



Master Services Agreement

between

NAK CONSULTING SERVICES LIMITED

and

<CLIENT>

VERSION 1.0

12/04/2024

NAK & CUSTOMER RESTRICTED

NAK Consulting Services Limited Registered in England & Wales No: 7129928
VAT No. 984715477

Document Control

Document Purpose

This Master Services Agreement provides the overall governing terms and conditions for products and services provided by NAK Consulting Services Limited to <CLIENT>. It is expected that individual services will generate statements of work or service schedules, which will set out the specific elements of each detailed engagement.

Document History

Version	Date	Author	Revisions

Document Approval

Date	Approved By	Company/Position

THIS MASTER SERVICES AGREEMENT IS DATED <DATE>

PARTIES

- (1) **NAK CONSULTING SERVICES LIMITED** incorporated and registered in England and Wales with registered number 07129928 whose registered office is at Suite 2b, Portman House, 300 Pavilion Drive, Northampton, NN4 7YE ("**NAK**");
- (2) **<CLIENT>** incorporated and registered in England and Wales with registered number **<CLIENT REGNO>** whose registered office is at **<CLIENT REG ADDRESS>** (the "**Customer**").

1. INTERPRETATION

1.1. In this Master Agreement the following definitions and rules of interpretation apply:

"Acceptance"	has the meaning specified in clause 4.5;
"Authorised Users"	Those employees, agents and independent contractors and clients of the Customer who are authorised by the Customer to use the Hosted Services and the Documentation, as further described in clause 7;
"Change Control Procedure"	the change control procedure set out in clause 15;
"Co-location Service Terms"	The additional terms and conditions applicable to the provision of co-location services
"Co-location Services"	has the meaning set out in the Co-location Services Terms;
"Confidential Information"	all confidential information (however recorded or preserved) disclosed by a party or its employees, officers, representatives or advisers (together its Representatives) to the other party and that party's Representatives in connection with the Master Agreement concerning: • the existence and terms of the Master Agreement; • any information that would be regarded as confidential by a reasonable business person relating to: • the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); • the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); and

- any information developed by the parties in the course of carrying out the Master Agreement and each Statement of Work; and

Provided That the term “**Confidential Information**” does not include any information that:

- is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause); or
- was available to the receiving party on a non-confidential basis prior to disclosure by the disclosing party; or
- was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party’s knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party; or
- was known to the receiving party before the information was disclosed to it by the disclosing party; or
- the parties agree in writing is not confidential or may be disclosed; or
- is developed by or for the receiving party independently of the information disclosed by the disclosing party;

“ Customer Data ”	the information that is provided by the Customer to NAK as part of the Customer’s use of the Services, including any information derived from such information;
“ Customer Information ”	the information that the Customer should provide to NAK in relation to the Services (including all relevant details which relate to the Customer’s requirement for the provision of the Services and information more particularly described in the Statement of Work);
“ Customer Materials ”	all Documents, Customer Information and other information and materials provided by the Customer to NAK relating to the Services which existed prior to the commencement of the Master Agreement and/or was generated independently of the Master Agreement including computer programs, data, reports and specifications;
“ Customer’s Manager ”	the Customer’s manager for the Services, appointed in accordance with clause 10.1.2;

“Customer’s Operating Environment”	the Customer’s computing environment (consisting of hardware, software and telecommunications networks) that is to be used by the Customer in connection with its use of the Services and which interfaces with NAK’s System in order for the Customer to receive the Services;
“Data and Network Service Terms”	the additional terms and conditions applicable to the provision of data and network services
“Data and Network Services”	has the meaning set out in the Data and Network Service Terms;
“Deliverables”	all Documents, products and materials to be provided by NAK to the Customer in relation to the Statement of Work in any form, including computer programs, data, reports and specifications (including drafts) and any deliverables specified as such in the Statement of Work;
“Document”	includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form;
“Documentation”	The documentation made available to the Customer by NAK online via such web address as may be notified by NAK to the Customer from time to time which sets out the user instructions for the Hosted Services;
“Effective Date”	the date specified as such in the Statement of Work or if not specified the date an order for Products and/or Services is accepted in accordance with clause 3.1.5 or 3.1.6;
“Exit Plan”	has the meaning given in clause 27.1;
“Exit Services”	the services to be provided by NAK in implementation of the Exit Plan;
“Extended Term”	12 months or as otherwise specified in the Statement of Work;
“Go Live Date”	the date of Acceptance of the Services or if no Implementation is provided, the date when NAK notifies the Customer by telephone, email or fax that the Service is ready for use by the Customer;
“Group”	in relation to a company, that company, any company of which it is a Subsidiary (its holding company) and any other Subsidiary of such holding company; and each company in a group is a member of the group. Unless the context requires otherwise, the application of the definition of Group to any company at any time shall apply to NAK as it is at that time;
“Half Day”	a period of three and a half hours;

“Hardware”	any computers, servers, cabling and other equipment to be supplied by NAK as set out in the Statement of Work;
“Hosted Services”	services to be made available to the Customer via the internet and/or a private network by NAK as specified in the Statement of Work;
“Implementation”	the installation, configuration and related work referred to in clause 4, to be performed by NAK to install, configure and/or prepare its software and other IT systems for the performance of the Services and the delivery of the Deliverables;
“Initial Term”	the initial term relating to the Services of 12 months from the Effective Date or as otherwise specified in the Statement of Work or the Service Schedule;
“Intellectual Property Rights”	patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, trade names and domain names, rights in get-up, rights to goodwill or to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
“NAK Materials”	all Documents, information and materials provided by NAK relating to the Services which existed prior to the commencement of the Master Agreement and/or were generated independently of the Master Agreement including computer programs, data, reports and specifications;
“NAK Software”	The online software applications provided by NAK as part of the Hosted Services and such other or alternative software applications as may be provided by NAK as part of the Hosted Services from time to time;
“NAK’s Manager”	NAK’s manager for the Services appointed under clause 9.3;
“NAK’s System”	the information and communications technology system to be used by NAK in performing the Services excluding the Customer’s Operating Environment;
“NAK”	NAK Consulting Services Limited;
“Normal Business Hours”	8.30 am to 5.30 pm during a Working Day;

“Operating Manuals”	the operating manuals, user instructions and all other related materials in human-readable and/or machine-readable forms supplied by NAK to the Customer;
“Products”	any Hardware or Third Party Software;
“Prohibited Materials”	any material which: • is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; • facilitates illegal activity; • depicts sexually explicit images; • promotes unlawful violence; • is discriminatory based on race, gender, age, colour, religious belief, sexual orientation, disability, gender reassignment; or • is otherwise illegal, hazardous, a risk to health and safety or causes damage or injury to any person or property;
“Renewal Period”	the renewal period of 12 months or as otherwise specified in the Statement of Work;
“Replacement Supplier”	a replacement supplier of service of the nature of the Services nominated by the Customer pursuant to clause 27.1;
“Retail Prices Index”	the Retail Prices Index (all Items, excluding mortgages) as published by the Office for National Statistics from time to time, or failing such publication, such other index as the parties may agree most closely resembles the Retail Prices Index;
“Service Credit”	the credit (if any) offered by NAK for any failure by NAK to perform the Services in accordance with the Service Levels relating to such Services as more particularly specified in the Statement of Work;
“Service Level Failure”	Has the meaning set out in clause 14.4.1;
“Service Levels”	the service levels in respect of the Services specified in the relevant Statement of Work;

“Service Schedule”	Detailed descriptions and terms of any on-going, recurring specific service provided to the client by NAK;
“Services”	the services to be provided by NAK as specified in the Statement of Work and including any Hosted Services and any Implementation which NAK agrees to provide to the Customer;
“Statement of Work”	the detailed plan agreed in accordance with clause 4, describing the Services to be provided by NAK, the timetable for their performance and the related matters listed in the template Statement of Work set out in Error! Reference source not found. ;
“Subsidiary” and “holding company”	means a subsidiary or a holding company (as the case may be) as defined in section 1159 of the Companies Act 2006. Unless the context requires otherwise: (a) the application of the definition of Subsidiary to any company at any time shall apply to NAK as it is at that time; and (b) references to Subsidiary are references to a Subsidiary of NAK;
“Term”	the period from the Effective Date until termination of the Statement of Work;
“Termination Notice Period”	90 days or such other termination notice period specified in the Statement of Work or the Service Schedule;
“Third Party Services”	any hosted or other services provided by third parties which are to be provided to the Customer by NAK as part of the Services;
“Third Party Software”	software programs proprietary to third parties;
“VAT”	value added tax chargeable under the Value Added Tax Act 1994 and any similar additional tax;
“Virus”	any thing or device (including any software, code, file or programme) which may: • prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; • prevent, impair or otherwise adversely affect access to or the operation of any programme or data,

including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or

- adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices; and

“Working Day”

a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

User Subscriptions

the user subscriptions purchased by the Customer from time to time which entitle Authorised Users to access and use the Hosted Services and the Documentation in accordance with the Statement of Work;

Data Protection Legislation:

means:

- unless and until the GDPR is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK; and then
- any successor legislation to the GDPR or the Data Protection Act 2018.

GDPR

General Data Protection Regulation ((EU) 2016/679)

- 1.2. Clause, schedule and paragraph headings shall not affect the interpretation of the Master Agreement.
- 1.3. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person’s legal and personal representatives, successors and permitted assigns.
- 1.4. The schedules form part of the Master Agreement and shall have effect as if set out in full in the body of the Master Agreement and any reference to the Master Agreement includes the Schedules.
- 1.5. Words in the singular shall include the plural and vice versa.
- 1.6. A reference to one gender shall include a reference to the other genders.
- 1.7. Any reference to an “hour” means an hour in a day and any reference to a “day” means a period of 24 hours running from midnight to midnight.
- 1.8. A reference to a statute, statutory provision or subordinated legislation is a reference to it as it is in force from time to time, taking account of any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts; provided that, as between the parties, no such amendment or re-enactment shall apply for the purposes of the Master Agreement to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, any party.

- 1.9. A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10. A reference to “writing” or “written” includes faxes and e-mail.
- 1.11. Where the words “include(s)”, “including” or “in particular” are used in this Master Agreement, they are deemed to have the words without limitation following them and where the context permits, the words “other” and “otherwise” are illustrative and shall not limit the sense of the words preceding them.
- 1.12. Any obligation in this Master Agreement on a person not to do something includes an obligation not to agree, allow, permit or acquiesce to that thing being done.
- 1.13. References to clauses are to the clauses in this Master Agreement.
- 1.14. In the event of an inconsistency between any of the provisions of the documents comprising the Master Agreement, they shall be given the order of precedence set out below in the descending order of priority with sub-clause 1.14.1 taking precedence over the subsequent sub-clauses:
 - 1.14.1. Statement of Work
 - 1.14.2. The Service Schedule;
 - 1.14.3. Master Service Agreement

2. **COMMENCEMENT AND DURATION**

- 2.1. This Master Agreement shall come into force on 12th April 2024 and shall continue unless terminated earlier in accordance with clause 25 (Termination) until either party gives to the other party written notice to terminate of not less than the Termination Notice Period such notice to expire on completion of all Statements of Work entered into before the date on which it is served.
- 2.2. If there are no uncompleted Statements of Work as at the date notice to terminate is served under clause 2.1, such notice shall terminate this Master Agreement with immediate effect.
- 2.3. The parties shall not enter into any further Statements of Work after the date on which notice to terminate is served under clause 2.1.
- 2.4. The Customer may procure goods and services from NAK by agreeing a Statement of Work with NAK pursuant to clause 3 (Statements of Work).
- 2.5. NAK shall provide the Services from the date specified in the relevant Statement of Work.
- 2.6. Unless otherwise specified in the Statement of Work, each Statement of Work shall commence on the date it is signed by the parties and shall, unless terminated earlier in accordance with clause 25 (Termination) or unless otherwise specified in the Statement of Work, continue for the Initial Term and shall automatically extend for the Extended Term at the end of the Initial Term and at the end of each Extended Term. Either party may give written notice to the other party, of not less than the Termination Notice Period, before the end of the Initial Term or the relevant Extended Term, to terminate the Statement of Work at the end of the Initial Term or the relevant Extended Term, as the case may be.

3. **STATEMENTS OF WORK**

- 3.1. Each Statement of Work shall be agreed in the following manner:

- 3.1.1. the Customer shall provide NAK with as much information as NAK may request to allow NAK to prepare a draft Statement of Work for the Services requested;
- 3.1.2. following receipt of the information requested from the Customer NAK shall, as soon as reasonably practicable either:
 - 3.1.2.1. inform the Customer that it declines to provide the requested Services; or
 - 3.1.2.2. provide the Customer with a draft Statement of Work.
- 3.1.3. NAK provides the Customer with a draft Statement of Work pursuant to clause 3.1.2.2, NAK and the Customer shall discuss and use reasonable endeavours to agree the draft Statement of Work;
- 3.1.4. the Statement of Work must be signed by an authorised party on behalf of the Customer and returned to NAK prior to the commencement of such Services or provision of Products by NAK as confirmation that it accurately sets out the Customer's requirements;
- 3.1.5. if, at the Customer's request, work commences prior to the signing of the Statement of Work then the Customer is deemed to have accepted that the Statement of Work accurately sets out the Customer's requirements and the Customer accepts the terms of the last version of the Statement of Work sent to the Customer by NAK; and
- 3.1.6. both parties shall sign the draft Statement of Work when it is agreed.
- 3.2. Once the Statement of Work has been agreed and signed in accordance with clause 3.1.6 or the Customer is deemed to have accepted the Statement of Work pursuant to clause 3.1.5 no amendment shall be made to it except in accordance with the Change Control Procedure.
- 3.3. Each Statement of Work shall be part of this Master Agreement and shall not form a separate contract to it.

4. **IMPLEMENTATION**

- 4.1. NAK shall agree with the Customer whether or not Implementation is required in respect of the Services and if Implementation is not required in respect of any part of the Services, then the remainder of this clause 4 shall not apply to such Services.
- 4.2. NAK shall perform Implementation in accordance with the timetable set out in the Statement of Work. NAK shall use reasonable endeavours to meet the performance dates set out in the Statement of Work, but any such dates shall be estimates only.
- 4.3. When NAK considers that the Services are ready for activation it shall notify the Customer. Within fifteen days of such notification (or such longer period as NAK may agree in writing) the Customer shall review the operation of the Services to confirm that they function in material conformance with their specification. If the Services fail in any material respect to conform with their specification, the Customer shall give NAK a detailed description of any such non-conformance (**Error**) in writing, within the fifteen-day review period.
- 4.4. NAK shall use reasonable endeavours to correct any Error within a reasonable time and, on completion, re-submit the Services to the Customer. If NAK is unable to correct the Error within a period of three months from the start of the acceptance tests, either party may terminate the Statement of Work without further liability to the other by giving written notice to the other.

- 4.5. If the Customer does not provide any written comments in the notification period described in clause 4.3 above, or if the Services are found to conform with the specification, then the Services shall be deemed accepted as from the date of their notification (**Acceptance**).

5. SERVICE SCHEDULES

- 5.1. NAK's Data and Network Services terms and conditions in force from time to time (**Data and Network Services Terms**) shall apply to the provision of Data and Network Services by NAK to the Customer under the Statement of Work. If there is any inconsistency between the Data and Network Services Terms and the terms of the Statement of Work, the latter shall prevail.
- 5.2. NAK's Co-location Services terms and conditions in force from time to time (**Co-location Services Terms**) shall apply to the provision of Co-location Services by NAK to the Customer under the Statement of Work. If there is any inconsistency between the Data and Network Services Terms and the terms of the Statement of Work, the latter shall prevail.

6. SERVICES

- 6.1. The Customer shall remain responsible for the use of the Services under its control, including any use by third parties (whether fraudulent or invited by the Customer).
- 6.2. The Customer must take reasonable measures to ensure it does not jeopardise services supplied to third parties on the same shared access infrastructure. This includes informing NAK immediately it becomes aware of a denial-of-service attack or distributed denial-of-service attack. In the event of any such incident, NAK will work with the Customer to alleviate the situation as quickly as possible. The parties shall discuss and agree appropriate action (including suspending the Services).
- 6.3. Unless expressly agreed in writing by NAK, the Customer shall not provide the Services to third parties.
- 6.4. NAK reserves the right to:
- 6.4.1. modify NAK's System, its network, system configurations or routing configuration; or
 - 6.4.2. modify or replace any hardware or software in its network or in equipment used to deliver any Service over its network,
- provided that this has no material adverse effect on the provision of the Services or the Service Levels.
- 6.5. The Customer understands and agrees that if there is a change to the Customer's Operating Environment and/or the Customer's premises between any inspection carried out on the Customer's Operating Environment and/or the Customer's premises and commencement of the Services NAK will be entitled to alter its terms for the provision of the Services (including increasing NAK's charges for the Services).

7. HOSTED SERVICES

The following terms apply to the provision of Hosted Services:

- 7.1. Subject to the restrictions set out in this clause 7 and the other terms and conditions of the Statement of Work, NAK hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Hosted Services and the Documentation during the Term solely for the Customer's internal business operations.

- 7.2. The Customer shall ensure that any log on details or passwords issued to or used by the Customer or any Authorised Users in relation to the Hosted Services are kept confidential and are not disclosed to any unauthorised users or third parties.
- 7.3. In relation to the Authorised Users, the Customer undertakes that:
 - 7.3.1. unless otherwise agreed by NAK, the maximum number of Authorised Users that it authorises to access and use the Hosted Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;
 - 7.3.2. it shall permit NAK to audit the Hosted Services in order to establish whether the Hosted Services are being used in accordance with the Statement of Work and the Master Agreement; and
 - 7.3.3. if the number of Authorised Users exceeds the number of User Subscriptions it has purchased NAK may charge the Customer and the Customer shall pay, NAK then current fees for additional Authorised Users.
- 7.4. The Customer shall not, and shall procure that Authorised Users shall not, access, store, distribute or transmit any Viruses, or any material during the course of its use of the Hosted Services that is Prohibited Material and NAK reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this paragraph.
- 7.5. The Customer shall not, and shall procure that Authorised Users shall not:
 - 7.5.1. except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
 - 7.5.1.1. and except to the extent expressly permitted under the Statement of Work, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the NAK Software and/or Documentation (as applicable) in any form or media or by any means; or
 - 7.5.1.2. attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the NAK Software; or
 - 7.5.2. subject to clause 7.5.1 and except as expressly permitted by NAK, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Hosted Services and/or Deliverables available to any third party except the Authorised Users; or
 - 7.5.3. attempt to obtain, or assist third parties in obtaining, access to the Hosted Services and/or Deliverables, other than as provided under this Clause 7.
- 7.6. The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Hosted Services and/or the Deliverables and, in the event of any such unauthorised access or use, promptly notify NAK.
- 7.7. The rights provided under this clause 7 are granted to the Customer only, and except as expressly permitted under the Statement of Work shall not be considered granted to any subsidiary or holding company of the Customer.
- 7.8. The Customer:

- 7.8.1. shall not store, distribute or transmit any Prohibited Materials through the Hosted Services.
- 7.8.2. shall ensure that the Customer's Operating Environment complies with the relevant specifications provided by NAK from time to time in relation to the Customer's use of the Hosted Services.
- 7.8.3. Shall not use the Hosted Services for any illegal or unlawful purpose under any applicable law; or
- 7.8.4. Shall not use the Hosted Services in a manner or for a purpose which constitutes an infringement of the rights of NAK and/or any third party, or which brings, or is likely to bring, NAK or any of its Service Providers into disrepute

8. **SUPPLY OF THIRD PARTY SOFTWARE AND SERVICES**

- 8.1. If NAK supplies or provides any Third Party Software to the Customer then such software shall be supplied or provided subject to the standard terms and conditions of the proprietor of such software at the time of supply or provision. The Customer undertakes to use such software strictly in accordance with such terms and conditions.
- 8.2. If the Customer acquires any Third Party Software for use on or with the Products and/or Services (otherwise than in the circumstances referred to in clause 8.1), the Customer acknowledges that it is the Customer's responsibility to obtain and maintain all necessary licences and consents in relation to such Third Party Software.
- 8.3. If NAK supplies or provides any Third Party Services to the Customer then such services may be supplied or provided subject to the standard terms and conditions of the provider of such Third Party Services at the time of supply or provision. The Customer accepts that its rights to receive, access or otherwise use the Third Party Services may be subject to such additional terms and conditions as are set out in the Statement of Work, manifest from the Third Party Services concerned (including by any web page or other document accompanying such Third Party Services) or which have otherwise been notified by NAK to the Customer and the Customer undertakes to use such services strictly in accordance with such additional terms and conditions. If there is an inconsistency between any of the provisions of the Statement of Work and the additional terms and conditions referred to in this clause 8.3, the provisions in the Statement of Work shall prevail.
- 8.4. If any order for Services includes the provision of products and services supplied by Microsoft Corporation and/or any Microsoft Group (**Microsoft**), the Customer understands that Microsoft may accept or reject the Customer as a customer of Microsoft or may refuse to supply Microsoft's products and services to the Customer at Microsoft's absolute discretion. If, after the term for Hosted Services commences, Microsoft rejects the Customer as a customer of Microsoft, or refuses to supply Microsoft's products or services to the Customer, either party may terminate the Statement of Work to which the Microsoft products or services relate immediately without liability to the other party by giving written notice to the other party. In the event of termination under this clause 8.4 and without prejudice to any liability for any breach of the Master Agreement by the Customer that there may be, any fees paid by the Customer in respect of the Microsoft products or services for the period after termination shall be refunded to the Customer by NAK. Such refund constitutes the Customer's sole and exclusive remedy and NAK's entire liability for any termination under this clause 8.4.

9. **NAK'S OBLIGATIONS**

- 9.1. NAK shall provide the Services, and deliver the Products and Deliverables to the Customer, in accordance in all material respects with the Statement of Work.

- 9.2. Any dates specified by NAK for performance of the Services and/or delivery of the Deliverables and the Products are intended to be an estimate and time shall not be of the essence for delivery and any other obligations under the Statement of Work and shall not be made of the essence by notice. If no dates are so specified, delivery and/or performance will be within a reasonable time.
- 9.3. NAK shall appoint NAK's Manager who shall have authority contractually to bind NAK on all matters relating to the Services. NAK may replace him from time to time where reasonably necessary in the interests of NAK's business.
- 9.4. NAK shall use reasonable efforts to ensure that, while on the Customer's premises, NAK's Manager and all other persons who enter such premises with the authority of NAK for the purpose of, or in connection with, the Statement of Work or the provision of the Services adhere to the Customer's reasonable security procedures and health and safety regulations, as from time to time are notified to NAK or otherwise brought to the notice of NAK or such persons. The Customer shall be entitled to remove or to refuse admission to any person who is, or has been, in material breach of such procedures and regulations. However, NAK shall incur no liability for any delay in performing or failure to perform its obligations under the Statement of Work as a result of compliance with the terms of this clause 9.4.
- 9.5. NAK shall have no obligation to provide the Services and/or the Products or liable for any breach of the Statement of Work to the extent that such breach arises due to any act or omission of the Customer (or the Customer's employees, agents or sub-contractors) in breach of the Statement of Work.
- 9.6. Notwithstanding the undertaking in clause 9.1, NAK:
 - 9.6.1. does not warrant that the operation of the Hosted Services and/or any software supplied as part of the Hosted Services will be uninterrupted or error-free; or that the Hosted Services and/or the information obtained by the Customer through the Hosted Services will meet the Customer's requirements otherwise than as specified in the Statement of Work; and
 - 9.6.2. is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities owned or operated by third parties (other than NAK's sub-contractors), including the internet, and the Customer acknowledges that the Hosted Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

10. CUSTOMER'S OBLIGATIONS

- 10.1. The Customer shall:
 - 10.1.1. co-operate with NAK in all matters relating to the Services;
 - 10.1.2. appoint the Customer's Manager in relation to the Services who shall have the authority contractually to bind the Customer on matters relating to the Services;
 - 10.1.3. provide, for NAK, its agents, sub-contractors, consultants and employees, without charge, safe and timely access to the Customer's premises, office accommodation, data and other facilities as reasonably required by NAK (including any access as specified in a Statement of Work);
 - 10.1.4. provide, in a timely manner, such Customer Materials and other information as NAK may request and ensure that it is complete and accurate in all respects;
 - 10.1.5. inform NAK of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises. If the Customer wishes to make a change to those requirements which may detrimentally affect provision of the Services, it can only do so via the Change Control Procedure;

- 10.1.6. ensure that all Customer's Operating Environment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant UK standards or requirements;
- 10.1.7. obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable NAK to provide the Products or Services including in relation to the installation of the NAK Equipment, the use of Customer's Materials and the use of the Customer's Materials insofar as such licences, consents and legislation relate to the Customer's business, premises and staff and equipment in all cases before the Go-Live Date;
- 10.1.8. comply with such reasonable instructions as NAK may issue from time to time in connection with the Services and the Products so that NAK can provide the Services, the Deliverables and the Products to the Customer; and
- 10.1.9. not, unless expressly agreed in writing by NAK, use any of the Services and/or Deliverables to provide services to third parties. Should the Customer wish to use the Services and/or Deliverables to provide services to third parties the Customer shall notify NAK in writing and the Customer's request shall be treated as a request for a variation to the Statement of Work and dealt in accordance with the Change Control Procedure.
- 10.2. The Customer acknowledges that it is solely responsible for providing the Customer Information and that NAK shall rely on the Customer Information in determining and selecting the appropriate Services and Products.
- 10.3. The Customer acknowledges that, unless otherwise agreed in writing by NAK pursuant to a Statement of Work, it is solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to NAK's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.
- 10.4. The Customer undertakes to NAK throughout the Term to take all reasonable precautions to protect the health and safety of NAK's employees agents and sub-contractors while on the Customer's premises.
- 10.5. The Customer shall at all reasonable times provide NAK, its employees, contractors and agents, with such access to the Customer's premises, adequate and safe working space, and any lighting, power and telecommunications facilities as are reasonably required to enable NAK to perform the Services.
- 10.6. NAK shall be entitled to rely upon the specification and any advice given by the Customer (its employees, directors, agents and sub-contractors) (in relation to the suitability of the Services and Products for meeting the Customer's requirements) such that to the extent that the Services comply with such specification and or such advice then NAK shall be deemed to have supplied the same in accordance with the Statement of Work, without limitation, notwithstanding the Customer Information.
- 10.7. If the Customer wishes to amend the Customer Information or any specification given by it or in the event that the Customer Information or any specification given by it is subsequently found to be inaccurate and/or not complete for any reason other than NAK's negligence, NAK (at its absolute discretion) may require that the request be treated as a request for a variation to the Statement of Work and dealt in accordance with the Change Control Procedure.
- 10.8. If NAK's performance of any of its obligations under the Statement of Work is prevented or delayed by any act or omission of the Customer, or the Customer's agents, sub-contractors or employees (other than NAK) (**Customer Default**): (i) NAK shall, without limiting its other rights or remedies, have the right to suspend performance of the Statement of Work until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent that Customer Default prevents or delays NAK's performance of any of its obligation; (ii) NAK

shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from NAK's failure or delay to perform any of its obligations; and (iv) the Customer shall be liable to pay to NAK, on demand, all reasonable costs, charges or losses sustained or incurred by NAK (including any labour costs and the de-mobilisation and re-mobilisation costs of NAK's sub-contractors and agents), loss or damage to property and loss of opportunity to deploy resources elsewhere and any network disconnection and reconnection charges) that arise from the Customer Default, subject to NAK confirming such costs, charges and losses to the Customer in writing.

- 10.9. The Customer understands and agrees that where NAK purchases Products for the Customer from a third party NAK shall purchase such Products as agent for the Customer and it shall be the Customer's responsibility to ensure that such goods and/or services are suitable for its requirements and NAK shall have no responsibility or liability for such Products (whether for their suitability, performance or otherwise).
- 10.10. The Customer understands and accepts that notwithstanding that NAK may use industry accepted anti-virus software in connection with the Services to check for and delete Viruses on NAK's System, there is an inherent risk that such software will not detect all Viruses.

11. WARRANTIES

- 11.1. Each party warrants to the other it has full power and authority to enter into and perform its obligations under the Master Agreement and each Statement of Work.
- 11.2. The Customer warrants that:
 - 11.2.1. it has the authority to grant any rights to be granted to NAK under each Statement of Work, including in respect of any hardware or software supplied by the Customer to NAK for use in the provision of the Services, the right to provide such software and hardware to NAK as indicated in the Statement of Work and for the same to be used in the provision of the Services and otherwise in connection with the Statement of Work; and
 - 11.2.2. it is the owner or authorised licensee of the Customer Materials and that NAK's use of the Customer Materials in accordance with the Statement of Work and any hardware or software supplied by the Customer to NAK for use in the provision of the Services will not infringe the Intellectual Property Rights or any other rights of any third party.
- 11.3. NAK warrants that:
 - 11.3.1. the Services will be performed with reasonable skill and care;
 - 11.3.2. the Customer's use of the Services in accordance with the Statement of Work will not infringe the Intellectual Property Rights of any third party;
 - 11.3.3. on delivery the Deliverables shall conform in all material respects with their description; and
 - 11.3.4. so far as it is able NAK will pass onto the Customer the benefits of any manufacturer's warranties relating to the Products.

12. TITLE AND RISK

- 12.1. Risk in all Products and Deliverables will pass to the Customer on delivery.
- 12.2. Ownership of the Products and Deliverables shall not pass to the Customer until NAK has received in cleared funds all sums due to it in respect of the Deliverables and/or Products Provided That, for the

avoidance of doubt, ownership of any Intellectual Property Rights in the Deliverables shall not pass to the Customer.

- 12.3. Until ownership of the Products has passed to the Customer under clause 12.2, the Customer shall:
 - 12.3.1. hold the Products on a fiduciary basis as NAK's bailee;
 - 12.3.2. store the Products (at no cost to NAK) in satisfactory conditions and separately from all the Customer's other equipment or that of a third party, so that they remain readily identifiable as NAK's property;
 - 12.3.3. not destroy, deface or obscure any identifying mark or packaging on or relating to the Products; and
 - 12.3.4. keep the Products insured on NAK's behalf for its full price against all risks with a reputable insurer to the reasonable satisfaction of NAK, ensure that NAK's interest in the Products is noted on the policy, and hold the proceeds of such insurance on trust for NAK and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 12.4. The Customer's right to possession of the Products before ownership has passed to it shall terminate immediately if the Customer is the subject of any of the circumstances set out in clause 25.1 or if the Customer encumbers or in any way charges the Products, or if the Customer fails to make any payment to NAK within 30 days of the due date.
- 12.5. The Customer grants NAK, its agents and employees an irrevocable licence at any time to enter any premises where the Products are or may be stored in order to inspect them, or where the Customer's right to possession has terminated, to remove them. All costs incurred by NAK in repossessing the Products shall be borne by the Customer.
- 12.6. On termination of the Statement of Work for any reason, NAK's (but not the Customer's) rights in this clause 12 shall remain in effect.
- 12.7. NAK may appropriate payments by the Customer to such Products as it thinks fit, notwithstanding any purported appropriation by the Customer to the contrary, and may make such appropriation at any time.

13. **DELIVERY OF PRODUCTS**

- 13.1. NAK shall deliver the Products to the location set out in the Statement of Work or such other location as the parties may agree
- 13.2. If for any reason the Customer will not accept delivery of any of the Products when they are ready for delivery, or NAK is unable to deliver the Products on time because the Customer has not provided or obtained appropriate instructions, documents, licences, consents or authorisations:
 - 13.2.1. risk in the Products will pass to the Customer;
 - 13.2.2. the Products will be deemed to have been delivered;
 - 13.2.3. NAK may store the Products until delivery whereupon the Customer will be liable for all related costs and expenses (including, without limitation, storage and insurance); and
 - 13.2.4. the Customer shall pay to NAK any additional costs incurred by NAK as a result of the Customer's failure to accept delivery.

- 13.3. NAK reserves the right to make partial deliveries. The Customer shall not be entitled to object to or reject the delivery by reason of the surplus or shortfall.
- 13.4. NAK may deliver the Products by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 13.5. The Customer must give notice in writing of any damage to the Products to NAK within five (5) Working Days of delivery of the Products giving full particulars, including the condition of parcels received, failing which NAK is discharged from any liability in respect of such damage and the Products are deemed to be compliant.
- 13.6. The Customer must comply with NAK's returns policy regarding the return of any Products as made available on NAK's website and as amended from time to time.
- 13.7. NAK shall not be responsible for any damage to, or shortage or loss of the Products in transit where the Customer has agreed to arrange for carriage of the Products.

14. **SERVICE LEVELS AND SERVICE CREDITS**

- 14.1. NAK shall use reasonable endeavours to provide the Services in accordance with the Service Levels which shall apply with effect from the Go Live Date.
- 14.2. Where a Customer believes any Services have failed to meet the relevant Service Levels the Customer must notify NAK in writing giving full details of such failure within 14 days of the date the Customer becomes aware of any failure of the Services to meet the Service Levels.
- 14.3. If NAK fails to provide the Services in accordance with the Service Levels then:
 - 14.3.1. NAK shall, promptly on becoming aware of a Service Level Failure, at NAK's expense deploy within a reasonable period of time such additional resources as are reasonably necessary (in each case having regard to the steps that the Customer would have been likely to take if acting on its own account) to perform the Services in the future in a manner which is likely to meet the Service Levels; and
 - 14.3.2. for the avoidance of doubt any failure of NAK to provide the Services in accordance with the Service Levels shall not be a material breach unless such breach continues to a material extent and the Customer has first served written notice on NAK giving reasonable particulars of the relevant breach or breaches and afforded NAK a period of two (2) months to remedy the deficiency and NAK shall have failed to comply with clause 14.3.1.
- 14.4. Where NAK offers Services Credits in respect of any Services the following terms apply:
 - 14.4.1. If NAK fails to provide a Service within the relevant Service Level (a "**Service Level Failure**"), the Customer shall become entitled to the Service Credit corresponding to the relevant Service Level Failure on submitting a written claim for such Service Credit, provided that the relevant Service Level Failure: (a) did not result from an act or omission of the Customer in breach of Master Agreement, or a cause outside NAK's control, or any scheduled downtime or routine maintenance of the relevant Service; and (b) was promptly notified to NAK under clause 14.2.
 - 14.4.2. The provision of a Service Credit shall be an exclusive remedy and NAK's entire liability for a particular Service Level Failure.
 - 14.4.3. A Service Credit shall not be payable unless the Customer notifies NAK in writing of its claim for Service Credits within 20 Working Days of the service-affecting event. The maximum

Service Credit allowable in a given month may be limited to an amount specified in the Statement of Work.

- 14.4.4. Service Credits shall be shown as a deduction from the amount due from the Customer to NAK in the next invoice then due to be issued under the Contract. NAK shall not in any circumstances be obliged to pay any money or make any refund to the Customer.

15. **CHANGE CONTROL**

- 15.1. If either party wishes to change the scope of the Services, it shall submit details of the requested change to the other in writing.
- 15.2. If either party requests a change to the scope or execution of the Services (including any Additional Services), NAK shall, within a reasonable time, provide a written estimate to the Customer of:
- 15.2.1. the likely time required to implement the change;
 - 15.2.2. any variations to NAK's charges arising from the change; and
 - 15.2.3. any other impact of the change on the terms of the Statement of Work.
- 15.3. If NAK requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it.
- 15.4. If the Customer requests a change to the scope of the Services, NAK shall not unreasonably withhold consent to it Provided That the Customer agrees any variation to NAK's charges to take account of the change.
- 15.5. If the Customer wishes NAK to proceed with the change, NAK has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges and any other relevant terms of the Statement of Work to take account of the change.

16. **CHARGES AND PAYMENT**

- 16.1. The Customer will pay the charges for Products and Services set out in the Statement of Work or, if no charges are specified, the charges shall be NAK's standard charges as at the date the relevant Product or Service is provided.
- 16.2. Unless otherwise specified in the Statement of Work the charges for Services shall be paid in advance of the period to which they relate.
- 16.3. Except as otherwise specified in the Statement of Work any charges contained in the Statement of Work shall exclude:
- 16.3.1. expenses reasonably incurred by NAK in connection with the Services which will be charged (at cost) to the Customer in accordance with NAK's expenses policy (as amended from time to time);
 - 16.3.2. VAT, and/or any relevant local sales tax which NAK shall add to its invoices at the appropriate rate; and
 - 16.3.3. rescheduling or cancellation charges for the Services, which NAK shall add to its invoices.

- 16.4. Unless otherwise specified in the Statement of Work, the Customer shall pay NAK's standard charges for the amount of power, bandwidth, disk and storage space used by the Customer and any Authorised User in connection with their use of the Hosted Services.
- 16.5. Where NAK provides individuals to perform Services at the Customer's site, or any other site specified by the Customer (other than NAK's premises):
- 16.5.1. the charges payable for the Services shall be calculated in accordance with NAK's daily or hourly fee rates set out in the Statement of Work and as amended from time to time;
- 16.5.2. unless otherwise agreed between the parties NAK's standard daily fee rates for each individual person are calculated on the basis of a 7 (seven) hour day;
- 16.5.3. NAK shall be entitled to charge a minimum of a Half Day for each Half Day or less worked by such individuals during Normal Business Hours rounded up to the nearest Half Day;
- 16.5.4. NAK shall be entitled to charge a rate of 150% of NAK's fee rates set out in the Statement of Work for each Half Day or less worked by such individuals outside Normal Business Hours rounded up to the nearest Half Day; and
- 16.5.5. if for any reason the Customer cancels or reschedules Services once they have been scheduled NAK shall be entitled to charge a cancellation fee as follows:

7 Working Days notice or less	10% of the total Services fees
3 Working Days notice or less	25% of the total Services fees
1 Working Days notice or less	50% of the total Services fees

- 16.6. The Customer shall pay each invoice submitted to it by NAK, in full and in cleared funds and in British pounds sterling, within thirty (30) days of the date of each invoice.
- 16.7. Without prejudice to any other right or remedy that it may have, if the Customer fails to pay NAK on the due date, NAK may charge interest on such sum from the due date for payment at the annual rate of 8% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment.
- 16.8. Time for payment shall be of the essence of the Statement of Work.
- 16.9. All sums payable to NAK under the Statement of Work shall become due immediately on its termination, despite any other provision. This clause 16.9 is without prejudice to any right to claim for interest under the law, or any such right under the Statement of Work.
- 16.10. NAK may, without prejudice to any other rights it may have, set off any liability of the Customer to NAK against any liability of NAK to the Customer.
- 16.11. The charges for some Services is based on the usage of the relevant Service and the Customer understands and accepts that it is responsible for and shall pay the charges for all use of such Service as calculated by NAK or by its third party supplier.
- 16.12. NAK reserves the right at any time to require the Customer at the Customer's cost to provide such security for the Customer's obligations to make payment under this Master Agreement or any other agreement between NAK and the Customer as NAK may reasonably require from time to time which

may include (a guarantee, deposit, irrevocable letter of credit) in a form acceptable to NAK in respect of any amounts which are due or may become due to NAK under the Master Agreement if the Customer's financial circumstances or payment history is or becomes unacceptable to NAK.

- 16.13. Subject to clauses 16.14 and 16.15, NAK may increase the charges payable under the Statement of Work on an annual basis with effect from the anniversary of the Effective Date by giving the Customer not less than 30 days written notice of such increase and the price increase shall take effect on the expiry of the 30 days notice period referred to in this clause 16.13.
- 16.14. If the charges increase notified by NAK to the Customer under clause 16.13 is in line with the percentage increase in the Retail Prices Index in the preceding 12-month period it shall be based on the latest available figure for the percentage increase in the Retail Prices Index at the beginning of the last month of the previous year.
- 16.15. If the charges increase notified by NAK to the Customer under clause 16.13 is more than the percentage increase in the Retail Prices Index in the preceding 12-month period and is not acceptable to the Customer, the Customer shall notify NAK in writing within not later than 30 days of the date of NAK's notice and the parties shall meet and use reasonable endeavours to agree an increase in the charges payable under the Statement of Work. If an increase cannot be agreed within 30 days after the parties commencing discussions in accordance with this clause 16.15 either party shall have the right without limiting its other rights or remedies to terminate the Statement of Work by giving written notice of not less than the Termination Notice Period to the other party.
- 16.16. Notwithstanding clause 16.13, at any time during the Term, NAK may, by giving not less than 30 days written notice to the Customer increase the price of the Services to reflect any increase in the cost of the Services that is due to any factor beyond NAK's control (including foreign exchange fluctuations, increases in taxes and duties, increase in the cost of fuel and increases in labour, materials and other manufacturing costs) and the price increase shall take effect on the expiry of the 30 days notice period referred to in this clause 16.16.
- 16.17. Notwithstanding clause 16.13, at any time during the Term, NAK may, by giving notice to the Customer at any time before delivery of the Products, increase the price of the Products to reflect any increase in the cost of the supply of the Products that due to any factor beyond NAK's control (including foreign exchange fluctuations, increases in taxes and duties, increase in the cost of fuel and increases in labour, materials and other manufacturing costs). If such increase is not acceptable to the Customer, it shall notify NAK in writing within 5 days of the date of NAK's notice and the Products that are the subject of the price increase shall be deemed to be excluded from the Statement of Work. In the absence of any notification from the Customer within the 5 day period, the Customer shall be deemed to have accepted the cost increase notified to it by NAK pursuant to this clause 16.17.
- 16.18. For the avoidance of doubt, upon the termination of any Statement of Work for whatever reason, the Customer shall not be entitled to any refund of the charges or any part thereof.

17. **INTELLECTUAL PROPERTY RIGHTS**

- 17.1. NAK acknowledges that the Intellectual Property Rights in Customer Materials and Customer Data are proprietary to the Customer.
- 17.2. Except for Customer Materials and Customer Data, the Customer acknowledges that any and all Intellectual Property Rights created, subsisting or used in or in connection with the Services and the Deliverables including all Operating Manuals relating thereto are legally and/or beneficially owned by NAK or (as NAK may direct) NAK's supplier.

- 17.3. For the avoidance of doubt other than as expressly agreed in writing nothing shall be interpreted as granting the Customer any rights in NAK's or any third party's Intellectual Property Rights (including any software or any development or enhancement of any software by a third party).
- 17.4. In the event that new inventions, designs or processes evolve or are otherwise generated in the performance of or as a result of the Statement of Work the Customer acknowledges that all rights in the same shall vest in NAK or (as NAK may direct) NAK's supplier.
- 17.5. Where the Services involve the use of any Customer Materials and/or Customer Data, the Customer hereby grants to NAK a non-transferable, non-exclusive right and license for the duration of the Statement of Work to use, copy, modify and prepare derivative works of any such Intellectual Property Rights to the extent necessary to enable NAK to perform the Services in accordance with the Statement of Work.

18. **CONFIDENTIALITY**

- 18.1. Each party (**recipient party**) in receipt of the other party's (**disclosing party**) Confidential Information shall keep the disclosing party's Confidential Information confidential and shall not:
 - 18.1.1. use such Confidential Information except for the purpose of exercising or performing its rights and obligations under the Master Agreement and each Statement of Work (**Permitted Purpose**); or
 - 18.1.2. disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause.
- 18.2. A recipient party may disclose the disclosing party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
 - 18.2.1. it informs such Representatives of the confidential nature of the Confidential Information prior to disclosure; and
 - 18.2.2. at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this clause.
- 18.3. A recipient party may disclose Confidential Information to the extent required by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the disclosing party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 18.3, it takes into account the reasonable requests of the disclosing party in relation to the content of such disclosure.
- 18.4. Each disclosing party reserves all rights in its Confidential Information. No rights or obligations in respect of a disclosing party's Confidential Information other than those expressly stated in the Master Agreement are granted to the recipient party, or to be implied from the Master Agreement.
- 18.5. On termination or expiry of the Master Agreement and/or the Statement of Work each recipient party shall:
 - 18.5.1. subject to clause 18.6, return to the disclosing party all documents and materials (and any copies) containing, reflecting, incorporating or based on the disclosing party's Confidential Information; and

18.5.2. erase all the disclosing party's Confidential Information from its computer systems (to the extent possible),

provided that a recipient party may retain documents and materials containing, reflecting, incorporating or based on the other party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority.

18.6. NAK shall be under no obligation to comply with clause 18.5.1 and 18.5.2 unless or until the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination) including NAK's costs and charges in returning or disposing of the Customer's Confidential Information.

18.7. The provisions of this clause 18 shall continue to apply to any such documents and materials retained by a recipient party.

18.8. Except as expressly stated in the Master Agreement or any Statement of Work, no disclosing party makes any express or implied warranty or representation concerning its Confidential Information.

18.9. The provisions of this clause 18 shall survive termination or expiry of the Master Agreement or any Statement of Work howsoever arising.

19. **NON-SOLICITATION**

19.1. Neither party shall, without the prior written consent of the other party, at any time from the date of the Master Agreement and any Statement of Work to the expiry of twelve months after termination or expiry of the Master Agreement or any Statement of Work or completion of the Services or delivery of the Products (whichever is later) solicit or entice away from the other party or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or sub-contractor of the other party.

19.2. Any consent given by a party (the "**consenting party**") in accordance with clause 19.1 shall be subject to the party (the "**recruiting party**") wishing to solicit or entice away from the consenting party or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or sub-contractor of the consenting party paying to the consenting party a sum equivalent to 30% of the then current annual remuneration of the consenting party's employee, consultant or sub-contractor or, if higher, 30% of the annual remuneration to be paid by the recruiting party to such employee, consultant or sub-contractor.

20. **EXPORT**

20.1. Neither party shall export, directly or indirectly, any technical data acquired from the other party under the Statement of Work (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations (**Export Control Laws**), including United States export laws and regulations, to any country for which the government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.

20.2. Each party undertakes:

20.2.1. contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and

20.2.2. if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

21. LIMITATION OF LIABILITY

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF THIS CLAUSE

21.1. In this clause 21.1 the following shall mean an “**Event of Default**”:

21.1.1. any breach by NAK or the Customer of its contractual obligations arising under the Master Agreement and/or Statement of Work (other than a breach arising from wilful default or recklessness);

21.1.2. any misrepresentation by NAK or the Customer in connection with (whether or not contained in the Master Agreement and/or Statement of Work) NAK or the Customer or the Products or Deliverables (other than a fraudulent misrepresentation);

21.1.3. any tortious, act or omission, including negligence, arising in connection with NAK's or the Customer's performance under the Master Agreement and/or Statement of Work (other than any act or omission which is fraudulent or dishonest); and/or

21.1.4. any other act giving rise to a liability in respect of the Master Agreement and/or Statement of Work.

21.2. Subject to clause 21.4, neither party shall have any liability to the other party in respect of any Event of Default unless the party shall have served notice in writing of such claim (specifying in reasonable detail with supporting evidence the event, matter or default which gives rise to the claim and an estimate of the amount claimed) has been given to the other party within twelve months of the party becoming aware of the circumstances which gave rise to such claim Provided That without prejudice to their rights, the parties agree that if they have reason to believe that they may have a cause of action hereunder, they shall liaise with the other in an open and co operative way with a view to rectifying the reason for such cause of action whenever practicable.

21.3. NAK shall not be liable for any delay or failure to provide the Services, the Products and the Deliverables caused by:

21.3.1. any act or omission of the Customer which is relative to its obligations under the Master Agreement and/or any Statement of Work;

21.3.2. any failures of any third parties (other than NAK's sub-contractors) to provide equipment, software, materials or information required to provide the Services, the Products and the Deliverables; and/or

21.3.3. down time of the computer systems caused by suppliers of third party computer services provided that (and to the extent that) the same is not due to any default of NAK, its employees, agents or sub-contractors.

21.4. Notwithstanding any other provision under the Master Agreement, Statement of Work or otherwise each Party's liability to the other for:

21.4.1. death or personal injury resulting from its own or its employees', agents' or sub-contractors' negligence; and/or

21.4.2. any breach of the terms implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982; and/or

21.4.3. in relation to any fraudulent misrepresentation or fraudulent acts of its employees,

shall not be limited or excluded.

- 21.5. Subject to clause 21.4 above, neither party shall be liable to the other party in respect of any Event of Default for:
 - 21.5.1. loss of profits; or
 - 21.5.2. loss of business; or
 - 21.5.3. depletion of goodwill and/or similar losses; or
 - 21.5.4. loss of anticipated savings; or
 - 21.5.5. loss of goods; or
 - 21.5.6. loss of agreement; or
 - 21.5.7. loss of use; or
 - 21.5.8. any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses (including loss or damage suffered by the party as a result of an action brought by a third party) even if such loss was reasonably foreseeable or the party has been advised of the other party incurring the same.
- 21.6. Subject to the provisions of clauses 21.4 and 21.7, NAK's entire liability to the Customer in respect of any individual Event of Default arising under or in connection with the Master Agreement shall be limited to a sum equal to the aggregate fee paid by the Customer for the Services in accordance with the Statement of Work during the 6 months prior to the action giving rise to the Event of Default.
- 21.7. Subject to the provisions of clauses 21.4 and notwithstanding clauses 21.6 and 21.8, NAK's aggregate liability to the Customer in respect of all Events of Default arising under or in connection with any Statement of Work for the supply of Products only (without any supply of Services) shall be limited to £50,000.
- 21.8. Subject to the provisions of clauses 21.4 and 21.7 above, NAK's aggregate liability to the Customer in respect of all Events of Default arising under or in connection with the Master Agreement shall be limited to a sum equal to one hundred per cent (100%) of the average annual charges (calculated by reference to the charges in successive 12 month periods from the date of the Master Agreement) paid by the Customer for the Services under the Master Agreement.
- 21.9. NAK shall not be liable for loss or damage suffered by the Customer as a result of the Customer failing to test the Deliverables or the Products within thirty (30) days of delivery.
- 21.10. If a number of Events of Default give rise substantially to the same loss then they shall be regarded as giving rise to only one claim under the Master Agreement or relevant Statement of Work.
- 21.11. Nothing in this clause shall confer any right or remedy upon a party to which it would not otherwise be legally entitled.
- 21.12. Both parties agree that the terms set out in the Master Agreement and each Statement of Work are in lieu of and exclude all other terms, conditions or warranties implied by statute, law or otherwise as to the satisfactory quality or fitness for any particular purpose of the Services to the fullest extent permitted by law.

- 21.13. In addition, neither party shall be liable for loss or damage suffered by the other party as a result of the other party failing to protect its own interests.
- 21.14. Both parties have entered into the Master Agreement and each Statement of Work knowing that their liability is limited as set out in this Clause and that the charges payable under the Master Agreement and each Statement of Work have been fixed on that basis.

22. CUSTOMER DATA

- 22.1. The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 22.2. NAK shall, in providing the Services, comply with its privacy and security policy relating to the privacy and security of the Customer Data which policy is available on request (after redaction) such document may be amended by NAK in its sole discretion from time to time.
- 22.3. In the event of any loss, damage or corruption of data or information (including Customer Data), the Customer's sole and exclusive remedy shall be for NAK to use reasonable commercial endeavours to restore the lost or damaged data or information from the latest back-up of such data or information maintained by NAK in accordance with the archiving procedure described in its IT security policy. NAK shall not be responsible for any loss, destruction, alteration or disclosure of data or information caused by any third party (except those third parties sub-contracted by NAK to perform services related to Customer Data maintenance and back-up).

23. DATA PROTECTION

- 23.1. For the purposes of this clause 23 **Personal Data** means personal data (as the term "personal data" is defined under Data Protection Legislation) processed by NAK as processor on the Customer's behalf in connection with the performance of the agreement and the terms **Controller**, **Processor**, and **Data Subject** shall have the meanings given to them in the Data Protection Legislation.
- 23.2. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 23 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 23.3. The parties acknowledge that for the purposes of the Data Protection Legislation, in respect of Personal Data processed by NAK on behalf of the Customer as contemplated by the agreement, the Customer is the Controller and NAK is the Processor. The Statement of Work sets out the subject matter and duration of the processing, the nature and purpose of the processing, the types of Personal Data and categories of Data Subjects.
- 23.4. Without prejudice to the generality of clause 23.2, NAK shall, in relation to any Personal Data processed in connection with the performance by NAK of its obligations under this Master Agreement:
 - 23.4.1. process that Personal Data only on the written instructions from the Customer, including with regard to transfers of personal data to a country outside the European Economic Area, unless NAK is required to do so by the laws of any member of the European Union or by the laws of the European Union applicable to NAK (**Applicable Laws**). Where NAK is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, NAK shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit NAK from so notifying the Customer;
 - 23.4.2. ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction

of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- 23.4.3. ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- 23.4.4. assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with the Customer's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 23.4.5. notify the Customer without undue delay on becoming aware of a Personal Data breach;
- 23.4.6. at the written direction of the Customer, delete or return Personal Data to the Customer on termination of the agreement unless required by Applicable Law to store the Personal Data. Unless otherwise agreed by NAK in writing the Customer shall pay NAK's reasonable costs and expenses associated with returning any data to the Customer; and
- 23.4.7. maintain all information necessary to demonstrate its compliance with this clause 23.4 and allow for audits by the Customer or the Customer's designated auditor. The Customer shall give NAK not less than 5 Working Days written notice of its intention to conduct an inspection and audit and shall bear its own costs and expenses incurred in respect of conducting any inspection and audit under this clause 23.4.7.
- 23.5. The Customer gives NAK general authorisation to appoint sub-processors of Personal Data under this agreement. NAK will notify the Customer if it intends to add to or replace such sub-processors (**Change Notice**), thereby giving the Customer the opportunity to object to such changes. If the Customer does not notify any objection to NAK within 5 days of receipt of a Change Notice, the Customer is deemed to have accepted the change.
- 23.6. If, following receipt of a Change Notice, the Customer objects to the addition or replacement of the sub-contractor who is processing Personal Data the Customer must notify NAK in writing within 5 days of receipt of the Change Notice outlining the reasons for its objection (**Objection**). Following receipt of an Objection the Customer and NAK shall discuss a commercially reasonable alternative way of processing the Personal Data that is the subject of the Change Notice. At any time following receipt of an Objection and where no alternative arrangement can be agreed NAK may at its discretion either not appoint the subcontractor to process Personal Data or may by giving notice to the Customer suspend or terminate that part of the service that is affected by the Change Notice without liability to the Customer.
- 23.7. NAK confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are on no less onerous terms than those set out in this clause 23. As between the Customer and NAK, NAK shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 23.7.
- 23.8. With prejudice to the generality of clause 23.2, the Customer:

- 23.8.1. shall ensure that it is entitled to transfer the relevant personal data to NAK so that NAK may lawfully use, process and transfer the personal data in accordance with the agreement on the Customer's behalf; and
- 23.8.2. shall provide sufficient notice to, and (where consent is relied upon as a basis for lawful processing) obtain sufficient consent and authorization from, its employees and any other party providing personal data to NAK to permit the processing of the data by NAK, and its service providers as contemplated by the agreement.
- 23.9. The Customer acknowledges that NAK is reliant on the Customer for direction as to the extent to which NAK is entitled to use and process the Personal Data. Consequently, NAK will not be liable for any claim brought by a Data Subject arising from any action or omission by NAK, to the extent that such action or omission results from the Customer's instructions.
- 23.10. Unless otherwise specified in the Statement of Work NAK's charges for the provision of information and assistance referred to in this clause 23 (including the provision of information and assistance in clauses 23.4.4 and 23.4.6) shall be NAK's standard charges in force from time to time.
- 23.11. The Client shall at all times use the Services in accordance with NAK's Acceptable Use Policy
- 24. **SUSPENSION**
- 24.1. Without limiting its other rights or remedies, NAK shall have the right to suspend the supply of Services and/or all further deliveries of Products under the Statement of Work if:
 - 24.1.1. the Customer fails to pay any amount due under the Statement of Work on the due date for payment; or
 - 24.1.2. the Customer becomes subject to any of the events listed in clauses 25.1.1 to 25.1.9, or NAK reasonably believes that the Customer is about to become subject to any of them.
- 24.2. Without limiting its other rights or remedies, NAK shall have the right to suspend the provision of all or any part of the Hosted Services (including blocking the Customer's or any Authorised User's access to the Hosted Services) in any of the following circumstances:
 - 24.2.1. if NAK or any Service Provider is required to so do in order to comply with any law, regulation, court order, or request, order, direction, determination or consent by or of a governmental or regulatory body or authority;
 - 24.2.2. to substitute, change reconfigure, relocate or rearrange all or any part of the Hosted Services, as agreed with the Customer;
 - 24.2.3. if NAK or any Service Provider is required to carry out any schedule or emergency maintenance or repair of NAK's System. Where possible NAK will give the Customer reasonable advance notice of such emergency maintenance or repair;
 - 24.2.4. if the Customer fails to comply with any of its obligations set out in the Statement of Work (including its obligations to pay NAK's charges) or if NAK has reasonable grounds to believe that the conduct of the Customer or any Authorised User is likely to place the Customer in breach of any such obligation;
 - 24.2.5. if NAK reasonably believes that suspension is necessary to protect or maintain the security or viability of the Hosted Services.

24.2.6. if the Customer exceeds any credit limit agreed with NAK and does not remedy the situation within 14 days of receiving a written notice to do so;

24.3. NAK will use reasonable endeavours to provide as much notice of the suspension pursuant to clause 24.2 as reasonably possible however the Customer acknowledges that on occasions no notice may be possible.

24.4. NAK will restore suspended Services as soon as reasonably practicable after the cause of the suspension has been rectified.

24.5. If the suspension arises out of, or in connection with, an act or omission of the Customer in breach of the Master Agreement, then the Customer will pay to NAK all reasonable costs that NAK incurs as a consequence of the suspension of the Services (which may include all reasonable costs that NAK incurs in reconnecting any Hosted Services).

24.6. The Customer acknowledges and accepts that, notwithstanding any suspension of the Services by NAK pursuant to clauses 24.1 and/or 24.2, NAK may continue to incur expenses and/or charges of its sub-contractors (including network rental charges and disconnection and reconnection charges) which shall be payable by the Customer.

25. **TERMINATION**

25.1. Either party may terminate the Master Agreement or any Statement of Work immediately (or following such notice period as it sees fit), by giving written notice to the other party if:

25.1.1. if the other party commits a material breach of the Master Agreement or any Statement of Work and (if such a breach is remediable) fails to remedy that breach within thirty (30) days of that party being notified in writing of the breach; or

25.1.2. the other party has made repeated breaches or a continuous breach of any of the terms of the Master Agreement or any Statement of Work during three (3) or more consecutive months and (if such breaches are remediable) has failed to remedy such breaches within a period of thirty (30) days after being notified in writing to do so; or

25.1.3. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospects of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; or

25.1.4. an order is made or a resolution is passed for the winding up of the other party; or

25.1.5. an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or

25.1.6. a receiver is appointed over all or a substantial part of any of the other party's assets or undertaking, or circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party; or

25.1.7. the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or

- 25.1.8. the other party ceases, or threatens to cease, to trade; or
- 25.1.9. the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.
- 25.2. NAK may terminate the Master Agreement or any Statement of Work immediately (or following such notice period as it sees fit), by giving written notice to the Customer if:
 - 25.2.1. there is a change of control of the Customer; or
 - 25.2.2. the Customer fails to pay any amount due under the Master Agreement or the Statement of Work on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment.
- 25.3. If for any reason NAK is unable to obtain any software, hardware and/or services from NAK's suppliers such that NAK is prevented from providing the Products and/or Services to the Customer in a material respect NAK shall notify the Customer and the parties shall use reasonable endeavours to agree a variation to the Statement of Work which may include a reduction in the charges for the Products and/or Services set out in the Statement of Work or if the parties are unable to reach agreement, either party may terminate the Statement of Work by giving 5 Working Days' written notice to the other party. As the Customer's entire remedy for any termination pursuant to this clause NAK shall refund any charges paid by the Customer for the Products and/or Services for the period after the effective date of termination.
- 26. **CONSEQUENCE OF TERMINATION**
 - 26.1. Termination of the Master Agreement will automatically terminate all Statement of Work.
 - 26.2. Termination or expiry of any Statement of Work shall not affect any other Statements of Work or the Master Agreement.
 - 26.3. On termination or expiry of the Master Agreement or any Statement of Work for any reason:
 - 26.3.1. all licences granted under the Master Agreement or Statement of Work which is being terminated or which has expired shall immediately terminate;
 - 26.3.2. the Customer shall immediately pay to NAK all of NAK's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, NAK may submit an invoice, which shall be payable immediately on receipt;
 - 26.3.3. the Customer shall promptly return all of NAK Materials, Products and Deliverables in respect of which ownership has not transferred to the Customer under clause 12. If the Customer fails to do so, then NAK may enter the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping;
 - 26.3.4. upon expiry or notice of termination the parties shall use reasonable endeavours to agree the format in which the Customer Data shall be returned to the Customer and/or the Customer may instruct NAK to erase some or all of the Customer Data. NAK shall be entitled to charge the Customer for exporting the Customer Data and its charges will be based on NAK's published charges in force at the date of termination or expiry. Unless otherwise agreed by NAK in writing, such charges (together with any other charges remaining unpaid by the Customer) must be paid in full by the Customer prior to export of the Customer Data; and

26.3.5. the accrued rights of the parties as at termination or expiry and the continuation of any provision expressly stated to survive or implicitly surviving termination or expiry shall not be affected.

26.4. On termination or expiry of any Statement of Work the provisions of clause 29.3 shall apply to the extent that they relate to the Statement of Work that is the subject of termination or expiry.

27. **EXIT ASSISTANCE**

27.1. Provided That:

27.1.1. the Customer is not in breach of the Master Agreement and the relevant Statement of Work;
and

27.1.2. the Customer has paid all fees and charges outstanding at that time of making a request to NAK for the transition of the Services under this clause,

NAK shall, on request from the Customer at any time prepare a plan for the orderly transition of the Services from NAK to the Customer or its nominated Replacement Supplier (**Exit Plan**). The Exit Plan shall include details of NAK's charges for such transition of the Services calculated at NAK published charges in force from time to time and the date from which and the period during which the Exit Services will be provided.

27.2. If the Customer wishes NAK to proceed with the provision of the Exit Services that are the subject of the Exit Plan the Exit Plan must be signed by an authorised party on behalf of the Customer and returned to NAK prior to the commencement of such Exit Services by NAK as confirmation that it accurately sets out the Customer's requirements.

27.3. If, at the Customer's request, work commences prior to the signing of the Exit Plan then the Customer is deemed to have accepted that the Exit Plan accurately sets out the Customer's requirements and the Customer accepts the terms of the last version of the Exit Plan sent to the Customer by NAK.

27.4. NAK shall charge for the preparation of the Exit Plan on a time and materials basis in accordance with its standard hourly rates in force from time to time.

27.5. Once the Exit Plan has been agreed and signed by the Customer in accordance with clause 27.2 or the Customer is deemed to have accepted the Exit Plan pursuant to clause 27.3 both parties shall comply with their obligations in the Exit Plan and no amendment shall be made to it except in accordance with the Change Control Procedure Provided That NAK may terminate or suspend the performance of Exit Services immediately if the Customer fails to make payment of any sums due under the Master Agreement on the due date for payment.

28. **AUDIT**

28.1. If required to do so by judicial or regulatory authority or if this Master Agreement or any Statement of Work is terminated pursuant to clause 27.1 and/or 27.2 then the Customer will permit NAK (or any Service Provider) or any third party qualified auditor appointed by NAK or any Service Provider on reasonable notice during Normal Business Hours to examine and take copies of all the Customer's information, records and documentation relating to the Master Agreement and the performance of the Customer's obligations under the Master Agreement.

29. **GENERAL**

29.1. Except for the Customer's obligation to make payment, neither party shall be liable for delay in performing or failure to perform obligations under the Master Agreement or any Statement of Work if the delay or failure results from "force majeure". For the purposes of this Master Agreement "**force**

majeure” shall mean any Act of God, war, riot, act of terrorism, outbreak of hostilities, strike or other industrial action of any kind, malicious damage, default of suppliers or sub-contractors, accident, failure or breakdown of plant or machinery, fire, flood, explosion, any act of local or national government or authority and any cause or circumstance whatsoever outside the reasonable control of the parties.

- 29.2. If any delay or failure under the Master Agreement or any Statement of Work resulting from “force majeure” continues for a period in excess of 90 consecutive days either party shall have the right to terminate the Master Agreement or any Statement of Work with immediate effect by giving notice in writing to the other party.
- 29.3. Except as expressly stated in this Master Agreement, no variation of the Master Agreement or any Statement of Work or of any of the documents referred to in it shall be valid unless it is in writing and signed by or on behalf of the Customer; and by a director on behalf of NAK.
- 29.4. A waiver of any right under the Master Agreement or any Statement of Work is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.
- 29.5. Unless specifically provided otherwise, rights arising under the Master Agreement or any Statement of Work are cumulative and do not exclude rights provided by law.
- 29.6. If any provision (or part of a provision) of the Master Agreement or any Statement of Work is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force.
- 29.7. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, that provision will apply with whatever modification is necessary to make it valid, enforceable and legal.
- 29.8. It is acknowledged and agreed that the Master Agreement or any Statement of Work (including the documents and instruments referred to herein) (the Contract Documents) shall supersede all prior representations arrangements understandings and agreements between the parties relating to the subject matter hereof and shall constitute the entire complete and exclusive agreement and understanding between the parties hereto.
- 29.9. The parties irrevocably and unconditionally waive any right they may have to claim damages for any misrepresentation arrangement understanding or agreement not contained in the Contract Documents or for any breach of any representation not contained in the Contract Documents (unless such misrepresentation or representation was made fraudulently).
- 29.10. It is further acknowledged and agreed that no representations arrangements understandings or agreements (whether written or oral) made by or on behalf of any of the other parties have been relied upon other than those expressly set out or referred to in the Contract Documents.
- 29.11. The Customer shall not without the prior written consent of NAK assign, transfer, mortgage, charge, declare a trust of or deal in any other manner with the Master Agreement or any Statement of Work or any of its rights and obligations under or arising out of the Master Agreement, Statement of Work (or any document referred to in it), or purport to do any of the same.
- 29.12. Each party that has rights under the Master Agreement or any Statement of Work is acting on its own behalf and not for the benefit of another person.
- 29.13. Nothing in the Master Agreement or any Statement of Work is intended to create a partnership or joint venture of any kind between any of the parties, nor constitute the Customer an agent of NAK for any

purpose. The Customer has no authority to act in the name or on behalf of or otherwise to bind NAK in any way.

- 29.14. A person who is not a party to the Master Agreement or any Statement of Work shall not have any rights under or in connection with it.
- 29.15. Notice given under the Master Agreement or any Statement of Work shall be properly served only if it is in writing, sent by fax, email, first class pre-paid post to the receiving party, at the address, email address or fax number, given in the Master Agreement or any Statement of Work or otherwise notified to the other party.
- 29.16. If a dispute arises under the Master Agreement or any Statement of Work (**Dispute**), excluding any Dispute arising out of any amount due to NAK under an Statement of Work, then before bringing any suit, action or proceeding in connection with such Dispute, a party must first give written notice of the Dispute to the other party describing the Dispute and requesting that it is resolved under this dispute resolution process (**Dispute Notice**).
- 29.17. If the parties are unable to resolve the Dispute within 30 days of delivery of the Dispute Notice, then each party will promptly (but no later than five Working Days thereafter):
 - 29.17.1. appoint a designated representative who has sufficient authority to settle the Dispute and who is at a higher management level than the person with direct responsibility for the administration of any Statement of Work (**Designated Representative**); and
 - 29.17.2. notify the other party in writing of the name and contact information of such Designated Representative.
- 29.18. The Designated Representatives will then meet as often as they deem necessary in their reasonable judgment to discuss the Dispute and negotiate in good faith to resolve the Dispute. The Designated Representatives will mutually determine the format for such discussions and negotiations, provided that all reasonable requests for relevant information relating to the Dispute made by one party to the other party will be honoured.
- 29.19. If the parties are unable to resolve the Dispute within 30 days after the appointment of both Designated Representatives, then either party may proceed with any other available remedy.
- 29.20. Notwithstanding the foregoing clauses 29.17 to 29.20, nothing shall prevent the parties commencing or continuing court proceedings in relation to the Dispute under Clause 29.24 (Jurisdiction) which clause shall apply at all times.
- 29.21. NAK may amend this Master Agreement from time to time. NAK may change this Master Agreement to reflect the following circumstances: (i) changes in relevant laws and regulatory requirements; (iii) changes to the terms on which any Third Party Services and/or Third Party Software is supplied to NAK; (iv) technical reasons; (v) operational requirements. NAK will give the Customer not less than 30 days notice of any changes to this Master Agreement and unless otherwise agreed in writing by the Company, the change shall apply to all Statements of Work entered into on or after the expiry of the notice period referred to in this clause.
- 29.22. NAK may assign, novate, sub-contract or delegate in any manner any or all of its obligations under the Master Agreement or any Statement of Work to any third party or agent. To the extent that the Customer's consent is required to novate the Master Agreement or any Statement of Work the Customer shall not unreasonably withhold its consent.
- 29.23. Subject to clause 15 (Change control), no variation of this Master Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

- 29.24. The Master Agreement and each Statement of Work and any dispute or claim arising out of or in connection with them or their subject matter, shall be governed by, and construed in accordance with, the laws of England and Wales.
- 29.25. The parties to the Master Agreement and any Statement of Work irrevocably agree that, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim arising out of or in connection with the Master Agreement or any Statement of Work or their subject matter or formation (including non-contractual claims).

SIGNED by) Signature

For and on behalf of) Name

NAK CONSULTING SERVICES LIMITED) Position

) Dated

SIGNED by) Signature

For and on behalf of) Name

<CLIENT>) Position

) Dated

Schedule 1

TEMPLATE STATEMENT OF WORK

Each SOW shall consist of the following as a minimum:

1	DOCUMENT CONTROL	Document governance including version numbers, authors, dates and approvals
2	CLIENT INFORMATION	Details of the client, key contact points, etc.
3	SERVICE TIMESCALES	Service start date, implementation period, term, mechanism for extension, mechanism to serve notice including notice periods
4	SERVICES DESCRIPTION	Definition of the service being provided, scope of the service, detailed description of inclusions and notable exclusions
5	SERVICE LEVELS	Definition of incident/service categorisation and prioritisation, target response and resolution times, hours of operation/cover
6	SERVICE MEASUREMENT	Definition of contractual KPIs and minimum thresholds and their reporting
7	COMMERCIALS	Details of how the service will be priced, payment schedule, details of any price increase mechanism, cancellation fees, if applicable, and any service credits, if applicable
8	RESPONSIBILITIES	RACI matrix of responsibilities for NAK and client
9	CHANGE MANAGEMENT	Mechanism by which the service can be amended, if applicable
10	DEFINITIONS	Detailed definition of how any measures, KPIs, timings, etc are to be calculated, if applicable
11	SIGNATURES	Signature page for authorised representations to engage the service schedule