

**The Provider's attention is specifically drawn to clause 15 (Data Protection); clause 18 (Indemnity), and clause 19 (Liability).**

This page tells you information about us and the legal terms and conditions ("**Terms**") on which NDNA regulate the certification process of the quality standard, Millie's Mark.

These Terms will apply to any contract between NDNA and a Provider for the certification of Millie's Mark to Early Years providers and other organisations whose principal function is the care of children ("**Contract**").

## 1 **Interpretation**

1.1 The following definitions and rules of interpretation applies to the Contract:

<b>"Application"</b>	the application made by a Provider for Certification, such application to be made by uploading the documentation and associated evidence provided by NDNA to the Website;
<b>"Approval Date"</b>	the date upon which NDNA advises the Provider (in writing) that Certification has occurred;
<b>"Background Intellectual Property Rights"</b>	Intellectual Property Rights owned or controlled by either NDNA or the Provider on the date that the Contract is entered into;
<b>"Brand Guidelines"</b>	NDNA's guidelines for the use of the Mark, as they may be amended by NDNA from time to time; a copy of which (or electronic access to) will be provided to the Provider on or around the Approval Date;
<b>"Business Day"</b>	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
<b>"Certification"</b>	confirmation that a Provider has achieved or exceeded the standards set out in the Certification Conditions and continues to do so. <b>Certified</b> shall be

	construed accordingly;
<b>"Certification Conditions"</b>	the basis upon which a Provider is assessed by NDNA when being considered for approval for Certification as meeting the standard required to be an approved centre and use the Mark;
<b>"Certification Period"</b>	the period of three (3) Years from the Approval Date;
<b>"Charges"</b>	the charges set out in clause 5;
<b>"control"</b>	the ability to direct the affairs of another person whether by virtue of the ownership of shares, contract (including without limitation the general management of a company or business) or otherwise, and <b>controls, controlled</b> and the expression <b>change of control</b> shall be construed accordingly;
<b>"Foreground Intellectual Property Rights"</b>	Intellectual Property Rights arising out of the use of the Mark;
<b>"Group Provider"</b>	has the meaning set out in clause 4.6;
<b>"Individual Setting"</b>	has the meaning set out in clause 4.6;
<b>"Intellectual Property Rights"</b>	patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority

from, 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;

<b>"Mark"</b>	the trade mark details of which are set out in the Schedule to these Terms;
<b>"NDNA"</b>	National Day Nurseries Association a company with limited liability registered in England with company number 03738616 and whose registered office is at National Early Years Enterprise Centre, Longbow Close, Huddersfield, HD2 1GQ;
<b>"Premises"</b>	the location where the care and education of children takes place;
<b>"Provider"</b>	a nursery school or other provider of child care which a) wishes to be considered by NDNA for Certification or b) has been Certified (as appropriate);
<b>"Provider Manager"</b>	that person who has the overall responsibility for the management of the Provider (where the Provider is a Group Provider the Provider Manager shall be that person who is responsible for the management of an Individual Setting);
<b>"Request for Application"</b>	the request made by a Provider to NDNA for consideration for assessment to receive access to the Certification Conditions;
<b>"VAT"</b>	value added tax chargeable under the Value Added Tax Act 1994 or any similar replacement or additional tax;
<b>"Website"</b>	the website owned and controlled by NDNA with the html of <a href="http://www.milliesmark.com">www.milliesmark.com</a> , which is utilised by NDNA for the management of, and applications for Certification, and all related activity;

**"Year"** a period of 12 months.

## 1.2 **Interpretation:**

- 1.2.1 a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- 1.2.2 any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.2.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.2.4 a reference to **writing** or **written** includes faxes and emails.

## 2 **Use of the Website**

The use of the Website is governed by NDNA's *Terms of Website use* which can be found [www.milliesmark.com/privacy-policy](http://www.milliesmark.com/privacy-policy)

## 3 **How we use your personal information**

Personal information will be dealt with in accordance with NDNA's *Privacy Policy* which can be found at [www.milliesmark.com/privacy-policy](http://www.milliesmark.com/privacy-policy)

## 4 **Formation of Contract**

- 4.1 The pages on the Website guide the user through the steps required to make a Request for Application. Please take the time to read and check the application at each page of the process.

- 4.2 In circumstances where a Provider is unable to submit payment online (except for reasons connected with the availability of an internet connection or similar) NDNA may accept a Request for Application by telephone.
- 4.3 When a Request for Application has been made, the Provider will, depending upon the information submitted, either:
- 4.3.1 receive an acceptance E-mail from NDNA in accordance with clause 4.5; or
  - 4.3.2 receive a notification on the Website that further information is required; such information will be requested by NDNA in writing as soon as reasonably practicable upon the Request for Application being made.
- 4.4 In circumstances where further information is required by NDNA in accordance with clause 4.3.2 as a result of a Request for Application being incomplete, or includes contents which NDNA believes to be prejudicial to the continuation of the Request for Application (for example if a Provider does not agree to Spot Check visits or it is apparent that accidents have occurred at Premises), NDNA may defer acceptance until such a time that any concerns have been allayed, or ultimately reject the Request for Application.
- 4.5 When appropriate, NDNA will confirm acceptance of a Request for Application by sending a confirmation E-mail to the Provider. The Contract is entered into at this time.

## **Groups**

- 4.6 In circumstances where a Provider owns or controls more than one Premises (**Group Provider**), a separate Request for Application must be made for each Premises (by reference to its OFSTED (or equivalent) number) within that group (**Individual Setting**). Each Request for Application will be considered separately by NDNA; Approval will be for each Individual Setting only.

## **5 Charges and payment**

- 5.1 The Charges are determined in accordance with NDNA's price list which can be found at [www.milliesmark.com/buy-course](http://www.milliesmark.com/buy-course). Any variation in the Charges will be notified to the Provider by NDNA by E-mail or otherwise in writing; all current Charges can be found on the Website at the link contained in this clause 5.1.

- 5.2 Charges are variable dependent upon the number of individuals who work at a Premises. The Provider undertakes to notify NDNA in the event that there is a variation in such numbers. NDNA shall be entitled to upwardly adjust the Charges accordingly.
- 5.3 The Charges are payable at the time that a Request for Application is accepted by NDNA. The Contract is entered into at the Provider's risk; the Provider should consider the contents of the Website where more information relating the process of Certification can be found before a Request for Application is submitted. The Charges are **not** refundable in any circumstances.
- 5.4 All Charges due under the Contract are inclusive of VAT, which shall, where applicable, be paid by the Provider at the prevailing rate on the due date for payment.

## 6 **Assessment**

- 6.1 Upon acceptance of a Request for Application in accordance with clause 4.5, NDNA shall make the Certification Conditions available to the Provider. The date that the Certification Conditions are made available to the Provider shall be known as the **Commencement Date**.
- 6.2 The Provider shall be entitled to make an Application when a period of three (3) months has elapsed from the Commencement Date.
- 6.3 The deadline for making an Application shall be that date which is six (6) months from the Commencement Date (**Deadline**).
- 6.4 Should an Application not be made by the Deadline the right to do so will lapse therefore preventing the Provider from accessing the restricted pages of the Website; any data that has been submitted may be lost.
- 6.5 Upon receipt of an Application, NDNA shall endeavour (but not be obliged) to complete its assessment of it on or around the date of NDNA's next assessment panel (these dates shall be posted on the Website or otherwise communicated to the Provider in writing) provided that such date is not less than 30 Business Days from date of the Deadline, in which case the relevant assessment panel date shall be that which occurs first after the conclusion of this 30 Business Day period. Decisions shall be notified to the Provider by E mail.

## 7 **Spot checks**

- 7.1 Due to the nature and the purpose of Certification (i.e. its aim is to improve the level of children's health care in early years settings and other environments) all Providers shall, from the Commencement Date until such a time as the Contract is terminated (for whatever reason), be subject to random assessments on short notice (**Spot Check**).
- 7.2 Providers and/or Individual Settings shall be notified of a Spot Check as follows:
- 7.2.1 typically one day's notice shall be given by telephone call to the Provider Manager before 12:00 pm on the Business Day preceding the proposed day of the Spot Check. In the event that the Provider Manager is unavailable, the individual with the next level of authority shall be advised of the Spot Check;
  - 7.2.2 in the event that a Provider cannot be contacted by telephone after NDNA has made reasonable efforts to do so, the Provider and/or Individual Setting shall be advised of the impending Spot Check in writing (usually by E-mail);
  - 7.2.3 NDNA shall attempt to carry out a Spot Check irrespective of whether it has received confirmation by a Provider that it acknowledges such a visit.
- 7.3 The purpose of the telephone call outlined in clause 7.2.1 is to:
- 7.3.1 to inform the Provider of the Spot Check;
  - 7.3.2 confirm the Provider's status and give it an opportunity to declare any changes in circumstances, for example if it no longer has the requisite amount of trained personnel;
  - 7.3.3 to enable any arrangements for owners or directors to participate in the Spot Check;
  - 7.3.4 make arrangements for discussions with key staff including the Provider Manager;
  - 7.3.5 request that relevant information is ready, e.g. all Paediatric first aid certificates;

7.3.6 provide an opportunity for the Provider or Individual Setting to ask or prepare any questions for the assessor.

7.4 **No requests shall be granted by NDNA for the deferral or rescheduling of Spot Check visits.**

7.5 In the event that either NDNA is unable to undertake a Spot Check or the outcome of such confirms that the Provider and/or Individual Setting does not meet the Certification Conditions, or results in a decision by NDNA that the Provider or Individual Setting could not be, or should not be Certified, then NDNA shall be entitled to either suspend Certification (or the application for Certification) or terminate the Contract.

## 8 **Appeals & Disputes**

8.1 In the event that a Provider considers that any decision made by NDNA following an Application is unfair or incorrect, it has the right to appeal in accordance with the provisions set out in NDNA's appeals procedure which can be found at [www.milliesmark.com/documentation](http://www.milliesmark.com/documentation).

8.2 If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it, such a dispute shall be dealt with in accordance with NDNA's complaints policy which can be found at [www.milliesmark.com/documentation](http://www.milliesmark.com/documentation)

## 9 **Certification Period**

9.1 The period of Certification shall commence on the Approval Date and continue for the Certification Period, unless and until terminated early in accordance with the terms of the Contract.

9.2 Upon the expiry of the Certification Period the Certification shall automatically lapse unless the Provider has renewed its Certification by making a successful Application.

## 10 **Provider's obligations**

10.1 For the duration of the Contract the Provider:



- 10.1.1 warrants that all information disclosed to NDNA is, and continues to be, complete and accurate;
- 10.1.2 acknowledges the need for Spot Checks and confirms its acceptance of them on one (1) Business Day's notice;
- 10.1.3 will advise NDNA promptly of any serious incidents, accidents or deaths that have occurred within its premises where the care and education of children takes place;
- 10.1.4 shall ensure that the Certification Conditions are met and continues to be met;
- 10.1.5 shall ensure all of its employees or other personnel engaged in the care of children at its Premises have a valid Paediatric First Aid certificate and maintain these for the duration of its Certification;
- 10.1.6 agrees to complete and upload the self-assessment audit documents, training matrix, all staff paediatric first aid certificates, floor plan and risk assessment to the dedicated area of the Website;
- 10.1.7 shall complete annual declarations on the dates stipulated by NDNA from time to time. Failure to do so may result in the termination of Certification;
- 10.1.8 shall continue to review and upload evidence of its adherence to the Certification Conditions throughout the Certification Period;
- 10.1.9 shall maintain its OFSTED registration (or jurisdictional equivalent if located outside England) and otherwise conform with all and every law, regulation, directive or other authority which governs the provision of child care and education in the United Kingdom as it applies to the Provider or Individual Setting.

## 11 **NDNA obligations:**

### 11.1 NDNA shall for the duration of the Contract:

- 11.1.1 provide on line mentor support and will endeavour to provide mentor response to enquiries within 72 hours within the Website;

- 11.1.2 provide telephone and e-mail help via NDNA head office between office hours on Business Days (09:00 – 17:00);
- 11.1.3 use experienced assessors for both online assessment and onsite Spot Checks. Conflict of interest will be checked by the completion of the assessor declaration. In order to reduce any such conflicts, NDNA will not appoint assessors who live or work within the same geographical locality as the Provider or Individual Setting;
- 11.1.4 provide annual declarations with a set deadline for return;
- 11.1.5 provide reminder emails at least three months before the conclusion of the Certification Period to remind Providers to renew their Certification. **To renew a Certification a Provider must make a new Application;**
- 11.1.6 provide Providers and or Individual Settings with online resources to test ongoing understanding and conformity with the Certification Conditions throughout Certification Period
- 11.1.7 provide a dated certificate to those Providers or Individual Settings which are Certified
- 11.1.8 provide an award pack which includes copies of the Mark and information concerning public relations and marketing.

## 12 **Ownership of Intellectual Property Rights**

- 12.1 All Background Intellectual Property Rights that belong to NDNA or the Provider shall remain with that party.
- 12.2 Any Foreground Intellectual Property Rights shall vest absolutely in NDNA or as NDNA otherwise directs.
- 12.3 The Provider hereby irrevocably, unconditionally and absolutely assigns to NDNA, with full title guarantee, and without restriction, all right, title and interest to all Foreground Intellectual Property Rights.

## 13 Trade Mark licence

- 13.1 Subject to clause 13.2, NDNA grants the Provider a non-exclusive, non-transferable, royalty-free licence during the Certification Period to use the Mark in the performance of its obligations under the Contract subject always to the Brand Guidelines.

### Groups

- 13.2 Where a Provider is a Group Provider the licence granted in clause 13.1 shall apply to an Individual Setting only; as such the Group Provider shall not use the Mark (whether directly or indirectly) in connection with any of its other Premises.

## 14 Infringements

- 14.1 The Provider shall notify NDNA promptly on becoming aware of:

14.1.1 any unauthorised use by any third party of the Mark; or

14.1.2 any actual or threatened claim by any third party in connection with the performance of the Contract in each case giving full details of that unauthorised use and/or claim.

- 14.2 NDNA shall have sole and complete control of any litigation or other proceedings arising out of any unauthorised use of its Intellectual Property Rights or any third-party claim against it. The Provider shall provide NDNA with all assistance as may be reasonably required by it to prosecute, defend or settle any such claim. The Provider shall take any action which might be reasonably anticipated to compromise any such claim.

## 15 Data protection

- 15.1 If either NDNA or the Provider receives (**Receiving Party**) from the other (**Disclosing Party**) in course of the performing its obligations under the Contract, or otherwise, any personal data relating to any employee, client (including without limitation parent or child), or any other individual ("**Personal Data**"), the Receiving Party shall:

15.1.1 only process the Personal Data in accordance with the instructions of the Disclosing Party and at all times in accordance with the Data Protection Act 1998

(or any similar or equivalent legislation applicable in the location that the Personal Data is processed);

15.1.2 not otherwise modify, amend or alter the contents of the Personal Data or disclose or permit the disclosure of any of the Personal Data to any third party unless specifically authorised in writing by the Disclosing Party;

15.1.3 take appropriate technical and organisational measures against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data; and

15.1.4 provide reasonable evidence of the Receiving Party's compliance with its obligations under this clause 15.1 to the Disclosing Party on reasonable notice and request.

15.2 The Receiving Party shall notify the Disclosing Party within three Business Days if it receives a request from a data subject for access to any Personal Data. If the Receiving Party receives any complaint, notice or communication that relates directly or indirectly to the processing of any Personal Data or to either party's compliance with the Data Protection Act 1998, it shall immediately notify the Disclosing Party and provide the Disclosing Party with full co-operation and assistance in relation to that complaint, notice or communication.

15.3 At the Disclosing Party's request, the Receiving Party shall provide the Disclosing Party with a copy of all Personal Data held by it in the format and on the media reasonably specified by the Disclosing Party.

15.4 A Receiving Party shall not transfer any Personal Data outside the European Economic Area without the prior written consent of the Disclosing Party.

15.5 The Disclosing party warrants to the Receiving party that it has obtained all and any consent required to process Personal Data in the manner contemplated by this clause 15.

15.6 In this clause 15, **personal data**, **data subject** and **process** shall have the meanings given to them in the Data Protection Act 1988.

## 16 **Anti-bribery**

16.1 NDNA and the Provider shall:

16.1.1 comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("**Relevant Requirements**");

16.1.2 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if that activity, practice or conduct had been carried out in the UK;

16.1.3 promptly report to the other any request or demand for any undue financial or other advantage of any kind received by it in connection with the performance of the Contract.

16.2 Breach of this clause 16 shall be deemed a material breach under clause 20.1.1.

16.3 For the purpose of this clause 16, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), section 6(5) and (6) and section 8 of that Act respectively

## 17 **Confidentiality**

17.1 The Provider undertakes that it shall not at any time during the duration of the Contract, and for a period of five years after termination of it, disclose to any person technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature, or information or documentation derived out of the performance of the Contract, and have been disclosed to the Provider by NDNA, its employees, agents, consultants or subcontractors.

17.2 The Provider may disclose NDNA's confidential information:

17.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. The Provider shall ensure

that its employees, officers, representatives or advisers to whom it discloses NDNA's confidential information comply with this clause 17; and

17.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

17.3 The Provider shall not use the NDNA's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

## 18 **Indemnity**

18.1 The Provider undertakes to indemnify NDNA and hold it harmless from for and against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by NDNA arising out of or in connection with the Provider's breach or negligent performance or non-performance of the Contract.

## 19 **Limitation of liability**

19.1 Nothing in the Contract shall limit or exclude NDNA's liability for:

19.1.1 death or personal injury caused by its negligence; or

19.1.2 fraud or fraudulent misrepresentation.

19.2 Subject to clause 19.1, NDNA shall not be liable to the Provider, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

19.2.1 loss of profits;

19.2.2 loss of sales or business;

19.2.3 loss of agreements or contracts;

19.2.4 loss of anticipated savings;

19.2.5 loss of or damage to goodwill;

19.2.6 loss of use or corruption of software, data or information;

19.2.7 any indirect or consequential loss; and

19.2.8 any losses that derive out of the loss of connectivity to the Website.

19.3 Subject to clause 19.1, NDNA's total liability to the Provider, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to £100,000.

## 20 **Termination**

20.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

20.1.1 the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

20.1.2 the other party repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;

20.1.3 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 or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

20.1.4 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors;

20.1.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company);

- 20.1.6 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
  - 20.1.7 the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
  - 20.1.8 a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
  - 20.1.9 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
  - 20.1.10 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 20.2 For the purposes of clause 20.1.1 **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from:
- 20.2.1 a substantial portion of this agreement; or
  - 20.2.2 any of the obligations set out in clauses 6.3, 7, 10, 13, 15, and 16.
- over the term of the Contract.
- 20.3 Without affecting any other right or remedy available to it, NDNA may terminate the Contract with immediate effect by giving written notice to the Provider if:
- 20.3.1 there is a change of Control of the Provider; or
  - 20.3.2 NDNA receives a complaint regarding the Provider which is substantiated.



20.3.3 NDNA is of the opinion (acting reasonably) that the continuation of the Provider's Certification is detrimental to the goodwill in the Mark.

## 21 **Consequences of termination**

21.1 On termination or expiry of the Contract the Provider shall:

21.1.1 immediately cease to use the Mark; and

21.1.2 immediately cease to use all that information and resources provided by NDNA upon receiving its Certified status, and any other information or resources purchased from NDNA and which relate to its Certification or which were purchased only as a result of it achieving Certification; and

21.1.3 return to NDNA all of its confidential information.

21.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

## 22 **Force majeure**

22.1 Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

23      **Assignment and other dealings**

23.1      The Contract is personal to the Provider who shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

23.2      NDNA may at any time assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights under the Contract..

24      **Variation**

NDNA shall be entitled to vary these Terms by serving reasonable notice upon the Provider.

25      **Waiver**

25.1      A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

25.2      A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

26      **Severance**

26.1      If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

27 **Entire agreement**

27.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

27.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

28 **No partnership or agency**

28.1 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

28.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

29 **Third party rights**

No one other than a party to the Contract their successors and permitted assignees, shall have any right to enforce any of its terms.

30 **Notices**

30.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:

30.1.1 delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

30.1.2 by E-mail to:

30.1.2.1 NDNA at [info@milliesmark.com](mailto:info@milliesmark.com), and

30.1.2.2 the Provider at the address submitted when the Request for Application is made.

30.2 Any notice or communication shall be deemed to have been received:

30.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

30.2.2 if sent by pre-paid first-class post or other next Business Day delivery services, at 9.00am on the second Business Day after posting

30.2.3 if sent by E-mail, at 9.00am on the next Business Day after transmission.

30.3 This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## 31 **Governing law**

The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

## 32 **Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.