

## Participation Agreement - Cover Page

Parties			
<b>NOW: Pensions</b>		NOW: Pensions Ltd (Company number 07766398), with registered office 164 Bishopsgate, London EC2M 4LX.	
Employer	Employer legal name	<company_name_legal>	Employer trading name (if applicable) <company_name_aka>
	Registered office	<company_address1> <company_address2> <company_address3> <company_city> <company_postcode>	Registration number <company_registration_no>
	PAYE reference	<paye_ref>	Employer code <id>
	Staging Date	<staging_date>	Scheme Start Date <start_date>

Background			
<p>NOW: Pensions admits the Employer to participate in the Scheme with effect from the <b>Scheme Start Date</b>, 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 <b>Cover Page, Payments Schedule, Services Schedule</b> and the <b>Terms &amp; Conditions</b>, together comprising the <b>Participation Agreement</b>. Unless otherwise defined, terms used in the Cover Page, Payments Schedule and Services Schedule shall have the meaning given to them in the Terms &amp; Conditions. NOW: Pensions will provide the Employer with the <b>Pension Services</b> and the <b>Employer Services</b> as standard. Upon request by the Employer and subject to NOW: Pensions' agreement to do so, NOW: Pensions will provide the Employer with the <b>Auto Enrolment Communications Services</b>; and/or provide the Employer with the <b>Worker Assessment Services</b>. The Services are described in the Services Schedule.</p>			
Contact address, if different to registered office	<contact_address1> <contact_address2> <contact_address3> <contact_city> <contact_postcode>		
Primary Contact name	<primary_contact_name>	Primary Contact Job Title	<primary_contact_title>
Primary Contact email address	<primary_contact_email>	Default Retirement Age	State Pension Age
<b>Pension Services</b>	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.		
<b>Auto Enrolment Communications Services</b> <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 for further information.	Employer Generic email address	<company_pdf_email>
<b>Worker Assessment Services</b>	The Employer's payroll system will perform assessment.		
<b>Employer Services</b>	YES. Provided as standard from <charge_start_date> ( <b>Employer Services Charge Commencement</b> ). 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 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 (or any one of them), and consents to such notification.

### Participation Agreement Approval

Approved by Employer	I, <accepted_by_first_name><accepted_by_last_name>
	<ol style="list-style-type: none"> <li>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</li> <li>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 shall be liable for compliance with the Employer's obligations, costs and liabilities as set out in this Participation Agreement;</li> <li>have taken any legal or financial advice which the Employer considers to be necessary before submitting this application; and</li> <li>agree for and on behalf of the Employer that if accepted this application will form a binding contract.</li> </ol> <p>Please sign the application and email a scanned copy to NOW: Pensions at <a href="mailto:salesadmin@nowpensions.com">salesadmin@nowpensions.com</a>, or alternatively please send a signed copy of this application to NOW: Pensions at the address at the head of this application. Please retain a signed copy of this Participation Agreement for your records.</p>
Signature	



	Name	Date
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

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 Contribution Rate	Employer Contribution Rate
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 Schedule of Payments/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 increased 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. The Trust Manager will provide prior written notification (which may be via electronic communications and/or on the NOW: Website) of such changes.

#### Due dates for contributions

The Employer shall ensure Payroll Files are uploaded within 10 working days of contributions being deducted from a Member's earnings by the Employer (**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.

Fees Payable by Members (incl. VAT)		
Category	Fees	When paid and how
Active Member Administration Fee	Active Members earning £18,000 or less: £0.30 per calendar month prior to 1 October 2017; £1.00 per calendar month from 1 October 2017 and prior to 1 October 2018; and £1.50 per calendar month from 1 October 2018.  For other workers, £1.50 per calendar month.	Deducted from the Member Account on a monthly basis
Deferred Member Administration Fee	Deferred Members shall pay: (a) £0.30 per calendar month for those earning £18,000 or less whilst an Active Member; or (b) £1.00 per calendar month for other Deferred Members.	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 Services (where applicable)	Electronic communications will not incur an additional charge.  Where NOW: Pensions agrees to provide hard copy communications, these will be subject to additional charges, as applicable from time to time, which are available from NOW: Pensions on request.	Payable by monthly direct debit on receipt of applicable Auto Enrolment Communications Services.
Worker Assessment Services	N/A	N/A
Employer Services	<b>Employer Direct Employer Services Charge</b> 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 a Payroll Bureau Microsite), the monthly Employer Services Charge is currently: £[ChargeC] per month (plus VAT) as at the date of this Participation Agreement.  <b>Payroll Bureau Employer Services Charge</b> For Employers who are supported by a Payroll Bureau using a Payroll Bureau Microsite, the monthly Employer Services Charge is currently: <ul style="list-style-type: none"> <li>where the Employer has between 0 – 4 employees and workers as assessed by NOW: Pensions at its sole discretion,</li> </ul>	Payable from the Employer Services Charge Commencement by monthly direct debit.

	<p>£[ChargeA] per month (plus VAT) as at the date of this Participation Agreement; and</p> <ul style="list-style-type: none"> <li>where the Employer has 5 and above employees and workers as assessed by NOW: Pensions at its sole discretion, £[ChargeB] per month (plus VAT) as at the date of this Participation Agreement.</li> </ul> <p>The number of Employer's employees and workers shall be assessed at the Employer Services Charge Commencement and thereafter from time to time at NOW: Pensions' discretion and the monthly Employer Services Charge payable may change accordingly without further notice to the Employer.</p>	
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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 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.
Details to be provided by the Employer	Contributions	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: <ul style="list-style-type: none"> <li>the first contributions payable after a Member is automatically enrolled into the Scheme any contributions deducted 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</li> </ul>

		<p>payments) of the month after the last day of that three month period; and</p> <ul style="list-style-type: none"> <li>For all other contributions, the 22<sup>nd</sup> 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.</li> </ul>
	Jobholder information	<p>The Employer shall provide the jobholder information in accordance with clause 4.2(i) of the Terms &amp; Conditions and the Automatic Enrolment Regulations as follows:</p> <p>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.</p>
	Data compliance	<p>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.</p>

#### Auto Enrolment Communications Services

Category	Process	Task Description
Delivery of communications	Electronic communications	AE communications will be delivered in electronic format to the worker's email address. 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. <b>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.</b>
	Hard copy communications (where agreed by NOW: Pensions)	Where NOW: Pensions agrees to provide hard copy communications and no worker email address is provided, hard copy communications will be sent to the worker's address as provided by the Employer, and the Employer agrees to pay the fees referred to in the Payments Schedule. NOW: Pensions reserves the right to remove the option for hard copy communications, in particular as a result of any late or non-payment of fees.
Auto-enrolment communications	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.

#### Worker Assessment Services

Process	Task Description
Worker Assessment	All workers for whom the required data is supplied will be assessed to establish the category of worker in accordance with the Automatic Enrolment Regulations
Worker Re-assessment	All workers for whom the required data is supplied will be assessed to establish the category of worker in accordance with the Automatic Enrolment Regulations.

**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	Employer Portal	Provision of the Employer Portal 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 the Employer Portal.
	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	Processing of addenda to permit the Employer to amend their staging date in accordance with the Participation Agreement.
	Communications	Processing of addenda to permit the Employer to amend the delivery method for AE communications in accordance with the Participation Agreement.



## 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 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;

**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 agreed from time to time, in addition to the Pension Services, Auto Enrolment Communications Services, Worker Assessment Services and Employer Services;

**Additional Services Fee** means the agreed fee between NOW: Pensions and the Employer for the Additional Services;

**Auto Enrolment Communications Services** means the Service specified in the subsection "Auto Enrolment Communications Services" set out in the Services Schedule;

**Applicable Law** means all statutes which relate to occupational pension schemes and the regulations made under them. This includes, but is not limited to, the Automatic Enrolment Laws;

**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 the Employer Portal;

**Data Protection Legislation** means the Data Protection Act 1998 and all applicable laws and regulations relating to the processing of personal data;

**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 or a registered pension scheme through his employment with the Employer and whose accrued right under than scheme have 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 Direct Employer Services Charge** means the Employer Services Charge applicable to those Employers who are not supported by a Payroll Bureau using a Payroll Bureau Microsite on the Employer's behalf;

**Employer Portal** means the facility on the NOW: Website 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 the Employer Portal shall mean Payroll Bureau Microsite;

**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 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](http://www.nowpensions.com) or such other system or website designated from time to time by NOW: Pensions;

**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 Microsite, 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 a Payroll Bureau Microsite on the Employer's behalf and who uploads payroll files on behalf of the Employer;

**Payroll Bureau Microsite** means the facility on the NOW: Website, 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 the Employer Portal 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 the Employer Portal by or on behalf of the Employer which shall be no later than within 10 working days of contributions being deducted from a Member's earnings by the Employer;



**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 Policy** means the NOW: Pensions privacy policy set out at [www.nowpensions.com/privacy-policy/](http://www.nowpensions.com/privacy-policy/);

**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 in the Cover Page;

**Service** means individually the Pension Services, Auto Enrolment Communications Services, Worker Assessment 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 the Employer Portal provided to the Employer under this Participation Agreement via <https://www.nowpensions.com/login/> or any other website notified 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;

**Worker Assessment Services** means the Service specified in the subsection “Worker Assessment Services” set out in the Services Schedule.

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 2.4.

2.3 This Clause 2.3 applies to the extent that the Employer has asked NOW: Pensions and NOW: Pensions has agreed to perform the Auto Enrolment Communications Services and/or the Worker Assessment Services.

NOW: Pensions is providing the Auto Enrolment Communications Services and/or the Worker Assessment 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 Auto Enrolment Communications Services and/or the Worker Assessment Services. If NOW: Pensions is succeeded in business by another entity as provider of the Auto Enrolment Communications Services and/or the Worker Assessment Services, this Participation Agreement will continue in effect in relation to the Auto Enrolment Communications Services and/or the Worker Assessment Services as if it had been made between the Employer and such successor entity.

2.4 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.

2.5 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.

2.6 Upon Employer’s acceptance to the Scheme, NOW: Pensions will give the Employer:

- (a) details relating to the Employer Portal;
- (b) a copy of the Employer’s Participation Agreement;
- (c) a summary of the Employer’s Scheme;
- (d) an implementation guide.

2.7 NOW: Pensions will give each Member written confirmation of membership and NOW: Pensions contact details.

2.8 NOW: Pensions confirms that the Scheme:

- (a) is an occupational pension scheme established in the United Kingdom;
- (b) is registered with HM Revenue and Customs under the Finance Act 2004; and
- (c) 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 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 no less than 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 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;
- (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 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;

##### Generic details

- (e) 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;
- (f) the Employer will provide to NOW: Pensions, and shall regularly monitor, a generic Employer email address and distribute any communications;

##### Contributions and Members

- (g) 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;

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

(i) 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;

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

##### Opt out and ceasing to be a Member

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

(l) 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;

(m) 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 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 Auto Enrolment Communications Services and/or Worker Assessment Services and/or any Additional Services provided; 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 non-refundable.

- 5.3 In consideration of the provision of the Scheme to the Members, the Member will pay the fees specified in the Payments Schedule by the methods specified in the Payments Schedule.
- 5.4 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.
- 5.5 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 to NOW: Pensions by direct debit which is generated by uploading details of the shortfall amount(s) to the Employer Portal as soon as possible but in any event no later than the next Payroll Upload Date.
- 5.6 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.
- 5.7 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.
- 5.8 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 Administration Fee and Investment Management Charge 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 pension scheme under the Scheme. 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, "data controller", "data processor", "personal data", "processing" and "sensitive personal data" have the meanings given to them in the Data Protection Legislation.
- 7.2 Any personal data and sensitive personal data, provided by the Employer, or on the Employer's behalf, or by the Data Subjects, to NOW: Pensions and/or the Trustee for the purposes of the Scheme (**Scheme Personal Data**) in respect of the Employer's:
- (a) Members,
  - (b) employees; or
  - (c) workers;
- whether currently or formerly working under a contract with the Employer (together **Data Subjects**), 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 Processors**), in accordance with:
- (a) this Participation Agreement;
  - (b) the Data Protection Legislation;
  - (c) NOW: Pensions' Privacy Policy;
  - (d) the Employer's reasonable written instructions;
- (**Data Protection Requirements**), for the purpose of:
- (a) NOW: Pensions and the Trustee providing the Pension Services;
  - (b) NOW: Pensions providing the Auto Enrolment Communications Services, Worker Assessment Services and 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) or otherwise as may be required to enable the Employer and the Data Subjects' participation in the Scheme under this Participation Agreement, and to provide support services in relation to the same; and
  - (d) maintaining the business relationship between NOW: Pensions and the Employer.
- (**Permitted Purposes**).
- 7.3 The Employer acknowledges and agrees 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 if required to process such personal data for its own independent purposes, including for the purposes of providing any specialist services to the Employer and/or Trustee; and to the extent necessary for it to comply with its statutory role as Scheme administrator, and in all other cases NOW: Pensions will

- be a data processor acting on behalf of the Employer and/or Trustee;
- (c) where NOW: Pensions is a data processor for the Trustee/Employer as data controller it will act in accordance with this clause 7 and will:
- (i) act only in accordance with the instructions of the relevant data controller; and
  - (ii) comply with obligations equivalent to those imposed on the data controller by virtue of the seventh data protection principle of the Data Protection Act 1998 (DPA) (in relation to data security).
- 7.4 The Employer consents to NOW: Pensions, the Trustee and the Third Party Data Processors processing, storing and transferring the Employer's personal data and the Scheme Personal Data, in accordance with the Data Protection Requirements for the Permitted Purposes. This will include the processing and storing of the Employer's personal data and the Scheme Personal Data, within the United Kingdom and European Economic Area ("EEA"), and may include transferring, storing and processing the Employer's personal data and the Scheme Personal Data outside of the EEA, by NOW: Pensions, the Trustee or by the Third Party Data Processors.
- 7.5 NOW: Pensions may collate the Data Subjects' personal data for use on an aggregate and anonymised basis.
- 7.6 In order to maintain NOW: Pensions' business relationship with the Employer, the Employer consents to NOW: Pensions contacting the Employer by email or post with updates and offers relating to products that NOW: Pensions think the Employer might be interested in. The Employer can opt out of receiving further updates and offers by following the opt out instructions in each email. The Employer further consents to NOW: Pensions sharing the Employer's details with selected third parties who may provide the Employer with information about goods and services which may be of interest.
- 7.7 The Employer will obtain and maintain, for the duration required by the Permitted Purposes, all necessary consents and permissions from the Data Subjects to enable NOW: Pensions, the Trustee and the Third Party Data Processors to process the Scheme Personal Data in accordance with the Data Protection Requirements for the relevant Permitted Purposes. 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.
- 7.8 NOW: Pensions, or the Trustee, may disclose personal data to any member of their group, which means their subsidiaries, their ultimate holding company and its 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 we 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 Processors, to perform or provide certain services on behalf of NOW: Pensions or a group company; 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.
- 7.9 The Employer shall:
- (a) comply with the DPA at all times in relation to the Scheme Personal Data;
  - (b) not take any action or make any omission in relation to the Scheme Personal Data which would cause NOW: Pensions or the Trustee to breach their obligations under the DPA;
  - (c) only store and transfer the Scheme Personal Data to NOW: Pensions and the Trustee in an appropriately secure encrypted form; and
  - (d) at the Employer's expense, co-operate with NOW: Pensions or the Trustee in respect of any relevant data subject access request received.
- 7.10 The Employer will indemnify NOW: Pensions and the Trustee, at the Employer's own expense, in respect of all losses, damages, penalties, costs, claims and expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by, or for which NOW: Pensions, the Trustee or the Third Party Data Processors may become liable as a result of any failure by the Employer to comply with any of the Employer's obligations under Clause 7.
- 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 any 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 does not satisfactorily pass ongoing checks, as specified in clause 2.5; 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:
- (a) 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;
  - (b) all rights and authorisations granted by NOW: Pensions to the Employer under this Participation Agreement shall automatically terminate and immediately revert to NOW: Pensions;
  - (c) 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;
  - (d) 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:

- (a) the preparation of a statement of investment principles under Section 35 of the Pensions Act 1995; and
- (b) 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:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation; or
- (c) 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:

- (a) the Pension Services, NOW: Pensions and the Trustee; and
- (b) the Auto Enrolment Communications Services, Worker Assessment Services, 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:

- (a) contract;
- (b) tort (including negligence);
- (c) breach of statutory duty;
- (d) innocent or negligent misrepresentation;
- (e) or otherwise,

for any:

- (a) loss of profit;
- (b) loss of sales or business;
- (c) loss of anticipated savings;
- (d) loss of use or corruption of software, data or information;
- (e) loss of or damage to goodwill or reputation;
- (f) loss of management time;
- (g) indirect loss; or
- (h) 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:

- (a) contract;
- (b) tort (including negligence);
- (c) breach of statutory duty;
- (d) innocent or negligent misrepresentation;
- (e) or otherwise,

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

- (a) legal and other professional fees and expenses incurred by the Employer and the Employer's Related Parties;
- (b) 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
- (c) 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;
- (c) the Auto Enrolment Communications 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 (for which the Trustee has no liability);
- (d) the Worker Assessment 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 (for which the Trustee has no liability); and
- (e) 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 Auto Enrolment Communications Services, the Worker Assessment Services, 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, and will otherwise communicate with NOW: Pensions, through the Employer Portal. 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 the Employer Portal or otherwise through 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 where no email address for the



- Member is available, by post or through the NOW: Website. This Clause is subject always to the Applicable Law. 15.6
- 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 the Participation Agreement to an affiliated or group company without the Employer's consent. 15.7
- 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. 15.8
- 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. 15.9
- 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. 15.10
- 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.
- 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.
- 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.
- 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.
- 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.