

Numark Membership Agreement

Operative provisions:

1. Definitions and interpretation

- 1.1 In this agreement (except where the context otherwise requires) the following words shall have the following meanings:
- "Associate"** has the meaning set out in Section 1152 of the Companies Act 2006 and in respect of the Company may also include but is not limited to its distributors, suppliers, customers and all such other organisations or bodies with which it transacts business from time to time;
- "Brand Equalisation Programme"** means the brand equalisation programme of the Company as applied from time to time by the Company;
- "Business"** means the business of the Member being a retail pharmacy or health centre;
- "Business Day"** means any day which is not a Saturday, a Sunday or a bank or public holiday in England;
- "Confidential Information"** means any and all trade secrets or other confidential information whether written, visual or oral (and whether or not stated as being confidential or marked as such) concerning the business of the Company, its Associates or the Consortium or internal affairs of any Party or any of their respective associates or customers, suppliers, officers, employees or contractors including:
- any and all information relating to the existence, terms or operation of the agreement and/or the provision of the Services;
 - lists or details of customers and/or suppliers including but not limited to all aspects of their business relationships in respect of the same; and
 - any and all information relating to the marketing or sales of any past, present or future product or service including but not limited to marketing and advertising requirements, sales targets and statistics, market share and pricing statistics, market research reports, marketing surveys and plans, sales advertising and promotional plans and materials;
- "Data"** has the meaning set out in the Data Protection Act 1998;
- "Consortium"** means the group of members of the Company membership scheme from time to time;
- "Goods"** means Own Brand goods, OTC products and such other goods as the Company may from time to time make available to the Member for purchase;
- "Member's Business"** means the Business carried on by the Member in all outlets owned, run by, or in which the Member has an interest whether or not such business outlet is receiving directly or indirectly the Services;
- "Members"** means other members of the Consortium or where the context requires other members including the Member;
- "Numark Distributor"** means a wholesale supplier or distributor operating under a Wholesaler Agreement with the Company;
- "OTC"** means branded consumer products commonly sold over the counter in retail pharmacies but excluding Own Brand goods;
- "Own Brand"** means any goods sold under the Trade Mark;
- "Participating Outlet"** means such outlets of the Member which in any way participate in the Services;
- "Parties"** means the Company and the Member;
- "PMR System"** means a PMR system which has been given and which continues to maintain the approval of the Company as published from time to time in the company's monthly publication;
- "Services"** means the Services set out in Schedule 2 and/or such other services as the Company may from time to time introduce or substitute;
- "Standard Conditions of Trade"** means all those terms and conditions set out on the Company's Website as amended from time to time, including but not limited to competition conditions, discount conditions, e-mail conditions and brand support conditions;
- "Trade Mark"** means the registered name of the Company and all getup, logos, brand and trade names whether registered or unregistered from time to time adopted or created by the Company;
- "Website"** means NumarkNet.com or such other web address as the Company may advise.
- 1.2 Any reference to a clause or Schedule is to the relevant clause or Schedule of or to this agreement and any reference to a paragraph is to the relevant paragraph of the clause or Schedule in which it appears; the index and clause headings are included for convenience only and shall not affect the interpretation of this agreement; use of the singular includes the plural and vice versa; any references to "you" and "your" are to the Member; any reference to persons includes natural persons, firms, partnerships, companies, corporations, associations, organisations, governments, states foundations and trusts (in each case whether or not having separate legal personality); any reference to a statute, statutory provision or subordinate legislation (legislation) shall (except where the context otherwise requires) be construed as referring to:
- such legislation as amended and in force in England from time to time and to any legislation which (either with or without modification) re-enacts, consolidates or enacts in rewritten form any such legislation; and
 - any former legislation which it re-enacts, consolidates or enacts in rewritten form;
 - any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to what most nearly approximates in that jurisdiction to the English legal term;
 - any reference to a company shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established; and
 - any reference to any other document is a reference to that other document as amended, varied, supplemented, or novated (in each case, other than in breach of the provisions of this agreement) at any time.
- 1.3 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the Schedules.

2. Commencement

- 2.1 This agreement revokes and replaces any previous membership agreements between the parties and shall commence on the date of this agreement being the date on which the Company signs and dates the agreement, having, subject to clause 2.2 received a signed agreement from the Member ("the Commencement Date").
- 2.2 Membership fees from the Member and payment of rebates to the Member shall commence from the 1st of the month following the processing of the Member's application, where such application is received by the 25th of the month of receipt and thereafter monthly in advance. Any membership fees payable in respect of a month in which this agreement is terminated shall be paid by the Member in full for that month and shall be non-refundable. The Company shall be entitled to adjust the membership fees from time to time upon reasonable notice.

3. Provision of Services

- 3.1 The Company may from time to time make available to the Member various services, schemes and promotions.
- 3.2 The provision of some schemes and services may be subject to the Member being required to meet certain specified qualification criteria both at the commencement of and throughout the term of such scheme.

4. Obligations and rights of the Member

- 4.1 As from the Commencement Date, in consideration of the Company providing the Services to the Member, the Member shall at all times:
- act in good faith to the Company and other Members of the Consortium;
 - use reasonable endeavours to act in the best interests of the Member's Business and to promote the Consortium and the Company;
 - take all steps to ensure that goods which are the subject of the Company's negotiated promotions and which the Member sells by way of wholesale dealing are only sold to other Members of the Consortium who have agreed to be bound by the provisions of this agreement;
 - to act in a manner in keeping with good business practice and, where the Member chooses to participate in any enhanced schemes of the Company, to meet and to continue to meet such reasonable criteria and standards as the Company may from time to time set;
 - where the Member chooses to participate in any of the schemes of the Company which entitle the Member to utilise the Trade Mark of the Company, subject to the Company notifying the Member that the Company is satisfied that the Member has acted in a manner in keeping with good business practice and has met all such reasonable standards as the Company may from time to time set (and subject to the Member continuing to do so), the Company shall allow the Member to display the Trade Mark on its shop fascia or window in each Participating Outlet and utilise the Trade Mark on stationery and electronic media during the term of membership;
 - where authorised by the Company to sell Own Brand lines, to place such lines (together with any advertising material) in a prominent position and use its best endeavours to promote the sale of such lines within each Participating Outlet.
 - where a Member is authorised by the Company to use the Trade Mark, to use its best endeavours to participate in, fully co-operate with and comply with the Company's promotion policies as notified to the Member from time to time.
 - where the Numark rebate schemes continue to be offered by the Company, and the Member wishes to and the Company allows the Member to participate, the Member shall throughout such participation:
 - retain its PMR System Licence in full force (including virus protection agreement) and shall provide to the Company on request evidence of compliance;
 - comply with all obligations which the Company shall from time to time notify to the Member, in particular, to maintain a permanent broadband connection approved by the Company, to install the necessary software to enable PMR data to be collected at a frequency to be determined by the Company, participate in the generic contract scheme as from time to time nominated by the Company and participate in either the Parallel Imports (PI) and/or Brand Equalisation Programmes as from time to time nominated by the Company;
 - notify the Company should the Member:
 - lose in whole or part its broadband connection;
 - lose its PMR System Licence;
 - cease to use or changes a PMR System (including where the Company withdraws approval of a system); or
 - not wish to participate in all of the deals from time to time that the Company or its Associates organise on behalf of the Members through the PMR System.
 - where the member ceases to use an approved PMR System, the Members participation shall automatically cease forthwith.
- 4.1.10 subject to the terms of this agreement and clause 4.1.9, participation in the Numark Rebate Scheme may be terminated by either party giving reasonable notice in writing to the other, such notice to end on a complete calendar month.

- 4.2 All members will automatically be signed up to all brand support deals unless they notify the Company in writing that they do not wish to participate. Please note there are some deals which need a separate sign up.

5. Obligations and rights of the Company

- 5.1 The Company shall:
- 5.1.1 establish and maintain effective communication methods between the Members and the Company by means of its representatives, Pharmacy Advisory Boards, E-shots, SMS, MMS, web updates, telephone messaging or otherwise as the Company shall from time to time decide;
- 5.1.2 subject to the Company having first received the same from the manufacturer on behalf of the Member, pay to the Member monthly in arrears a rebate at a rate set and publicised from time to time by the Company (excluding VAT).
- 5.1.3 use all reasonable endeavours to collect as agent for the Member all such monies as the Member is entitled to receive from manufacturers in respect of discounts, including incentive payments, applicable to the Member and negotiated by or on behalf of the Company and, subject to the terms of this agreement to pay all such receipts to the Member and the Member shall indemnify the Company and keep the Company indemnified from and against all and any costs, claims, expenses, damages, demands, actions and liabilities which relate to any claim arising from the Company acting as agent of the Member and for the purposes of this clause 5.1.3, the Company's decision not to pursue any particular outstanding payment or payments from a manufacturer shall be final but shall not prevent a Member itself from seeking payment directly from the manufacturer;
- 5.1.4 be entitled to withhold rebates or other payments due to the Member under the terms of this agreement where the Company believes, and the Member has failed to provide satisfactory evidence to the contrary to the Company, that the Member is or has been involved in supplies to third parties not approved by the Company who are involved in wholesale or retail business;
- 5.1.5 at its sole discretion have the right and upon giving the Member reasonable notice, to withdraw or amend schemes and/or rebate programmes in whole or in part and temporarily or permanently and to re-claim any over payment of rebate made to members. Save in respect of the Company's manifest error, any demand for the re-claim of an overpayment shall be binding on the Member which shall arrange immediate payment in full.
- 5.2 Where the Company introduces services for the Member which would involve contacting patients directly on behalf of the Member, the Company may, with the agreement of the Member instigate direct contact with patients on behalf of the Member. The Member shall be responsible for ensuring all patient consent has been obtained including consent in respect of the transfer of personal data and in respect of authorising contact in the manner agreed between the Company and the Member.
- 5.3 The Member may opt out of receiving direct marketing such as E-shots and SMS by written notice to the Company.

6. Trading Terms

- 6.1 The Company shall provide Goods to the Member. Numark Distributors are authorised to accept orders, issue invoices and receive payments for Goods from Members. All Goods shall be supplied on the Company's Standard Conditions of Trade as amended from time to time. Where there is any conflict between the terms of this Agreement and the Standard Conditions of Trade, the document containing the most recently updated provision shall prevail.
- 6.2 The Company's Standard Conditions of Trade shall be available on the Company's Website and can also be requested by the Member. The Member is responsible to ensure it remains aware of any changes, additions and updates to the Standard Conditions of Trade by regular visits to the Website.

7. Payment for Services

- 7.1 The Member shall make all payments in respect of the Goods in accordance with the Company's Standard Conditions of Trade as applicable from time to time.
- 7.2 The Company shall be entitled to withhold any payments due to the Member where payments due from the Member are outstanding and the Company shall be entitled to use any receipts from or received in respect of the Member in application to payment of any amounts outstanding, as the Company shall decide.
- 7.3 Queries on rebate payments cannot be raised more than 6 months after the issue of the rebate statement.
- 7.4 The Member agrees to the Company issuing self-billed invoices in accordance with Schedule 3, or otherwise as notified to the Member by the Company from time to time.

8. Term and Termination

- 8.1 This agreement shall come into force on the Commencement Date and subject to the provisions of clause 8.2 shall continue in force until either party gives not less than three months' prior written notice of termination.
- 8.2 The Company shall be entitled forthwith to terminate this agreement by written notice to the Member if:
- 8.2.1 the Member commits a material breach of any of the obligations, terms or conditions of this agreement which is not capable of remedy or if capable of remedy is not remedied within such period as the Company in its sole discretion shall decide having regard to all of the circumstances; or
- 8.2.2 a petition is presented, or a meeting is convened for the purpose of considering a resolution or other steps are taken for making an administration order against or for the winding up of the Member or an administration order or a winding up order is made against or a provisional liquidator appointed with respect to the Member; or

- 8.2.3 an encumbrancer takes possession of, or a trustee or administrative receiver or similar officer is appointed in respect of all or any part of the Business or assets of the Member, or distress or any form of execution is levied or enforced upon or sued out against any such assets and is not discharged within seven days of being levied, enforced or sued out; or
- 8.2.4 the Member is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (as amended, re-enacted or replaced from time to time) or becomes unable to pay its debts as they fall due or suspends or threatens to suspend making payment with respect to all or any class of its debts; or
- 8.2.5 any voluntary arrangement is proposed under section 1 of the Insolvency Act 1986 in respect of the Member; or
- 8.2.6 the Member proposes or makes any composition or arrangement or composition with, or any assignment for the benefit of its creditors; anything analogous to any of the events described in clauses 8.2.2 to 8.2.6 inclusive, occurs under the laws of any applicable jurisdiction;
- 8.2.8 the Member fails to pay its membership fees to the Company in any three consecutive months or;
- 8.2.9 there is a change in the Member's ownership.
- 8.3 For the purposes of clause 8.2.1 above a breach shall be considered capable of remedy if the Member in breach would, should the Company serve a notice on the Member, be able to comply with the provision in question in all respects within a period of ten days from the date of the Company providing notice to the Member. Nothing in this clause 8.3 requires the Company to serve a notice.
- 8.4 Upon the expiry or termination of this agreement:
- 8.4.1 the Member shall pay to the Company all arrears of monies and any other sums due to the Company hereunder within seven days;
- 8.4.2 any licence whether express or implied to use the Trade Mark shall immediately terminate and as soon as reasonably practicable but in any case not later than three calendar months from the date of termination, the Member shall cease using the Trade Mark, both from inside and outside the premises from which the Business is operated and shall not thereafter hold itself out as a Member of the Consortium or in any way connected with the Company and shall comply with any requirement of the Company in the return or destruction (as the Company shall decide) of equipment bearing any Trade Mark;
- 8.4.3 the Member shall have a period of not more than three months in which to sell over the counter or to other Members Own Brand goods. Any Own Brand goods not sold within this period must be disposed of or destroyed in accordance with the Company's instructions and otherwise in accordance with good trade practice and environmental law.
- 8.4.4 the Company will continue to pay any rebate received by the Company to the Member subject to the provisions of clauses 5.1.4 and 7.2;
- 8.4.5 each party shall comply with its obligations under clause 14.4 to return to the other, destroy or delete Confidential Information.
- 8.5 Where on termination, the Member fails to remove or obliterate the Trade Marks and/or fascia within the timeframe set out in clause 8.4.2, the Company, its employees and agents shall be entitled during business hours to attend at and enter the Member's premises and at the Company's entire discretion, remove or obliterate all Trade Marks and fascia, and the Member hereby irrevocably authorises the Company, its employees and agents to enter onto such premises for the purposes of doing so.
- 8.6 The Member shall be liable for the costs incurred by the Company in removing or obliterating Trade Marks and fascia and in respect of costs arising out of improper sale or disposal of Own Brand Goods. The Company shall not be liable to the Member for any damage caused to the Member's premises in the normal course of removing or obliterating Trade Marks or fascia. The Company shall have the right to withhold payment of any outstanding payments due to the Member on termination of this agreement pending the Member complying to the satisfaction of the Company with the provisions of clauses 8.4.2 and 8.4.3. Any sums withheld may be applied to the costs incurred by the Company in removing and/or obliterating Trade Marks and fascia and the Member hereby indemnifies and shall keep indemnified the Company and any Associate in respect of all such costs.
- 8.7 The provisions of this clause 8 shall survive termination of this agreement.

9. Data Protection

- 9.1 The Company will, during its dealings with the Member, acquire Data which will when processed better enable the Company to provide the Member with the Company's most suitable Services, including those in the following, non-exhaustive, list:
- 9.1.1 calculation of and payment of rebates;
- 9.1.2 use of the data (on an anonymous basis) in negotiating rebates and deals with third party manufacturers and suppliers;
- 9.1.3 to profile the Members purchases to enable the Company to identify where the Company may be able to require the Numark Distributors to provide the Company with the following data in relation to purchases made by the Member: an identifier which will enable the Company to identify the Member's name and address, the date of purchase, the product purchased, its quantity and value.
- 9.2 Data Supply
This clause 9.2 sets out the basis upon which the Company and its Associates may extract, manipulate and utilise the Data from the Member including data derived from a PMR System. The Member hereby agrees that:
- 9.2.1 Data may be transferred with agreement of the Member by means of telephone, uploading of PMR to the Company's database or such other method as the Parties may agree from time to time. The Member shall be entitled to withhold the transfer of personal data.
- 9.2.2 The Company and its Associates may combine the Member's Data with that of other Members.
- 9.2.3 The Data may be used for the development of marketing, sales promotion, market research and any other purpose as the Company and its Associates shall from time to time decide as being relevant within the pharmaceutical and healthcare industries.

- 9.2.4 It is in Members interests to know who other Members of the Consortium are and therefore the fact that a party is a Member and its location is made available on request to other Members and applicants for membership to the Consortium.
- 9.2.5 Individual Data will be used to calculate individual rebates due to the Member in respect of participation by the Member in initiatives for which rebates are available and to ascertain compliance by the Member of such initiatives.
- 9.2.6 No PMR Data which would identify a particular Member will be made available to manufacturers or the Numark Distributors or any third party without that Member's prior written consent.
- 9.2.7 No PMR Data which would identify or which would enable the identification of a particular patient will be extracted.
- 9.2.8 The Company shall be entitled to use Data acquired through a Numark Distributor for the identification of the Member, details of purchases, including date of purchase, product purchased, quantity and value which would be used for account management purposes, invoice verification and which may be provided to selected suppliers.
- 9.2.9 The Company and the Member shall comply with all legal requirements in connection with the collection, storage and use of Data including registration under the Data Protection Act 1998 and the compliance with the Computer Misuse Act 1990.
- 9.2.10 The Company will use the Data only in accordance with the terms of this agreement and will take all reasonable precautions to prevent disclosure of the Data in a manner not permitted under this agreement.
- 9.2.11 The Company shall comply with any guidelines issued by the Royal Pharmaceutical Society in respect of the collection, storage or use of Data.
- 9.2.12 The Company shall, subject to the terms of this agreement, indemnify and shall keep the Member indemnified in respect of any direct loss arising from a claim for damages from a third party resulting from the Company's use or the third party's use of the Data provided by the Member under the terms of this agreement.
- 9.2.13 The Member shall maintain all relevant licences and authorisations required in the collection and processing of Data.
- 9.2.14 The Member warrants and represents that all Data held by the Member has been obtained and is held in compliance with the Member's obligations as a data controller, and the passing of personal data to, or access to personal data by the Company will not be in breach of the Data Protection Act 1998 and the Member shall indemnify and shall keep indemnified the Company in respect of any loss or damages arising from the Company's use of Data provided by the Member in breach of Data Protection Act 1998.

10. Member's Warranty

- 10.1 The Member warrants and represents to the Company that it is a pharmacy business with power to enter into this agreement.
- 10.2 The Member undertakes to the Company that it will duly pay the taxes which are due from it whether in the United Kingdom or elsewhere in relation to the payments to be made to it by the Company pursuant to this agreement and further agrees to indemnify the Company in respect of all and any tax which may be found due from the Company on any payments made to it under this agreement together with any interest, penalties or gross-up thereon.

11. VAT

- 11.1 All payments and receipts made in pursuance of this agreement will be subject to appropriate VAT at the then applicable rate.

12. Authority

- 12.1 A Member shall have no authority to commit the Company to any legally binding commitments or contracts or to interfere in the running of the Company's affairs or business or the affairs or business of other Members.
- 12.2 A Member shall not use the name of the Company, any Trade Mark of the Company or any name or logo which may be confused with that of the Company, save without the prior written consent of the Company.

13. Restrictions

- 13.1 Since the Member is likely to obtain in the course of providing the Services confidential information of the Company and other Members, the Member agrees that it shall not during the period of this agreement and for two years after its termination directly or indirectly:
- 13.2 interfere or seek to interfere in any contract between the Company and any third party; and/or
- 13.2.1 solicit or seek to solicit any person, firm or company to terminate or alter any contractual relationship between them and the Company and/or any Members; and/or
- 13.2.2 discourage any person, firm or company from entering into contractual relations with the Company and/or any Members and/or
- 13.2.3 make any disparaging remarks about the Company and/or any Members, the Services, the Business or any of their directors or managers.

14. Confidential information

- 14.1 During the term of this agreement and after its termination (howsoever termination may arise or occur) or expiry, each party ("Receiving Party") shall hold (and shall procure that its officers, employees and representatives hold) in confidence the terms of this agreement and all Confidential Information that it may receive from any other party or any third party on behalf of the other party ("Disclosing Party") and shall not disclose (and shall procure that its officers, employees and representatives do not disclose) any part of the Confidential Information to any third party without obtaining the prior written consent of the Disclosing Party and shall not use any Confidential Information of the

Disclosing Party other than for the performance by it of its rights or obligations under this agreement provided that such duty of confidence and non-disclosure shall not extend to any part of the Confidential Information of the Disclosing Party which the Receiving Party can show by documentary evidence:

- 14.1.1 was known to it prior to disclosure by the Disclosing Party;
- 14.1.2 was in the public domain or the subject of public knowledge at the time of disclosure by the Disclosing Party;
- 14.1.3 subject to such disclosure by the Disclosing Party, becomes part of the public domain or the subject of public knowledge other than by reason of any act or omission of the Receiving Party,
- 14.1.4 is supplied or imparted to the Receiving Party by a third party otherwise than in breach of any obligation of confidentiality owed to the Disclosing Party; or
- 14.1.5 is independently developed by the Receiving Party without use of the Confidential Information.
- 14.2 Notwithstanding the aforesaid provisions of this clause 14, the Receiving Party shall be entitled to disclose Confidential Information that it may receive from the Disclosing Party or any third party on behalf of the Disclosing Party pursuant to any legal or regulatory requirement or pursuant to any requirement of any recognised stock exchange.
- 14.3 The provisions of this clause 14 shall survive the expiry of termination of this agreement.
- 14.4 Upon expiry or termination of this agreement as the case may be, each Party shall cause all Confidential Information belonging to the other and which has been disclosed to it pursuant to this agreement to be returned, deleted or destroyed according to the written instructions of the other Party (or where no instructions are given within a reasonable time) unless the Confidential Information must be retained for any legal or regulatory requirements.

15. Default Interest

Where the Member fails to pay any amount payable by it under this agreement, the Company shall be entitled but not obliged to charge interest on the overdue amount, from the due date up to the date of actual payment, after as well as before judgment, at the rate of 4% per annum above the base rate for the time being of Barclays Bank Plc. Such interest shall accrue on a daily basis and be compounded quarterly. The parties agree that this constitutes a substantial remedy within the meaning of the Late Payment of Commercial Debts (Interest) Act 1998.

16. Payments

The Member shall pay all amounts due arising under this agreement in full without any deduction or withholding other than as required by law and the Member shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part.

17. Inadequacy of damages

Without prejudice to any other rights or remedies that the Company may have, the Member acknowledges and agrees that damages alone would not be an adequate remedy for any breach by it of the provisions of this agreement and that accordingly the Company shall be entitled, without proof of special damages, to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the provisions of this agreement.

18. Liability

- 18.1 Subject to clause 18.2, the aggregate liability of the Company under this agreement shall in no event exceed the amount payable under this agreement by the Member to the Company for the Services in the year in which an event gives rise to a claim.
- 18.2 Nothing in this agreement excludes or limits a party's liability for
- 18.2.1 death or personal injury arising as a result of the negligence of that party or any of its officers, employees or agents;
- 18.2.2 fraud or fraudulent misrepresentation; or
- 18.2.3 any other liability which cannot be excluded or limited by reason of applicable Law.

19. Waiver and remedies

The failure to exercise or delay in exercising a right or remedy provided by this agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. A waiver of a breach of any of the terms of this agreement or of a default under this agreement does not constitute a waiver of any other breach or default and shall not affect the other terms of this agreement. A waiver of a breach of any of the terms of this agreement or of a default under this agreement will not prevent a party from subsequently requiring compliance with the waived obligation. The rights and remedies provided by this agreement are cumulative and (subject as otherwise provided in this agreement) are not exclusive of any rights or remedies provided by law.

20. Force majeure

- 20.1 In this agreement, Force Majeure will mean any cause preventing any party from performing any or all of its obligations which arises from or is attributable to EITHER acts, events, omissions or accidents beyond the reasonable control of the party so prevented including without limitation strikes, lock-outs or other industrial disputes (whether involving the workforce of the party so prevented or of any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire flood or storm or default of suppliers or sub-contractors OR war, civil war, armed conflict or terrorist attack, nuclear, chemical or biological contamination or sonic boom, but nothing else.

- 20.2 If any party is prevented or delayed in the performance of any of its obligations under this agreement by force majeure, that party will forthwith serve notice in writing on each of the other parties specifying the nature and extent of the circumstances giving rise to force majeure, and will, subject to service of such notice and having taken all reasonable steps to avoid such prevention or delay and subject to clause 14.4 have no liability in respect of the performance of such of its obligations as are prevented by the force majeure events during the continuation of such events, and for such time after they cease as is necessary for that party, using all reasonable endeavours, to recommence its affected operations in order for it to perform its obligations.
- 20.3 If the Member is prevented from performance of its obligations for a continuous period in excess of one month, the Company may terminate this agreement with that Member forthwith on service of written notice upon the Member so prevented, in which case neither party will have any liability to the other except that rights and liabilities which accrued prior to such termination shall continue to subsist.
- 20.4 The party claiming to be prevented or delayed in the performance of any of its obligations under this agreement by reason of force majeure will use all reasonable endeavours to bring the force majeure event to a close or to find a solution by which the agreement may be performed despite the continuance of the force majeure event.

21. Personal agreement

- 21.1 This agreement is personal between the parties.
- 21.2 The Company may assign or novate this agreement in whole or in part.
- 21.3 The Member may not sell, assign or transfer any duties, rights or interests created under this agreement without the prior written consent of the Company. The Company may assign its rights and obligation contained in this agreement.

22. Costs and expenses

- 22.1 Each party shall pay its own costs relating to the negotiation, preparation, execution and implementation by it of this agreement and of each document referred to in it.

23. Notices

Any notice to be given by one party to the other shall be validly given if:

- 23.1 posted by prepaid recorded delivery first class post within the mainland of the United Kingdom and correctly addressed to the party to be served, and shall be deemed served on the third Business Day after posting (unless not actually delivered);
- 23.2 sent to the correct facsimile number of the party to be served and the sender has his fax machine's printed journal entry to prove safe receipt by the party to be served and shall be deemed served on the next Business Day after sending;
- 23.3 personally delivered to the member or (in the case of the Company) a registered director of the Company and shall be deemed served when so delivered;
- 23.4 delivered by electronic mail;

and for these purposes the parties' details for service are as set out in the signed Agreement.

24. Entire Agreement

This agreement supersedes any previous agreement between the parties in relation to the matters dealt within it and represents the entire understanding between the parties. Each party acknowledges and agrees that it has not entered into this agreement in reliance on any representation, warranty or undertaking which is not set out or referred to in this agreement.

25. Variation

- 25.1 The Company shall be entitled by giving the Member not less than one calendar month's notice to amend any provision of this Agreement or to replace this Agreement in its entirety. Where the Company does not during such period receive notice from the Member to terminate this Agreement, the Member shall be deemed to have accepted the revised terms or replacement agreement.
- 25.2 The Company shall be entitled to amend its Standard Conditions of Trade from time to time. The Standard Conditions of Trade shall be available from the Company's Website. The Member shall be responsible for visiting the Website from time to time to obtain details of any revisions.

26. Severance

- 26.1 If any provision of this agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this agreement which shall remain in full force and effect.
- 26.2 If any provision of this agreement is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it valid and enforceable.
- 26.3 The parties agree, in the circumstances referred to in clause 26.1 and if clause 26.2 does not apply, to attempt to substitute for any invalid or unenforceable provision a valid and enforceable provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision.

27. No partnership/agency

Nothing in this agreement is intended to or shall operate to create a partnership or joint venture of any kind between the parties, and save where the terms of this agreement provide to authorise either party to act as agent for the other, no party shall have authority to act in the name of or on behalf of or otherwise to bind the other in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

28. Counterparts

This agreement may be executed in any number of counterparts, each of which, when executed, shall be an original, and all the counterparts together shall constitute one and the same instrument.

29. Rights of Third Parties (Exclusion)

Save as expressly provided in this agreement, no term of this agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

30. Governing law and jurisdiction

This agreement shall be governed by and construed in accordance with the laws of England and Wales.

31. Alternative Dispute Resolution (ADR)

- 31.1 If any dispute arises out of this agreement the parties will attempt to settle it by negotiation. A party may not serve an ADR notice or commence court proceedings/an arbitration until 21 days after it has made a written offer to the other party to negotiate a settlement to the dispute.
- 31.2 If following the procedure set out in clause 31.1 any dispute out of this agreement remains unsettled, the parties will attempt to settle it by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure.

SCHEDULE 2 SERVICES

The following is a non-exhaustive list of services which the Company provides to Members subject to the terms of this agreement and the Company's Standard Conditions of Trade (as amended from time to time):

- NHS and Professional Services
- Training and Development
- Marketing Support
- Retail Support
- Business Consultancy
- NumarkNet.com
- Commercial Terms
- Numark Insurance
- Information Services
- Numark Own Brand product range

The Company reserves the right to add to or remove the services in whole or in part. Details in respect of each scheme are available upon request from the Company.

SCHEDULE 3 Self billing Agreement

This agreement shall form part of and be subject to the terms of the agreement and sets out a self billing procedure between the Company (VAT number GB 109 898 228) and the Member.

The Company agrees to;

1. Issue self-billed invoices for supplies made to the Company by the Member until the cessation of the agreement.
2. Complete self-billed invoices showing the Member's name, address, and VAT registration number, together with all the other details which constitute a full VAT invoice and will state on the invoice "THE VAT SHOWN IS YOUR OUTPUT TAX DUE TO CUSTOMS & EXCISE".
3. Make a new self billing agreement in the event that the Company's VAT registration number changes.
4. Inform the Member if the issue of self-billed invoices will be outsourced to a third party.

The Member agrees to;

1. Accept invoices raised by the Company on the member's behalf until the cessation of the agreement.
2. Not raise sales invoices for the transactions covered by this agreement.
3. Notify the Company immediately if the Member changes its VAT registration number, ceases to be VAT registered or sells part or all of its business.