

Participation Agreement - Cover Page

Parties			
NOW: Pensions		NOW: Pensions Ltd (Company number 07766398), with registered office 6 Bevis Marks, London, EC3A 7BA.	
Employer	Employer legal name		Employer trading name (if applicable)
	Registered office		Registration number
	PAYE reference		Employer code
	Employer Duties Start Date / Staging Date		Scheme Start Date

Background			
<p>NOW: Pensions admits the Employer to participate in the Scheme with effect from the Scheme Start Date, so that the Employer's workers or employees (including former workers or employees) may become Members of the Scheme on the terms and conditions contained in this Cover Page, Payments Schedule, Services Schedule and the Terms & Conditions, together comprising the Participation Agreement. Unless otherwise defined, terms used in the Cover Page, Payments Schedule and Services Schedule shall have the meaning given to them in the Terms & Conditions. NOW: Pensions will provide the Employer with the Pension Services and the Employer Services as standard. The Services are described in the Services Schedule.</p>			
Contact address, if different to registered office			
Primary Contact name		Primary Contact Job Title	
Primary Contact email address		Default Retirement Age	State Pension Age
Pension Services	YES. Provided as standard. There are no charges for the Employer in respect of the Pension Services. Please see Payments Schedule for detail on Member charges.		
Auto Enrolment Communications <i>Do you want NOW: Pensions to send your workers communications required by the Auto Enrolment Laws?</i>	YES/NO Please refer to the Services Schedule, Employer Services, for further information.	Employer Generic email address	
Employer Services	YES. Employer Services are provided as standard from the Scheme Start Date and shall be charged from the charge start date (Employer Services Charge Commencement). Please see Payments Schedule for detail on charges.		

Employer's Obligations include:

- compliance with Automatic Enrolment Laws;
- upload Employer's Payroll File and pay Employer and Member contributions into the Scheme;
- ensure the Payments Schedule is kept up to date.

Please see clause 4 of the Terms and Conditions for more details and further obligations.

The Employer acknowledges that the Trustee may be under an obligation to notify The Pensions Regulator of the Employer's failure to comply with the Employer's obligations under the Automatic Enrolment Laws and/or this Participation Agreement (or any one of them), and consents to such notification.

Participation Agreement Approval

Approved by Employer	<p>I, _____, accepted by first name last name</p> <p>a. have read and checked the Participation Agreement and am duly authorised for and on behalf of the Employer, to submit this application for the Employer to participate in the Scheme on the terms set out in this Participation Agreement; and</p> <p>b. agree that if I am not duly authorised for and on behalf of the Employer to submit this application that I and/or my employer/company/organisation shall be liable for compliance with the Employer's obligations, costs and liabilities as set out in this Participation Agreement;</p> <p>c. have taken any legal or financial advice which the Employer considers to be necessary before submitting this application; and</p> <p>d. agree for and on behalf of the Employer that if accepted this application will form a binding contract.</p>
Approved by NOW: Pensions	Submission by the Employer of an application does not create legal relations between the parties. If NOW: Pensions accepts the Employer's application, NOW: Pensions will send an email confirming NOW: Pensions' acceptance to the Employer Primary Contact attaching a copy of this Participation Agreement and the Participation Agreement shall commence on such date.

Payments Schedule

Employer legal name

Employer code

This is the Employer's "schedule of payments" for the purposes of Section 87 of the Pensions Act 1995.

Rates of Contributions

Contribution Model 'Default' Based on Band Earnings		
Period	Member Pays	Plan Code <101> Employer Pays
To 5 April 2018	<1%>	<1%>
6 April 2018 to 5 April 2019	<3%>	<2%>
From 6 April 2019	<5%>	<3%>

Please note the Employer is responsible for the compliance of its Contribution Models with the Applicable Law.

Where minimum contribution rates for an employer and/or contribution dates are varied as a result of a change in the Automatic Enrolment Laws, the Payments Schedule will be deemed updated to reflect the change from the effective date of the change. Unless you notify the Trust Manager otherwise, the Member contribution rate shall be varied from time to time to the extent necessary so that, when combined with the minimum employer contribution rate required by the Automatic Enrolment Laws, the total contribution rate in respect of each Member will be equal to the overall minimum rate required by the Automatic Enrolment Laws.

Due dates for contributions

The Employer shall ensure Payroll Files are uploaded in sufficient time following deduction from a Member's earnings to enable compliance with the Applicable Laws (**Payroll Upload Date**). Following upload of the Payroll Files by the Payroll Upload Date, NOW: Pensions will deduct contributions by direct debit from the Employer's bank account in order for the Employer's contributions to be held by the Scheme by the due dates specified in the Automatic Enrolment Laws and the Applicable Law. The Employer will be notified in advance of the contribution amount and payment date. There may be more than one payment taken during any one pay period.

Fees Payable by Members (incl. VAT)

Category	Fees	When paid and how
Member Administration Fee	£1.50 per calendar month.	Deducted from the Member Account on a monthly basis
Investment Management Charge	0.3% per year of each Member Account	Deducted from the Member Account on a monthly basis and taken into account before unit prices are calculated.

Fees Payable by the Employer (excl. VAT)		
Category	Fees	When paid and how
Auto Enrolment Communications (where applicable)	Electronic communications will not incur an additional charge.	N/A
Employer Services	<p>The Employer Services Charge is due from the Employer Services Charge Commencement, and is subject to the terms below and this Participation Agreement. The Employer Services Charge varies depending on the Employer's categorisation into one of the 3 groups determined below:</p> <p>Payroll Bureau Employer Services Charge <i>For Employers who are supported by a Payroll Bureau using the Payroll Bureau Gateway, the monthly Employer Services Charge is currently:</i></p> <p>A. where the Employer has between 0 – 4 Active Members in a particular month as assessed by NOW: Pensions at its sole discretion, £12.50 for that month (plus VAT) as at the date of this Participation Agreement; and</p> <p>B. where the Employer has 5 and above Active Members in a particular month as assessed by NOW: Pensions at its sole discretion, £20 for that month (plus VAT) as at the date of this Participation Agreement.</p> <p>Employer Direct Employer Services Charge <i>For Employers who sign up directly with NOW: Pensions (or an agent signs up on the Employer's behalf and the scheme is not managed through the Payroll Bureau Gateway),</i></p> <p>C. The monthly Employer Services Charge is currently: £36 for that month (plus VAT) as at the date of this Participation Agreement.</p> <p>Subject to the paragraph below, the number of Employer's Active Members shall be assessed at the Employer Services Charge Commencement and thereafter on a monthly basis at NOW: Pensions' sole discretion and the monthly Employer Services Charge payable may change accordingly without further notice to the Employer.</p> <p>The first 3 full months from the Scheme Start Date shall be chargeable as specified in this Payments Schedule. Thereafter, in any month where the number of Active Members participating in the Scheme through the Employer and this Participation Agreement, shall be 0 then the Employer Services Charge shall be reduced to £0 for that month, as assessed by NOW: Pensions at NOW: Pensions' sole discretion.</p>	Payable from the Employer Services Charge Commencement by monthly direct debit.

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Additional fees that may become payable by Employer

Category	Fees	When paid and how
Additional Administration Fee	To be determined by NOW: Pensions to cover the reasonable additional administration costs incurred by or on behalf of NOW: Pensions and/or the Trustee which in NOW: Pensions' reasonable opinion have arisen or are expected to arise as a result of material breach of this Participation Agreement by the Employer.	Payable by monthly direct debit.
Additional Services Fee	To be jointly agreed between NOW: Pensions and the Employer from time to time in relation to any agreed Additional Services.	Payable by monthly direct debit.

Services Schedule

Pension Services

Category	Process	Task Description
Data	Common data compliance	Common data information shall be provided to The Pensions Regulator upon request by The Pensions Regulator.
Communications	Welcome letter	Containing basic scheme information to be issued in accordance with the Disclosure Regulations.
	Annual benefit statement	To be issued annually within 12 months of the Scheme year end in accordance with the Disclosure Regulations.
	Alterations to the Scheme	Communication to be issued where appropriate in accordance with the Disclosure Regulations.
	Lifestyling	Communications to be issued where appropriate in accordance with the Disclosure Regulations.
	Benefits on retirement	Communications to be issued where appropriate in accordance with the Disclosure Regulations.
	Death benefits	Communications to be issued where appropriate in accordance with the Disclosure Regulations.
	Leavers	Communications to be issued where appropriate in accordance with the Disclosure Regulations.
	Winding up	Communications to be issued where appropriate in accordance with the Disclosure Regulations.
	Transfers	Communications to be issued where appropriate in accordance with the Disclosure Regulations.
	Information requested	Information to be provided upon request in accordance with the Disclosure Regulations.
Opt out, opt in and joining	Opt out	Processing opt out forms in accordance with the Automatic Enrolment Regulations
	Opt in	Issuing opt in and joining notices in accordance with the Automatic Enrolment Regulations and processing such forms.
Processing	Updates	Updates to Member details including personal circumstances, divorce and general Member correspondence.
	Escalation Process	Complaints and escalation procedure compliant with the Automatic Enrolment Laws, details available on NOW: Website.
	Retirement	Processing of retirement and Members approaching retirement.
	Investment	Allocate contributions to each Member Account and invest such contributions within the Scheme.
	Joiner	Enrolment and re-enrolment of jobholders processed in accordance with the Employer's instructions and the Automatic Enrolment Laws and updating records as appropriate.
	Transfers	Processing transfer payments into and out of the Scheme in accordance with the Scheme Documents and Applicable Laws.
	Benefits	Calculation, communication and provision of benefits including payment of tax due in accordance with the Scheme Documents including retirement benefits and death benefits.
	Statutory Reporting	Statutory reporting as required by Scheme regulatory bodies.

Employer Services

Category	Process	Task Description
Helpdesk	Employer support	Provision of a contact centre to respond to Employer enquiries via appropriate support media.
	Member support	Provision of a contact centre to respond to Member enquiries via appropriate support media.
Resource Library	Toolkits	Assistance with implementation of the Employer's participation in the Scheme available on the NOW: Website.
	Materials	Availability of support materials on the NOW: Website including webinars.
	Guides	Availability of guides to assist with ongoing auto enrolment and re-enrolment.
Software	Gateway	Provision of Gateway and associated technology including updates to such software as provided from time to time to enable upload of payroll data.
	Report(s)	Report(s) available on Gateway.
	Maintenance and developments	Software maintenance, developments and updates to be provided from time to time to relevant systems.
Administration	Data quality	Provision of reasonable assistance to help the Employer with issues arising from their data.
Addenda	Contribution tiers	Processing of addenda to permit the Employer to amend their Contribution Model in accordance with the Participation Agreement.
	Staging date / Employer duties start date / Scheme start date	Processing of addenda to permit the Employer to amend their staging date or employer duties start date or Scheme start date in accordance with the Participation Agreement.
	Communications	Processing of addenda to permit the Employer to amend whether NOW: Pensions will send the Auto enrolment communications in accordance with the Participation Agreement.
Auto-enrolment communications (where NOW: Pensions is requested to send such communications by the Employer)	Electronic delivery of auto enrolment communications	Auto enrolment communications will be delivered in electronic format to the worker's email address (where provided). Where the Employer has not provided a worker's email address, PDF communications for each worker will be sent to the Employer's generic email address as specified on the Cover Page. It is the Employer's responsibility to maintain and monitor the Employer's generic email address on a daily basis and to distribute the communications along with any attachments as directed by NOW: Pensions.
	Enrolment and re-enrolment	Enrolment and re-enrolment information to be provided to an eligible jobholder in accordance with the Automatic Enrolment Regulations.
	Postponement	Postponement notice to be provided to workers as required by the Automatic Enrolment Laws and the Automatic Enrolment Regulations.
	Non-eligible jobholder and entitled workers	Provide joining rights to those not enrolled in accordance with the Automatic Enrolment Laws including communication requirements.



Participation Agreement - Terms & Conditions

The Employer's attention is particularly drawn to the provisions of Clause 11.

1 DEFINITIONS

1.1 In this Participation Agreement, including the Cover Page and the Schedules, the following terms have the following meanings:

Active Member means a Member who has been admitted to the Scheme and will remain an Active Member until the earlier date of the following: (a) the Member's Employer no longer participates in the Scheme; (b) the Member notifies the Employer and the Trust Manager that they no longer wish to be an Active Member and contributions in respect of the Member cease; or (c) the Member leaves employment with the Employer, or (d) when the balance in all Member Accounts in respect of the Member falls to zero;

Additional Administration Fee means the fee determined by NOW: Pensions to cover the reasonable additional administration costs incurred by or on behalf of NOW: Pensions and/or the Trustee which in NOW: Pensions' reasonable opinion have arisen or are expected to arise as a result of material breach of this Participation Agreement by the Employer;

Additional Services means any additional services provided by NOW: Pensions to the Employer as jointly agreed from time to time, in addition to the Pension Services and Employer Services;

Additional Services Fee means the fee jointly agreed between NOW: Pensions and the Employer from time to time in relation to any agreed Additional Services;

Applicable Law means all statutes which relate to occupational pension schemes and NOW: Pensions' provision of the Services, and the regulations made under them. This includes, but is not limited to, the Automatic Enrolment Laws, Automatic Enrolment Regulations, Data Protection Legislation, Disclosure Regulations and the Finance Act 2004;

Automatic Enrolment Laws means those parts of the Pensions Act 2008 as amended by the Pensions Act 2011 and the regulations made under it that deal with automatic enrolment. This includes, but is not limited to, the Automatic Enrolment Regulations;

Automatic Enrolment Regulations means the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010;

Authorised Users means those employees, agents and independent contractors of the Employer who are authorised by the Employer to use Gateway;

Data Protection Legislation means all Applicable Laws relating to processing and use of personal data and privacy, including: (a) the Data Protection Act 2018, the EU Data Protection Directive 95/46/EC and / or the General Data Protection Regulation (EU) 2016/679 ("GDPR"); (b) the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC and the Privacy and Electronic Communications (EC Directive) Regulations 2003; (c) any laws which implement such laws; and (d) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing, and any guidance, guidelines, codes of practice and codes of conduct issued by any relevant supervisory authority responsible for administering Data Protection Legislation, including the UK Information Commissioner ("Supervisory Authority"), relating to such laws;

Deferred Member means a Member in respect of whom the Scheme maintains a Member Account and who either (i) has been, but is no longer, an Active Member; or (ii) has been, but is no longer, an active member of a registered pension scheme through his employment with the Employer and whose accrued right under that scheme has been transferred into the Scheme;

Disclosure Regulations means The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013, as amended from

time to time; The Occupational Pension Scheme (Preservation of Benefits) Regulations 1991; or The Occupational Pension Schemes (Winding Up) Regulations 1996 as appropriate;

Employer Contributions means the contributions payable by the Employer, as specified in the Payments Schedule;

Employer Direct Employer Services Charge means the Employer Services Charge applicable to those Employers who are not supported by a Payroll Bureau using the Payroll Bureau Gateway on the Employer's behalf;

Gateway means the NOW: Pensions' facility through which the Employer shall upload the Employer's Payroll Files by the relevant Payroll Upload Date, and where the Employer may access information relating to the Employer's participation in the Scheme; and where relevant, references in this Participation Agreement to Gateway shall mean Payroll Bureau Gateway;

Employer Services means the Service specified in the subsection "Employer Services" set out in the Services Schedule;

Employer Services Charge means the fee payable by the Employer for the Employer Services as specified in the Payments Schedule;

Founder means NOW: Pensions Ltd and any replacement founder appointed under the Scheme Documents;

Intellectual Property means the rights to inventions, copyright and related rights, trademarks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (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;

Member means a member of the Scheme who is either an Active Member or a Deferred Member;

Member Account means a notional account maintained by NOW: Pensions which represents a Member's interest in the Scheme. This term is defined in more detail as "the member plan account" in the Scheme Documents;

Member Contributions means the contributions payable by the Member and deducted by the Employer from the Member's salary, as specified in the Payments Schedule;

Member Portal means the member portal provided to the Member under this Participation Agreement via <https://www.nowpensions.com/login/>;

Member Software means the Member Portal or any other website notified to the Member by NOW: Pensions from time to time;

NOW: Website means www.nowpensions.com or such other system or website designated from time to time by NOW: Pensions, and all webpages on such website;

Opt-out Notice means a notice by which a worker exercises his right under the Automatic Enrolment Laws to opt out of automatic enrolment into the Scheme;

Participation Agreement means the Cover Page, the Terms & Conditions, the Payments Schedule and the Services Schedule;

Payroll Bureau means the third party authorised by the Employer who assists the Employer with the Employer's payroll obligations, who may have their own Payroll Bureau Gateway, and is not a party to this Participation Agreement and whom NOW: Pensions recognises as an approved payroll bureau in connection with the Scheme;

Payroll Bureau Employer Services Charge means the Employer Services Charge applicable to those Employers who are supported by a Payroll



- Bureau using the Payroll Bureau Gateway on the Employer's behalf and who uploads payroll files on behalf of the Employer;
- Payroll Bureau Gateway** means the NOW: Pensions facility where the Employer has a scheme administered through a payroll bureau, through which the Employer's Payroll Bureau shall upload the Employer's Payroll Files by the relevant Payroll Upload Date, and where the Employer's payroll bureau may access information relating to the Employer's participation in the Scheme;
- Payroll File** means the file containing payroll data to be uploaded by the Employer, or the Payroll Bureau as appropriate, to Gateway by the Payroll Upload Date, and containing Employer's workers details as specified by NOW: Pensions in the format required by NOW: Pensions;
- Payroll Upload Date** means the date the Payroll Files are uploaded to Gateway by or on behalf of the Employer which, in respect of Member contributions, shall be in sufficient time following deduction from a Member's earnings by the Employer to enable compliance with the Applicable Laws;
- Pension Services** means the Service specified in the subsection "Pension Services" set out in the Services Schedule;
- Primary Contact** means any person listed as a primary contact of the Employer in this Participation Agreement, and any replacement notified by the Employer to NOW: Pensions;
- Privacy Documents** means the NOW: Pensions privacy documents, including the privacy policy set out at www.nowpensions.com/privacy-policy/ and the data protection notice displayed on the Member Portal and Gateway and the Payroll Bureau Gateway, where applicable and as updated from time to time;
- Related Parties** means in relation to a party, that party, any related party, agent, director, officer, partner, parent, affiliated subsidiary, group company or holding company from time to time;
- Scheme** means the NOW: Pensions Trust, which is a registered occupational pension scheme governed by the Scheme Documents;
- Scheme Documents** means the Trust Deed and Rules dated 29 November 2011 (as varied from time to time) by which the Scheme was established;
- Scheme Start Date** means the date on which the Employer begins to participate in the Scheme, as specified on the Cover Page;
- Service** means individually the Pension Services, Employer Services and the Additional Services, as relevant, including within each Service any additional administration services (pursuant to clause 4.4(a)) as applicable from time to time for that Service, (collectively, "the Services");
- Software** means Gateway access which is provided to the Employer under this Participation Agreement via the link provided to the Employer by NOW: Pensions from time to time;
- Trust Manager** means the company which acts as trust manager in accordance with the Scheme Documents. This term is defined in more detail in the Scheme Documents. NOW: Pensions Ltd is currently the Trust Manager;
- Trustee** means the trustee of the Scheme. This is currently NOW: Pension Trustee Ltd.
- 1.2 Any reference to a statute includes any modification or re-enactment of it and any regulations made under it. Any reference to legislation includes the equivalent Northern Ireland legislation.
- 1.3 Any reference to this Participation Agreement or to the Scheme Documents includes any modification of this Participation Agreement or the Scheme Documents.
- 1.4 In this Participation Agreement, unless the contrary intention appears, a reference to any gender includes the other gender, words in the singular include the plural, and words in the plural include the singular.
- 1.5 The Schedules form integral parts of this Participation Agreement.
- 2 THE EMPLOYER'S ADMISSION TO THE SCHEME**
- 2.1 If there is a conflict between this Participation Agreement and the Scheme Documents, the Trustee will decide which will prevail.
- 2.2 In respect of the Pension Services, NOW: Pensions is entering into this Participation Agreement on behalf of the Trustee, and is providing the Pension Services on behalf of the Trustee. NOW: Pensions and the Trustee may each take the benefit of any term of this Participation Agreement. If NOW: Pensions is replaced as Trust Manager of the Scheme by the Trustee, this Participation Agreement will continue in effect as if it had been made between the Employer and the replacement Trust Manager, who will also be acting on behalf of the Trustee. This Clause 2.2 is subject always to Clause 2.3 and Clause 2.3.
- 2.3 NOW: Pensions provides the Employer Services on NOW: Pensions' own behalf and not on behalf of the Trustee. The Trustee may not take the benefit of any term of this Participation Agreement insofar as it relates to the provision of the Employer Services. If NOW: Pensions is replaced as Trust Manager of the Scheme by the Trustee, this Participation Agreement will continue in effect as if it had been made between the Employer and the replacement Trust Manager (pursuant to clause 2.2), except that the Employer Services will not form part of such Participation Agreement between the Employer and the replacement Trust Manager and there will be deemed a separate agreement between Employer and NOW: Pensions on the terms of this Participation Agreement in relation to the Employer Services only.
- 2.4 The Employer's participation in the Scheme is subject to professional and regulatory checks that may include conflict, credit and due diligence checks. NOW: Pensions may request and retain information and documentation from the Employer, relating to the Employer's identity and NOW: Pensions may also make searches of appropriate databases. NOW: Pensions may repeat these checks from time to time.
- 2.5 Upon Employer's acceptance to the Scheme, NOW: Pensions will give the Employer:
- details relating to Gateway;
 - a copy of the Employer's Participation Agreement;
 - a summary of the Employer's Scheme;
 - an implementation guide.
- 2.6 NOW: Pensions will give each Member written confirmation of membership and NOW: Pensions' contact details.
- 2.7 NOW: Pensions confirms that the Scheme:
- is an occupational pension scheme established in the United Kingdom;
 - is registered with HM Revenue and Customs under the Finance Act 2004; and
 - allows for the Employer's workers to be enrolled into the Scheme automatically, without them needing to express any choice or provide any information on any matter.
- The Scheme is capable of acting as an automatic enrolment scheme for the purposes of the Automatic Enrolment Laws. In order to act as an automatic enrolment scheme, certain contribution requirements must be satisfied by the Employer.
- 3 VARIATIONS TO THE PARTICIPATION AGREEMENT**
- 3.1 NOW: Pensions may vary any part of this Participation Agreement at any time including by updating the Participation Agreement at <http://www.nowpensions.com/participation-agreement>. NOW: Pensions will give the Employer at least three months' prior notice, unless the change is required as a result of a change in the law, a change in regulation or in the policy of a regulator to which the Trustee or Trust Manager is subject, or a decision of an ombudsman or other statutory decision-maker, or the change is not material. Except where as a result



of a change in the law, a change in regulation or in the policy of a regulator to which the Trustee or Trust Manager is subject, or a decision of an ombudsmen or other statutory decision maker, if the variation relates to an increase in Member fees, NOW: Pensions will give at least three months' prior notice to the Members.

3.2 Subject to the other terms of this Participation Agreement and the Scheme Documents, the Employer may vary the rates of the Employer or Member contributions payable to the Scheme and the other available options selected by the Employer and the Employer's details contained under this Participation Agreement. The Employer will give NOW: Pensions three months' prior notice, save where NOW: Pensions agrees to a shorter period. The Employer will give such notice to the Members as may be required by current legislation or otherwise.

3.3 NOW: Pensions will give the Employer at least three months' notice of any proposed amendment to the Scheme Documents which could have the effect of increasing the Employer's liability in relation to the Scheme. In accordance with the Scheme Documents, either the Employer or the Employers' Forum must consent to the amendment.

4 THE EMPLOYER'S OBLIGATIONS

4.1 The Employer shall perform all obligations under the Scheme that apply to the Employer (whether under the Scheme Documents, as amended from time to time, under this Participation Agreement, the Applicable Law, or otherwise).

4.2 In particular, the Employer agrees that:

Compliance

- (a) it is the Employer's responsibility to comply with, and the Employer shall comply with, all Employer obligations under the Automatic Enrolment Laws including the compliance of all obligations in relation to contributions with the Applicable Law;
- (b) the Employer will promptly provide any documents, information or other assistance requested by NOW: Pensions, or the Trustee, or as required under this Participation Agreement, the Scheme or Member Accounts including, without limitation, verification of the identities of each of Employer's Members;
- (c) the Employer will not enrol any workers into the Scheme who are not relevant UK individuals within the meaning of Section 189 of the Finance Act 2004, or are relevant UK individuals but are not individuals for whom the Employer is able to make the declarations provided for in Regulations 5(2) and 6 of the Registered Pension Schemes (Relief at Source) Regulations 2005;
- (d) the Employer will ensure that the contributions referenced in the Payments Schedule accurately reflects the intended contributions payments, and shall inform NOW: Pensions or any update to the contributions specified in the Payments Schedule, and the Employer shall immediately inform NOW: Pensions of any shortfall in contributions by reference to those contributions specified in the Payments Schedule or the Automatic Enrolment Laws;
- (e) the Employer will ensure that all Member contributions are deducted from the respective Member's salary;
- (f) The Employer shall provide the jobholder information in accordance with clause 4.2(l) of the Terms & Conditions and the Automatic Enrolment Regulations as follows: Name, date of birth, postal residential address, gender, automatic enrolment date, national insurance number, e-mail address, the value of contributions payable by the Employer and the jobholder in respect of any relevant pay period;
- (g) The Employer shall ensure compliance of their data with The Pensions Regulator's common data requirements, and any other data required by NOW: Pensions or the Trustee.

Generic details

(h) the Employer will ensure that all information given to NOW: Pensions by the Employer and on Employer's behalf is complete, accurate and kept up to date including, without limitation, any change to the Primary Contact; if the Employer is likely to become insolvent, enter into administration, become bankrupt, be wound up or compromise any debts to creditors; or any change of control of the Employer;

(i) the Employer will provide to NOW: Pensions, and shall regularly monitor, a generic Employer email address and distribute any communications as necessary including to Employer's Members;

Contributions and Members

(j) the Employer will be responsible for carrying out any consultation with the Employer's workers required by law and for ensuring that any variations to the Employer's workers' contracts are lawfully carried out;

(k) the Employer will, in accordance with the Payments Schedule, upload Employer's payroll information and pay the Employer and Member contributions into the Scheme;

(l) the Employer will give NOW: Pensions details of any new workers who are due to be enrolled into the Scheme during that month, including the date on which their membership is to begin and the "jobholder information" set out in the Automatic Enrolment Regulations in respect of those workers including an email address and a postal address for each of the Employer's workers;

(m) the Employer shall use all reasonable endeavours to ensure the Members' compliance with the Scheme Documents;

(n) The Employer shall take all actions necessary to ensure their Payroll Files are uploaded by the Payroll Upload Date to enable NOW: Pensions to deduct contributions by direct debit for the Employer to comply with their obligations pursuant to the Automatic Enrolment Laws as follows:

Member Contributions

- (i) the first Member Contributions payable after a Member is automatically enrolled into the Scheme any contributions deducted by the Employer from the Member's salary in the three month period starting from the start date of active membership must be paid across to the Scheme by the 22nd day (for electronic payments) of the month after the last day of that three month period; and
- (ii) For all other Member Contributions, the 22nd day of the month following the month in which the Member's contribution is deducted from the Member's pay.

The above is subject in all cases to the requirements of Applicable Law, and shall be as updated from time to time in accordance with the Applicable Law.

Employer Contributions

- (iii) Employer Contributions shall be paid within the time limits specified above for Member Contributions.

Opt out and ceasing to be a Member

(o) NOW: Pensions may accept, as the Employer's agent, any Opt-out Notice given to NOW: Pensions;

(p) the Employer shall promptly provide to NOW: Pensions any Opt-out Notice given to the Employer, whether the Employer believes it is correctly completed or not;

(q) the Employer shall include the leaving date of an Active Member who will cease to be an Active Member on the payroll upload file.

- 4.3 The Employer may authorise a third party to give NOW: Pensions the information referred to in Clause 4, however the Employer shall remain responsible for compliance with this Clause 4.
- 4.4 Where the Employer breaches any of its obligations in relation to the Scheme or this Participation Agreement, including but not limited to the Employer's obligations under Clause 4 of this Participation Agreement, and without limitation to any legal and financial consequences and any other rights or remedies of NOW: Pensions and the Trustee, the following shall apply:
- (a) NOW: Pensions may charge the Employer an Additional Administration Fee, where additional administration services are required to be provided by NOW: Pensions to the Employer; and
- (b) the Employer shall indemnify and keep indemnified NOW: Pensions against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by NOW: Pensions or the Trustee as a result of the breach.
- 4.5 NOW: Pensions reserves the right to remove any Member from the Scheme who, in NOW: Pensions' opinion, has been incorrectly enrolled by the Employer and to repay to the Employer any contributions which in NOW: Pensions' opinion have been incorrectly paid as a result. This is subject to Applicable Law and to the requirements of HM Revenue and Customs.
- 5 PAYMENT**
- 5.1 The Employer will provide NOW: Pensions with valid and up to date direct debit mandates at all times for payments to be made by the Employer to NOW: Pensions in accordance with this Participation Agreement to include payment of all fees and contributions. Please note a separate direct debit mandate may be required for payment of contributions and for payment of fees to NOW: Pensions.
- 5.2 In consideration of the provision of the Pension Services and Employer Services; and, where applicable, the Additional Services; the Employer will pay the fees specified in the Payments Schedule which are payable by the Employer by direct debit in accordance with the terms of the Payments Schedule. Such Employer fees are due in full and are non-refundable.
- 5.3 The Employer Services Charge is payable by the Employer monthly in advance by direct debit, and is charged in full month increments which are not pro-rated.
- 5.4 In consideration of the provision of the Scheme to the Members, the Member will pay the Member Administration Fee and Investment Management Charge specified in the Payments Schedule by the methods specified in the Payments Schedule.
- 5.5 Pursuant to the Scheme Documents and the Employer's participation in the Scheme, the Employer will pay the contributions specified in the Payments Schedule by direct debit in accordance with the details specified in the Payments Schedule.
- 5.6 If the Employer discovers, or is informed by NOW: Pensions, that any contributions paid into the Scheme fall short of those required to be paid under the Payments Schedule or the Automatic Enrolment Laws, the Employer will pay the shortfall including the amount of any investment detriment incurred by the members to NOW: Pensions by the method specified by NOW: Pensions as soon as possible and in any event within the timeframes specified by NOW: Pensions.
- 5.7 If the Employer fails to make any payment of such fees due under this Participation Agreement by the due date for payment, then the Employer shall pay interest on the overdue amount at the rate of 4% per annum above HSBC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount. The Employer shall pay the interest together with the overdue amount.
- 5.8 All Employer fees due under this Participation Agreement are subject to VAT at the prevailing rate and shall be paid in full without any set-off, counterclaim, deduction or withholding.
- 5.9 All sums payable to NOW: Pensions or the Scheme under this Participation Agreement shall become due immediately on its termination or expiry.
- 6 INTELLECTUAL PROPERTY**
- 6.1 NOW: Pensions or its licensors, shall at all times remain the owner of any Intellectual Property provided, supplied, created or developed whether prior to the Scheme Start Date or thereafter, in the course of NOW: Pensions performance of this Participation Agreement.
- 6.2 In consideration of the fees paid by the Employer to NOW: Pensions and performance of the Employer's obligations under this Participation Agreement, NOW: Pensions grants to the Employer a non-exclusive, non-transferable right to permit the Authorised Users to use the Software during the term of this Participation Agreement solely to the extent and for the duration required to receive the Services under this Participation Agreement.
- 6.3 In relation to the Authorised Users, the Employer undertakes that each Authorised User shall keep a secure password for their use of the Software and that each Authorised User shall keep their password confidential.
- 6.4 The Employer shall not access, store, distribute or transmit any viruses, or any material during the course of the Employer's use of the Software that is unlawful, or is otherwise illegal or causes damage or injury to any person or property. NOW: Pensions reserves the right, without liability or prejudice to NOW: Pensions' other rights, to disable the Employer's access to any material that breaches the provisions of this clause.
- 6.5 The Employer shall prevent any unauthorised access to, or use of, the Software and, in the event of any such unauthorised access or use, promptly notify NOW: Pensions.
- 6.6 In consideration of the Member Administration Fee paid by the Member to NOW: Pensions, NOW: Pensions grants to the Member a non-exclusive, non-transferable right to use the Member Software solely to the extent and for the duration required for the purposes of management of their Member Account. This subsection 6.6 shall survive the termination of this Participation Agreement.
- 6.7 The Employer acknowledges that the Software has not been developed to meet the Employer's individual requirements, and the Member Software has not been developed to meet each Member's individual requirements. NOW: Pensions does not warrant that the use of the Software or Member Software will be uninterrupted or error-free. In the event of any material defect in the Software or Member Software, NOW: Pensions will repair or make good such defect within a reasonable time, which will constitute either the Employer's, or the Member's, sole remedy for any defect. No representation or warranty is given by NOW: Pensions or the Trustee that all faults will be fixed, or will be fixed within a specified period of time.
- 6.8 The Employer agrees to remain liable at all times for the acts and omissions of the Authorised Users and Members in relation to this clause 6 (Intellectual Property).
- 7 DATA PROTECTION**
- 7.1 In this Clause 7:
- (a) "data controller" (or "controller"), "data processor" (or "processor"), "data controller" (or "controller"), "data subject", "international organisation", "personal data", "personal data breach", "processing" and "sensitive personal data" (or "special categories of personal data") or similar expressions have the meanings given to them in Data Protection Legislation from time to time;
- (b) **Administration Personal Data** means any personal data provided by or on behalf of the Employer or a third party or

representative acting on behalf of the Employer, including payroll bureaux, financial advisers and other advisers to NOW: Pensions, for the purposes of the administration and day to day running of the Scheme and managing the business relationship between NOW: Pensions and the Employer (excluding Scheme Personal Data);

(c) **Relevant Data Subjects** means any or all of the Employer's:

- (i) Members;
- (ii) employees; or
- (iii) workers,

whether currently or formerly employed or engaged under a contract with the Employer, and any beneficiaries or other relevant data subjects whose personal data is processed by NOW: Pensions in connection with the Services under this Participation Agreement (including individual Employers);

(d) **Scheme Personal Data** means any personal data and sensitive personal data, provided by or on behalf of the Employer or the Relevant Data Subjects to NOW: Pensions and/or the Trustee for the purposes of the Scheme; and

(e) **Security Measures** means such technical and organisational security measures as required under Data Protection Legislation, including as appropriate:

- (i) pseudonymisation and encryption;
- (ii) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
- (iii) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident; and
- (iv) processes for regularly testing, assessing and evaluating the effectiveness of technical and organisational security measures.

7.3

(d) managing the business relationship between NOW: Pensions and the Employer (**Permitted Purposes**).

The parties acknowledge and agree that:

- (a) the Employer and the Trustee will process Scheme Personal Data as data controllers;
- (b) NOW: Pensions will process Scheme Personal Data as a data controller to the extent necessary for it to comply with its statutory role as Scheme administrator under Applicable Law, and clause 7.12 shall apply to such processing;
- (c) NOW: Pensions will process Scheme Personal Data as a data controller jointly with the Employer and / or the Trustee to the extent that it processes Scheme Personal Data in accordance with both its statutory obligations under Applicable Law and the Employer's and / or the Trustee's instructions, and clause 7.13 shall apply to such processing;
- (d) NOW: Pensions will process Administration Personal Data as a data controller jointly with the Employer to the extent that it processes Administration Personal Data in accordance with both its statutory obligations under Applicable Law and the Employer's instructions, and clause 7.13 shall apply to such processing;
- (e) in all other cases, NOW: Pensions will be a data processor acting on behalf of the Employer and/or Trustee, and clauses 7.9 to 7.11 shall apply to such processing.

7.4

The Employer acknowledges and consents to NOW: Pensions, the Trustee and the Third Party Data Recipients processing, storing and transferring the Administration Personal Data and the Scheme Personal Data, in accordance with the Data Protection Requirements for the Permitted Purposes, including:

- (a) the processing and storing of such personal data, within the United Kingdom and the European Economic Area ("EEA"), and may include transferring, storing and processing such personal data outside of the EEA, by NOW: Pensions, the Trustee and/or by the Third Party Data Recipients, which is authorised by the Employer provided such transfer is effected by EU Model Clauses or another approved transfer mechanism under Data Protection Legislation; and
- (b) use of Third Party Data Recipients to process such personal data, which is authorised by the Employer provided that, where such Third Party Data Recipient is acting as a data processor (or a sub-processor), they are appointed under a written contract containing materially the same obligations as under the provisions of this section of this clause 7 applying to NOW: Pensions as a data processor.

7.5

NOW: Pensions may collate the Relevant Data Subjects' personal data for use on an aggregate and anonymised basis.

7.6

NOW: Pensions may contact the Employer from time to time by email, text or post with updates and offers relating to similar NOW: Pensions products that NOW: Pensions think the Employer might be interested in. The Employer can opt out of receiving such updates and offers by following the opt out instructions in each communication. NOW: Pensions sometimes uses trusted third party marketing services providers to assist with marketing and may share the Employer's information (which may include personal data) with them for that purpose, as necessary in pursuance of NOW: Pensions' legitimate interests in maintaining its business relationship with the Employer. All such service providers enter into written contracts to process the Employer personal data provided to them only for the purpose of providing the specific service to NOW: Pensions and to maintain appropriate security measures to protect Employer personal data.

7.7

NOW: Pensions, or the Trustee, may disclose the Administration Personal Data / or and the Scheme Personal Data to any member of their group, which means their subsidiaries, their ultimate holding company and its

Scheme data processing and administration

7.2 Any Scheme Personal Data and any Administration Personal Data will be handled and processed by NOW: Pensions, the Trustee, and NOW: Pensions':

- (a) group companies;
- (b) third party administrators; and
- (c) service providers,

(together **Third Party Data Recipient**), in accordance with:

- (a) this Participation Agreement;
- (b) the obligations placed on them by applicable Data Protection Legislation and other relevant Applicable Laws;
- (c) NOW: Pensions' Privacy Documents; and
- (d) the Employer's reasonable written instructions (including as set out in the Scheme Documents),

(**Data Protection Requirements**), for the purposes of:

- (a) NOW: Pensions and the Trustee providing the Pension Services;
- (b) NOW: Pensions providing the Employer Services, and in respect of the transfer of the personal data to NOW: Pensions and the Trustee so as to enable NOW: Pensions to act as Trust Manager;
- (c) otherwise as may be required to enable the Employer and the Relevant Data Subjects' participation in the Scheme under this Participation Agreement, and to provide support services in relation to the same; and/or

subsidiaries. NOW: Pensions may disclose personal data to third parties in the following limited circumstances:

- (a) if NOW: Pensions, the Trustee, or their group companies, buy or sell any business or assets, in which case NOW: Pensions may disclose personal data to the prospective seller or buyer of such business or assets;
- (b) if NOW: Pensions contracts with third parties, including its Third Party Data Recipients, to perform or provide certain services on behalf of NOW: Pensions or a group company, as necessary for the purpose of performing or providing those services; or
- (c) if NOW: Pensions is under a duty to disclose or share personal data to comply with any legal obligation or to protect the rights, property or safety of NOW: Pensions, its customers or others. This includes exchanging information with other companies and organisations for the purposes of verification, fraud protection and credit risk reduction.

7.8 The Employer shall indemnify and keep indemnified NOW: Pensions and the Trustee, at the Employer's own expense, in respect of all losses, damages, penalties, fines, sanctions, costs, interest, claims and expenses, compensation paid to data subjects, demands and other liabilities, including legal and other professional fees, (calculated on a full indemnity basis and in each case whether or not arising from any investigation by, or imposed by, a Supervisory Authority) incurred by, awarded against or agreed to be paid by, or for which NOW: Pensions, the Trustee or the Third Party Data Recipients may become liable as a result of any failure by the Employer to comply with any of the Employer's obligations under this clause 7.

Processing by NOW: Pensions as a processor

7.9 The details of the processing of Scheme Personal Data by NOW: Pensions as processor and under this Agreement shall be as follows:

- (a) subject-matter: NOW: Pension's provision of the Services under this Agreement, which shall involve performance on behalf of the Employer and / or Trustee of the tasks and activities set out in this Agreement for the purpose of providing those Services;
- (b) duration: for the term of this Agreement for the purpose of and only to the extent required to provide the Services, provided that Scheme Personal Data shall not be processed for longer than is necessary for the Permitted Purposes (except where a statutory exception applies);
- (c) nature and purposes of processing: the processing of the Scheme Personal Data for the Permitted Purposes, and as otherwise set out in this Agreement;
- (d) types of personal data: identification data and financial data, personal details, lifestyle and social circumstances, employment details, family details;
- (e) categories of data subjects: Relevant Data Subjects, as more particularly defined above,

and the rights and obligations of each controller are as set out in this Agreement.

7.10 Where NOW: Pensions is a data processor processing Scheme Personal Data on behalf of the Trustee and/or Employer as data controller, it shall:

- (a) subject to clause 7.12, only process Scheme Personal Data in accordance with the instructions of the relevant controller, as set out in this Agreement and the Scheme Documents (unless alternative processing instructions are agreed between the parties in writing), provided that, if NOW: Pensions believes that any instruction received by it is likely to infringe Data Protection Legislation, it shall be entitled to cease to provide the relevant Services until the parties have agreed appropriate amended instructions which are not infringing;

- (b) ensure that all persons authorised by NOW: Pensions or any Third Party Data Recipient to process Scheme Personal Data are subject to a contractual obligation to keep such data confidential;
- (c) implement and maintain technical and organisational measures to protect Scheme Personal Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access in accordance with Data Protection Legislation (including the Security Measures, where appropriate), and shall notify the relevant controller without undue delay and in writing on becoming aware of any personal data breach in respect of any Scheme Personal Data;
- (d) assist the controller in ensuring compliance with the controller's obligations under Articles 32 to 36, GDPR (and any similar obligations under applicable Data Protection Legislation) taking into account the nature of processing and information available to NOW: Pensions;
- (e) taking into account the nature of the processing (and that Scheme Personal data is mainly held by the Scheme administrator), assist the data controller by implementing appropriate technical and organisational measures insofar as this is possible for the fulfilment of the data controller's obligation to respond to requests for exercising the Relevant Data Subject's rights under Chapter III, GDPR (and any similar obligations under applicable Data Protection Legislation) in respect of any Scheme Personal;
- (f) at the end of the Services relating to processing of Scheme Personal Data, at the controller's option, either return to the controller, or securely delete, all such data (and promptly delete all existing copies), except where any Applicable Law or other laws require NOW: Pensions to store such data;
- (g) make available to the controller such information as is reasonably required to demonstrate NOW: Pensions' compliance with the provisions of this clause 7 that apply to it as processor, and allow for and contribute to a maximum of one audit every 12 months by the controller (or their mandated auditor) for this purpose (as agreed with NOW: Pensions); and
- (h) provide any specific assistance or information that is not reasonably able to be accommodated within the usual provision of the Services, or implement any specific additional technical and organisational measures requested by the Employer, at the Employer's cost.

7.11 The Employer shall, and shall ensure that its agents, sub-contractors and employees shall:

- (a) comply in all respects, including in terms of its collection, storage and processing, with the Data Protection Legislation at all times in connection with the processing of Scheme Personal Data, which shall include the Employer:
 - (i) providing all necessary information to, and obtaining and maintaining, for the duration required by the Permitted Purposes, all necessary consents and permissions from the Relevant Data Subjects, or otherwise established a legal basis for processing personal data and to enable NOW: Pensions, the Trustee and the Third Party Data Recipients to lawfully process the Scheme Personal Data in accordance with the Data Protection Requirements for the relevant Permitted Purposes, or as otherwise contemplated in this Agreement. This is applicable whether such information is provided by the Employer, or on the Employer's behalf, for example by the Employer's Payroll Bureau or financial advisor; and
 - (ii) complying with the data protection principles, including data minimisation, by providing NOW: Pensions with only

that personal data which is strictly necessary for NOW: Pensions to perform the Services;

- (b) ensure all instructions given by it to NOW: Pensions in respect of Scheme Personal Data shall at all times be in accordance with Applicable Law (including Data Protection Legislation);
- (c) not do or omit to do anything which would cause NOW: Pensions or the Trustee to be in breach of its obligations under the Data Protection Legislation;
- (d) maintain all appropriate technical and organisational measures to protect the Scheme Personal Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure, access or processing, in particular during the transfer of such data to NOW: Pensions and the Trustee, including at least the Security Measures;
- (e) provide any information requested in relation to the Scheme Personal Data or in relation to a Relevant Data Subject within the timescales required by NOW: Pensions or the Trustee;
- (f) notify NOW: Pensions and the Trustee (as applicable) of any claim, complaint, query and/or exercise or purported exercise of rights by a data subject under the Data Protection Legislation or any notice, investigation or enforcement activity by a Supervisory Authority or any other regulator, which relates to or is connected with NOW: Pensions or the Trustee's processing of Scheme Personal Data, within the timescales required by NOW: Pensions, the Trustee or Data Protection Legislation or in any event within 2 working days.

Processing by NOW: Pensions as a controller

- 7.12 Where NOW: Pensions acts as data controller (but not jointly with the Trustees and/or the Employer) in the course of processing Scheme Personal Data to the extent necessary for it to comply with its statutory role as Scheme administrator, NOW: Pensions shall have sole responsibility for compliance with Data Protection Legislation in relation to those activities.

Processing by NOW: Pensions of Scheme Personal Data or Scheme Administration Data as a joint controller with the Trustee and /or the Employer

- 7.13 To the extent that NOW: Pensions is acting as:

- (a) joint controller with the Trustee and /or the Employer of any Scheme Personal Data in accordance with clause 7.3(c); or
- (b) joint controller with the Employer of any Administration Personal Data in accordance with clause 7.3(d),

the parties agree that the Scheme Personal Data or the Administration Personal Data (as the case may be) ("**Shared Data**") will be shared between the relevant parties in accordance with the Data Protection Requirements, for the Permitted Purposes and in order to comply with NOW: Pensions' obligations under Applicable Law, and that their respective controller responsibilities are allocated between them in respect of processing of such Shared Data as follows:

Each of NOW: Pensions and the Employer, respectively, shall be responsible for ensuring that:

- (a) there is a lawful basis on which that party can process the Shared Data;
- (b) appropriate privacy notices and/or policies (including the Privacy Documents) are communicated to the Relevant Data Subjects which explain how Shared Data will be processed (including the fact that the Shared Data may be disclosed to the other parties and any third parties in the scenarios and for the Permitted Purposes):
 - (i) providing information as required by the Data Protection Legislation (and in particular, Articles 13 and 14 of the GDPR) on NOW: Pensions' behalf, and
 - (ii) making available the essence of the parties' arrangements as set out in this clause 7.13 to the Relevant Data Subjects;

- (c) it promptly notifies the other party in the event that it receives updates or corrections to any of the Shared Data;
- (d) it keeps the Shared Data secure, including by implementing the Security Measures and only sharing the Shared Data with the other party (or the Trustee) in a secure manner;
- (e) it provides reasonable and timely assistance, information and cooperation where requested by the other party in respect of data protection matters (taking into account that Scheme Personal Data is mainly held by the Scheme administrator), including:
 - (i) in respect of any matter which in the reasonable opinion of the other party is required for ensuring that party's continued compliance with the Data Protection Legislation;
 - (ii) in respect of any claim, complaint, query and/or exercise or purported exercise of rights by a data subject under the Data Protection Legislation or any notice, investigation or enforcement activity by a Supervisory Authority or any other regulator, which relates to or is connected with the other party's processing of Shared Data;
 - (iii) any breach of security, including any breach of this clause 7.13 and/or any personal data breach involving any Shared Data, including notifying the other party of the personal data breach within 24 hours of becoming aware of it;
 - (iv) providing copies of records it is required to maintain under the Data Protection Legislation (including, without limitation, under Article 30 of the GDPR), subject to removing any commercially sensitive information that does not directly relate to the Services provided by NOW: Pensions under this Participation Agreement; and
- (f) it documents and can demonstrate its own compliance with the Data Protection Legislation (and in particular the data protection principles in Article 5 of the GDPR) for accountability purposes.

8 TERMINATION OF THE PARTICIPATION AGREEMENT

- 8.1 This Participation Agreement, and the Employer's participation in the Scheme, will terminate if:

- (a) the Employer gives NOW: Pensions a minimum of three months' written notice (or a shorter period, if NOW: Pensions agrees);
- (b) NOW: Pensions gives the Employer a minimum of three months' written notice;
- (c) the Employer fails, in the opinion of the Trustee or NOW: Pensions, to perform or observe the Employer's obligations under the Scheme or this Participation Agreement. This includes, but is not limited to, circumstances where the Employer has failed to provide NOW: Pensions with information required under this Participation Agreement and/or the Employer has failed to pay any contributions or fees due under this Participation Agreement on time or at all and/or where the Employer fails to respond to NOW: Pensions communications, and/or where the Employer does not satisfactorily pass ongoing checks, as specified in clause 2.4; or
- (d) the Employer becomes or is reasonably likely to become, in NOW: Pensions' opinion, insolvent, enter into administration, become bankrupt, be wound up or compromise any debts with creditors.

- 8.2 If this Participation Agreement is terminated fees will continue to be charged to Member Accounts as set out in the Payments Schedule, but the Employer will not be required to pay any further fees to NOW: Pensions (other than fees or payments that have become due from the

Employer under the terms of the Participation Agreement up until the termination date).

- 8.3 On termination or expiry of this Participation Agreement:
- the Employer shall immediately pay to NOW: Pensions all outstanding unpaid fees, contributions, payments, invoices and interest and, in respect of any services supplied for which no invoice has been submitted, NOW: Pensions may submit an invoice, which shall be payable immediately on receipt;
 - all rights and authorisations granted by NOW: Pensions to the Employer under this Participation Agreement shall automatically terminate and immediately revert to NOW: Pensions;
 - the Active Members shall become Deferred Members and all rights and authorisations granted by NOW: Pensions to the Members pursuant to clause 6.6 shall continue whilst the Member remains a Deferred Member;
 - any provision which expressly or by implication is intended to come into or remain in force on or after the termination of the Participation Agreement will continue in full force and effect.

9 THE FOUNDER AND THE EMPLOYER FORUM

- 9.1 The Employer authorises the Founder to act for the Employer in all circumstances in which the Applicable Law allows or requires, including:
- the preparation of a statement of investment principles under Section 35 of the Pensions Act 1995; and
 - any other provisions of the Applicable Law which allow (expressly or otherwise) one employer in a multi-employer pension scheme to act for all of the employers participating in the scheme in order to fulfil any function of the employer, where the Founder is willing to do so.
- 9.2 In all other circumstances, the Employer will not exercise any right that the Employer has under the Applicable Law without the prior written consent of the Founder.
- 9.3 The Employer may participate in any employer forum established for the Scheme, in accordance with the Scheme Documents.

10 DISPUTES AND MATTERS OF DOUBT

- 10.1 The Employer will refer any disputes or matters of doubt relating to the Scheme to NOW: Pensions, which will be determined by the Trustee, or by NOW: Pensions as its delegate, in accordance with the Scheme Documents.

11 LIMITATION OF LIABILITY

The Employer's attention is drawn particularly to this clause.

11.1 Unlimited Liability

Nothing in this Participation Agreement shall limit or exclude a party's liability, or the Trustee's liability, for:

- death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- fraud or fraudulent misrepresentation; or
- any other limitation or exclusion that is prohibited by law.

11.2 Acknowledgment of time and resources spent

The Employer acknowledges and agrees that in relation to:

- the Pension Services, NOW: Pensions and the Trustee; and
- the Employer Services and any Additional Services, NOW: Pensions,

will spend considerable time and resources in administering the Scheme, such that NOW: Pensions, and/or the Trustee's, costs and expenses may in some circumstances substantially exceed the amount of the fees payable by the Employer under this Participation Agreement. The

Employer further acknowledges and agrees that NOW: Pensions and the Trustee are entitled to the exclusion of liability set out in Clause 13 of the Scheme Documents (which the Employer is invited to review on request to NOW: Pensions).

11.3 Consequential and other losses

To the extent that, and only to the extent that, the exclusion of liability set out in Clause 13 of the Scheme Documents does not apply on the facts of any particular case or is held by a court of competent jurisdiction to be invalid, unenforceable or illegal, the Employer expressly acknowledges and agrees, on its behalf and on behalf of the Employer's Related Parties, that, subject to Clause 11.1, NOW: Pensions and the Trustee will under no circumstances whatsoever be liable to the Employer and the Employer's Related Parties, whether in:

- contract;
- tort (including negligence);
- breach of statutory duty;
- innocent or negligent misrepresentation;
- or otherwise,

for any:

- loss of profit;
- loss of sales or business;
- loss of anticipated savings;
- loss of use or corruption of software, data or information;
- loss of or damage to goodwill or reputation;
- loss of management time;
- indirect loss; or
- consequential loss.

11.4 Maximum Liability

To the extent that, and only to the extent that, the exclusion of liability set out in Clause 13 of the Scheme Documents does not apply on the facts of any particular case or is held by a court of competent jurisdiction to be invalid, unenforceable or illegal, the Employer expressly acknowledges and agrees, on its behalf and on behalf of the Employer's Related Parties, that, subject to Clause 11.1 and 11.3, NOW: Pensions' and the Trustee's applicable aggregate liability to both the Employer and the Employer's Related Parties in respect of all other losses howsoever arising, whether in:

- contract;
- tort (including negligence);
- breach of statutory duty;
- innocent or negligent misrepresentation;
- or otherwise,

and for the avoidance of doubt (but without limiting the generality of this clause 11.4) including:

- legal and other professional fees and expenses incurred by the Employer and the Employer's Related Parties;
- all costs claims and expenses incurred by the Employer and the Employer's Related Parties arising from any claims against the Employer and the Employer's Related Parties by any of the Employer's or the Employer's Related Parties' workers or anybody representing their interests; and
- statutory or regulatory fines and / or penalties incurred by the Employer and the Employer's Related Parties,



- shall in no circumstances exceed in respect of all claims (connected or unconnected) in any consecutive 12 month period in relation to:
- (a) the Employer Services, the equivalent of the greater of the total fees paid by the Employer in that period in respect of the specific Service in question, or £500 (for which the Trustee has no liability);
 - (b) the Pension Services, the equivalent of the greater of the total fees paid by the Employer in that period in respect of the specific Service in question, or £250; and
 - (c) any Additional Services, the equivalent of the greater of the total fees paid by the Employer in that period in respect of the specific Service in question, or £250.
- 11.5 The Employer shall only be entitled to claim for any loss once, therefore:
- (a) any claim made in respect of any one specific Service, shall be made to the exclusion of such liability in relation to the remaining Services; and
 - (b) any claim made against NOW: Pensions or the Trustee, shall be made to the exclusion of such liability in relation to the other party (i.e. the Trustee or NOW: Pensions respectively).
- 11.6 For the avoidance of doubt, the Trustee shall have no liability in respect of the Employer Services or any Additional Services.
- 11.7 If NOW: Pensions' or the Trustee's performance of its obligations under this Participation Agreement is prevented or delayed by any act or omission by the Employer, NOW: Pensions and the Trustee shall not be liable for any costs, charges or losses sustained or incurred by the Employer that arise directly or indirectly from such prevention or delay.
- 11.8 Employer shall only enrol into the Scheme the Employer's workers and employees; and the Employer confirms they are liable under the Applicable Law for such workers and employees enrolled into the Scheme. The Employer shall indemnify NOW: Pensions and/or the Trustee against all liabilities, costs, expenses, damages and losses including but not limited to direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs and all other professional costs and expenses suffered or incurred by NOW: Pensions and/or the Trustee arising out of or in connection with any breach of this clause 11.8.
- 11.9 This Clause 11 shall survive the termination of this Participation Agreement.
- 11.10 The parties agree that the exclusions and limitations of liability set out in this Clause 11 satisfy the requirement of reasonableness as stated in section 11(1) of the Unfair Contract Terms Act 1977, to the extent applicable.
- 12 CONFIDENTIALITY**
- 12.1 Each party undertakes that it shall not at any time during this Participation Agreement, and for a period of five years after termination or expiry of the Participation Agreement, disclose to any person any confidential information of the other party, including the relationship between the parties, the Participation Agreement terms, discussions and reasons relating to any termination of or claim in relation to the Participation Agreement, and any information that would be regarded as confidential by a reasonable business person relating to the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by paragraph 12.2.
- 12.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under this Participation Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 12; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.3 No party shall use any other party's confidential information for any purpose other than to perform its obligations under this Participation Agreement.
- 12.4 The provisions of this clause shall not apply to any confidential information that:
- (a) 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);
 - (b) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
 - (c) 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
 - (d) is developed by or for the receiving party independently of the information disclosed by the disclosing party.
- 12.5 The Employer agrees to indemnify and keep indemnified and defend at its own expense NOW: Pensions and the Trustee against all costs, claims, damages or expenses incurred by NOW: Pensions and/or the Trustee or for which NOW: Pensions and/or the Trustee may become liable due to any failure by the Employer or its employees or agents to comply with any of its obligations under this clause.
- 13 ANTI-BRIBERY**
- 13.1 Each party shall:
- (a) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**); and
 - (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK.
- 13.2 The Employer shall have and shall maintain in place throughout the term of this Participation Agreement its own policies and/or procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and clause 13.1(b), and will enforce them where appropriate.
- 14 THIRD PARTY RIGHTS**
- 14.1 Subject to the further provisions of this clause 14, no one other than a party to this Participation Agreement, their successors and permitted assignees, shall have any right to enforce any of the terms of the Participation Agreement.
- 14.2 You agree that:
- (a) the Trustee may enforce rights under this Participation Agreement, as if the Trustee had been named, with NOW: Pensions, as a party to the Participation Agreement; and
 - (b) NOW: Pensions and the Trustee may act together or separately in claiming any loss incurred, and each may claim a loss incurred by the other party on behalf of that party;
- providing that any damages or other remedy shall be subject to the provisions of this Participation Agreement and providing the Employer shall only be liable for each loss once.
- 14.3 The parties agree that NOW: Pensions shall remain solely responsible for NOW: Pensions' obligations under this Participation Agreement and the Trustee shall remain solely responsible for the Trustee's obligations under this Participation Agreement.



15 GENERAL

- 15.1 **Notices and communications:** Unless NOW: Pensions agrees otherwise, the Employer will give all information and any notice to NOW: Pensions by registered post sent to the NOW: Pensions registered office. NOW: Pensions may give any information and any notice (including, but not limited to, any notice under Clause 3) to the Employer, and will otherwise communicate with the Employer, by email, post, courier, through Gateway or otherwise on the NOW: Website. NOW: Pensions may give any information and any notice (including, but not limited to, any notice under Clause 3) to Members through the Member Portal, by email to the Member's email address, by email to the Employer's email address, by post or on the NOW: Website. Where notice is given by email, evidence of sending the email to the recipient's last known email address shall be sufficient and deemed delivery shall be at the time of transmission. This Clause is subject always to the Applicable Law.
- 15.2 **Assignment:** The Employer will not assign or otherwise transfer the Employer's rights or responsibilities under this Participation Agreement to any third party including to any affiliated or group company. NOW: Pensions may assign and/or subcontract the Participation Agreement (or any part of it) to an affiliated or group company or to any third party without the Employer's consent.
- 15.3 **Relationship:** Nothing in this Participation Agreement will create, or be deemed to create between the parties a partnership or joint venture or relationship of employer and employee or principal and agent in which NOW: Pensions acts as agent of the Trustee, except where otherwise expressly stated.
- 15.4 **Entire Agreement:** This Participation Agreement together with the Scheme Documents and the Privacy Policy constitute the entire agreement between the parties relating to its subject matter and supersedes any prior correspondence, representations or agreements. The parties acknowledge that this Participation Agreement has not been entered into wholly or partly in reliance on, nor has either party been given any warranty, statement, promise or representation by the other or on their behalf, other than as expressly set out in this Participation Agreement.
- 15.5 **Force Majeure:** NOW: Pensions shall not have any liability to the Employer if NOW: Pensions does not fulfil its obligations to the Employer due to an event outside NOW: Pensions reasonable control.
- 15.6 **Rights and remedies:** Except as expressly provided for in this Participation Agreement, the rights and remedies provided under this Participation Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 15.7 **Publicity:** Except where the Employer provides prior written instructions to the contrary, NOW: Pensions may use the Employer's name and logo in the NOW: Pensions' customer lists (whether online or offline) and in other marketing materials.
- 15.8 **Severance and waiver:** If any provision of this Participation Agreement is held to be invalid under any enactment or rule of law or otherwise, that invalidity will not affect the rest of the Participation Agreement. Any waiver of any breach of this Participation Agreement will be in writing and will not prevent the subsequent enforcement of that provision nor be deemed to be a waiver of any subsequent breach of that or any other provision.
- 15.9 **Survival:** Any provision of this Participation Agreement that expressly or by implication is intended to come into or continue in force on or after termination of this Participation Agreement shall remain in full force and effect.
- 15.10 **Governing Law:** This Participation Agreement will be governed by English law, and the English courts will have exclusive jurisdiction to settle any claim arising out of or in connection with it.