

Participation Agreement

Terms and Conditions

Version 7



The Employer's attention is particularly drawn to the provisions of Clause 3 and Clause 11.

1 DEFINITIONS AND REFERENCES

1.1 The Participation Agreement includes, incorporated by reference:

- (a) the Employer's 'Participation Agreement' page within *now:u* ("**Participation Agreement Page**")
- (b) these Terms and Conditions
- (c) the Services Schedule
- (d) the Payments Schedule

as amended from time to time in accordance with Clause 3, (together comprising the "**Participation Agreement**"), and sets out the terms agreed between the Employer and NOW: Pensions for the Employer's participation in the Scheme and in relation to the provision of the Services. The Participation Agreement becomes effective once the Employer's application to join the Scheme is accepted by NOW: Pensions.

1.2 In the Participation Agreement, including the Participation Agreement Page, the Services Schedule and Payments Schedule, the following terms have the following meanings:

Active Member means a Member who has been admitted to the Scheme in accordance with the Scheme Documents and who is not a Deferred Member. This term is defined in more detail in the Scheme Documents;

Additional Administration Fee means the additional fees that may be payable by the Employer for any additional administration services, as set out within the Payments Schedule;

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 additional fees that may be payable by the Employer for any Additional Services, as set out within the Payments Schedule;

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 *now:u* on the Employer's behalf;

Contributions means Employer Contributions and Member Contributions collectively;

Data Protection Legislation means all Applicable Laws relating to processing and use of personal data and data protection/data privacy in force from time to time in the UK or as are otherwise relevant to once or both of the parties, including, but not limited to: (a) the Data Protection Act 2018; (b) the General Data Protection Regulation (EU) 2016/679; (c) the General Data Protection Regulation (EU) 2016/679 in the form in which it is incorporated into UK laws (together, these laws, as relevant, will be referred to as "**GDPR**"); (d) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing; and (e) any guidance, guidelines, codes of practice and codes of conduct issued from time to time by any relevant supervisory authority responsible for administering Data Protection Legislation, including in the UK the Information Commissioner's Office ("**Supervisory Authority**") where the same are relevant to any such laws;

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

Deferred Member means a Member who has been, but is no longer an Active Member of the Scheme or is no longer an active member of a registered pension scheme. This term is defined in more detail in the Scheme Documents;

Disclosure Regulations means the requirements of section 113 of the Pension Schemes Act 1993, section 41 of the Pensions Act 1995, 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; The Occupational Pension Schemes (Winding Up) Regulations 1996 and any other statutory provision requiring the provision of documents or other information to any person in relation to the Scheme as appropriate;

Employer means a person, company or entity admitted to participate in the Scheme pursuant to the Participation Agreement. This term is defined in more detail in the Scheme Documents;

Employer Contributions means the contributions payable by the Employer, as specified in the Payments Schedule. This term is defined in more detail in the Scheme Documents;

Employer Fees means the fees payable by the Employer including the Employer Services Charge, Additional Administration Fee and Additional Services Fee as may become payable from time to time, as specified in the Payments Schedule;

Employer Generic Email Address means the email address provided by the Employer within *now:u* (as amended from time to time) and utilised by NOW: Pensions in accordance with the Participation Agreement. This should be a mailbox that is frequently monitored by the Employer;

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

Employer Services Charge means either the Direct Employer Services Charge or the Payroll Bureau Services Charge as specified in the Payments Schedule;

Employer Services Charge Commencement means the date from which either the Direct Employer Services Charge or the Payroll Bureau Employer Services Charge shall become chargeable. This will be the same as the Scheme Start Date unless expressly agreed otherwise;

Exit Fee means the additional exit fees that may be payable by the Employer upon termination of the Participation Agreement, as set out within the Payments Schedule;

Founder means NOW: Pensions 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. This term is defined in more detail in the Scheme Documents;

Member Contributions means the Ordinary Contributions and Voluntary Contributions payable by the Member and deducted by the Employer from the Member's remuneration;

Member Fees means the Member Administration Fee and Investment Management Charge payable by the Member and deducted by NOW: Pensions from the Scheme Account, as specified in the Payments Schedule;

Net Pay Arrangement means the arrangement set out in Section 193 of the Finance Act 2004;

NOW: Pensions means NOW: Pensions Limited, a limited company incorporated in England and Wales with registration number 07766398;

NOW: Pensions 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;

now:u means the NOW: Pensions online software facility (whether accessed via an internet browser or the mobile application) through which:

- (a) the Employer or Payroll Bureau: (i) shall upload the Employer's Payroll Files; (ii) may access information relating to the Employer's participation in the Scheme; and (iii) may make any amendments to the Employer information and to access help and support;
- (b) a Member may: (i) access their Scheme Account and view information in relation to their membership of the Scheme; (ii) amend their personal details; (iii) select their investment option from time to time (where available); and (iv) access help and support;

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

Ordinary Contributions means the Contributions required from a Member under the Payments Schedule;

Payments Schedule means the Payments Schedule forming part of the Participation Agreement (as amended from time to time);

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 access to *now.u*, and is not a party to the 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 *now.u* on the Employer's behalf and who uploads Payroll Files on behalf of the Employer;

Payroll File means the file containing payroll data to be uploaded by the Employer, or the Payroll Bureau as appropriate, to *now.u* 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 *now.u* 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 Services 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 within *now.u* at any time;

Privacy Documents means the NOW: Pensions and/or Trustee privacy documents which cover privacy and data protection information, including but not limited to the privacy policy and privacy notices, whether made available on the NOW: Pensions Website or elsewhere, or as may be otherwise provided from time to time to the Employer and/or Relevant Data Subjects by or on behalf of NOW: Pensions and/or the Trustee, 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 established by a Trust Deed dated 29 November 2011 and currently governed by the Scheme Documents;

Scheme 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 in the Scheme Documents;

Scheme Documents means the Trust Deed and Rules dated 29 March 2024 (as varied from time to time) by which the Scheme is currently governed;

Scheme Start Date means the date on which the Employer begins to participate in the Scheme. This is the later of: (a) the date upon which NOW: Pensions accepts the Employer's application to enter into the Participation Agreement; or (b) by exception, a date agreed between NOW: Pensions and the Employer upon application;

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");

Services Schedule means the Services Schedule forming part of the Participation Agreement (as amended 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 is currently the Trust Manager;

Trustee means the trustee of the Scheme. This is currently NOW: Pension Trustee Limited; and

Voluntary Contributions means such extra contributions, if any, as a Member pays from time to time. This term is defined in more detail in the Scheme Documents.

- 1.3 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.
- 1.4 Any reference to the Participation Agreement or to the Scheme Documents includes any modification of the Participation Agreement or the Scheme Documents.
- 1.5 In the 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.
- 1.6 The Schedules form integral parts of the Participation Agreement.

2 THE EMPLOYER'S ADMISSION TO THE SCHEME

- 2.1 If there is a conflict between the 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 the 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 the Participation Agreement. If NOW: Pensions is replaced as Trust Manager of the Scheme by the Trustee, the 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 2.1 is subject always to Clause 2.3 and Clause 2.4.

- 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 the 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, the Participation Agreement will continue in effect as if it had been made between the Employer and the replacement Trust Manager (pursuant to Clause 2.1), 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 the 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 the Employer's acceptance to the Scheme, NOW: Pensions will give the Employer:
 - (a) a welcome email setting out the next steps and key information;
 - (b) access to *now.u*, where a copy of the Employer's Participation Agreement will be made available;
 - (c) links to the NOW: Pensions help centre; and
 - (d) a guide to *now.u*.
- 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:
 - (a) is an occupational pension scheme within the meaning of section 1 of the Pension Schemes Act 1993 and established in the United Kingdom;
 - (b) is an authorised master trust scheme under the Pension Schemes Act 2017 for the purposes of Regulation 12(7) of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991;
 - (c) is registered with HM Revenue and Customs under the Finance Act 2004; and
 - (d) 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.
- 2.8 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

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

- 3.1 NOW: Pensions may vary any part of the Participation Agreement at any time by updating the Participation Agreement and providing notice on the NOW: Pensions Website or within *now.u* (as appropriate). 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 or the Employer agrees to a shorter notice period. 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 ombudsman 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 Notwithstanding anything set out in Clause 3.1 of these Terms and Conditions, the Employer agrees that any and all variations to the Participation Agreement published on the NOW: Pensions Website either on or before the Scheme Start Date shall constitute valid amendments to the Participation Agreement as per the date stated on the NOW: Pensions Website. The Employer agrees and confirms that valid notice under these Terms and Conditions has been provided by NOW: Pensions for any and all such variations.
- 3.3 Subject to the other terms of the Participation Agreement and the Scheme Documents, the Employer may vary, via *now.u*, the rates of the Employer Contributions and/or Member Contributions payable to the Scheme and the other available options selected by the Employer and the Employer's details contained under the Participation Agreement. The Employer will give such

notice to the Members as may be required by current legislation, the terms of the Participation Agreement or otherwise.

- 3.4 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, unless the Employer agrees to a shorter notice period. Where required by 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 the 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 with all obligations in relation to contributions pursuant to the Applicable Law;
- (b) Where an Employer fails to comply with its obligations under Applicable Law, NOW: Pensions reserves the right to claim any monies owed in relation to any investment loss incurred to Scheme Accounts resulting from the late payment of Contributions;
- (c) Failure by the Employer to comply with its regulatory obligations in relation to the Scheme may result in NOW: Pensions being required to make a report to The Pensions Regulator or any other relevant regulatory body;
- (d) the Employer will promptly provide any documents, information or other assistance requested by NOW: Pensions, or the Trustee, or as required under the Participation Agreement, the Scheme or Scheme Accounts including, without limitation, verification of the identities of each of the Employer's Members;
- (e) 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;
- (f) the Employer will ensure that the Contributions referenced in the Payments Schedule accurately reflect the intended Contributions at all times, and shall inform NOW: Pensions of 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;
- (g) the Employer will ensure that all Member Contributions are correctly deducted from the respective Member's remuneration and in accordance with the Net Pay Arrangement;
- (h) The Employer shall provide the jobholder information in accordance with the Participation Agreement 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;
- (i) 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

- (j) the Employer will ensure that all information given to NOW: Pensions by the Employer and on the 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;
- (k) the Employer will provide to NOW: Pensions, and shall regularly monitor, the Generic Employer Email Address and distribute any communications as necessary including to Employer's Members;

Contributions and Members

- (l) 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;
- (m) the Employer will, in accordance with the Payments Schedule, upload Employer's payroll information to *now:u* and pay the Employer Contributions and Member Contributions into the Scheme;

- (n) the Employer will provide NOW: Pensions with all reasonable assistance required in respect of any notification to Members arising in accordance with Clause 3.1;
- (o) 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;
- (p) the Employer shall use all reasonable endeavours to ensure the Members' compliance with the Scheme Documents;
- (q) 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) In respect of the first Member Contributions payable after a Member is automatically enrolled into the Scheme, any Member Contributions deducted by the Employer from the Member's remuneration 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;

- (r) Where an Employer overpays Contributions, or provides NOW: Pensions with incorrect Payroll Data, within a Payroll File or otherwise, which leads to NOW: Pensions collecting an incorrect Contribution amount, the Employer acknowledges and accepts that any refund of Contributions due in respect of any such overpayment is subject to any decrease in value due to unit price fluctuation in the period between receipt of the overpayment and payment of the refund and NOW: Pensions will not be liable for any resulting loss to the Employer or the Member;

Opt out and ceasing to be a Member

- (s) NOW: Pensions may accept, as the Employer's agent, any Opt-out Notice given to NOW: Pensions;
- (t) 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;
- (u) the Employer shall include the leaving date of an Active Member who will cease to be an Active Member on the Payroll 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 the Participation Agreement, including but not limited to the Employer's obligations under this Clause 4 of these Terms and Conditions, 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.

- 4.6 A Member will cease to be an Active Member where required under the Scheme Documents.

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 the Participation Agreement to include payment of all Contributions and Employer Fees. Please note a separate direct debit mandate may be required for payment of Contributions and for payment of Employer 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 Employer 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 prorated.
- 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 Employer Fees or any Exit Fee due under the 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 and any Exit Fee due under the 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 the 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 the Participation Agreement.
- 6.2 In consideration of the Employer Fees paid by the Employer to NOW: Pensions and performance of the Employer's obligations under the Participation Agreement, NOW: Pensions grants to the Employer a non-exclusive, non-transferable right to permit the Authorised Users to use *now:u* during the term of the Participation Agreement solely to the extent and for the duration required to receive the Services under the 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 *now:u* 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 *now:u* 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.
- 6.5 The Employer shall prevent any unauthorised access to, or use of, *now:u* 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 *now:u* solely to the extent and for the duration required for the purposes of management of their Scheme Account. This subsection 6.6 shall survive termination of the Participation Agreement.
- 6.7 The Employer acknowledges that neither the NOW: Pensions Website nor *now:u* has been developed to meet either the Employer's or any Member's individual requirements. NOW: Pensions does not warrant that the use of *now:u* or the NOW: Pensions Website will be uninterrupted or error-free. In the event of any material defect in *now:u* or the NOW: Pensions Website, 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) "controller", "processor", "data subject", "international organisation", "personal data", "personal data breach", "processing" "special categories of personal data" and "criminal convictions and offences 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 Bureau, 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) including but not limited to the personal data categories mentioned in the Privacy Documents whether made available on the NOW: Pensions Website or elsewhere and as updated from time to time;
- (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 the Participation Agreement (including individual Employers);
- (d) **Scheme Personal Data** means any personal data including but not limited to special category data and, as relevant, criminal convictions and offences 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 including but not limited to the personal data categories mentioned in the Privacy Documents whether made available on the NOW: Pensions Website or elsewhere and as updated from time to time; and
- (e) **Security Measures** means such technical and organisational security measures as required under Data Protection Legislation, including as a minimum those which are referred to in NOW: Pensions' own documented security policy/ies, and 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.
- (f) **Third Party Data Recipients** means NOW: Pensions' and/or (as relevant) the Trustee's:
- (i) group companies;
 - (ii) third party administrators; and
 - (iii) service providers.
- Scheme Personal Data processing and Administration Personal Data processing, including the roles of NOW: Pensions, the Trustee, and the Employer**
- 7.2 Any Scheme Personal Data and any Administration Personal Data will be handled and processed by NOW: Pensions and the Trustee, in accordance with:
- (a) the Participation Agreement;
 - (b) the obligations placed on them by applicable Data Protection Legislation and other relevant Applicable Law; and
 - (c) NOW: Pensions' and the Trustee's Privacy Documents ("Data Protection Requirements"), for the purposes of:
 - (d) NOW: Pensions and the Trustee providing the Pension Services;

- (e) 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;
- (f) otherwise as may be required to enable the Employer and the Relevant Data Subjects' participation in the Scheme under the Participation Agreement, and to provide support services in relation to the same;
- (g) managing the business relationship between NOW: Pensions and the Employer;
- (h) managing arrangements as between the Trustee and the Employer should they (or NOW: Pensions acting on behalf of the Trustee) be in correspondence or enter into communications from time to time;
- (i) NOW: Pensions creating and devising new products and services from time to time and providing the Employer and/or the Relevant Data Subjects with information about those products and services and which may, at the discretion of NOW: Pensions, be of interest to them; and/or
- (j) such other purposes as may, at the discretion of NOW: Pensions and/or the Trustee, become relevant from time to time
- (together these are the "**Permitted Purposes**").
- 7.3 The parties acknowledge and agree that:
- (a) the Employer and the Trustee will process Scheme Personal Data as separate controllers in that each of them will make decisions (independently from the other) about how and why they do their own processing;
- (b) NOW: Pensions will process Scheme Personal Data as an independent controller to the extent necessary for it to comply with its statutory role as Scheme administrator under Applicable Law, as otherwise may be necessary from time to time for its own compliance with Applicable Law, for such other purposes as may be referred to in its Privacy Documents, and for the purposes mentioned in Clauses 7.5 and 7.6, and accordingly the relevant provisions in clause 7.12 shall apply to all such processing by NOW: Pensions;
- (c) NOW: Pensions will process Scheme Personal Data as a controller jointly with the Trustee to the extent that it makes decisions jointly with the Trustee about how and why the Scheme Personal Data is processed, and that joint controller relationship is not the subject matter of this Agreement (it is acknowledged by the Employer that it is for NOW: Pensions and the Trustee to consider how to deal with that separately as between themselves);
- (d) NOW: Pensions and the Employer will process Administration Personal Data as independent controllers and accordingly the relevant provisions in Clause 7.12 shall apply to such processing by NOW: Pensions;
- (e) in all other cases, when processing Scheme Personal Data, NOW: Pensions will be a processor acting on behalf of:
- (i) the Employer, and accordingly Clauses 7.9, 7.10 and 7.4(a) shall apply to such processing of Scheme Personal Data by NOW: Pensions; and
- (ii) the Trustee (it is acknowledged by the Employer that it is for NOW: Pensions and the Trustee to consider how to deal with that separately as between themselves);
- (f) for the avoidance of doubt, NOW: Pensions and the Employer are not joint controllers for any of their respective processing of Scheme Personal Data and/or Administration Personal Data.
- 7.4 The Employer acknowledges and agrees that NOW: Pensions, the Trustee and the Third Party Data Recipients will be processing, storing and transferring the Administration Personal Data and the Scheme Personal Data, in accordance with the Data Protection Requirements for the Permitted Purposes, and the Employer hereby authorises all of the processing mentioned in this Clause 7.4, including:
- (a) the processing and storing of such personal data, within the United Kingdom, and outside of the United Kingdom, and the latter may include transferring, storing and processing such personal data outside of the United Kingdom, by NOW: Pensions, the Trustee and/or by the Third Party Data Recipients, provided such transfer is compliant with the Data Protection Legislation; and
- (b) use of Third Party Data Recipients to process such personal data, provided that, where such Third Party Data Recipient is acting as a processor (or a sub-processor) of NOW: Pensions, they are appointed in accordance with Clause 7.10.
- 7.5 NOW: Pensions may collate the Relevant Data Subjects' personal data for use on an aggregate and anonymised basis and this includes (as relevant) NOW: Pensions converting Scheme Personal Data and Administration Personal Data into aggregated and anonymised form.
- 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. The Employer acknowledges and agrees to the processing described in this 7.6 and it shall make those Relevant Data Subjects to whom Administration Personal Data relates (including employees and workers) aware of the processing described in this Clause 7.6 including by the Employer providing all such persons with a copy of or link to the employer privacy notice of NOW: Pensions whether made available on the NOW: Pensions Website or elsewhere and as updated from time to time, without undue delay and at the latest within a month of providing their data to NOW: Pensions.
- 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 subsidiaries. NOW: Pensions (and, as the case may be, the Trustee) 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 and/or the Trustee contracts with third parties, including its or their Third Party Data Recipients, to perform or provide certain services on behalf of NOW: Pensions and/or the Trustee or a group company, as necessary for the purpose of performing or providing those services;
- (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 or if disclosure of the same is otherwise done in accordance with Applicable Law. This includes exchanging information with other companies and organisations for the purposes of verification, fraud protection and credit risk reduction; or
- (d) if the Trustee is under a duty to disclose or share personal data to comply with any legal obligation or if disclosure of the same is otherwise done in accordance with Applicable Law.
- 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 of Scheme Personal Data as a processor**
- 7.9 The details of the processing of Scheme Personal Data by NOW: Pensions as processor and under this Agreement include but are not limited to the following (and if other details should become relevant from time to time NOW: Pensions will put a notice on the NOW: Pensions Website and direct the Employer to that notice or it will notify the Employer in writing of the details):
- (a) subject-matter: NOW: Pensions' 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: (without prejudice to Clause 7.10(a)) 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 processor processing Scheme Personal Data on behalf of the Employer as controller, it shall:

- (a) subject to Clause 7.12, only process Scheme Personal Data in accordance with the documented instructions of the Employer, as set out in this Agreement and the Scheme Documents (unless alternative processing instructions are agreed between the parties in writing or unless NOW: Pensions is required to process Scheme Personal Data to comply with Applicable Law in which case it will notify the Employer of such legal requirement prior to such processing unless such law prohibits notice to the Employer on important public interest grounds), provided that, if NOW: Pensions believes that any instruction received by it is likely to infringe Data Protection Legislation, it shall notify the Employer and 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 to process Scheme Personal Data are subject to a contractual obligation to keep such data confidential or are under an appropriate statutory obligation of confidentiality;
- (c) ensure that all Third Party Data Recipients who are sub-processors of NOW: Pensions are engaged by NOW: Pensions under a written contract containing materially the same obligations as are set out in this Clause 7.10 and Clause 7.4(a) and which specifies the sub-processors' processing activities;
- (d) 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 Employer without undue delay on becoming aware of any personal data breach in respect of any Scheme Personal Data;
- (e) 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;
- (f) taking into account the nature of the processing (and that Scheme Personal data is mainly held by the Scheme administrator), provide reasonable assistance to the Employer by implementing appropriate technical and organisational measures insofar as this is possible for the fulfilment of the controller's obligation to respond to requests for exercising the Relevant Data Subject's rights under Data Protection Legislation in respect of any Scheme Personal Data;
- (g) be entitled to engage sub-processors of the Scheme Personal Data (including Relevant Third Parties) provided a list of those sub-processors is as far as reasonably possible made available to the Employer upon request, and NOW: Pensions shall be entitled to engage additional or replacement sub-processors in relation to processing of the Scheme Personal Data provided it informs the Employer of any intended changes concerning the addition or replacement of sub-processors thereby giving the Employer the opportunity to object to such changes strictly only when the objection by the Employer is for reasons related to material issues regarding compliance with Data Protection Legislation and where the objection is made in good faith;
- (h) 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 Scheme Personal Data (and promptly delete all existing copies), except where any Applicable Law or other laws require NOW: Pensions to store such Scheme Personal Data or which it is required to retain for insurance, accounting, taxation or record keeping purposes;
- (i) 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
- (j) 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.

Obligations of the Employer

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) implement and 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 and/or the Trustee; and
 - (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' and/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 of the Employer having received or otherwise become aware of the same.

Processing by NOW: Pensions of Scheme Personal Data and Administration Personal Data as an independent controller

7.12 Where:

- (a) NOW: Pensions acts as independent controller in the course of processing Scheme Personal Data to the extent necessary for it to comply with its statutory role as Scheme administrator, and for such other purposes as may be referred to in its Privacy Documents, and for the purposes mentioned in Clause 7.5; and
- (b) NOW: Pensions acts as independent controller in the course of processing Administration Personal Data for the purposes of its day to day management of tasks relevant to this Agreement and for the purposes mentioned in Clause 7.6; in each case NOW: Pensions shall have sole responsibility for compliance with Data Protection Legislation in relation to all those activities and it shall:
 - (i) implement and maintain technical and organisational measures to protect Scheme Personal Data and Administration 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);
 - (ii) assign a point of contact within its organisation who understands data protection with a view to that person working together with the Employer's own data protection contact person should that, in the sole discretion of NOW: Pensions, be necessary in relation to the sharing as between the Employer and NOW: Pensions of Scheme Personal Data and Administration Personal Data; and
 - (iii) consider the rights of Relevant Data Subjects under the Data Protection Legislation when NOW: Pensions is processing the Scheme Personal Data and the Administration Personal Data.

Additional duties of the Employer and warranties made by the Employer

7.13 The Employer shall provide those Relevant Data Subjects to whom Scheme Personal Data relates (including Members) with a copy of or link to the member privacy notice of NOW: Pensions whether made available on the NOW: Pensions Website or elsewhere and as updated from time to time, without undue delay and at the latest within a month of providing their data to NOW: Pensions.

- 7.14 The Employer warrants to NOW: Pensions and the Trustee on its own behalf and on behalf of other third parties or representatives acting on behalf of the Employer, including Payroll Bureau, financial advisers and other advisers that:
- it has all necessary rights to authorise NOW: Pensions to process Administration Personal Data in accordance with this Agreement and the Data Protection Legislation;
 - it has all necessary rights to authorise NOW: Pensions to process Scheme Personal Data in accordance with this Agreement and the Data Protection Legislation;
 - it will not, by its act or omission (or by those of other third parties or representatives acting on behalf of the Employer, including Payroll Bureau, financial advisers and other advisers), cause NOW: Pensions or the Trustee to infringe Data Protection Legislation; and
 - its instructions to NOW: Pensions (as processor) relating to processing of Scheme Personal Data will not put NOW: Pensions in breach of Data Protection Legislation, including without limitation with regard to transfers of Scheme Personal Data outside the United Kingdom.

8 TERMINATION OF THE PARTICIPATION AGREEMENT

- 8.1 The Participation Agreement, and the Employer's participation in the Scheme, will terminate if:
- the Employer gives NOW: Pensions a minimum of three months' notice (or a shorter period, if NOW: Pensions agrees);
 - NOW: Pensions gives the Employer a minimum of three months' written notice;
 - the Employer fails, in the opinion of the Trustee or NOW: Pensions, to perform or observe the Employer's obligations under the Scheme or the Participation Agreement. This includes, but is not limited to, circumstances where the Employer has failed to provide NOW: Pensions with information required under the Participation Agreement and/or the Employer has failed to pay any Contributions or Employer Fees due under the 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
 - 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 the Participation Agreement is terminated, Member Fees will continue to be charged to Scheme Accounts as set out in the Payments Schedule, but the Employer will not be required to pay any further Employer 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 and/or any Exit Fee determined by NOW: Pensions to be payable by the Employer).
- 8.3 On termination or expiry of the Participation Agreement:
- the Employer shall immediately pay to NOW: Pensions all outstanding unpaid Employer Fees, Exit 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 the 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; and
 - 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 be invited to 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 the 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 Employer Fees payable under the Participation Agreement. The Employer further acknowledges and agrees that NOW: Pensions and the Trustee are entitled to the exclusion of liability set out in 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 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;
- wasted expenditures;
- business disruptions;
- 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 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;

- (e) or otherwise,
- and for the avoidance of doubt (but without limiting the generality of this Clause 11.4) including:
- (f) legal and other professional fees and expenses incurred by the Employer and the Employer's Related Parties;
 - (g) 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
 - (h) 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:

- (i) the Employer Services, the equivalent of the greater of the total Employer 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);
- (j) the Pension Services, the equivalent of the greater of the total Employer Fees paid by the Employer in that period in respect of the specific Service in question, or £250; and
- (k) any Additional Services, the equivalent of the greater of the total Employer 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 the 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 The 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 the 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 the term of the 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 the 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 requested by 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 the Participation Agreement.

12.4 The provisions of this Clause 12 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;
- (d) is developed by or for the receiving party independently of the information disclosed by the disclosing party; or
- (e) is agreed between the parties as appropriate for public release (for example, press releases).

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 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 12.

13 THIRD PARTY RIGHTS

13.1 Subject to the further provisions of this clause 13, no one other than a party to the Participation Agreement, their successors and permitted assignees, shall have any right to enforce any of the terms of the Participation Agreement.

13.2 The Employer agrees that:

- (a) the Trustee may enforce rights under the 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 the Participation Agreement and providing the Employer shall only be liable for each loss once.

13.3 The parties agree that NOW: Pensions shall remain solely responsible for NOW: Pensions' obligations under the Participation Agreement and the Trustee shall remain solely responsible for the Trustee's obligations under the Participation Agreement.

14 GENERAL

14.1 **Notices and Communications:** Unless NOW: Pensions agrees otherwise, the Employer will give any notice to NOW: Pensions by registered post sent to the NOW: Pensions registered office. Notwithstanding this, the Employer may request to terminate the Participation Agreement in accordance with Clause 8.1(a) via *now.u*. 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 *now.u* or otherwise on the NOW: Pensions Website. NOW: Pensions may give any information and any notice (including, but not limited to, any notice under Clause 3) to Members through *now.u*, by email to the Member's email address, by email to the Employer Generic Email Address, by post or on the NOW: Pensions 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 14.1 is subject always to the Applicable Law.

14.2 **Assignment:** The Employer will not assign or otherwise transfer the Employer's rights or responsibilities under the 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.

14.3 **Relationship:** Nothing in the 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.

14.4 **Tax evasion:** The Employer shall comply with all applicable laws, statutes, regulations and codes relating to the evasion of tax including but not limited to the Criminal Finances Act 2017.

14.5 **Anti-Bribery and Modern Slavery:** 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 and the Modern Slavery Act 2015 (“**Relevant Requirements**”); and

- (b) not engage in any activity, practice or conduct which would constitute an offence under the Relevant Requirements if such activity, practice or conduct had been carried out in the UK.

The Employer shall have and shall maintain in place throughout the term of the Participation Agreement its own policies and/or procedures, including but not limited to adequate procedures under the Bribery Act 2010 and Modern Slavery Act 2015, to ensure compliance with the Relevant Requirements, and Clause 14.5(b) and will enforce them where appropriate. The Employer shall inform NOW: Pensions as soon as it becomes aware of a breach of the Bribery Act 2010 or the Modern Slavery Act 2015.

- 14.6 **Entire Agreement:** The Participation Agreement together with the Scheme Documents and the Privacy Documents constitute the entire agreement between the parties relating to its subject matter and supersedes any prior correspondence, representations or agreements. The parties acknowledge that the 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 the Participation Agreement.
- 14.7 **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.

- 14.8 **Rights and Remedies:** Except as expressly provided for in the Participation Agreement, the rights and remedies provided under the Participation Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

- 14.9 **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.

- 14.10 **Severance and Waiver:** If any provision of the 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 the 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.

- 14.11 **Survival:** Any provision of the Participation Agreement that expressly or by implication is intended to come into or continue in force on or after termination of the Participation Agreement shall remain in full force and effect.

- 14.12 **Governing Law:** The 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.

