited, all of which have their registered office at Falcon House, Ridgeway Street, Douglas, Isle of Man IM1 1EL, British Isles;
Myzone Data	means any and all categories of Personal Data recorded or uploaded to the Myzone System by the User in accordance with the terms and conditions of their user agreement with Myzone;
Myzone Materials	the System Software, the Documentation and any other materials or information included in or provided as part of or in connection with the Myzone System;
Myzone System	the Myzone personal monitoring system known as <i>Myzonemoves</i> , comprising the Equipment, the myzonemoves.com site and all related sites, the System Software and the Documentation and related information systems;
Personal Data	has the meaning given to that term in Data Protection Laws;
Subscription Period	a period of 1 calendar year during which, on payment of the applicable Licence Charges, the Facility is entitled to use the System Software and receive the Support Services;
Support Services	the support services provided by a Myzone-authorized service provider in respect of the System Software on payment of the applicable Licence Charge;
System Software	the personal monitoring and display software operated on the Equipment as part of the Myzone System and any variations, modifications, copies, releases, or enhancements thereof from time to time;
Terms	these terms and conditions;
User	an individual by or for whom a Myzone Belt is purchased or issued for their personal use at an establishment owned or operated by the Facility;
Warranty Period	The warranty period applicable to a given item of Equipment;

2. Application of Terms

2.1. These Terms shall

2.1.1. govern the facility's use of the Myzone System; and

2.1.2. override all other terms inconsistent with them, whether express, implied or

otherwise, including terms, conditions or stipulations contained in any communication with the supplier of the Equipment to the Facility.

- 2.2. These terms shall not apply to the sale of Equipment to a Facility from Myzone or its duly authorised distributor, which shall be subject to such separate commercial trade terms as are agreed between such parties for matters including price, payment, delivery, installation, damage, shortage, loss in transit, title, risk and governing law of any such sale.

3. System Supply and Use

- 3.1. Subject to payment of the applicable Licence Charges in accordance with Clause 5, Myzone agrees to grant the Licence to the Facility.
- 3.2. Expressly excluded from this Licence, is the right of access or processing of the Myzone Data. The Facility will at no time during the course of this Licence, have access to or the ability to download or otherwise process the Myzone Data and shall only have access to its own Facility Data in respect of the Users.
- 3.3. The Facility will not access or use or attempt to access or use the Equipment or the System Software:
- 3.3.1. in any way to access, download or otherwise use Myzone Data;
 - 3.3.2. in any way which interferes with, damages or disrupts, or might reasonably be expected to interfere with, damage or disrupt the Myzone System;
 - 3.3.3. in any way which is unlawful, illegal or fraudulent, or has any unlawful, illegal or fraudulent purpose or effect;
 - 3.3.4. knowingly to store, transmit or upload any data or material that comprises or contains Malware;
 - 3.3.5. knowingly to store, transmit or upload any data or material which
 - (a) advocates, promotes or assists violence, any other illegal or unlawful activity;
 - (b) is obscene, offensive, hateful, defamatory or inflammatory;
 - (c) is threatening, abusive or which invades another's privacy, or causes needless anxiety or annoyance;
 - (d) advocates or promotes discrimination based on race, sex, religion, nationality, disability, sexual orientation or age;
 - (e) infringes any copyright, database right, trade mark or other proprietary right of any other person;
 - (f) is fraudulent or misleading; or
 - (g) is made in breach of any legal duty owed to a third party, such as a contractual duty or a duty of confidence.
- 3.4. The Facility will ensure that all of its relevant personnel are familiar with the [Important Information](#) on the use of the Myzone belt which Users are required to acknowledge before they register their Myzone belt and use it for the first time, and that those personnel bring such information to the attention of Users prior to sale or supply to them of a Myzone belt by that Facility. If the Facility supplies Myzone belts to Users, it will in particular ensure that Users are informed prior to purchase or issue that:
- 3.4.1. Myzone belts are intended for use at that Facility to which the belt is registered; and
 - 3.4.2. each belt can at any given time only be used in relation to one Facility or chain of associated Facilities / Facility code.
- 3.5. The Facility will provide each User with a valid facility code to enable that User to

register their Myzone belt.

- 3.6. Where the Facility Controller appoints a Facility Authorised User, the Facility and Facility Controller acknowledge and accept responsibility for taking appropriate technical and organisational measures against unauthorised or unlawful access to or other processing of User information and accidental loss of, or damage to, such information.
- 3.7. The Facility will only have access to Facility Data and at no time will it have access to Myzone Data.

4. Price and Payment

- 4.1. The Facility will pay all Licence Charges as applicable from time to time. No payment will be effective unless and until received by Myzone or its duly authorised agent in cleared funds.
- 4.2. The price of the Equipment does not include the price of the Licence.
- 4.3. The Facility will pay the Licence Charges for the Licence annually in advance for the initial Subscription Period and for each subsequent Subscription Period. The Facility will pay by either a single payment or, if Myzone permits, by monthly instalments.
- 4.4. Myzone or its duly appointed distributor will serve a notice on the Facility not less than 30 days prior to the end of the then-current Subscription Period, confirming
 - 4.4.1. the date on which that Subscription Period will expire; and
 - 4.4.2. the Charges payable for use of the System Software by the Facility for a further period of 1 calendar year.
- 4.5. Unless the Facility serves notice on Myzone at least 30 days before the expiry of the then current Subscription Period that it wishes to terminate the Agreement with effect from the end of that Subscription Period, the Charges referred to in Clause 4.4.2 will be payable by the Facility and on payment of the same the Licence will be renewed for a further period of one (1) calendar year.
- 4.6. All Licence Charges for the Myzone System are exclusive of value added tax and/or any other similar taxes, duties or levies or other deductions or withholdings in countries or jurisdictions outside the United Kingdom, which shall be payable at the rate and in the manner prescribed by Applicable Law.

5. Licence

- 5.1. The provisions of this Clause 5 shall apply to all System Software to be supplied under the Agreement.
- 5.2. The Facility hereby accepts an annual, non-exclusive, non-transferable licence to use the System Software on the Equipment in accordance with the Agreement.
- 5.3. The Facility undertakes
 - 5.3.1. not to copy (other than for normal operation of the Equipment and except to the extent permitted by applicable law), reproduce, translate, adapt, vary or modify the System Software nor to communicate the same to any third-party without Myzone's prior written consent;
 - 5.3.2. to use the Software only on the Equipment, and not to remove, add to, change or otherwise tamper with any copyright notice, legend or logo appearing in or on the Software or the medium upon which it resides;
 - 5.3.3. not to create any work based on or in any way derived from the Myzone System or any Myzone Materials.
- 5.4. The Licence hereby granted shall continue in force unless and until terminated in accordance with Clause 4.5 or Clause 12.

5.5. All rights not expressly granted to the Facility under this Agreement are reserved by Myzone or by its licensors.

6. Support Services

Subject to payment of the applicable Licence Charges, the Facility will be entitled to receive the Support Services for the relevant Subscription Period.

7. Drawings, etc.

All drawings, descriptive weights, dimensions and the descriptions and illustrations contained in the sales literature and price list are approximate only and shall not form part of the Agreement. In addition, drawings or technical documents issued either before or after the conclusion of the Agreement for the use or information of the Facility and such other information as may be supplied to the Facility including specifications shall not be copied, reproduced or communicated to any third-party without Myzone's prior written consent.

8. Delivery and Installation

8.1. Delivery dates for Equipment are subject to separate agreement between the Facility and the supplier of the Equipment. Myzone shall not be liable for direct, indirect or consequential loss arising from part, late or non-delivery.

8.2. Alterations and additions to or in connection with any of the Equipment may only be carried out by Myzone or its duly authorised distributor and no liability whatsoever shall be accepted by Myzone for any alterations or additions carried out in contravention of this Clause nor for any effect such alterations or additions may have on the Myzone System.

9. Damage, Shortage or Loss in Transit

9.1. In relation to the Equipment, Myzone does not accept responsibility for damage, shortage or loss in transit, all of which are subject to the terms separately agreed between the Facility and its supplier.

10. Software Warranty

10.1. Myzone warrants that the System Software will operate in all material respects in accordance with the Documentation whilst the Licence described in Clause 5 remains valid and in force (the "Warranty Period"). If, within the Warranty Period, the Facility notifies Myzone in writing of any defect or fault in the System Software in consequence of which it fails to conform in any material respect to the Documentation, and such defect or fault does not result from the Facility, or anyone acting with the authority of the Facility, having amended the System Software or used it outside the terms of the Licence for a purpose or in a context other than the purpose or context for which it was designed or in combination with any other software not provided by Myzone, Myzone shall, at Myzone's option, do one of the following:

10.1.1. repair the System Software;

10.1.2. replace the System Software; or

10.1.3. terminate the Licence immediately by notice in writing to the Facility and refund any Charges paid by the Facility as at the date of termination (less a reasonable sum in respect of the Facility's use of the System Software to the date of termination) on return of the System Software and all copies thereof,

provided the Facility provides all the information that may be necessary to assist Myzone in resolving the defect or fault, including a documented example of any defect or fault, or sufficient information to enable Myzone to re-create the defect or fault.

10.2. Myzone does not warrant that the use of the System Software will be uninterrupted or

error-free.

- 10.3. The Facility acknowledges that the System Software has not been developed to meet the individual requirements of the Facility.
- 10.4. All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into the Agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded to the fullest extent permitted by applicable law, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.
- 10.5. Myzone warrants that it has used commercially reasonable efforts to check the System Software for Malware, but Myzone cannot and does not warrant that the System Software will be free from all known Malware.

11. Confidentiality

- 11.1. All information, drawings, specifications, documentation, software listings, source or object code which Myzone may have imparted and may from time to time impart to the Facility relating to the Myzone System are proprietary and confidential. The Facility agrees that it shall use the same solely in accordance with the provisions of the Agreement for the proper operation of the Myzone System and that it shall not at any time during or after expiry or termination of the Agreement disclose the same, whether directly or indirectly, to any third-party without Myzone's prior written consent.
- 11.2. The Facility further agrees that it shall not itself or through any affiliate, agent or third-party use such confidential information for any purpose prohibited by Clause 3.2.
- 11.3. Nothing in this Clause 11 shall prevent the disclosure or use by the Facility of any information (other than personal data) which is or hereafter becomes, through no fault of the Facility, public knowledge or to the extent permitted by law.

12. Termination

- 12.1. Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Agreement without liability to the other:
 - 12.1.1. if the other party commits a material breach of any of the provisions of the Agreement and, in the case of a breach capable of remedy, fails to remedy the breach within thirty (30) days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied; or
 - 12.1.2. the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement; or
 - 12.1.3. upon the other party passing a resolution for winding-up or having a petition to wind up presented against it or going into liquidation, whether voluntary or compulsory (save for the purposes of amalgamation or reconstruction where the amalgamated or reconstructed company agrees to adhere to the Agreement) or suffering a winding-up order being made against it or going into administration; or
 - 12.1.4. if the other party proposes a voluntary arrangement (if in the United Kingdom within the meaning of Section 1 or Section 253 of the Insolvency Act 1986, or an interim order is made in relation to Myzone under Section 252 of the Insolvency Act 1986), or any other steps are taken or negotiations commenced by that party or any of its creditors with a view to proposing any kind of composition, compromise or arrangement involving the other party and any of its creditors;
 - 12.1.5. if a receiver or administrative receiver or administrator is appointed or an encumbrancer takes possession of the undertaking or assets (or any part thereof) of the other party; or

- 12.1.6. if the other party is unable to pay its debts (if in the United Kingdom within the meaning of Section 123 of the Insolvency Act 1986 or any statutory re-enactment or modification thereof) as they fall due or ceases to or threatens to cease to carry on its business or enters into a composition with its creditors; or
- 12.1.7. the other party takes or suffers any action similar or analogous to the events described in Clauses 12.1.3, 12.1.4, 12.1.5 or 12.1.6 in any jurisdiction in consequence of debt.
- 12.2. Myzone may terminate the Agreement if there is a change of control of at least 50% of the ownership of the Facility.
- 12.3. On termination of this Agreement for any reason:
 - 12.3.1. the Licence shall immediately terminate, and the Facility shall return and make no further use of the System Software; and
 - 12.3.2. the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.
13. **Myzone's Liability**
- 13.1. This Clause 13 prevails over all other clauses in the Agreement.
- 13.2. Myzone does not exclude or limit its liability to the Facility for:
 - 13.2.1. death or personal injury caused by its negligence;
 - 13.2.2. fraud or fraudulent misrepresentation;
 - 13.2.3. breach of third party Intellectual Property Rights; or
 - 13.2.4. breach of its obligations in respect of the Facility's Confidential Information.
- 13.3. The liability of Myzone in respect of loss or damage to tangible property of the Facility caused by its negligence shall not exceed one million (1,000,000) pounds.
- 13.4. Subject to the provisions of Clauses 13.2 and 13.3, the aggregate liability of Myzone in respect of any claim by the Facility under the Agreement shall not exceed a sum equal to the total Charges paid by or due from the Facility during the 12 months immediately prior to written notification of the claim, however that liability arises including (without limitation) breach of contract, tort, misrepresentation or breach of statutory duty.
- 13.5. Myzone shall not be liable to the Facility for any loss not flowing directly and naturally in the ordinary course of events from its own act or omission.
- 13.6. Myzone shall not be liable for any deletion, destruction, damage, or other loss of any Facility data not attributable to any act or omission on the part of Myzone or any person acting on its behalf.
- 13.7. The Facility hereby acknowledges that:
 - 13.7.1. Myzone's obligations under the Agreement accord with the Facility's expectations and are fair and reasonable;
 - 13.7.2. some limitation of liability is to be expected; and
 - 13.7.3. the limitations of liability are fair and reasonable in the light of:
 - (a) the price and / or Charges to be paid; and
 - (b) the nature of the products / services supplied.
- 13.8. In the absence of fraud, no oral or written information or advice given by Myzone shall create a warranty or give rise to any other liability other than as expressly assumed in the Agreement.

14. Intellectual Property Rights

- 14.1. The Facility acknowledges that any and all Intellectual Property Rights used or subsisting in or in connection with the Myzone System including the System Software, Equipment and other parts thereof (as developed from time to time) are and shall be the sole property of Myzone or their respective manufacturer or licensor, and the Facility shall not during or at any time after the completion, expiry or termination of the Agreement in any way question or dispute the ownership thereof. Except to the extent expressly provided for in the Agreement, all Intellectual Property Rights shall remain the property of the party owning or creating the same.
- 14.2. Myzone does not have and shall not by virtue of providing the Myzone System acquire, any right of ownership in or title to any Facility Data, including data produced or owned by the Facility.
- 14.3. The Facility does not have, nor shall it acquire, any right of access or ownership in or title to any data generated by a User's use of a Myzone belt purchased by or issued to that User, or uploaded by a User to any website owned or operated by or on behalf of Myzone or any affiliate of Myzone.
- 14.4. The Facility shall indemnify and hold harmless Myzone, its officers, directors and employees against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Facility's use of the System Software or Myzone Materials, provided that:
 - 14.4.1. the Facility is given prompt notice of any such claim;
 - 14.4.2. Myzone provides, at the Facility's expense, reasonable co-operation to the Facility in the defence and settlement of such claim; and
 - 14.4.3. the Facility is given sole authority to defend or settle the claim.
- 14.5. Myzone shall indemnify and hold harmless for any amounts awarded in judgment or settlement against the Facility, its officers, directors and employees in respect of any claim that the Facility's use of the Myzone System in accordance with the Agreement infringes the Intellectual Property rights of any third party, provided that:
 - 14.5.1. Myzone is given prompt notice of any such claim;
 - 14.5.2. the Facility provides, at Myzone's expense, reasonable co-operation to Myzone in the defence and settlement of such claim; and
 - 14.5.3. Myzone is given sole authority to defend or settle the claim.
- 14.6. In the defence or settlement of any claim referred to in clause 14.4, Myzone may obtain for the Facility the right to continue using the Myzone System, replace or modify the affected component of the Myzone System so that it becomes non-infringing or, if such remedies are not reasonably available, terminate the Agreement without liability to the Facility. Myzone shall have no liability if the alleged infringement is based on:
 - 14.6.1. any modification of the Myzone System not made by or on behalf of Myzone; or
 - 14.6.2. the Facility's use of the Myzone System in a manner contrary to the instructions given to the Facility by Myzone; or
 - 14.6.3. the Facility's use of the Myzone System after notice of the alleged or actual infringement from Myzone or any appropriate authority; or
 - 14.6.4. the combination of the Myzone System with any other service, software, or system not provided by Myzone.
- 14.7. This Clause 14 sets out the Facility's sole and exclusive rights and remedies, and Myzone's entire obligations and liability, for infringements of any third party's Intellectual Property Rights.

15. Notices

- 15.1. Any notice required to be given under the Agreement shall be in writing and shall be
- 15.1.1. delivered by hand, or by pre-paid first-class post or recorded delivery post to the other party at such address as may have been notified by that party for such purposes from time to time, or
 - 15.1.2. sent by email or fax to the other party's fax number or email address as notified by that party for such purpose from time to time.
- 15.2. A notice shall be deemed to have been received:
- 15.2.1. if delivered by hand, when delivered (or if delivery is not in business hours, at 9 am on the first Working Day following delivery);
 - 15.2.2. if sent by pre-paid first-class or recorded delivery post, (provided it is correctly addressed) at the time at which it would have been delivered in the normal course of post;
 - 15.2.3. if sent by fax, at the time of transmission (as shown by the timed printout obtained by the sender); and
 - 15.2.4. if sent by email, at 9 am on the first Working Day following despatch.

16. Force Majeure

- 16.1. Neither Myzone nor any of its employees, agents or sub-contractors shall be deemed in breach of the Agreement or under any liability whatsoever to the Facility for failure or delay in performing any obligation under the Agreement, if the delay or failure resulted from circumstances beyond its reasonable control including any failure or interruption of the internet or other communication system owned or controlled by third parties.
- 16.2. Myzone will not be liable for any defect in or failure of any product or services not provided by or on behalf of Myzone (a "Third Party Default"), and shall not be liable for any delay to or interruption or failure of the Myzone System to the extent that such delay, interruption or failure is attributable to a Third Party Default.

17. Waiver

Failure or neglect by Myzone to enforce at any time any of the terms of the Agreement shall not be construed nor shall be deemed to be a waiver of Myzone's rights hereunder nor in any way affect the validity of the whole or any part of the Agreement nor prejudice Myzone's rights to take subsequent action.

18. Severability

In the event that any or any part of the Agreement shall be determined by any competent authority to be invalid, unlawful or unenforceable to any extent such term, condition or provision shall to that extent be severed from the remaining Terms which shall continue to be valid and enforceable to the fullest extent permitted by law.

19. Assignment

- 19.1. The Facility shall not, without the prior written consent of Myzone, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement, except in the case of a transfer to a bona fide purchaser of the whole of the business of the party in question, and subject to the purchaser first

entering into a written agreement with the other party to comply with the obligations of the transferor party as if it were a party to the Agreement.

- 19.2. Myzone may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement.

20. Entire Agreement

- 20.1. The Agreement, and any documents referred to in them, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover whether or not in writing, and whether existing prior to or at the same time as this Agreement.
- 20.2. Each of the parties acknowledges and agrees that in entering into the Agreement it does not rely on and shall have no remedy in respect of any statement of fact or opinion, any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether or not party to the Agreement) relating to the subject matter of the Agreement, other than as expressly set out in the Agreement. Nothing in this Clause 20 shall, however, operate to limit or exclude any liability for fraud or fraudulent misrepresentation.

21. Relationship of The Parties

The parties are independent contractors. Nothing in the Agreement is intended to or shall operate to create a partnership or joint venture between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

22. Third Party Rights

The Agreement is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, any other person.

23. Dispute Resolution

- 23.1. Except as otherwise provided, in the event of any dispute arising out of or in relation to the Agreement, the parties shall first use their respective best endeavours to consult and negotiate with each other in good faith and, recognising their mutual interests, attempt to reach a settlement of the dispute satisfactory to both parties. To such end the parties shall within 10 working days of a dispute arising convene a meeting between their authorised representatives and any other relevant members of management having regard to the matter under discussion (together, "Appointed Persons") to attempt to resolve the dispute.
- 23.2. If the Appointed Persons agree upon a settlement of the dispute, they will sign a statement setting out its terms and the parties will ensure that it is fully and promptly carried out. If the Appointed Persons do not reach such a settlement within 20 working days of the meeting convened in accordance with Clause 23.1, the parties will refer the dispute to mediation before having recourse to litigation. The mediation shall be conducted in accordance with an Alternative Dispute Resolution procedure recommended by the Centre for Effective Dispute Resolution, London (the "ADR Procedure").
- 23.3. If the matter has not been resolved by the ADR Procedure within 30 days of the initiation of that procedure, or if either party will not participate in the ADR Procedure, the

dispute shall be decided by the English Courts in accordance with Clause 24.

24. Governing Law and Jurisdiction

- 24.1. This Agreement and any disputes or claims arising out of or in connection therewith will be governed by and construed in accordance with the laws of England.
- 24.2. The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement.